

# BUYERS CONDITIONS OF SALE

**1. BUYER'S AGREEMENT.** By bidding at auction, you agree that this Buyers Conditions of Sale ("Conditions of Sale"), along with the Collection and Shipment of Wines, Bottle Description and Absentee Bids all published by Acker, Merrall & Condit Company ("AMC") and all incorporated into the Conditions of Sale constitute your entire agreement ("Agreement") with AMC and the owner ("Seller") with respect to the property listed in this catalogue. AMC may amend this Agreement from time to time and at any time before, during and after any auction through posted notices, addenda or errata or through oral announcements during the sale. By bidding at auction, you agree to be bound by all terms and conditions of the Agreement.

**2. AMC AS AGENT.** Except as otherwise stated in the catalogue, AMC acts as agent for the Seller. The Agreement for the sale of all property in this catalogue ("Property") is therefore between the Seller and the highest bidder accepted by the auctioneer (the "Buyer"). The Property is divided into separate groupings as solely determined by AMC and each such grouping ("Lot") is subject to a separate bid at auction.

### **3. BEFORE AUCTION.**

**a) Inspection.** Prior to auction you are expressly advised to physically inspect any Property on which you are interested in bidding and to rely on your physical inspection as opposed to catalogue or other descriptions. While AMC has attempted to describe all Property with accuracy, in no event whatsoever shall AMC be liable for any oral or written description of the Property, or for any errors in such description or for any omissions in such description. Except as provided in Section 5 d) below, ALL PROPERTY IS SOLD "AS IS."

**Please note that AMC may seek views of outside experts either before or after the sale on certain bottles, and said bottles may be marked by such expert as indicia that such expert has inspected such Property. In addition, the wine auction is sponsored and undertaken by Acker Merrall & Condit Company. Bouley Restaurant has not selected or inspected any of the wines to be sold at this wine auction and disclaims any and all responsibility therefor.**

**b) No Guarantee.** In no event whatsoever do Seller or AMC or any of their respective officers, employees or agents make any oral or written express or implied representations, warranties or guarantees as to the merchantability, fitness for a particular use, the correctness of any catalogue description or other description as to the origin, physical condition, quality, rarity, authenticity, attribution, value, estimated value, importance, provenance, exhibition history, historical relevance or bibliographic references concerning any item of Property.

**c) Bidder Registration.** To bid at this auction, you must complete and sign a registration form and provide identification and proof of age. AMC may require you to produce bank or other financial references. AMC retains the absolute right to refuse any prospective bidder admission to or participation in any auction.

**d) Importation.** You are expressly advised to read the Collection and Shipment of Wines form which is part of this Agreement. Various jurisdictions both within and outside of the United States prohibit the importation, or limit the quantity, of alcoholic beverages that may be brought or shipped into such jurisdiction. In addition, various jurisdictions may require the purchaser, seller or shipper to possess certain licenses or permits. Moreover, local laws may prohibit the importation and/or the resale of wine. *It shall be your sole responsibility to determine if such prohibitions, restrictions or limitations are applicable to you and to determine – before bidding at auction – the manner, if at all, in which alcoholic beverages can legally be brought into any jurisdiction. The prohibition or denial of, or delay in obtaining, any such permit or license shall neither justify the rescission of any sale nor any delay in making full payment for the purchase.*

AMC makes no representation or warranty as to the legal right of any party to ship or import alcoholic beverages to or from any jurisdiction. Further, AMC assumes no obligation and bears no responsibility whatsoever for applying for or obtaining any such permits or licenses.

**e) Exportation.** Property sold at auction may also be subject to laws governing exportation from the US. *It shall be your sole responsibility to determine – before bidding at auction – whether an export permit or license is required for your purchase and to obtain any such required permit or license. The denial of, or delay in obtaining, any such permit or license shall neither justify the rescission of any sale nor any delay in making full payment for the purchase.*

AMC makes no representation or warranty as to the legal right of any party to ship or export alcoholic beverages to or from any jurisdiction. Further, AMC assumes no obligation and bears no responsibility whatsoever for applying for or obtaining any such permits or licenses.

**f) Absentee Bidding.** You are expressly advised to read the Absentee Bids form which is part of this Agreement. As a courtesy to bidders not present at the auction either in person or through an agent or by telephone, AMC will enter written, absentee bids delivered to it prior to the auction. Absentee bids must be placed in the currency of the place of sale. If AMC receives identical written bids for a particular Lot and these bids are the highest amount for that Lot at auction, such Lot will be sold to the absentee bid first received. The entry of written bids is a free service and is undertaken by AMC subject to its obligations at the time of auction. Accordingly, AMC is in no event liable for any errors or omissions in executing such written bids or for any failure to execute any such bids.

**g) Telephone Bidding.** Prior to the day of auction, you may make arrangements with AMC to bid at auction by telephone. Telephone bidding is offered as a courtesy to bidders who cannot be present at the auction in person, by agent, or by written absentee bid. The entry of telephone bids is a free service and is undertaken by AMC subject to its obligations at the time of auction. Accordingly, AMC is in no event liable for any errors or omissions in executing such telephone bids or for any failure to execute any such bids.

#### 4. AT AUCTION.

a) **Catalogues.** You are expressly advised to read the Bottle Description form which is part of this Agreement. While AMC has attempted to describe each Lot in this catalogue accurately, in no event shall AMC be liable for any description or error or omission in such description. AMC retains the absolute right to amend at any time prior to and during the auction and in any manner any description of any Lot. Classifications in the text are for identification purposes only and are based on standard sources. Each statement contained in this catalogue and each other statement, whether oral or written, and whether made in an advertisement, bill of sale, addendum, notice, announcement or other written or oral communication, is a statement of opinion ONLY and shall not be relied upon by any bidder. **You must make appropriate allowances for natural variations of ullages, conditions of cases, labels, corks and wine.** In no event shall AMC accept a return, accord a credit or adjust a price to any Property after delivery except under the terms stated in Section 5 d) below. Images appearing in this catalogue or elsewhere are for illustrative purposes only and may not be relied upon to reveal imperfections in any Lot.

b) **Reserve Price.** Unless otherwise indicated, each Lot is sold subject to a reserve price, which is the minimum price below which the Lot will not be sold. While AMC has the right to raise or lower the reserve price at any time prior to the time the Lot is opened for bidding, under no circumstance shall the reserve price for a Lot ever exceed the low estimate for that Lot as printed in the Catalogue or as amended by oral or posted notices. If any Lots in the catalogue are offered without a reserve price, such Lots will be designated by the symbol \* next to the Lot number. The reserve price for each Lot is available upon request.

c) **Estimates.** Each lot in the catalogue is accompanied by a low and high estimate of the selling price, excluding the buyer's premium and any taxes. Where possible, estimates are based on past sales of comparable property, and while they are intended as a general guide for prospective bidders, in no event do they constitute either a representation or a prediction of an actual selling price and should not be relied upon as such. AMC determines estimates in advance of the sale and reserves the right to revise estimates to reflect current market conditions.

d) **Bidding. Warranties.** By bidding at auction, you represent and warrant that (i) you are at least twenty-one years of age, (ii) you have the legal authority, right, and capacity to buy, receive, possess and otherwise deal in any Lot purchased, and (iii) any bids made by you or on your behalf are not pursuant to any anti-competitive agreement and are otherwise in compliance with federal and state antitrust law.

*Bids per Lot.* Unless otherwise announced by the auctioneer, all bids are per Lot in consecutive numerical order as they appear in this catalogue.

*Bidding up to but not at the Reserve Price.* Subject to the auctioneer's discretion, bids shall be entered in the order in which they are received. The auctioneer may open bidding on any Lot by placing a bid on behalf of the Seller. The auctioneer may further bid on behalf of the Seller up to but not at the amount of the reserve

price, by placing successive or consecutive bids for the Lot, or by placing bids in response to other bidders.

*Bidding at and Beyond the Reserve Price.* Once bidding has reached the Lot's reserve price, the auctioneer will not bid on behalf of the Seller and will only accept bids from parties other than the Seller or the Seller's agent.

*No Sellers Bidding.* Sellers have agreed not to enter a bid or to cause a bid to be entered on any Lot of which they are the owner.

**AMC reserves the right to bid for its own account on any Lot at any auction, subject to the same terms and conditions applicable to all other buyers. AMC will make an announcement in the salesroom that it reserves the right to bid for its own account on any Lot at any auction.**

*Bidding Not Reaching the Reserve Price.* If bidding on a Lot does not reach the reserve price, the auctioneer may remove the Lot from sale. At the time of such removal and before bidding on another Lot begins, the auctioneer shall announce that the removed Lot has been "passed," "withdrawn," "returned to owner," or "bought-in."

*Hammer Price.* Subject to fulfillment of all conditions set forth in this Agreement, the highest bidder accepted by the auctioneer will be the Buyer and the striking of the auctioneer's hammer marks the acceptance of the final bid as the "hammer price" and the creation of a contract for sale between the Seller and the Buyer.

*Passage of Title.* At the fall of the hammer, title to the Lot and all risks in connection with the Lot pass to the Buyer.

*No Liability.* In no event shall AMC be liable for any errors in entering any bids or for failure to enter any bids.

e) **Parcel Lots.** In the event the catalogue lists a sequence of Lots carrying the same estimates and consisting of the same type of wine, quantity and bottle size, the Buyer of the first Lot may, in the discretion of the auctioneer, have the option to buy any or all additional Lots in the Parcel for the same hammer price if there is no higher absentee bid on any subsequent Lot within the Parcel. If the option is not exercised on all such Lots, the auctioneer will open bidding on the next unsold Lot and may elect to offer the Buyer of that lot the option to take any or all of the remaining Lots in the Parcel. Bidding shall continue in the same manner until all Lots in the Parcel have been offered and declared sold or unsold by the auctioneer.

f) **Auctioneer's Discretion.** AMC and/or auctioneer has the sole and absolute discretion to: (i) withdraw any Lot, (ii) divide any Lot; (iii) combine any two or more Lots; (iv) refuse any bid, (v) advance the bidding, including changing the increments, in such a manner as he may see fit and, in the event of error or dispute, (vi) to determine the successful bidder, to continue the bidding, to cancel the sale, or to reoffer and resell the disputed Lot. Wherever AMC and/or auctioneer exercises its discretion, its decision is final, binding and conclusive in all respects.

g) **Property in which AMC has an Ownership Interest.** Lots owned by AMC in whole or in part or where AMC has an economic interest equivalent to an ownership interest will be so designated on the first page where such Lots appear.

**h) Buyer's Premium.** A buyer's premium of 22% shall be added to the hammer price.

**i) Taxes.** Property shipped to Buyers within the State of New York and within the State of California is subject to taxation. Holders of licenses issued by the New York State Liquor Authority or the California Department of Alcoholic Beverage Control may be exempt from taxation and should present the required documents to Acker Merrall & Condit prior to purchase. Property shipped to Buyers outside the State of New York and outside the State of California is exempt from New York State and California State taxation provided the purchaser complies with his/her state regulations. Acker Merrall & Condit assumes no liability whatsoever for the collection of Sales Tax or Use Tax except for solely within New York State and the State of California. Taxation is determined by the governing body of the final destination of the shipment. Successful bidders are required to comply with their respective states' regulations regarding importation of alcoholic beverages. Acker Merrall & Condit assumes no tax liability whatsoever by virtue of arranging any customer's shipping. Acker Merrall & Condit makes all shipping arrangements based on the understanding that the buyer is shipping the wine purchased for delivery to him or her self at the address provided.

*Indemnification.* Buyer agrees to indemnify and hold AMC harmless from any and all demands, claims, suits, judgments, or other liability (including reasonable attorneys fees and expenses incurred by AMC in connection therewith) awarded to any person or entity arising by reason of Buyer's breach of his or her agreement to pay any such taxes due. This indemnification shall survive the termination of this Agreement.

**j) Retail Licensee as Buyer.** In the event the successful bidder is a retail licensee, in a state where such is required, purchases must be processed through an appropriately licensed wholesaler and are subject to a special handling charge of \$100.00.

## 5. AFTER AUCTION.

**a) Payment. When Due.** Invoices are rendered for the Final Purchase Price immediately after each auction. Buyer may pay each invoice upon receipt, but in any event must pay each invoice within thirty (30) days following its receipt. **All payments received more than 35 days after the sale will be subject to a monthly interest charge of 1.5% per month until the invoice is paid in full.**

*Method of Payment.* Payment of each invoice must be made in United States currency, with checks drawn on United States banks. All checks returned unpaid will be subject to a \$100 processing fee. Visa and MasterCard are accepted for purchases of \$10,000 and less. No other credit cards will be accepted. By providing AMC with a credit card, Buyer authorizes AMC to charge all payments described herein to such credit card at any time.

**b) Release of Purchased Property.** Once payment in full of the Final Purchase Price has been received by AMC, and subject to the Buyer's compliance with the other terms and conditions of the Agreement, the purchased Lots will be released to the Buyer. Any Lot not collected by the buyer within thirty (30) calendar days following the auction will be removed to storage by AMC and the

costs of packaging, handling, removing, insuring, and storing incurred by AMC in connection therewith shall be assessed as set forth in the Collection and Shipment of Wines document which is a part of this Agreement. Any such Lot will be released from storage only after payment is made in full of the aforesaid costs.

**c) Packing and Shipping.** You are expressly advised to read the Collection and Shipment of Wines form.

*By AMC.* Although the Buyer may engage AMC for the purpose, all packaging, handling, transporting, insuring, and delivering of purchased Lots is the sole responsibility and occurs at the sole risk and expense of the Buyer, subject to the provisions of the Collection and Shipment of Wines form. The Buyer shall pay AMC in advance for all expenses incurred by AMC in executing such engagement.

*By Third Parties.* AMC, on behalf of the Buyer, will follow the Buyer's instructions in arranging the delivery of the purchased Property by a carrier selected by the Buyer; provided, however, that AMC is not responsible for any acts or omissions of any carrier or shipper, including, without limitation, any packing, handling, transporting, insuring or delivering of any Lot.

**d) Rescission.**

*AMC Limited Guarantee.* AMC stands behind every Lot and is confident in the Property offered in this sale, based on AMC's inspection process. Accordingly, if within ninety (90) calendar days after the auction, the Buyer of a Lot notifies AMC in writing, Attention: John Kapon, President & Auction Director, that any such Lot is short or unsound (that is, cooked and spoiled), or that any statement in the relevant offering of such Lot is materially incorrect, AMC shall be the sole arbiter, by way of inspection or by such other reasonable means as it sees fit, of the validity of such claim between the Buyer and Seller and shall make a final decision binding on the Buyer and Seller based on its determination of such claim's validity. In order to serve such notice on AMC, all Property in issue must (i) have the special AMC custom sticker on its bottle,

(ii) be in the same condition in which it was delivered to Buyer, and (iii) be shipped both ways under ideal conditions. Having decided any such claim, AMC may, in good faith, direct that the sale either stand or be rescinded and that the Final Purchase Price be refunded either in whole or in part. *By bidding at auction you agree that (i) in no event shall you bring an action against AMC in connection with any such claim and (ii) in the event you fail to make timely and proper notice to AMC under this Provision, that you have forfeited your right to rescission.*

*Rescission available solely to Buyer.* The remedy of rescission, if AMC elects to rescind under the circumstances, is available solely to the Buyer of the Lot, who must have remained the sole owner of the Lot with no transfer of any interest therein to any third party.

**Buyer's Sole Remedy.** The refund to the Buyer of the purchase price for the Lot shall be the Buyer's sole remedy, and such remedy shall only be available if the Buyer received such Lot from AMC. In no event shall AMC be liable for any indirect, special, punitive, consequential, loss of profit or other damages, and AMC's maximum liability shall be the amount paid by the Buyer (exclusive of all taxes) for any Property that

is subject to return as permitted hereby. Seller shall have no other liability of any nature or kind under this Agreement, in tort or otherwise, whether at law or in equity, with respect to this Agreement or the offer, purchase and sale of any wine comprising the purchase and sale of the Property.

*Different Importers.* Although AMC makes an effort to serve notice in the catalogue if a Lot includes wines from different importers, failure to provide such notice is in no event a ground for rescission of the sale of any Lot. Similarly, any omission to note in the catalogue or failure to note correctly in the catalogue bottles and/or sequence numbers of Property from those producers that number their bottles of wine comprising the Property is in no event a ground for rescission of the sale of any Lot.

**e) Default by Buyer.** If Buyer fails to make payment in accordance with this Conditions of Sale within thirty (30) days following the auction, AMC may, in its absolute discretion:

- (i) Cancel the sale;
- (ii) Resell the Property publicly or privately for Buyer's account and at Buyer's risk and charge the Buyer for any deficiency between the final bid in the resale and the final bid placed by Buyer, along with all costs and expenses of both the initial sale and the resale at AMC's regular rates and the buyer's premium due in connection with the initial sale;
- (iii) Set off against any amounts which AMC may owe the Buyer all sums due from the Buyer;
- (iv) Exercise all the rights and remedies of a person holding a first priority, perfected security interest in any Property or property in AMC's possession owned by the Buyer;
- (v) Collect from the Buyer the total amount due plus any loss, cost or expense incurred by AMC in effecting such collection;
- (vi) Charge the Buyer interest at the rate of 18% per annum on all sums due from the Buyer;
- (vii) Collect from the Buyer liquidated damages equal to 50% of all sums due from the Buyer;
- (viii) Collect from the Buyer the fees and disbursements of legal counsel to AMC incurred in exercising any one or more of the rights or remedies set forth in this Agreement;
- (ix) Reject at future auctions bids made by or on behalf of the Buyer;
- (x) Exercise any right or remedy against the Buyer available to the Seller; and
- (xi) Assert any other rights or remedies available at law or in equity.

AMC may, in its discretion, exercise any one or more of the preceding remedies and any combination thereof.

**f) Buyer's Indemnity.** Buyer shall indemnify, defend, and hold AMC, its officers, directors, employees, and agents, harmless from any loss, expense (including the fees and disbursements of legal counsel), liability, cost, or damage incurred by reason of: (i) any breach of warranty or breach of this Agreement by the Buyer; (ii) any inaccuracy of any certificate, document or instrument, delivered by Buyer pursuant to or in connection with this Agreement; (iii) any act or omission of the Buyer, its agents or employees, adversely affecting the wine comprising any Lot; and (iv) any third-party action, claim, suit, proceeding, assessment, or judgment, arising from this Agreement or the performance by AMC of its obligations to the Buyer under this Agreement.

**g) Copyright.** AMC owns the copyright in all images, illustrations, and written material produced by or on behalf of AMC, including, without limitation, the content of this catalogue (collectively, "Material") and in no event may Buyer or any third party use any of the Material without AMC's prior written consent. In no event do either AMC or the Seller make any representation or warranty that the Buyer of any Property will acquire any copyright, reproduction right or any other intellectual property right in such Property.

**h) Data Protection.** AMC will use information provided by its clients or which AMC otherwise obtains relating to its clients for the provision of auction and other wine-related services, administration, marketing and otherwise to manage and operate its business, or as required by law. AMC may obtain some information about its clients through video images or through the use of monitoring devices. By agreeing to these Buyers Conditions of Sale, you agree to the processing of your personal information and also to the disclosure and transfer to any AMC affiliate and to third parties throughout the world for the above-noted purposes including to countries that may not offer equivalent protection to that offered in the United State with respect to personal information. You may prevent the use of your personal information for marketing purposes at any time by notifying AMC.

## 6. GENERAL TERMS.

**a) Headings.** The section headings in this Conditions of Sale are for convenience of reference only and shall not be considered as substantive parts of this Agreement.

**b) Entire Agreement.** This Agreement (including all instruments incorporated by reference) constitutes the entire agreement between AMC and the Buyer pertaining to the subject matter hereof and supersedes any and all prior discussions and agreements between them. This Agreement may not be amended, nor shall any waiver, change, modification, consent, or discharge of any part of this Agreement be granted, except by an instrument in writing executed by both AMC and the Buyer. Any failure to enforce any provision of this Agreement shall not operate as a waiver of such provision.

**d) No Joint Venture.** No provision of this Agreement shall be construed to create any agency, partnership, or other joint enterprise between AMC and any Buyer.

**e) Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to laws governing conflicts of law. The Buyer, by bidding at auction, whether in person, by agent, by written absentee bid, telephone, internet, or other means, irrevocably agrees that any legal action may be brought in the United States District Court for the Southern District of New York or in the courts of the State of New York, and the Buyer submits to the non-exclusive jurisdiction of each of such courts *in personam*. The Buyer waives any objection which he, she, or it may now or hereafter have to the laying of venue of any such action brought in the aforesaid courts in the Southern District of New York or New York County.