

General Terms and Conditions

Art. 1

(1)

RESSLER KUNST AUKTIONEN GMBH (hereinafter referred to as the Auction House) conducts public auctions, pursuant to § 158 of the Trade, Commerce and Industry Regulation Act of 1994 as well as the regulations laid out in these General Terms and Conditions. Legal regulations shall only be applicable in a subsidiary fashion. However, imperative provisions of the law, for example those contained in the Consumer Protection Act, remain unaffected.

(2)

The Auction House sells objects of art (mainly of the 20th and 21st century) which

- a) were submitted to the Auction House for auction voluntarily;
- b) were submitted for public auction as chattel by a creditor, pursuant to the regulations of the Austrian Business Enterprise Code;
- c) were impounded by courts or administrative authorities, or were marked by public authorities for sale by auction;
- d) were acquired by the Auction House.

(3)

Auction sales take place on consignment, in the name of and for account of the seller, or in the name of the Auction House, but for account of the seller.

(4)

The Auction House reserves the right to refuse objects of art offered on consignment, without giving any reasons. The Auction House can withdraw objects accepted on consignment at any time, especially if doubts arise concerning their authenticity or the seller's authority to dispose of them.

Art. 2

(1)

Details of agreements regarding the objects of art destined for auction are documented in an **Auction Agreement**. The Auction Agreement also includes a delivery list which serves to confirm the delivery of objects. This document must be signed by the seller or his agent.

The stipulations contained in the Auction Agreement concern the minimum sales price, the auction date, the size of the illustrations in the catalogue as well as the fee due to the Auction House. The seller receives a copy of the Auction Agreement and the delivery list. Any disadvantages or damages resulting from false or incomplete information shall be to the seller's detriment.

(2)

By signing the Auction Agreement or accepting a copy of the Auction Agreement, the seller agrees to the conditions contained therein and the General Terms and Conditions. Objections are only valid if they are submitted in writing prior to the auction.

(3)

The Auction House is entitled to demand proof of the power of disposition from the bearer of the copy of the Auction Agreement – especially with regard to paying out the auction proceeds.

Art. 3

(1)

The Auction House's experts will appraise and describe the delivered objects of art. They determine the **starting prices and estimated prices** and consult with the seller to determine the **minimum sales prices**. All appraisals are made with the necessary care; however, the Auction House makes no guarantee of their correctness in relation to the seller.

(2)

Objects of art which were not sold at the terms agreed upon or which were withdrawn from auction, but have not been picked up by the seller, despite previous requests for such pickup, may be disposed of by the Auction House in one of the following ways, if 14 days have passed after its request for pickup:

- a) the objects can be auctioned under market-compliant conditions,
- b) they can be disposed of by other means,
- c) they can be returned to the seller at his own cost and at his own risk, or

d) they can be placed in storage at his own cost and at his own risk.

(3)

Objects of art that have remained unsold will be considered to have been delivered **for direct sale** and can therefore be sold by the Auction House at any time directly for the minimum sales price, until such time as it is picked up. All the stipulations of the General Terms and Conditions for objects of art consigned to auction also apply in the same manner to such direct sales.

(4)

The Auction House is entitled to offer objects of art that have remained unsold for **online sale** after the audition. A fixed deadline will be announced for the submission of bids via the Auction House's website. This deadline will be within 4 weeks after the date of the original auction. Until this deadline has passed, the seller may only withdraw his object from the auction under the conditions laid out in Art. 11 (3), i.e. by incurring a withdrawal fee.

(5)

The Auction House retains a **lien and right of retention** regarding all objects of art delivered to it and bought at auction by buyers, in order to collateralise all its claims against the seller and the buyer. In the case of pawned objects of art, seller's provisos regarding the minimum sales prices and auction modalities are invalid. Therefore, the Auction House can dispose of such objects of art at the conditions set by the Auction House itself, if the outstanding claim has not been paid despite being past its due date and despite its disposal having been announced by the Auction House.

Art. 4

(1)

The Auction House may grant an **advance payment** on the expected auction proceeds, or can broker the granting of such an advance by third parties. The Auction House will charge such interest as has been agreed upon with the seller. In cases of objects of art for which an advance on the auction proceeds has been granted, the Auction House is entitled to ignore all dispositions of the seller which might endanger the collectability of the advance.

(2)

If the sales proceeds of an object of art do not cover the granted advance payment, the Auction House is entitled to demand the immediate repayment of the advance. The advance

plus interest becomes payable at the latest at the end of the third day after the unsuccessful offer for auction. The Auction House is entitled to declare the advance payable earlier.

Art. 5

(1)

Auctions are open to the public. The objects of art to be auctioned are exhibited publicly prior to the auction. The Auction House thus gives anyone the opportunity to examine the quality and state of the objects of art.

(2)

All objects of art are listed, illustrated and described in the auction catalogue, complete with starting bids or lower and upper estimated prices. If the object of art is not subject to differential taxation, the description contains an indication of another form of taxation. Most commonly, this means an indication of regular taxation.

(3)

The auctions take place at the Galerie Ostlicht in 1100 Vienna, at Absberggasse 27. They are conducted by the Auction House's auctioneer. The starting bid is either the starting bid listed in the catalogue or will be determined by the auctioneer in his sole discretion. The auctioneer is entitled to separate or combine lots, to withdraw lots or to change the order of the lots, deviating from the order given in the catalogue.

(4)

Lots will be awarded to the **highest bidder**, under the condition that he offers at least the minimum sales price agreed upon with the seller (seller's limit).

(5)

If the minimum sales price agreed upon is not achieved at the auction, the lot can be awarded to a bidder as a "conditional sale". A final acceptance can only take place if the seller has declared his consent within 8 days.

The seller irrevocably authorises the Auction House to negotiate with potential buyers, to offer the objects of art for sale and to sell them for the minimum sales price, for up to a month after the auction.

(6)

Any bidder will be considered as bidding in his own name, unless he submits written proof that he is acting as an agent for an interested party explicitly named. The Auction House can demand a down payment from a bidder. The amount of the down payment is determined by

the Auction House. If a bidder who has made a down payment falls into arrears with the payment of the sales price, despite a due date having been set and announced, the Auction House is entitled to treat and retain the down payment as a forfeit contractual penalty.

(7)

All prices listed in the catalogue and named during the auction are in **Euro**. Bidding steps generally increase in increments of approximately 10% of the previous bid. Lots can also be awarded in order to protect the work of art.

(8)

In cases of differences of opinion regarding a double bid or if a bid has been overlooked, the auctioneer is entitled to annul an award and to continue to auction the objects of art, or to open a new auction. The auctioneer is entitled to reject bids without giving reasons, especially if there is a danger that the bidder will not pay the highest bid. If a bid is rejected, the preceding bid remains valid.

(9)

No bidder may be advantaged or disadvantaged in any way. Collusion between prospective bidders aimed at lowering or raising the highest bid is forbidden. The auctioneer is entitled to have anyone breaking this rule excluded from the auction. In addition, such persons are liable for any damages caused by their collusion. The auctioneer has the right to have any person whose behaviour is likely to disrupt or falsify the orderly proceeding of the auction excluded from the auction and removed from the room.

Art. 6

(1)

Buyers are obliged to pay the sales price **within 8 days** after the awarding of the sale. If a buyer does not fulfil his obligation to pay, the Auction House reserves the right to annul the award, to offer the object of art for auction again or to award the object of art to a bidder who had offered a lower bid.

(2)

The sales price consists of the highest bid plus the **buyer's premium of 25%** if differential taxation is applicable. VAT is included in this case. If regular taxation applies (in such cases, the catalogue contains an explicit statement to this effect) the sales price consists of the highest bid, the **buyer's premium of 21%** and **13% VAT**.

(3)

In addition to the sales price, the Auction House is also obliged by law to add Droit de suite. **Droit de suite is calculated at 4%** of the first € 50,000 of the highest bid (minus any VAT included in any potential seller's provision), an additional 3% for the following € 150,000, an additional 1% for the following € 150,000, an additional 0.5% for the following € 150,000, and 0.25% for any amount beyond this sum, i.e. of all highest bids beyond € 500,000. However, resale royalties may amount only to a maximum of € 12,500. In cases of highest bids of less than € 2,500, resale royalties are not levied. Resale royalties are paid out to the artist, the artist's heirs or to royalty collection societies representing the artist.

(4)

The object of art bought at auction can only be delivered to the buyer after payment has been made in full – including all fees, interest and costs applicable since the award of the sale. The buyer's payments can be applied by the Auction House in its sole discretion to any debt payable to the Auction House, regardless of any dedications the buyer wishes to impose.

(5)

Objects of art for which the highest bid has not been paid or only been partially paid can be offered again at auction by the Auction House. In cases of such repeat auctions, an object of art may also be offered for a lower price, regardless of the highest bid achieved at the first auction or the originally agreed-upon minimum sales prices or estimate prices. The second auction is governed by the same rules and terms as the original auction. The defaulting buyer is considered the seller and is liable for the entire loss.

Art. 7

(1)

The Auction House vouches for the **authenticity** of the objects of art offered at its auctions. The Auction House guarantees that each of the objects of art was indeed created by the artist named in the catalogue – except in cases where the description is qualified with terms like “ascribed to”, “so-called”, “school of”, “workshop of” or similar modifications.

(2)

If a buyer can prove the lack of authenticity within two years of an auction, the seller will refund the sales price in return for the restitution of the object of art. The seller is not obliged to comply with such a request if the object of art has been modified after the auction.

(3)

Any information about the technique, signature, material, state, provenance, time of creation etc of an object of art is based on published or otherwise publicly accessible scientific insights which the Auction House's experts have researched. The Auction House does not guarantee

the correctness of this information. Instead, the objects of art are sold only “as seen”. This also applies to catalogue illustrations, which only serve purposes of visualisation.

(4)

The catalogue and expertises merely list such faults and damages of the objects of art which significantly compromise their artistic or commercial value. The Auction House does not guarantee a certain state of conservation.

(5)

The Auction House is entitled to correct information contained in the catalogue prior to an auction. Such corrections are made through notices posted, publication on the website or by oral comments delivered by the auctioneer immediately before calling out the object of art in question. In this case, guarantees only cover the corrected information.

Any claims for damages, especially for loss of earnings or consequential harm caused by a defect, are excluded.

Art. 8

(1)

If objects of art are purchased at auction by residents of Austria, but not paid for and picked up within 8 days, this will result in **default interest and storage fees**. For non-resident buyers, the deadline for pickup is 30 days.

(2)

Packaging objects of art bought at auction, especially for transport purposes, is a voluntary service for which the Auction House assumes no liability. The **shipping** of objects of art bought at auction takes place only at the buyer’s instruction. The buyer bears the cost of shipping and insurance, and bears all the risks involved.

(3)

Ownership of objects of art bought at auction passes to the buyer at the moment of payment of the sales price (highest bid plus buyer’s premium, VAT, resale royalties and any other invoiced costs).

(4)

All objects of art consigned for auction are insured against the risk of loss or damage from the moment of delivery to the due date of the sales price. The **insurance value** with regard to the seller is the agreed-upon minimum sales price. From the moment a sale is awarded, the insurance value with regard to the buyer is the sales price. 8 days after the auction, the

purchased object of art is only insured if the buyer has expressly agreed this with the Auction House. In this case, the buyer is also responsible for the costs of insurance.

(5)

In cases of loss or total damages, the Auction House will pay the seller the insurance value. In case of damages, the Auction House is responsible for the loss of value and the costs of restoration. The extent of the loss of value will be determined by the Auction House's experts or the insurance. The Auction House assumes no liability for damages caused by forces of nature, force majeure, climate changes, vermin or similar reasons, as well as for loss of value caused by extended storage, unless the Auction House has caused such damages by gross negligence.

Art. 9

(1)

Auction proceeds will be paid out to the seller after the entire sales price has been paid, but at the earliest 4 weeks after the auction.

(2)

The Auction House deducts the seller's provision, illustration and other fees, any incurred costs, advances and interest from the highest bid. The Auction House will provide an accounting for such deductions to the seller. If the seller has received a credit from a bank as an advance payment on expected auction proceeds, following a recommendation or the initiative of the Auction House, the Auction House will fulfil its own claims first and the bank's claims subsequently. The remaining sum will then be paid out to the seller.

(3)

If the buyer makes a claim for defects of the object of art purchased at auction within the period stated in Art. 8 (4), payment to the seller can be postponed until the mutual claims have been clarified. In case of reclamations recognised by the Auction House within the period stated in Art. 7 (2), the seller must repay any auction proceeds already paid out to him immediately following the Auction House's request.

(4)

The Auction House guarantees its customers **absolute confidentiality** regarding the identity of the seller or the buyer and other circumstances. Mutual identification is only possible if mutual claims are made, for example for payment or reduction of the sales price. The Auction House will only make exceptions from its principle of confidentiality if a seller or a buyer explicitly releases the Auction House from this confidentiality obligation.

Art. 10

(1)

The seller's provision for objects of art with a lower estimate (or starting bid) of **€ 10,000 and more is 10%**.

The seller's provision for objects of art with a lower estimate (or starting bid) of **€ 5,000 and more is 15%**.

The seller's provision for objects of art with a lower estimate (or starting bid) of **less than € 5,000 is 20%**.

In cases of especially high-value objects of art, the seller's provision is subject to negotiation.

(2)

The cost of illustrations in the catalogue is **€ 300 for each full page**. Half-page or third-page illustrations will be charged accordingly.

(3)

Advance interest is charged at 10% p.a. The insurance costs from acceptance of delivery to the auction will be paid for by the Auction House. If objects of art remain unsold, the insurance coverage will be extended for 30 days after the auction. This also applies to storage costs. After this period has lapsed, 1% insurance and 1% storage costs will be charged.

Transportation will be charged at the actual cost. The insurance of shipping requires explicit instructions from the seller or buyer.

(4)

The buyer's premium is **25% of the highest bid** in cases of differential taxation (incl. 20% VAT).

The buyer's premium is **21% of the highest bid** in cases of regular taxation; 13% VAT is added to this amount.

The buyer's premium for any amount over € 100,000 is **15%**.

(5)

Changes in the nature and calculation of provisions, fees and costs as well as the regulations of debt collection will be announced by the Auction House on its website and in the auction catalogues. The provisions, fees and costs announced in the latest auction catalogue will apply.

Art. 11

(1)

The seller transfers to the Auction House the right to photograph and illustrate the objects of art consigned to the Auction House or delivered to the gallery for exhibition, free of charge and without limitation, and to reproduce and disseminate such photographs and illustrations without any limitation as to time and place, whether with or without reference to the auction or exhibition in which the reproduced object of art will be auctioned or shown or has been auctioned or shown.

This also applies to all photographs and illustrations which the seller has provided, and for any copyrights, reproduction, dissemination or other usage rights accruing to the seller.

(2)

All the costs and expenses caused in connection with a sale by the seller or respectively buyer, e.g. bank charges, postage, customs, cleaning or restoration costs, shipping expenses, claims from royalty collection societies etc, shall be reimbursed to the Auction House by seller or respectively buyer.

(3)

Should the seller withdraw an object of art from auction, he is obliged to pay not only the **withdrawal fee of 30%** of the minimum sales price (seller's limit) or respectively 40% of the starting bid, but also all the costs incurred in advertising the object of art, even if the advertising has made use of other objects of art not consigned by the same seller.

(4)

All provisions of these General Terms and Conditions applicable to sellers, bidders and buyers are also applicable in the same manner to post-auction sales and online auctions.

Art. 12

(1)

Interested parties can deliver bids in person and written bids. By bidding, the bidder acknowledges the General Terms and Conditions.

(2)

Written bids are treated like bids made in person at the auction. They should contain the catalogue number, the object of art and the maximum bid offered (excluding buyer's premium and VAT) as well as the name, address, phone number and signature of the bidder.

Missing information or ambiguity is at the bidder's expense. The Auction House will try to implement such absentee bid orders to the best of its abilities, but does not guarantee their implementation. If several written offers for the same amount are received for the same object of art, the offer that was received first will take precedence.

(3)

The Auction House can refuse to act upon absentee bid offers without stating any reasons, or can make such action contingent on the receipt of a down payment made prior to the auction.

(4)

Interested parties can also **bid via telephone**. In this case, written instructions for bidding must have been received by the Auction House one hour before the auction at the very latest. The Auction House will do its best to establish a telephone connection, but cannot guarantee the establishment of such a connection.

Telephone bidding instructions are only accepted by the Auction House under the condition that the bidder is willing to bid at least to the starting bid. If the Auction House is unable to establish a telephone connection with the bidder, his instruction will be treated like a written absentee purchase offer for the starting bid. In such cases, the Auction House is authorized to award a conditional sale; as soon as a telephone connection with the bidder has been established, the conditionality can be lifted and the auction continued.

(5)

The Auction House can refuse to act upon telephone bids without stating any reasons, or can make such action contingent on the receipt of a down payment made prior to the auction.

(6)

Purchase orders submitted via the website or via email will be treated the same as purchase orders submitted by other means. Online offers are considered as written purchase orders or written instructions for bidding. Contracts of sale come about as a result of the fact that the auction house accepts the offer of the prospective buyer and the auction house is not granted a higher purchase order within the deadline set by it.

(7)

If the highest bidder at an auction is only willing to pay a lower price than the minimum sales price agreed upon with the seller, the auctioneer can **award a "conditional sale"**. After the auction, he will attempt to receive the seller's consent to a sale below the minimum sales price.

In cases of conditional sales, the highest bidder is bound by his highest offer for the duration of 8 business days. If another interested party offers the minimum sales price or more before

the lower bid is accepted, the Auction House will accept this higher bid without consulting with the lower bidder.

Inasmuch as it is possible, the Auction House will inform the lower bidder about the acceptance or rejection of the offer. However, this is not a precondition for the valid awarding of the sale.

Art. 13

Persons who disrupt the auction proceedings or influence them negatively may be removed from the premises. In cases of misdemeanours, the Auction House may bar certain persons from entering its premises in the future.

Art. 14

(1)

The place of fulfilment for the legal relationships between the Auction House, the sellers and the bidders is the place of business of the Auction House. The legal relationships and contracts between the Auction House, the sellers, the buyers and bidders shall be governed by **Austrian material law**.

(2)

The Auction House, the seller, the buyer and bidder agree to submit all disputes arising from, about or in connection with the contracts between them to the court with geographic jurisdiction over the 10th Municipal District of Vienna.

Vienna, 28th of August 2018