

AGB / General Business Terms

(This is a courtesy translation. The german version of this text is legally binding)

Auction conditions

By submitting a bid or placing a written order, the buyer (hereinafter also referred to as 'bidder') recognises the following auction terms and conditions as binding:

1. the auctioneer

The auction is a public auction. It shall be conducted by the auctioneers of the auction house Kendzia (hereinafter referred to as 'Auctioneer' or 'Auction House') in the name and for the account of the Vendor.

2. inspection, catalogue

(a) All works of art that are put up for auction (hereinafter referred to as 'Auction Goods') may be inspected and examined prior to the auction. They are used and will be auctioned in the condition in which they are at the time of the knockdown. Replacement items in the sense of a subsequent delivery within the meaning of § 439 BGB do not exist.

(b) The descriptions in the catalogue, in particular the details of dimensions, weight, origin, age, completeness, state of preservation, etc. are given to the best of our knowledge and belief. They are based on the information provided by the consignor and on the information published or generally available up to the time of the auction.

3 Condition of the auctioned goods

(a) The Auctioneer does not assume any guarantee in the sense of § 443 BGB for the agreed quality of the auctioned goods.

(b) Only the information on authorship, technology and signature of the Auction Goods determine their quality. The other details are for information purposes only and do not form part of a quality agreement.

(c) The state of preservation of the auctioned goods is not mentioned throughout the auction catalogue; missing information also does not constitute a quality agreement. The same applies to condition reports or other verbal or written information.

(d) The Auctioneer is entitled to correct or supplement catalogue information by posting it at the place of the auction and orally by the Auctioneer immediately before the auction of the auctioned goods.

4. auction

(a) The Auctioneer shall determine the starting price. Unless otherwise determined by the Auctioneer, the bidding price shall be 10 % of the preceding bid, but at least EUR 10.00.

(b) The bids are binding. The auctioneer may reject a bid or refuse to accept a bid without giving reasons, in particular if a bidder is not known to the auctioneer or does not provide security by the start of the auction. In this case, the previous bid shall remain binding.

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Admission as a bidder to the auction is dependent in particular on successful identification within the meaning of Section 1 (3) of the GWG if this is required due to the bid exceeding the value limits.

(c) Bidders who are unable to be present at the auction or who do not wish to place the bid themselves may authorise the Auctioneer in writing to bid on their behalf for specific auctioned items. Only the lot number, not the title in the catalogue, shall be decisive in the written instruction.

(d) Alternatively, these bidders can place a bid themselves by telephone during the ongoing auction after placing the written order. The auctioneer cannot guarantee that a telephone connection will be established.

(e) Only bidders to whom the Auction House has issued a bidder number may send their written bids by fax or e-mail.

(f) Bids via e-mail shall only become effective after explicit confirmation by the Auctioneer. The e-mail with the written order must be received no later than 24 hours before the start of the auction.

(g) The right of cancellation and return for distance selling contracts does not apply to written bids, telephone bids and bids by e-mail. A right of cancellation and/or return of the successful bidder according to §§ 312b ff, 355 ff. BGB does not exist.

(h) The Auctioneer shall not be liable for damages in connection with the submission of verbal, written, telephone or Internet bids, unless he is guilty of intent or gross negligence. This applies in particular to the establishment or existence of telephone, fax or data lines as well as to transmission or transfer errors in the context of the means of communication used. The limitation of liability does not apply to damage to life, limb or health.

(i) New bidders will only be accepted as bidders after sufficient legitimisation (copy of valid official photo ID).

(j) The Auctioneer reserves the right to combine the auctioned goods into lots, to separate them and, if there is a special reason, to bid out of sequence or to withdraw them.

5. knockdown

(a) A contract of sale is concluded when the auctioneer accepts the bid. The bid is accepted if no higher bid is submitted after three calls. The bidder remains unnamed. If more than one bidder submits the same written bid, the time of the bid is decisive.

(b) If a higher bid submitted in good time is overlooked by mistake and the bidder immediately objects to this, the auctioneer may withdraw the knockdown and re-bid the item. This also applies if there are doubts about the knockdown. If the auctioneer exercises this right, a knockdown already awarded shall become invalid.

(c) If a highest bidder does not wish to accept his bid, the auctioneer may nevertheless accept his bid and demand fulfilment of the purchase contract. Instead, the auctioneer may also accept the immediately preceding bid or call out the item again. If the auctioneer exercises this right, any knockdown already made shall become invalid.

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(d) If the limit is not reached, the auctioneer may accept the bid subject to reservation. The successful bidder shall be bound by a conditional acceptance for four weeks. If he does not accept the bid without reservation within this period, his bid shall lapse. If a reservation is not approved by the consignor and another bidder submits a bid in the amount of the limit, this bidder shall be awarded the lot without consulting the conditional bidder.

(e) The Auctioneer is authorised, without having to notify the Consignor, to place bids for the Consignor until a limit agreed with the Consignor has been reached and to knock down the auctioned goods to the Consignor, stating the consignment number. The auctioned goods shall then remain unsold.

(f) The acceptance of the bid obliges the bidder to accept the auctioned goods immediately and to pay the purchase price. With the acceptance of the bid, the risk of any damage to or loss of the auctioned goods shall pass to the successful bidder. Ownership shall not pass to the successful bidder until the purchase price has been paid in full and the auctioned goods have been handed over. Each successful bidder purchases in his own name and for his own account and is responsible for his own bidder number. An assignment is not recognised.

6 Purchase price

(a) The purchase price is made up of the hammer price and a premium of 16% (sixteen per cent). The respective statutory value added tax shall be charged on the buyer's premium. Invoices issued during or immediately after the auction are subject to verification by the auctioneer. In this respect, the Auctioneer reserves the right to object to erroneous calculation.

(b) The purchase price is due immediately after the knockdown and delivery of the invoice and must be paid in cash to the auctioneer if the successful bidder was present at the auction; otherwise payment is due and must be made within ten days of the invoice date. Cheques shall only be recognised as payment after unconditional crediting to the bank account, including all charges. Settlement of the purchase price by offsetting is only permissible with undisputed or legally established claims. In the case of payment of an amount of €10,000 or more (also by adding invoices of the buyer), the auctioneer is obliged in accordance with §3 of the GWG to attach a copy of a valid identification document of the buyer to the transaction.

(c) If the purchase price has not been paid within two weeks of receipt of the invoice, default shall be deemed to have occurred. In the event of default, the Auctioneer shall be entitled to assert the entire purchase price in his own name against the successful bidder in court.

(d) Two months after the occurrence of default, the Auctioneer is authorised and, at the request of the Consignor, obliged to provide the latter with the name and address of the successful bidder.

7 Acceptance of the auctioned goods

(a) The place of fulfilment for the transfer of ownership of the auctioned goods shall be the Auctioneer's business premises. Ownership shall not pass to the buyer until the purchase price has been paid in full. The Auctioneer shall not be obliged to hand over the Auction Goods to the successful bidder before the invoice amount has been paid in full.

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(b) If the successful bidder does not collect the auctioned goods within fourteen days of the auction or does not issue an order for despatch, he shall be in default of acceptance. The Auctioneer may then have the auctioned goods stored and insured by a forwarding agent at the expense and risk of the successful bidder without any further reminder. Auctioned but stored items shall only be delivered after full payment of the costs incurred.

(c) In the event that the successful bidder resells the auctioned goods before he has paid the purchase price in full, he hereby assigns all claims arising from the resale to the auctioneer, who hereby accepts the assignment. The auctioneer is obliged to immediately assign to the successful bidder that part of the assigned claims which exceeds his claims against the successful bidder.

8. dispatch of the auctioned goods

(a) Packaging and dispatch of the auctioned goods shall be at the expense and risk of the successful bidder and only after the successful bidder has placed an order in text form (fax, letter, e-mail, SMS) and confirmation by the Auctioneer. The Auctioneer reserves the right to refuse to dispatch the Auction Goods.

(b) After full payment of the purchase price, the Auctioneer shall organise proper transport of the auctioned goods by courier or carrier to the Buyer or the recipient named by the Buyer.

(c) The costs for packaging, transport and, if applicable, insurance shall be calculated at the time of commissioning according to the size, purchase price and sensitivity of the auctioned goods. Packaging and despatch shall only take place after payment of all costs for packaging, despatch and, if applicable, insurance.

9. right of cancellation of the Auctioneer

(a) If the successful bidder defaults on his obligation to pay or accept an auctioned item, the Auctioneer may withdraw from the purchase contract after setting the successful bidder a deadline of two weeks. With the cancellation, all rights of the successful bidder to the auctioned item shall lapse.

(b) After declaring the cancellation, the Auctioneer shall be entitled to demand compensation from the successful bidder for non-performance and to auction the item again at the expense of the successful bidder or to sell it to a lower bidder. In this case, the successful bidder shall be liable for any shortfall in proceeds. However, he shall not be entitled to any additional proceeds and shall not be authorised to make a further bid. The statutory rights of the auctioneer arising from the default of the successful bidder remain unaffected.

10 Liability

In all cases of contractual or statutory claims for damages by a successful bidder or other participant in a pre-inspection or auction against the Auctioneer, the Auctioneer shall only be liable for intent and gross negligence. The limitation of liability shall not apply to damage to life, body or health.

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11. subsequent sale

(a) During a period of two months after the auction, non-auctioned auctioned goods may be purchased by way of a post-auction sale. The post-auction sale is considered part of the auction.

(b) The interested party must place a bid of a certain amount in person, by telephone, in writing or via the Internet and recognise the auction conditions as binding. The contract is concluded if the auctioneer accepts the bid in writing within three weeks of receipt.

(c) The provisions on purchase price, payment, default, collection and liability for works of art purchased at auction shall apply accordingly.

12. rights of the buyer

(a) If the purchased auction goods have a defect of title due to third-party rights, the buyer may withdraw from the contract or reduce the purchase price within a period of two years due to this defect of title. Otherwise, the buyer's rights to subsequent fulfilment, compensation for damages or reimbursement of futile expenses are excluded, unless the defect of title has been fraudulently concealed.

(b) If the purchased auction goods deviate from the agreed quality (authorship, technology and signature), the buyer may withdraw from the contract within two years of the knockdown. The buyer shall be refunded the purchase price paid, including the buyer's premium and the value added tax payable thereon, concurrently with the return of the auctioned item in unchanged condition at the auctioneer's place of business.

Claims for reduction of the purchase price, for damages or for reimbursement of futile expenses are excluded. The exclusion of liability shall not apply if the Auctioneer has fraudulently concealed the defect.

(c) The right of withdrawal is excluded if the Auctioneer has taken the greatest possible care in determining the authorship, technique and signature of the auctioned item stated in the catalogue and there were no reasons to doubt the accuracy of this information.

(d) The Auctioneer undertakes to assert his rights against the Consignor in court in the event of deviations from the catalogue details which cancel out or significantly reduce the value or suitability and which are presented in a justified manner within one year of delivery. In the event of a successful claim against the Consignor, the Auctioneer shall reimburse the Purchaser exclusively for the entire purchase price.

13. final provisions

(a) German law shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

(b) The place of fulfilment and jurisdiction is Hamburg, insofar as this can be legally agreed.

(c) Amendments to these auction conditions or ancillary agreements must be agreed in writing. This also applies to the cancellation of this clause.

(d) Should one of the provisions be or become invalid in whole or in part, all other provisions shall remain unaffected. The invalid provision shall be replaced by the relevant statutory provisions.

(e) The auctioneer is neither willing nor obliged to participate in dispute resolution proceedings before a consumer arbitration board.

Hamburg, 17 February 2024