

## Conditions of Sale

Hargesheimer Kunstauktionen Düsseldorf GmbH (hereinafter referred to as "Hargesheimer Kunstauktionen") conducts auctions in a public auction in terms of Section § 474, Para.1 Line 2 and Section § 383 Para. 3 Line 1 of the German Civil Code (BGB) as a commissioner on his own behalf and on account of the clients (the ?consigner?), who remain anonymous.

### **1. Condition, Warranty**

1.1. The items to be auctioned may be viewed and examined prior to the auction, potential buyers being liable for any damage caused by them to the items exhibited.

1.2. The works of art that are up for auction are, without exception, used items and sold as is. They are in a state of repair that corresponds to their age and provenance. Objections to the state of repair are only mentioned in the catalogue if, in the opinion of Hargesheimer Kunstauktionen, they adversely affect the visual impression of the work of art as a whole. Lack of information regarding the state of repair does therefore not justify any claims based on a guarantee or agreement on the condition. Potential buyers may request a condition report for every work of art. This report, be it verbal or written, does not contain any differing, individually negotiated terms, and expresses Hargesheimer Kunstauktionen subjective assessment only. The information contained in the condition report is provided to the best of our knowledge and belief. It does not constitute any guarantee or agreement on the condition and serves the purpose of the provision of nonbinding information only. The same applies to general information of any kind, be it verbal or written. In all cases the actual state of repair of the work of art at the time of the acceptance of the bid is the agreed condition in terms of statutory provisions (Sections § 434 et seq. of the German Civil Code (BGB))

1.3. All information contained in the catalogue is based on knowledge published until the date on the auction and on other general scientific knowledge available to the public. Hargesheimer Kunstauktionen reserves the right to correct catalogue information on the works of art that are to be auctioned. Said correction is made by written notice at the location of the auction and/or orally by the auctioneer immediately before the specific work of art is auctioned. The corrected information will replace the description in the catalogue.

1.4. Hargesheimer Kunstauktionen expressly excludes any liability for potential defects, provided that Hargesheimer has complied with its duty of care obligations.

1.5. Irrespective of the provisions of Clause 1.2., the information in the catalogue relating to authorship of the work of art shall form part of the condition that is agreed with the buyer. The auctioneer assumes no liability for defects as far as he has fulfilled his duty of diligence. But he commits himself to assert complaints which have been brought forward in due time within the limitation period to the consigner. Thereby, the limitation period regarding the authenticity is set at twelve months, for any other defects six months after the

sale. In the event of successfully taking recourse to the consigner, the auctioneer will refund the purchasing price including the commission to the buyer.

1.6. Damages claims against Hargesheimer Kunstauktionen for legal and material defects and on other legal grounds (including compensation for futile expenses or cost for expert opinions) are excluded unless they are due to intentional or grossly negligent conduct by Hargesheimer Kunstauktionen or to the breach of significant contractual duties by Hargesheimer Kunstauktionen or are caused by injury to life or limb or damage to health.

## **2. Conduct of Auctions, Bids**

2.1. The estimates stated in the catalogue are reserve prices.

2.2. Hargesheimer Kunstauktionen reserves the right to combine, separate, offer out of sequence or withdraw numbered lots during an auction.

2.3. All bids are considered as submitted by the bidder on his own behalf and for his own account. If a bidder wishes to bid on behalf of a third party he must notify this 24 hours prior to the start of the auction, stating name and address of the party he is representing and submitting a written power of attorney. Otherwise the purchase contract is concluded with the bidder when the bid is accepted.

2.4. After presentation of a legal personal-document and admission to the auction, each bidder will be given a bidder's number by Hargesheimer Kunstauktionen. Only bids using this number will be included in the auction. Bidders, so far unknown to Hargesheimer Kunstauktionen, have to submit a written application no later than 24 hours before the auction, together with a document of identification. Hargesheimer Kunstauktionen may ask for a recent bank reference or other references for the admission to the auction.

2.5. The initial bid price is determined by the auctioneer; bids are generally submitted in Euros at maximum 10% above the previous bid. Bids may be made in person in the auction room or via the live auction during the sale. In absentia bids may be made in writing, by phone or over the internet or via a platform that has been approved by Hargesheimer Kunstauktionen.

2.6. All offers are based on the so-called hammer price and increase with premium, VAT and customs charges where applicable.

2.7. When there are equal bids, irrespective of whether they were submitted in the auction hall, by phone, in writing or over the internet, a decision shall be made by drawing lots. Written bids or bids submitted via the internet shall only be taken into consideration by Hargesheimer Kunstauktionen to that amount that is required to outbid another bid.

2.8. Absentee bids are generally permitted if the bidder has applied to Hargesheimer Kunstauktionen for permission at least 24 hours prior to the start of the auction and has, as far as possible, provided additional information pursuant to fig. 2.4. The application must specify the work of art, along with its catalogue number and catalogue description. In case of doubt, the catalogue number is decisive; the bidder shall bear the consequences of any uncertainties.

2.9. Hargesheimer Kunstauktionen provides the service of executing absentee bids for the convenience of clients free of charge. Hargesheimer Kunstauktionen therefore provides no guarantee for the effectuation or flawless execution of bids. This does not apply where Hargesheimer Kunstauktionen is responsible for a mistake made intentionally or through gross negligence. Absentee bids shall be equivalent to bids made in the auction.

2.10. The written bid must be signed by the bidder. In the event of written bids, the interested party authorises the auctioneer to submit bids on his behalf.

2.11. Telephone bids may be recorded by Hargesheimer Kunstauktionen. By applying for telephone bidding, the applicant declares that he agrees to the recording of telephone conversations. Hargesheimer Kunstauktionen is not liable for setting up and maintaining telecommunications connections or for transmission errors.

2.12. Bids via the internet can be submitted as 'pre-bids' prior to the beginning of the auction, as 'live bids' during a live web-cast auction, or as 'post-bids' after conclusion of the auction according to the provisions stated hereinafter. Bids received by Hargesheimer Kunstauktionen via internet during an auction will only be taken into account for the respective auction if it is a live, web-cast auction. Furthermore, bids via internet are only admissible if the bidder has been authorised by Hargesheimer Kunstauktionen to bid over the internet by providing him with a user name and password. They only represent valid bids if they can be unequivocally matched to the bidder by means of such user name and password. Bids via internet are recorded electronically. The accuracy of the corresponding transcripts is accepted by the bidder/buyer, who is nevertheless free to furnish evidence that the transcript is inaccurate. Live bids are considered equivalent to bids submitted in the auction hall during the auction.

2.13. The after sale is part of the auction. In the event of post-bids, a contract is concluded only after Hargesheimer Kunstauktionen accepts the bid.

2.14. By making a bid, either verbally in the auction, by telephone, written by letter, by fax, or through the internet the bidder confirms that he has taken notice of these terms of sale by auction and accepts them.

2.15. With distance contracts, the right of return and rescission shall not apply to written, phone or internet bids unless the bid was made in the after sale.

### **3. The Auction**

3.1. A bid is accepted after the auctioneer has called the highest bidder's bid three times. When a bid is accepted a purchase contract is concluded between Hargesheimer Kunstauktionen and the bidder whose bid was accepted. A purchaser is obliged to fulfill his obligations to pay for the item and to collect the purchased item.

3.2. Hargesheimer Kunstauktionen may refuse to accept the bid or accept it subject to reservation. If a bid is refused, the previous bid remains valid. If several individuals place the same bid and there is no higher bid after three calls, the decision will be made by drawing lots. Hargesheimer Kunstauktionen may revoke acceptance of the bid and re-offer the item if a higher bid that was made in due time has been overlooked by accident, if the highest bidder does not want his bid to stand, or if there are other doubts as to the acceptance. If no bid is successful even though several bids were submitted, Hargesheimer Kunstauktionen is liable to the bidder only for intent or gross negligence.

3.3. A bidder remains bound to a bid that has been accepted subject to reservation for a period of one month. A bid accepted subject to reservation only becomes valid if Hargesheimer Kunstauktionen confirms the bid in writing within one month after the date of the auction by submitting a corresponding invoice.

### **4. Purchase Price and Payment**

4.1. In addition to the bid award, the buyer must pay a premium of 25%. This includes statutory VAT, which will however not be stated due to the margin scheme in terms of Section § 25a of German Turnover Tax Law. An exception are lots with an asterisk (\*) before the catalogue number. They are to be sold with V.A.T. and are calculated in line with Statutory VAT of currently 19% respectively will be levied on the sum of bid award and premium.

4.2. For buyers who have a right to deduct input tax, the invoice may, if desired, (after prior notification) be made out in line with standard taxation. VAT is not charged on shipments to foreign countries (i.e. outside the EU) nor when the VAT-ID no. is stated to companies in EU member states. If parties participating in an auction take purchased items into foreign countries themselves, they will be reimbursed the turnover tax as soon as Hargesheimer Kunstauktionen has the export and acquirer certificate.

4.3. Invoices issued during or immediately after the auction must be verified; errors remain reserved to this extent.

4.4. Payment of the total amount due upon acceptance of a bid must be made in cash, via bank-wire or by bank certified cheque. Cheques are only accepted on account of performance. All taxes, costs, transfer or encashment fees (including the bank charges deducted by Hargesheimer Kunstauktionen) are to be borne by the buyer. Purchasers who participate in person at the auction must pay Hargesheimer Kunstauktionen the purchase price immediately after the bid is accepted. Without prejudice to the fact payment is due immediately, bids made in absentia may be paid within 14 days of the invoice date without being considered delayed. Default in payment commences two weeks after the date of the invoice.

4.5. The auctioned items are generally only handed over after full payment of all amount owed by the buyer has been received.

## **5. Collection and Assumption of Risk**

5.1. Acceptance of a bid imposes an obligation to collect the item. Buyers who are not present must collect their items immediately after Hargesheimer Kunstauktionen has advised them that the bid has been successful. Hargesheimer Kunstauktionen shall organise the insurance and shipment of the work of art to the buyer only upon the latter's written instructions and at his cost and risk. Since the purchase price is due immediately and the buyer is obliged to promptly collect his items, he will find himself in default of acceptance no later than two weeks after acceptance of the bid or post-bid, so that then at the very latest, and irrespective of the still undelivered items, the risk will be passed on the buyer. Each lot is at the sole risk of the buyer from the fall of the hammer.

5.2. If the buyer has not collected the items from Hargesheimer Kunstauktionen at the latest three weeks after his bid has been accepted and/or after he has been notified, Hargesheimer Kunstauktionen will call upon the buyer to collect the items within one week. At the end of said period Hargesheimer is entitled to have the items kept in a warehouse at the cost and risk of the buyer. Hargesheimer Kunstauktionen shall inform the buyer prior to storage. Any purchases that have not been collected within three weeks from the date of the invoice will be subject to handling and storage charge at 1 Euro + 19 % VAT per lot per day. Irrespective of this, Hargesheimer Kunstauktionen may demand performance of the contract or assert statutory rights for breach of duties. For the purpose of calculating any loss, reference is made to fig. 4 and 7 of these terms and conditions.

5.3. Hargesheimer Kunstauktionen shall under no circumstances be liable for loss of or damage to items that have not been collected or not handed over due to non-payment, unless Hargesheimer Kunstauktionen acted intentionally or with gross negligence.

## **6. Retention of Title, Offset, Right of Retention**

6.1. Title to the work of art passes to the buyer only upon receipt of all payments owed under fig. 4 and 7 in full.

6.2. Against claims by Hargesheimer Kunstauktionen, the buyer can only offset claims that are undisputed or that have been legally and finally determined.

6.3. Insofar as the buyer is a merchant registered in the commercial register, he waives his rights under Sections §§ 273, 320 of the German Civil Code (BGB).

## **7. Default**

7.1. The purchase price is due upon acceptance of the bid. If payment is made in a foreign currency, any exchange rate losses and bank charges will be borne by the buyer. The same applies to cheques, which will be recognised as payment only after unconditional confirmation of the credit has been received from the bank.

7.2. In the event of default in payment, default interest of 1% per month is charged. The buyer is entitled to provide evidence that the loss is less or that there is no loss. In addition, in case of default in payment, Hargesheimer Kunstauktionen may elect to demand performance of the purchase contract or may rescind the contract after setting a suitable period for performance. In the event of rescission, all of the buyer's rights to the purchased work of art shall lapse and Hargesheimer Kunstauktionen shall be entitled to demand damages amounting to the lost fee for the work of art (consignor commission and premium). If the item is re-auctioned at a new auction, then the defaulting buyer is additionally liable for any shortfall in proceeds compared with the earlier auction and for the costs of the repeat auction; he is not entitled to any excess proceeds. Hargesheimer Kunstauktionen has the right to exclude him from further bids in auctions.

7.3. One month after default has occurred, Hargesheimer Kunstauktionen is entitled to and, if the consigner demands it, required to provide the latter with details of the name and address of the buyer.

## **8. Data Privacy Declaration**

8.1. The buyer agrees that his name, address and any consignments being stored electronically and processed by Hargesheimer Kunstauktionen for the purpose of fulfilling and performing the contractual relationship, as well as to provide information about future auctions and offers. Should the buyer not meet the contractual obligations, within the scope of fulfilling and performing this contractual relationship, then he consents to this fact being added to a list which will be accessible to German auction houses. The buyer is entitled to object to the future collection and use of data by removing the said clause or by submitting notice to Hargesheimer Kunstauktionen at a later date.

## 9. Miscellaneous Provisions

9.1. These Auction Terms and Conditions shall govern all relations between the buyer and Hargesheimer Kunstauktionen. The buyer's General Commercial Terms and Conditions shall not apply. There are no verbal ancillary agreements. Amendments must be made in writing to be valid.

9.2. Insofar as it is possible to agree, Düsseldorf shall be the place of performance and jurisdiction. The law of the Federal Republic of Germany shall apply exclusively. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

9.3. The aforementioned provisions apply mutatis mutandis to the private sale of items consigned for auction.

9.4. If any of the above provisions are invalid in whole or in part, the validity of the remaining provisions shall be unaffected. The invalid provision shall be replaced by a valid regulation which most closely resembles the commercial content of the provision which was invalid. The same applies if the contract reveals a loophole in need of amendment. In cases of doubt the German version of the Consignment Conditions shall prevail.

Frank Hargesheimer | Susanne Hargesheimer (Publicly appointed and sworn auctioneer for arts and antiques)

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