

TERMS AND CONDITIONS OF AUCTION

1. Auction

- 1.1. The public auction on a voluntary basis [sections 383 sub-section 3, 474 sub-section 1 clause 2 German Civil Code (BGB)] shall be carried out by Hampel Kunstauktionen (Hampel Art Auctions), owner Holger Hampel – hereinafter “Hampel” or “auctioneer” –, which sells the Auction items for the account of and on behalf of the consignor or – at his choice – as commission agent in his own name for the account of the Consignor.
- 1.2. All claims of the buyer arising from the auction shall be directed to the consignor apart from objects sold by Hampel as commission agent; liability of the auctioneer shall only exist in so far as such liability results from mandatory laws or from the following provisions. Subject to this proviso, these terms and conditions of auction shall be applicable for the legal relationship of the buyer with both the consignor and the auctioneer.
- 1.3. The auctioneer shall designate those individuals who shall manage the auction in his name and on his behalf in so far as he himself does not assume the supervision. An agreement between the buyer and these individuals shall not be entered into.
- 1.4. The terms and conditions of auction shall apply directly for the auction and correspondingly for the subsequent sale of items which have not received a bid in the auction, more closely specified in 12.1.
- 1.5. These terms and conditions of auction shall be published in the catalogue, Internet and on the premises of the auctioneer. By granting a commission or making a bid, the buyer shall expressly acknowledge the applicability of the terms and conditions of auction.
- 1.6. The buyer's own terms and conditions of business shall have no validity.

2. Catalogue

- 2.1. In all cases of doubt, the German version of the catalogue shall prevail; catalogue details in other languages are merely a service of the auctioneer and shall have no relevance for the legal relationship with the buyer.
- 2.2. If questionable which item was bid for by the buyer and received acceptance at the auction, the number stated in the catalogue shall be decisive, in particular, not the title.
- 2.3. Consignor and auctioneer shall assume no liability if reproductions and photos in the printed catalogue deviate in colour from the original work of art.
- 2.4. The items in the catalogue owned by Hampel are specially marked with an “e” [= own merchandise].
- 2.5. Hampel may combine or separate catalogue numbers and, to the extent there is a special reason to do so, withdraw them or call them in another sequence other than the one stated in the catalogue.

3. Prices

- 3.1. The estimated prices stated in the catalogue of Hampel are merely a non-binding indication for the buyer; they may be minimum bidding prices if the auctioneer has agreed on a limit with the consignor.
- 3.2. All estimated prices are stated in euros; accordingly, the acceptance of bids shall imply in euros. Any and all statements in foreign currencies shall not be legally binding.
- 3.3. The total purchase price to be paid for the sold work of art shall comprise a) the price awarded the bid [hammer price]; b) buyer's premium of Hampel [“Aufgeld”]; c) the share in 9.2. regulating the droit de suite; d) the value added tax if not included in buyer's premium; e) accumulating costs and those to be proven by the auctioneer in individual cases if applicable or agreed cost-covering contributions.

4. Bidders

- 4.1. Each bidder shall receive a paddle number after submitting a valid form of identification and admission to the auction by Hampel. Only bids made under this number shall be taken into account. Hampel shall require from bidders with whom it is not familiar, a written application and current bank reference furnishing sufficient evidence of the bidder's creditworthiness, no later than 24 hours before the auction begins. Irrespective of this, bidders may be requested, at the discretion of Hampel, to render sufficient surety before bidding begins; if this request is not complied with, the bid may be disregarded.
- 4.2. It shall be up to the bidders if they make their bids at the auction, in writing before the auction or by telephone; in other respects, 5.6 shall apply. Bids may not be revoked pursuant to the law governing long-distance sales, cf. sections 312 b - d BGB.
- 4.3. As a general rule, bidders shall acquire, in so far as the bid is awarded, in their own name and for their own account. If a bidder wishes to bid on behalf of a third party, it must expressly notify Hampel at least 24 hours before the auction begins stating name and address of the party it is representing as well as submitting a current granted power of attorney. Otherwise, the purchase agreement shall be effected with the bidder in the event the bid is awarded. In cases of representation, proof of the credit standing of the represented party as laid down in 4.1. shall be carried along. Mandatory provisions of agency by operation of law [sections 164 et seq BGB] shall not be affected herewith.

5. Bids

- 5.1. Bids from interested parties who are present in the auction house shall be made by clearly raising the paddle number.
- 5.2. Bids may also be made in absentia; either in writing [5.3.] or by telephone [5.4.]. Bids of those not present at the bidding shall only be permitted if the bidder has applied for admission from Hampel at least 24 hours before the auction begins. The application must name the work of art stating the catalogue number and title. In case of doubt, the catalogue number shall be decisive; uncertainties shall be on the bidder's account. Hampel shall assume no guarantee for the handling of bids in the absence of the bidder. In particular, it will not be responsible for effecting and maintaining telecommunication connections or for transmission errors. This shall not apply in so far as the auctioneer is responsible for a mistake caused intentionally or through gross negligence.
- 5.3. A bid made in writing must be personally signed inter alia by the bidder and the purchase price offered for the work of art [3.3.a)] stated in numbers. Bids in writing are deemed bids already made in the auction. If several bids of the same amount have been made in writing for one and the same work of art, acceptance will be awarded to the bid that arrived first if a higher bid does not exist or has been made; in the case of receipt of bids on the same day, the bid awarded shall be decided by lots. Each bid in writing that is principally deemed a maximum bid shall only be utilised by Hampel in protecting its interests to the extent that it is necessary to outbid another offer.
- 5.4. Bids made by telephone will be carried out for the bidder by a person present in the auction house [telephonist]; these calls may be recorded by Hampel. The bidder shall consent to the recording upon making application to bid by telephone.
- 5.5. To the extent Hampel provides special forms with regard to bids made in absentia, such forms must be used by the bidder and signed if necessary. The bidder's own forms shall not be accepted under any circumstances.
- 5.6. Bids via Internet, particularly via e-mail, shall not be accepted.

6. Acceptance of a bid

- 6.1. The initial bid price will be determined by the auctioneer at his discretion; on principle, it is not to undercut the estimated price by more than half. As a rule, the bid will be increased by 5 – 10% over the previous bid. The decision thereof shall be incumbent upon the auctioneer.
 - 6.2. The purchase agreement with the bidder shall come into existence through acceptance of a bid. The bid shall be awarded if, after three calls on a bid, no higher bid is offered.
 - 6.3. The buyer shall also remain bound to his bid if a subsequent higher bid is rejected by the auctioneer or its invalidity is determined no later than one month after acceptance of the bid.
 - 6.4. Not only is the auctioneer entitled to reject a bid and/or refuse acceptance. In particular, he may also withdraw acceptance of a bid and offer the work of art once again if a higher bid offered on time was overlooked by mistake or if there are any other doubts with regard to the bid; the previous acceptance of a bid shall become invalid upon a new call for bids and/or acceptance.
 - 6.5. In individual cases, Hampel may – in particular if the reserve (“limit”) set by the owner has not been achieved – award acceptance of the bid subject to reserve; thereupon, the auctioneer shall make express indication of acceptance of the bid through a reference “subject to reservation” or “u.v.” The accepted bid subject to reserve shall only then be effective if Hampel confirms the bid in writing or through implied intention inter alia by means of an invoice within one month following the day of the auction. For the confirmation of the acceptance of the bid subject to reservation within the specified time limit, the timely dispatch to the address of the buyer notified to the auctioneer shall be sufficient within the one-month period. Without the confirmation of the acceptance of the bid, it shall be cancelled upon expiry of the above-mentioned time periods.
 - 6.6. Upon acceptance of the bid, the risk of accidental deterioration or loss of the work of art awarded by bid shall pass to the buyer. The buyer shall pick up his acquisition no later than within two weeks after acceptance of the bid. Supplementary to this, 8.1 shall apply.
 - 6.7. Hampel shall not be obliged to surrender the work of art until all amounts owed by the buyer have been paid in whole.
- ### 7. Payment
- 7.1. The amounts owed by the buyer [3.3.] shall be due and payable upon acceptance of the bid.
 - 7.2. All invoices which were issued during or directly following the auction shall remain subject to review.
 - 7.3. On principle, payments shall be made in cash. Cashless payments – incl. those paid by cheque – must be arranged individually and shall only be accepted as conditional payment. All costs, taxes, expenses, etc. connected with a cashless payment shall be borne by the buyer.
 - 7.4. Default in payment shall come into existence 2 weeks after the date of the invoice. The buyer shall be charged a flat rate of €15 for each reminder. Upon the time of default in payment, the entire purchase price shall bear interest of 1% per month irrespective of further claims of Hampel or the owner. The

owner may – acting through the auctioneer who decides at his discretion – respectively in the case of him acting as a commission agent, insist upon payment together with acceptance or withdraw from the purchase agreement after granting a period of grace of two weeks. The right to demand damages shall not be excluded through withdrawal. Hampel may inter alia convert its own damage into cash vis-à-vis the buyer. On this understanding, the claim to damages vis-à-vis the buyer shall amount to the consignor and buyer's premium of the auctioneer, advertising costs, catalogue illustrations and insurance as well as the costs of return delivery and possibly a further auction including accruing storage, processing and additional insurance costs. Moreover, the buyer in default of payment shall settle the costs of bringing an action as well as a possible deficit in the proceeds of a new auction; he shall have no claim to the restitution of excess proceeds. In so far as the owner is entitled to the above claims, Hampel may assert such claims directly against the buyer in its own name [litigation in one's own name on another's behalf].

- 7.5. Title to the work of art accepted by bid shall only pass over to the buyer after payment of the entire invoice amount to Hampel.
- 7.6. The buyer shall only be entitled to a setoff against the owner as well as vis-à-vis Hampel if the claims are res judicata or have not been contested. He shall not be entitled to rights of retention or rights to refuse performance in so far as he is a businessman within the meaning of the statutory provisions.
- 7.7. In the cases of 7.4. [2nd paragraph], Hampel shall be entitled to exclude the buyer from bidding in further auctions; Hampel shall be entitled to pass on his name and address to other auction houses for the purpose of blocking.

8. Collection

- 8.1. Hampel shall store and insure the work of art to be collected by the buyer in accordance with 6.6. in the amount of the hammer price on its costs up to the time of expiry of the two week-period; the insurance shall cover property risks [incl. fire/ tap water/ theft/ burglary/ vandalism] as well as the risk of getting lost and the damage to the work of art on the premises of the auctioneer. Following expiry of the two-week period, Hampel shall be entitled to store the work of art at a forwarding agent's and have it insured in the name of and on the account of the buyer or to bill a daily lump sum for the storage and insurance costs of storing the item on its own premises; the lump sum shall depend on the size of the work of art and ranges from € 1 to € 5 daily per item.
- 8.2. Dispatch of the items awarded by bid shall be carried out exclusively following written instructions of the buyer. Hampel shall assume liability only for orderly delivery to the forwarding agent, carrier or any other persons designated to carry out the shipping; section 447 sub-section 1 BGB shall apply.

9. Specific Terms

- 9.1. In addition to the hammer price, the buyer shall pay a buyer's premium of 27 %. The value added tax of currently 19 % shall be included and not separately shown. Items signed with a “+” are sold in the name of Hampel as commission agent for the account of the Consignor and are subject to regular VAT taxation. The VAT of 19% will be added to the hammer price of these items as well as on the buyer's premium of 22,70 % (Paintings, drawings, collages, original engravings or lithographic prints and sculptural works: VAT 7%, section 12 sub-section 2 Nr. 1 UStG). The VAT will be shown separately on the invoice. Reference is made to the catalogue regarding additional explanations. In particular cases, Hampel may opt for the rules of section 25a German Turnover Tax Law (“UStG”) to apply, so-called “margin taxation”. The VAT ID system will be applicable for European buyers. A VAT refund is only possible for Non-European exports.
- 9.2. The buyer shall assume in the ratio to the owner the payment of half the statutory artists resale rights (“droit de suite”) charges. This is shown separately on the invoice and shall be owed pursuant to section 26 sub-section 1 Copyright Act when selling the originals of a work of fine arts in which the copyright has not yet expired.
- 9.3. The obligation of the buyer to pay the regular costs set down in these terms and conditions of an auction such as reminders, transport and insurance costs, costs of bringing legal action, interest, etc. shall not be affected herewith.
- 9.4. Hampel shall be entitled, to assert the above-mentioned claims in its own name vis-à-vis the buyer – also in so far as they exist in the person of the owner – and to file suit for such claims if necessary.

10. State of the objects

- 10.1. All items which are to be auctioned may be viewed on the premises of Hampel before the auction during the preliminary viewing periods and studied without time limitations. On principle, these items are used objects; they are of vague age and they are in a condition – particularly in a state of preservation – that corresponds to their provenance, age, utilisation and application up to the present time.
- 10.2. Correspondingly, all works of art shall be auctioned by Hampel in the condition and state in which they are found at the time of auctioning [“as is”].
- 10.3. The actual state and condition shall be the agreed specification within the meaning of the statutory provisions [= section 434 sub-section 1 clause 1 BGB], even if Hampel has drawn up a condition report for the buyer at its request. Such reports do not contain individual agreements that deviate from conditions as set forth under 10.1. / 10.2. they simply express the subjective evaluation of Hampel. This is a customer service from which the buyer may not derive conditions deviating from the auction conditions or undertakings that go beyond such.
- 10.4. Objections that may be possible vis-à-vis the condition/ preserved condition of the work of art shall only be mentioned in the auction catalogue or the condition report if, in the opinion of Hampel, they significantly detract from the optical overall impression of the work of art. In this respect, lacking references with regard to repairs, completions or other measures on the work of art, restorations, removal of frames, damage, etc. do not, from an objective view, imply that a work of art is not in an objectionable condition. Each bidder shall be entitled to view and inspect the work of art in good time before the auction, cf. 10.1.

11. Catalogue descriptions [in other respects]

- 11.1. All statements in the catalogue or in the corresponding presentation in the Internet are based on the published and otherwise generally accessible scientific findings up to the time of the auction and on the statements made by the consignor. They are not a part of the agreed specification and do not include any guarantees within a legal context. Hampel reserves the right to rectify catalogue statements with regard to the works of art to be auctioned as well as to withdraw them. Rectification and withdrawal shall be made by means of written notification at the location of the auction and orally by the auctioneer directly before the auction. The rectified statements shall replace the catalogue description.
- 11.2. Any liability of Hampel and/ or the consignor for defects shall be excluded since the auction is a public auction handling used items within the meaning of section 474 sub-section 1 clause 2 BGB. The auctioneer undertakes, however, to enforce his rights vis-à-vis the owner in accordance with customer-friendly conduct if there is a deviation from the catalogue statements which cancel or reduce the value or suitability of the work of art significantly, and if the well-founded claims are submitted within one year after the transfer; in the case of successful demands on the owner, the auctioneer shall indemnify the acquirer.
- 11.3. Liability of the owner and/or Hampel to claim damages due to a defect within the meaning of 11.2., owing to loss, damage of the auctioned item or for any other reasons that are factual or legal shall be excluded. Such provision shall not apply if contractual cardinal duties have been violated as well as in all cases of section 309 clause 7 BGB. In other respects, the liability shall only include foreseeable damage; this shall apply to the extent permitted by and compatible with the law.
- 11.4. All eventual claims of the buyer shall become statute-barred following expiry of one year after the handing over of the work of art awarded by bid. For the limitation of actions of the claims described in the second last sentence of 11.3./, the statutory period of limitation is deemed applicable.

12. Miscellaneous; final provisions

- 12.1. Within 6 weeks after the auction, works of art that did not receive bids may be acquired by means of subsequent sale. This subsequent sale is a part of the auction; the interested party shall submit its offer in person, by telephone or in writing naming a certain amount such that the provisions of the terms and conditions for auction shall also apply correspondingly for its offer as well as its acceptance and any other legal handling.
- 12.2. These terms and conditions of auction shall govern any and all relationships between the buyer and Hampel as well as the owner.
- 12.3. The law of the Federal Republic of Germany shall apply exclusively. These provisions shall not be subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.4. The language of negotiations and of the agreement shall be German. Descriptions and other documents including these terms and conditions that are drawn up in another language shall be solely of informal nature and not authoritative.
- 12.5. Place of performance and jurisdiction – in so far as permitted by and compatible with the law – shall be Munich. Munich shall be the exclusive place of jurisdiction if the buyer is a businessman within the meaning of the statutory provisions or is not a resident of Germany; this shall also apply to actions arising from cheques or bills of exchange.
- 12.6. Should one or more of these terms and conditions of auction be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision by common consent of the parties that comes as close as possible to the original intended purpose of the provision.