

## TERMS AND CONDITIONS OF THE AUCTION HOUSE

### 1. Auction

1.1. The auctions carried out by Hampel Kunstauktionen (Hampel Fine Art Auctions), owner: Holger Hampel, - hereinafter referred to as "Auction House" – constitute voluntary auctions as defined by sections 383, sub-section 3, and 474, sub-section 1, clause 2 German Civil Code (BGB). The auction items are sold for the account and on behalf of the consignor. Only such auction items marked with a "t" in the auction catalogue shall be sold by the Auction House as a commission agent in its own name and for the account of the consignor.

1.2. Any claims of the successful bidder arising from the auction shall be directed to the consignor unless the relevant auction items have been sold by the Auction House on a commission basis. If an auction is carried out on a commission basis, the buyer's claims shall be directed to the Auction House in accordance with the provisions stipulated in these Terms and Conditions.

1.3. The Auction House shall designate the individual who manages the auction in its name and on its behalf unless its owner assumes such management himself or herself. An agreement between the successful bidder and such individuals shall not be concluded.

1.4. These Terms and Conditions shall apply directly to the auction, and shall apply accordingly to the subsequent sale of any auction items which have not received a bid in the auction. Such subsequent sale shall be subject to the provisions specified in art. 13 of these Terms and Conditions.

1.5. By making a bid, the successful bidder expressly acknowledges the applicability of these Terms and Conditions which are printed on the back of the bidding forms and in the catalogue, displayed on the Auction House premises and published on the website of the Auction House at [www.hampel-auctions.com](http://www.hampel-auctions.com).

1.6. Any general terms and conditions of the successful bidder shall not apply.

### 2. Catalogue

2.1. The catalogue text is available in the German and, for selected items, English language. In all cases of doubt, the German version of the catalogue shall prevail. Any catalogue details in other languages are merely a service of the Auction House and shall have no relevance to the legal relationship with the successful bidder.

2.2. If it is questionable which auction item was bid for by the successful bidder and accepted at the auction, the number stated in the catalogue shall be relevant, but not the title.

2.3. The consignor and the Auction House shall not assume any liability if reproductions and photographs in the printed catalogue deviate in colour from the original auction item.

2.4. Any auction items owned by the Auction House are specially marked with an "e" (property of the Auction House).

2.5. The Auction House may combine or separate catalogue numbers and, to the extent that a particular reason exists to do so, withdraw or call them in another sequence than the one stated in the catalogue.

### 3. Prices

3.1. The estimated prices stated in the catalogue of the Auction House are only a non-binding indication for the successful bidder. They may be minimum hammer prices if the Auction House has agreed upon a limit with the consignor.

3.2. All estimated prices are stated in Euros; accordingly, the acceptance of bids is also in Euros. Any and all statements in foreign currencies shall not be legally binding.

3.3. The total price payable for the auction items sold is composed as follows: a) the bid acceptance price (hammer price); b) the commission for the Auction House, the so-called buyer's premium pursuant to par. 10.1. of these Terms and Conditions; c) the share of the *droit de suite* (fee to which artists are entitled on resale of their works) regulated in par. 10.2. of these Terms and Conditions; d) value-added tax at the statutory rate, if not included in the buyer's premium, and e) any costs incurred and to be demonstrated by the Auction House in individual cases if applicable or any cost allocations are agreed upon.

### 4. Bidders

4.1. Each bidder shall receive a paddle number after submitting a valid form of identification and admission to the auction by the Auction House.

4.2. Bidders who are unknown to the Auction House and/or with whom it has not done business before, shall submit a written application and, upon request of the Auction House only, a current bank reference supplying sufficient evidence of the bidder's credit standing, to the Auction House no later than in the evening before the day of the auction. The bidder will not be admitted to the auction and assigned a paddle number until the said bank reference has been submitted, provided such a reference was requested.

4.3. Only bids made under this paddle number will be considered at the auction.

4.4. As a general rule, bidders shall acquire, if the bid is awarded, the items in their own name and for their own account. If a bidder wishes to bid on behalf of a third party, the bidder shall expressly notify the Auction House no less than 24 hours before the auction begins, stating the name and address of the party the bidder is representing as well as submitting a power of attorney recently granted. Otherwise, any contracts (cf. par. 7.3. of these Terms and Conditions) shall be concluded with the bidder when the bid is awarded. In cases of agency, proof of the credit standing of the principal as laid down in par. 4.2. of these Terms and Conditions shall be submitted. In addition, the provisions of the statutory right of agency pursuant to sections 164 et seqq. BGB shall apply.

### 5. Bids by persons present

Bids by persons who attend the auction in person shall be made by clearly raising the paddle number.

### 6. Bids by persons not present

6.1. Bids by persons who are not present in person may be made by telephone or in writing, but not per email.

6.2. Bids by persons not present are only allowed if the bidder has applied for admission no later than in the evening before the day of auction. The said application shall name the auction item with its catalogue number and title. In case of doubt, the catalogue number shall be applicable; any uncertainties shall be at the bidder's expense. The Auction House shall assume no guarantee for the handling of bids made in absentia. In particular, it will not be responsible for effecting and maintaining telecommunications connections or for transmission errors. This shall not apply if the Auction House is responsible for a mistake caused intentionally or by gross negligence.

6.3. Bids made in writing can only be admitted within the period of time stated in par. 6.2. of these Terms and Conditions provided such bids are made by submitting a properly completed "Bids in writing" form provided by the Auction House for this purpose, which shall have been personally signed

by the bidder. The form is available on the premises of the Auction House as well as on its website, [www.hampel-auctions.com](http://www.hampel-auctions.com), and is printed in its catalogues. All bids made in writing are deemed bids made in the auction. If several bids of the same amount have been made in writing for one and the same auction item, the bid which the Auction House received first will be accepted unless a higher bid has been submitted or is made. If several bids are received on the same day, the bid awarded shall be decided by lots. Each bid in writing generally deemed a maximum bid shall only be utilised by the Auction House in protecting its interests to the extent that it is necessary to outbid another offer.

6.4. Bids made by telephone shall only be admitted if such bids are announced/applied for by submitting a properly completed "Bids by telephone" form provided by the Auction House for this purpose, which shall be received by the Auction House within the period of time stated in par. 6.2. of these Terms and Conditions. The form is available on the premises of the Auction House as well as on its website [www.hampel-auctions.com](http://www.hampel-auctions.com) and is printed in its catalogues. Bids by telephone are carried out for the bidder by a telephonist present in the auction house and may be recorded by the Auction House. The bidder consents to such recording by submitting the application to bid by telephone.

6.5. Bids made by telephone cannot be revoked (subject to sections 312 b-d BGB), as a contract concluded as a result of a bid made by telephone does not constitute a distance-selling contract as defined by section 312 b BGB.

6.6. Bids by absent new clients and absent foreign bidders can only be considered if such persons at least have, their bank account information in the forms stated in par. 6.3. and 6.4. of these Terms and Conditions as well as an enclosed a copy of their national identity card or passport and, if requested, a bank reference to the completed forms.

6.7. Any changes or cancellations of bids made in writing as well as any applications for bids by telephone shall have been received by the Auction House no later than in the evening before the day of the auction. All ambiguities shall be at the expense of the bidder.

### 7. Acceptance of a bid

7.1. The initial bid price will be determined at the discretion of the auctioneer appointed to carry out the auction. Generally, it should not be lower than half of the estimated price. As a rule, the bid will be increased by 5%-10% over the previous bid. The Auction House has the power to decide on the said increase.

7.2. The contracts between the consignor and the successful bidder (agency) and between the Auction House and successful bidder (consignment) shall be concluded by the acceptance of the bid. The bid shall be awarded if, after three calls on a bid, no higher bid is offered.

7.3. The successful bidder shall also remain bound by his bid if a subsequent higher bid is rejected by the Auction House or its invalidity is determined no later than one month after acceptance of the bid.

7.4. The Auction House is not only entitled to reject a bid, but also has the right to refuse the fall of the hammer. In particular, it may also withdraw acceptance of a bid and offer the auction item once again if a higher bid offered in good time was overlooked in error or if any other doubts exist with regard to acceptance of the bid. The previous acceptance of a bid shall become invalid upon a new call for bids and/or acceptance.

7.5. In individual cases, the Auction House may, particularly if the reserve ("limit") set by the consignor has not been achieved, award acceptance of the bid with reserve. The foregoing shall be expressly indicated by the Auction House upon acceptance of the bid through the addition "with reserve" or "u.v.". The bid accepted with reserve shall be ineffective unless the Auction House submits a written or implied confirmation of the bid, *inter alia*, by presenting an invoice within one month following the day of the auction. For the confirmation of acceptance of the bid with reserve within the specified time limit, timely sending to the address of the successful bidder notified to the Auction House shall be sufficient within the said one-month period. If the acceptance of the bid is not confirmed, it shall be cancelled upon expiry of the aforesaid time periods.

7.6. Upon acceptance of the bid, the risk of accidental deterioration or loss of the auction item accepted by bid shall pass to the successful bidder. The successful bidder shall collect the auction item no later than within two weeks after acceptance of the bid. In addition, the provisions of par. 9.1. of these Terms and Conditions shall apply.

7.7. The Auction House is not required to give up possession of the auction items before full payment of all amounts owed by the successful bidder/the price owed pursuant to par. 3.3. of these Terms and Conditions.

### 8. Payment

8.1. The amounts owed by the successful bidder as specified in par. 3.3. and these Terms and Conditions shall be due and payable upon acceptance of the bid.

8.2. All invoices issued during or immediately following the auction shall be subject to review.

8.3. Principally, all payments should be made in cash. Cashless payments, incl. those made by cheque, must be individually agreed upon and can only be accepted as conditional payments. All costs, taxes, expenses, etc. associated with a cashless payment are at the expense of the successful bidder.

8.4. The successful bidder shall be deemed in default of payment two weeks after acceptance of the bid. For each warning letter, the successful bidder shall pay to the Auction House the amount of EUR 15.00 incl. value-added tax at the statutory rate. Upon the time of default in payment, interest shall be payable at a rate of 1%/month on debts due (subject to par. 3.3. of these Terms and Conditions). Further claims by the Auction House or, when applicable, the consignor shall remain thereby unaffected. The consignor, acting through the Auction House which decides at its discretion, or the Auction House if it acts as a commission agent, may insist upon payment together with acceptance of the items or cancel the purchase agreement after granting a two-week extension of the time limit. The right to claim loss or damages shall not be excluded by such a cancellation. The Auction House may, *inter alia*, claim compensation for, among other things, additional unforeseen costs (i.e. insurance, etc.) from the successful bidder. The said claim for loss or damages also includes the consignor's commission, the premium of the Auction House, the costs of advertising, catalogue illustrations and insurance, as well as the costs of return delivery and a renewed auction if applicable incl. any storage, handling and additional insurance costs which may be incurred. Moreover, the aforementioned claim for loss or damages is comprised of the cost of prosecuting an action and any deficit in the proceeds of a renewed auction. The successful bidder who defaults on payments is not entitled to receive any excess proceeds. Any claims of the consignor may be directly asserted by the Auction House *vis-à-vis* the successful bidder in its own name by virtue of a valid power of attorney granted together with the auction order (litigation in its own name but on another's behalf).

8.5. Ownership of the auction item will not be given to the successful bidder without successful payment of all payments due to the Auction House.

8.6. The successful bidder shall only be entitled to a set-off against the consignor or the Auction House if the relevant claims are undisputed or have become *res judicata*. The successful bidder shall

not have any rights of retention or rights to refuse performance if she or he is a trader as defined by the statutory provisions.

8.7. In the event of cancellation and/or the assertion of a claim for loss or damages as set forth in par. 8.4. of these Terms and Conditions, the Auction House is entitled to exclude the successful bidder from making bids in other auctions.

8.8. If the successful bidder has provided his or her credit card details to the Auction House, the Auction House is entitled, after the bid has been accepted, to charge the successful bidder's credit card for the payments owed by the successful bidder pursuant to par. 3.3. and the foregoing Terms and Conditions.

## 9. Collection

9.1. The Auction House shall store and insure the auction item, which shall be collected by the successful bidder in accordance with par. 7.6. of these Terms and Conditions, for the hammer price at the Auction House's own expense for 2 weeks after acceptance of the bid. The said insurance shall cover all property risks such as fire, water pipe burst, theft, burglary, vandalism, as well as the risk of loss of and damage to the auction item on the premises of the Auction House. Upon expiration of the 2-week period after the acceptance of the bid, the Auction House is entitled to authorise a forwarding agent to store and insure the auction items in the name and for the account of the successful bidder or store such items on its own premises against payment of a fixed daily rate for storage and insurance costs. The said fixed rate depends on the size of the item and ranges from EUR 1.00 to EUR 5.00 per day, per auction item.

9.2. Any auction item accepted by bid shall be exclusively transported in accordance with the written instructions of the successful bidder. The Auction House shall only be liable for the proper delivery of the auction item to the forwarding agent, courier or any other persons designated to carry out the transport. Section 447, sub-section 1 BGB shall apply.

## 10. Buyer's premium, droit de suite and other costs

10.1. In addition to the hammer price, the successful bidder shall pay a buyer's premium of 27% of the hammer price. The said amount includes value-added tax at the statutory rate on the buyer's premium. VAT will not be separately shown. In more detail, the regulations of section 25 a German Value-Added Tax Act (UStG), governing the so-called margin taxation, shall apply. Items on commission, as defined by par. 1.1. of these Terms and Conditions, marked with a "+" and auctioned in our own name and billed to the consignor, shall be subject to regular value-added tax at the current rate. Value-added tax at the statutory rate shall also be imposed on the hammer price upon acceptance of the bid, and the buyer's premium of then 22.7% net of the hammer price upon acceptance of the bid, and separately shown on the invoice. Paintings, drawings, collages, original engravings, silhouettes or lithographic prints and sculptural works are subject to the reduced rate of value-added tax value-added tax subject to section 12, sub-section 2, no. 1 UStG (currently 7%). In individual cases, the Auction House may opt for the rules of section 25 a UStG governing margin taxation. Reference is made to additional explanations that can be referenced in the catalogue. The VAT ID procedure can be used with European buyers. In all cases, a VAT refund is only possible for exports outside the EU.

10.2. The successful bidder is liable, vis-à-vis the consignor, to pay half the statutory artists' resale rights ("droit de suite") charges. The said charges are payable under section 26, sub-section 1, of the German Copyright Act (UrhG) when selling originals of a work of fine arts whose copyright has not yet expired. It is shown and invoiced separately; invoicing may occur at a later date if required.

10.3. The obligation of the successful bidder to pay the costs set forth in these Terms and Conditions of Auction such as; fees for late payment, transport and insurance costs, costs of prosecuting an action, interest etc.; shall remain unaffected.

10.4. The Auction House is entitled to assert and, if applicable, enforce by legal action the claims referred to in par. 10.3. of these Terms and Conditions, including the consignor's claims, in its own name vis-à-vis the successful bidder. The consignor has granted a power of attorney to this effect upon placing the auction order.

## 11. Condition of the auction items

11.1. All auction items may be viewed on the premises of the Auction House before the auction during the preview periods and examined without time limitations. Generally, auction items are used items, are of a certain age and are in a condition - particularly relating to their state of preservation - which corresponds to their provenance, age, use and application up to the present time.

11.2. Accordingly, all auction items are sold by the Auction House in the condition applicable upon acceptance of the bid ("as is").

11.3. The actual condition constitutes the agreed quality as defined by section 434, sub-section 1, clause 1 of the BGB, even if the Auction House has wilfully transmitted a condition report to the successful bidder at his or her request. Such condition reports do not contain any individual agreements deviating from the provisions of par. 11.1. and 11.2. of these Terms and Conditions; they simply express the subjective evaluation of the Auction House. This is a customer service from which the successful bidder may not derive any understanding deviating from or exceeding these Terms and Conditions of Auction.

11.4. Any objections possible, relating to the condition and/or state of preservation of the auction item, shall only be mentioned in the auction catalogue or any condition report if, of the opinion of the Auction House, it significantly distracts from the overall visual impression of the auction item. In this respect, the absence of references to repairs, additions, restorations, removal of frames, damage etc., or other measures taken on the auction item, does not imply that an auction item is in poor condition from an objective point of view. Each bidder may view and inspect the auction item with enough time before the auction, cf. par. 11.1. of these Terms and Conditions.

## 12. Liability

12.1. All information provided in the catalogue or in the corresponding internet presentation is based on scientific findings published or otherwise publicly accessible until the time of the auction and on the information provided by the consignor. Such information is not part of the agreed quality of the items and does not include any guarantees within a legal context. The Auction House reserves the right to correct any catalogue information about the auction item or to withdraw any items. The correction of descriptions or the withdrawal of any auction items ("withdrawal") shall be effected by means of a written notice at the location of the auction and orally, immediately before the auction, by the auctioneer authorised to carry out the auction. Such corrected information shall replace the catalogue description.

12.2. If and to the extent that it auctions for the account and in the name of the consignor, the Auction House does not assume any liability for defects, provided that it has complied with the duty of care incumbent on it. However, it agrees to notify the consignor within the statutory period of limitation of any justified complaints which have been timely submitted.

12.3. If, in cases where the Auction House auctions items as a commission agent in its own name but for the consignor's account, the successful bidder demonstrates within the period of time specified in par. 12.6. of these Terms and Conditions that any catalogue information about the origination, technique or signature of an auction item were incorrect upon acceptance of the bid, the Auction House shall repay the total price paid by him or her under par. 3.3. of these Terms and Conditions to the successful bidder, if he or she gives notice of cancellation, unless any third-party claims exist to the auction item and if the item is returned in unchanged condition to the principal place of business of the Auction House.

12.4. Any liability of the Auction House for damages in terms of defect, loss, damage or for other reasons of an actual or legal nature shall be excluded. This shall not apply in the event of any damage to the consignor's auction item resulting from grossly negligence or intentional negligence of duty by the Auction House or the persons employed by it in performing its obligations.

12.5. In all cases indicated in these Terms and Conditions or arising from the statutory regulations, the Auction House shall otherwise only be liable in the event of breach of cardinal duties, injury to life, body or health and grossly negligent or intentional actions. Cardinal duties shall include the obligations of the Auction House without whose discharge the proper performance of the auction contract is impossible and on whose fulfilment the successful bidder may normally rely. In particular, this shall include the obligations of the Auction House to catalogue the auction item, carry out the auction order and to hand over and transfer ownership of the auction item. If the Auction House engages any third parties in fulfilling its obligations, it shall only be responsible for intentional or grossly negligent actions by such persons or by itself in selecting and supervising such persons, with the exception of liability for breach of cardinal duties and liability for injury to life, body or health.

12.6. Any and all claims of the successful bidder against the Auction House and the consignor, with the exception of such claims referred to in par. 12.5. of these Terms and Conditions, shall become statute-barred at the end of a period of one year after delivery of the auction item sold.

## 13. Subsequent sale

Within a period of six weeks after the auction, auction items that have not been sold may be acquired by way of subsequent sale. Potential buyers can submit their offer, which shall include a bid with the specific amount, either in person, by telephone or in writing. The provisions of these Terms and Conditions shall also apply mutatis mutandis to the said offer, its acceptance by the Auction House and the contract concluded thereby.

## 14. Final provisions

14.1. These Terms and Conditions of Auction regulate all relationships between the successful bidder and the Auction House as well as between the consignor and the successful bidder.

14.2. The law of the Federal Republic of Germany shall be exclusively applicable. These Terms and Conditions shall not be subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.3. The official language for negotiations and of the contract shall be German. Any descriptions and documents, including these Terms and Conditions of Auction, drawn up in other languages are solely of an informal nature and are not authoritative.

14.4. Munich shall be the place of fulfilment. Munich shall be the exclusive place of jurisdiction for all claims arising from the contractual relationship between parties, if the successful bidder is a trader as defined by the statutory provisions or a legal person under public law. The same place of jurisdiction shall apply if the successful bidder does not have a general domestic place of jurisdiction, if he or she has relocated his or her principal place of business or legal or habitual residence abroad after conclusion of the contract or if his or her principal place of business or habitual residence is unknown upon commencement of the action. In all other cases, the court in whose district the successful bidder has his or her principal place of business or legal residence or, in the absence thereof, habitual residence upon commencement of the action shall be competent for all claims of the Auction House arising from the contractual relationship with the successful bidder.

14.5. Should any of the provisions of these Terms and Conditions be or become ineffective or unenforceable, the effectiveness of the remaining conditions shall remain unaffected. Such an ineffective or unenforceable term or condition shall be replaced by the parties with an effective and enforceable condition which comes closest to the purpose of the original condition.

Holger Hampel, MBA  
Sworn Public Auctioneer