

# AUCTION TERMS AND CONDITIONS

## 1. Auction

1.1 BRENSKE AUCTIONS, owner Dr. Stefan Brenske, (hereinafter referred to as the "Auctioneer") holds public auctions in accordance with § 474 paragraph 1 sentence 2, and § 383 paragraph 3 sentence 1 of the German Civil Code (BGB) as commission agent in its own name and for the account of its clients, whose names are not disclosed.

1.2 The items to be auctioned may be viewed and examined prior to the auction, potential buyers being liable for any damage they cause to the exhibited items.

## 2. Condition, Warranty

2.1 The works of art that are up for auction and can be examined and viewed during the preview are, without exception, used items. They are in a state of preservation that is consistent with their age and provenance. Objections to the state of preservation are only mentioned in the catalogue if, in the opinion of the Auctioneer, they adversely affect the visual impression of the work of art as a whole. Potential buyers may request a condition report for every work of art. This report, whether in verbal or written form, does not contain any diverging individually negotiated terms and is only an expression of the Auctioneer's subjective assessment. The information in the condition report is provided to the best of the Auctioneer's knowledge and belief. It shall not constitute any guarantee or agreement on the condition and serves the purpose of providing non-binding information only. The same applies to all types of information, whether in verbal or written form. In all cases it is the actual state of preservation of the work of art at the time of the acceptance of the bid that shall be applicable. Furthermore, the "condition score" shall also be referenced as a guide.

2.2 The information contained in the catalogue is based on knowledge published at the time of the catalogue's printing or on other generally available academic findings. If an Internet catalogue is prepared in addition, the information in the printed version shall nevertheless prevail.

2.3 Irrespective of the provisions under clause 2.1, only the information in the catalogue that relates to the authorship of the work of art is deemed to be part of the condition agreed with the buyer. The Auctioneer provides no special guarantees that result in additional rights. No additional features of the condition other than the authorship of the work of art shall be contractually agreed, even if the work of art is presented for reasons of advertising. The same applies to the reproductions in the catalogue. The purpose of said reproductions is to give the potential buyer an idea of the work of art; they are neither a constituent part of the agreement on the condition nor a guarantee of the condition.

2.4 Liability of the Auctioneer for faults or defects is expressly excluded provided that the Auctioneer has fulfilled its duty of care. Liability for physical injury or damage to health shall remain unaffected.

2.5 If, however, within one year after transfer of possession of the work of art the buyer is able to prove that catalogue information regarding authorship of the work of art is incorrect and is inconsistent with the accepted opinion of experts at the time of going to press, the Auctioneer undertakes to return the full commission, for a period of one year, if the work of art proves not to be authentic. This is subject to the work of art being returned in an unaltered condition to the Auctioneer's head office in Munich.

2.6 Claims for damages against the Auctioneer for defects in title and material defects and on other legal grounds (including compensation for futile expenses and compensation for costs for expert opinions) are excluded, unless they are based on intentional or grossly negligent conduct on the part of the Auctioneer or on the Auctioneer violating essential contractual obligations.

2.7 All claims against the Auctioneer shall come under the statute of limitations one year after the transfer of possession of the sold work of art.

## 3. Conduct of Auction, Bids

3.1 The estimates provided in the catalogue are not minimum or maximum prices but serve solely as an indication of the market value of the items, with no guarantee being given as to their correctness. Values in other currencies are provided for information purposes only and shall not be binding.

3.2 The Auctioneer reserves the right to combine, separate, offer out of sequence, or withdraw numbered lots during an auction.

3.3 All bids are deemed to have been made by the bidder in the bidder's own name and for the bidder's own account. If a bidder wishes to bid on behalf of a third party, the bidder must communicate this 72 hours prior to the start of the auction, specifying the name and address of the party the bidder is representing and submitting

written authorization. Otherwise the contract of sale shall be concluded with the bidder when the bid is accepted.

3.4 After presenting a valid form of identification and being admitted to the auction, the bidder will be given a bidder number by the Auctioneer. Only bids made using this number shall be considered during the auction.

3.5 Bidders unknown to the Auctioneer must submit a written application and valid ID to the Auctioneer no later than 72 hours prior to the start of the auction. The Auctioneer reserves the right to request a current bank reference or other references for admittance to the auction.

3.6 The Auctioneer may bid up to an amount below the reserve for the consigned lot on behalf of the consignor without disclosing this and irrespective of whether or not other bids are made.

3.7 The initial bid price shall be set by the Auctioneer; as a rule, bids are submitted in euros at a maximum of 10% above the previous bid. Bids may be made in person in the auction hall or, if the bidder is not present, in writing, by telephone, or via the Auctioneer's website, or via a platform approved by the Auctioneer.

3.8 All bids have reference to the so-called hammer price and are exclusive of the premium and, where applicable, VAT (see 5.1), customs costs and droit de suite. When there are equal bids, irrespective of whether they are made in the auction hall, in writing, by telephone, or over the Internet, a decision shall be made by drawing lots. Written bids or bids made via the Internet shall only be taken into consideration by the Auctioneer to the extent required to outbid another bid.

3.9 Absentee bids in writing are allowed as a rule if they are received by the Auctioneer at least 24 hours prior to the start of the auction and, if required, the additional information in accordance with clause 3.5 has been submitted. The bid must specify the relevant work of art by listing its catalogue number and catalogue description. In case of doubt, the catalogue number shall be decisive; the bidder shall bear the consequences of any ambiguities. The processing of absentee bids is an additional service provided by the Auctioneer free of charge. The Auctioneer therefore provides no assurance with regard to the execution or error-free processing of the bids and no guarantee can be given. This does not apply if the Auctioneer is responsible for an error made intentionally or through gross negligence. Absentee bids shall be given equal treatment to bids made in person during the auction when bids are accepted.

3.10 Written bids must be signed by the bidder. In the case of written bids, the potential buyer entrusts the Auctioneer to submit bids on its behalf.

3.11 In the case of telephone bids, a telephone operator present in the auction hall shall be authorized to make bids as per the telephone bidder's instructions. Telephone bids may be recorded by the Auctioneer. By applying for telephone bidding, the applicant declares that it consents to telephone conversations being recorded. In the case of bids made by phone or electronically, the Auctioneer accepts no liability for establishing and maintaining telecommunications connections or for transmission errors.

## 4. Acceptance of Bids

4.1 A bid is accepted after the highest bid has been called three times. When a bid is accepted, a contract of sale is reached between the Auctioneer and the bidder whose bid was accepted. The Auctioneer may refuse to accept the bid or accept it conditionally. This applies in particular in cases where a bidder who is not known to the Auctioneer or with whom no business relationship has yet been established fails to provide security in the form of bank references or guarantees by the start of the auction at the latest.

4.2 However, there shall be no fundamental entitlement to have a bid accepted. If a bid is rejected, the previous bid shall remain valid. The Auctioneer may revoke acceptance of a bid and invite bids for the item again if a higher bid made in due time was erroneously overlooked, if the highest bidder does not want its bid to stand, or if there are other doubts as to the acceptance. If no bid is accepted even though bids were made, the Auctioneer shall be liable to the bidder only in cases of intent or gross negligence. A bidder shall remain bound by a bid that has been conditionally accepted for a period of one month. A bid may be accepted conditionally if an agreed-upon reserve price is not reached, the ownership conditions of the item are unresolved, or in the case of other legal doubts; in this case, the bidder shall remain bound by its bid for a period of one month.

## 5. Purchase Price and Payment

5.1 The buyer must pay the hammer price plus a premium of 24% in the case of sums above € 50,000, a premium of 26% in the case of sums between € 10,000

and € 49,999, and a premium of 28% in the case of lesser amounts. This includes statutory VAT, which will, however, not be stated separately due to the margin scheme as per § 25a of the German Value Added Tax Act (UstG). With regard to items listed in the appendix as subject to standard taxation, a premium of 20% on sums above € 50,000 and of 22% for those between € 10,000 and € 49,999 and of 24% in the case of lesser amounts shall be levied. Statutory VAT of currently 7% (for icons, paintings, drawings, sculptures, prints etc.) and 19% (objets d'art, carpets, jewelry, watches, clocks, silkscreens, offsets, photographs etc.) respectively shall be levied on the sum total of the hammer price and the premium.

5.2 For buyers entitled to deduct input tax, the invoice may, on request (and after prior notification), be issued in accordance with standard taxation. VAT is not charged on deliveries to third countries (i.e. outside the EU) nor – provided the VAT ID number is stated – to companies in EU member countries. If participants in an auction take purchased items to third countries themselves, they shall be reimbursed for VAT as soon as proof of export and purchase has been provided to the Auctioneer.

5.3 Invoices issued during or immediately following the auction must be verified; errors remain excepted to this extent.

5.4 Payment of the total amount due upon acceptance of a bid must be made in cash or by bank certified check. Checks shall only be accepted on account of performance. Any taxes, costs, transfer or check-cashing fees (including bank fees charged to the Auctioneer) shall be borne by the buyer. Buyers who participate in the auction in person shall pay the purchase price to the Auctioneer immediately after their bid is accepted. Notwithstanding the fact that payment is due immediately, in the case of bids made in absentia payment may be made within 14 days of the invoice date without being considered late.

5.5 The items shall, in principle, only be handed over after full payment of all amounts owed by the buyer has been received.

## 6. Collection and Assumption of Risk

6.1 Acceptance of a bid establishes an obligation to take delivery of the item. Absentee buyers are obligated to collect their items from the Auctioneer without delay after they have been notified that their bid has been accepted. The Auctioneer shall organize the insurance and shipment of the auctioned items to the buyer only upon the buyer's written instruction and at the buyer's cost and risk. Since the purchase price is due immediately and the buyer is obligated to collect the items without delay, the buyer shall be in default of acceptance no later than 14 days after acceptance of the bid or post-bid, and consequently the risk shall be transferred to the buyer at this time at the latest, irrespective of the fact that possession of the item has not yet been transferred.

6.2 If the buyer has not collected the items from the Auctioneer at the latest three weeks after acceptance of the bid and/or notification, the Auctioneer shall request that the buyer collect the items within one week. At the end of said period the Auctioneer shall have the right to have the items kept in a warehouse at the cost and risk of the buyer. The Auctioneer shall inform the buyer prior to storage. If the Auctioneer stores the items in its own storage facilities, up to 1% p.a. of the hammer price shall be charged for insurance and storage costs. Irrespective of this, the Auctioneer may elect to demand performance of the contract or to assert legal rights for breach of duty.

6.3 The Auctioneer shall on no account be liable for loss of or damage to items that have not been collected or not transferred due to non-payment, unless attributable to intent or gross negligence on the part of the Auctioneer.

## 7. Reservation of Title, Offsetting, Right of Retention

7.1 The title to an item purchased at an auction passes to the buyer only upon receipt of all payments owed as per clauses 5 and 8.

7.2 Against claims by the Auctioneer, the buyer shall only be able to offset claims that are undisputed or that have been established by a court of law.

7.3 The buyer shall have no right of retention based on claims arising from any prior transaction with the Auctioneer. Insofar as the buyer is a merchant, the buyer waives its rights under §§ 273, 320 of the German Civil Code (BGB).

## 8. Default

8.1 The purchase price is due upon acceptance of the bid. Payment shall be considered in default 14 days after conclusion of the contract, i.e. acceptance of the bid or post-bid. Payments are to be made to the Auctioneer in euros. This also applies to checks, which shall only be recognized as fulfillment of the payment obligation once they have been unconditionally credited to the bank account.

8.2 If a payment is in default, default interest of 1% per month shall be charged. Furthermore, if a payment is in default, the Auctioneer may elect to demand performance of the contract of sale or to withdraw from the contract after having set a reasonable period for performance. In the event of withdrawal, all of the buyer's rights to the item purchased at auction shall lapse, and the Auctioneer shall be entitled to claim damages in the amount of the lost proceeds from the work of art (consignor's commission and premium). The buyer reserves the right to provide evidence that no loss, or only minor loss, was incurred. If the item is re-offered at a new auction, the defaulting buyer shall be additionally liable for any shortfall in proceeds compared to the earlier auction and for the costs of the repeat auction; the buyer shall not be entitled to any surplus proceeds. The Auctioneer has the right to exclude such a buyer from making further bids at auctions.

8.3 One month after default has occurred, the Auctioneer shall be entitled and, at the consignor's request, obligated to disclose the buyer's name and address to the consignor.

## 9. Declaration of Consent Regarding Data Protection

The bidder hereby agrees to the bidder's name, address, and purchases being stored electronically and processed by the Auctioneer for the purposes of fulfilling and performing the contractual relationship, and for the purpose of providing information about future auctions and offers. Should the bidder fail to carry out its contractual obligations within the scope of fulfilling and performing this contractual relationship, the bidder consents to this fact possibly being made known to other auctioneers. The collection of data and its further use may be objected to by deleting this clause or by submitting a statement to the Auctioneer at a later date, with effect for the future.

## 10. Other Provisions

10.1 These Auction Terms and Conditions shall govern all relations between the buyer and the Auctioneer. The buyer's General Terms and Conditions shall not apply. No verbal collateral agreements have been made. Amendments must be made in writing to be valid.

10.2 The place of fulfillment and place of jurisdiction for business transactions shall exclusively be Munich. German law shall apply; the United Nations Convention on Contracts for the International Sale of Good (CISG) shall not apply.

10.3 The above provisions shall also apply mutatis mutandis to post-sales, which are not governed by the provisions on distance sales as they form part of the respective auctions.

10.4 Should any of the above provisions be invalid in whole or in part, the validity of the remaining provisions shall be unaffected. The invalid provision shall be replaced by a valid provision which most closely resembles the commercial content of the invalid provision.

10.5 In cases of doubt the German version of the Auction Terms and Conditions shall prevail. Translations into other languages are intended merely to serve as a guide.

Dr. Stefan Brenske  
Auctioneer under § 34 b of the German Trade, Commerce and Industry Regulation Act (Gewerbeordnung)