

## **GENERAL TERMS AND CONDITIONS**

*governing the contribution for sale by auction of moveable property. These General Terms and Conditions were filed with the Chamber of Commerce and Industry for Amsterdam on 30 March 2004 under no. DS 40530226*

### **Article 1 Applicability**

- 1.1 These General Terms and Conditions govern all matters relating to the relationship between the auctioneer and the contributor/seller, referred to below as the 'Contributor', including matters relating to purchase, sale, agency, valuation, assessment, appraisal, cataloguing and safekeeping, unless the parties explicitly agree otherwise.
- 1.2 Deviations from these General Terms and Conditions are valid only if and insofar as they are explicitly accepted in writing by the auctioneer.

### **Article 2 Commission contract**

- 2.1 The Contributor commissions the auctioneer to examine, appraise and sell by auction the moveable property (also referred to below as the 'Objects') that he contributes and that the auctioneer receives.
- 2.2 The Contributor authorises the auctioneer to sell the Objects in the auctioneer's name, regardless of whether the sale relates to all of the items or only some of them, under conditions to be determined by the auctioneer. The Contributor can agree on a minimum price (reserve) in consultation with the auctioneer.
- 2.3 However, the receipt of Objects will not obligate the auctioneer to sell or auction them. If the auctioneer does not wish to sell or auction the Objects he will inform the Contributor accordingly within six weeks after he has taken that decision.

### **Article 3 Contributor's rights and obligations**

- 3.1 The Contributor must provide proof of his identity at the auctioneer's first request.
- 3.2 The Contributor guarantees that he is entitled, as the owner or otherwise, to offer the Objects for auction and indemnifies the auctioneer against all claims of third parties in that respect.
- 3.3 At the auctioneer's first request the Contributor is obligated to provide the auctioneer with information regarding the origin of the Objects, substantiated with evidence. The Contributor is liable for damage as a result of the provision of incorrect or misleading information and/or other circumstances for which the Contributor can be blamed and indemnifies the auctioneer against all claims of third parties in that respect.
- 3.4 The Contributor declares that the sale of the Objects at auction is not impeded by national or international statutory provisions.
- 3.5 The Contributor is not permitted to bid on the Objects he has contributed unless he has agreed otherwise with the auctioneer in writing.
- 3.6 The rights and obligations pursuant to these General Terms and Conditions are vested exclusively in the Contributor. The Contributor cannot transfer those rights and obligations to third parties.

### **Article 4 Auctioneer's rights**

- 4.1 The inclusion or exclusion of Objects in an auction, and any statement made about an Object in the auction catalogue or brochure, is at the sole discretion of the auctioneer. The auctioneer is entitled to consult with experts, without accepting any responsibility in that respect.
- 4.2 The auctioneer accepts no liability towards the Contributor with respect to recommendations given by or on behalf of the auctioneer with regard to the Objects.
- 4.3 The auctioneer is entitled to determine in which of his auctions an Object will be offered for sale.
- 4.4 If the auctioneer is instructed to fully clear a dwelling or warehouse, he reserves the right to exclude Objects from clearance and to destroy or remove Objects that he deems unsuitable for auction or to otherwise convert such Objects into cash.
- 4.5 The Contributor declares that the auctioneer is entitled to photograph, illustrate or otherwise portray, depict or cause the depiction of all objects offered for sale, in any manner whatsoever, before or after the auction, with due observance of applicable statutory provisions. The auctioneer retains the copyright on all such depictions.

### **Article 5 Taking back of the Objects by the Contributor**

- 5.1 Once an Object has been offered for auction the Contributor may not take it back unless he pays 30% of the agreed reserve, or less if the auctioneer considers that reasonable, or, if no reserve was agreed, of the expected auction proceeds for which the auctioneer appraised the Object, plus any costs incurred.
- 5.2 If the Contributor is not satisfied with the appraisal referred to in paragraph 1 he may have the Object re-appraised at his own expense by three registered brokers or registered valuers admitted in respect of the field related to the Object, or by certified valuers or brokers, one of whom will be appointed by the auctioneer, one by the Contributor and the third by the two valuers already appointed. In the event that the value after re-appraisal deviates from the original appraisal value, the re-appraisal value will be deemed binding for the auctioneer and the Contributor for the purposes of this Article.

### **Article 6 Commission**

- 6.1 If the Objects are sold at auction, the commission due to the auctioneer will be a percentage, agreed in advance, of the amount for which the Objects are sold.

### **Article 7 Auctioneer's obligation to take objects back**

- 7.1 The Contributor is aware that the auctioneer has declared in his conditions of sale, i.e. the General Terms and Conditions governing the sale by auction of moveable property between the auctioneer and the purchaser, that it is willing to do the following:

'Unless explicitly excluded in respect of particular Objects listed in the catalogue, and with the exception of a number of cases referred to in the General Terms and Conditions applicable to the sale of moveable property by auction, the auctioneer is willing to take back auctioned objects and simultaneously reimburse the purchase price and auction charges if the purchaser proves to the auctioneer's satisfaction within a period of three weeks after the sale that the auctioned object has such serious hidden defects or that the description provided was so inaccurate that if the purchaser had been aware of those defects or that inaccurate description at the time of allocation he would have decided not to go ahead with the purchase or would have purchased the object only for a considerably lower price.

- 7.2 If those circumstances occur, to be determined at the sole discretion of the auctioneer, the Contributor irrevocably authorises the auctioneer to dissolve the sale and to reimburse the purchase price and auction charges. Upon dissolution of the sale, the Object or Objects will be deemed unsold within the meaning of Article 11 of these General Terms and Conditions.

#### **Article 8 Payment to the Contributor**

- 8.1 The auctioneer will pay the Contributor the proceeds of the sale minus all the costs due from the Contributor, such as transport costs, restoration costs, commissions, inspection costs, any insurance costs and any other costs agreed in advance, as well as VAT, referred to below as the 'Remuneration', provided that the auctioneer has received the purchase price in full from the purchaser, the purchaser has not invoked the auctioneer's duty to take the Object back within the meaning of Article 7 of these General Terms and Conditions while the auctioneer has acknowledged that invocation, and the sale has not been dissolved within the meaning of Article 9 of these General Terms and Conditions.
- 8.2 Payment of the Remuneration will customarily be made within 30 days after the sale, unless a notification within the meaning of Article 7 of these General Terms and Conditions has been received from the purchaser or the sale has been dissolved within the meaning of Article 9 of these General Terms and Conditions.
- 8.3 The 'margin arrangement' may be invoked only if, in the auctioneer's sole opinion, all of the relevant rules have been complied with prior to the auction, including the rules governing the purchasing statement.

#### **Article 9 Consequences of dissolution by the purchaser**

- 9.1 If the auctioneer has taken back Objects within the meaning of Article 7 of these General Terms and Conditions or if the contract of sale with the purchaser has been dissolved for other reasons, the auctioneer has the right to reclaim any reimbursement already paid to the Contributor, as well as all other damage and costs that the auctioneer has incurred as a result of the dissolution, including interest and court and out of-court costs.

#### **Article 10 Consequences of dissolution by the auctioneer**

- 10.1 The Contributor is aware that the auctioneer has reserved the right in his conditions of sale (i.e. the General Terms and Conditions governing the sale by auction of moveable property between auctioneer and purchaser) to dissolve the contract of sale if the purchaser exceeds the payment term or fails to collect the Objects in a timely manner.
- 10.2 The Contributor explicitly acknowledges the auctioneer's right to recover from the purchaser the auctioneer's loss and costs in the event of a situation referred to in paragraph 1. The Contributor also acknowledges the auctioneer's right, at his discretion, to claim specific performance from a purchaser who has exceeded the payment term or to dissolve the sale, or to first claim specific performance from the purchaser and to subsequently dissolve the sale if that claim fails.

#### **Article 11 Unsold Objects**

- 11.1 The auctioneer is irrevocably authorised but not obligated to sell unsold Objects at a subsequent auction, referred to below as 're-auction', or to sell the Objects within a period of ten days after the auction. The auctioneer will do so, however, only if such a sale after the auction ('aftersale') can be made for a price that results in an amount that is at least equal to the sale price minus all costs due from the Contributor, to which the Contributor would have been entitled if the Object to be auctioned had been sold for the reserve that applied in that auction.
- 11.2 In the event of such an aftersale, the rights and obligations of the Contributor and auctioneer pursuant to these General Terms and Conditions will continue to apply in full as they would have applied if the Object had been sold at auction.
- 11.3 The provisions contained in these General Terms and Conditions apply in full to the sale by re-auction or aftersale.

#### **Article 12 Transport/storage/insurance of Objects**

- 12.1 The auctioneer may remove or destroy all packing materials related to the Objects contributed for sale, unless the auctioneer has explicitly agreed otherwise with the Contributor.
- 12.2 All Objects received by the auctioneer have been insured for the value indicated in the receipt or for a value considered suitable at the auctioneer's sole discretion. The Objects are insured against fire, theft, loss and damage as long as they are located in his auction building or in another warehouse of his choice. The Contributor is entitled to demand a receipt for the Objects received by the auctioneer, indicating the value of the Objects upon receipt in the auctioneer's provisional opinion.
- 12.3 The auctioneer is entitled to take measures to have Objects that are sent or delivered stored by third parties and to charge the costs involved to the Contributor.
- 12.4 Objects sent or delivered to the auctioneer that the auctioneer does not accept for sale and does not store will be returned to the sender entirely at the sender's expense and risk.

### **Article 13 Auctioneer's liability**

- 13.1 The auctioneer will in no event be liable for damage to picture frames, other frames and any related objects such as glass plates, passepartouts, etc., unless the damage is caused by an intentional act or wilful recklessness on the part of the auctioneer and/or assistants or staff members whom the auctioneer engages.
- 13.2 The auctioneer will in no event be liable for loss of profits, consequential loss, pecuniary loss and/or indirect damage.
- 13.3 The auctioneer will furthermore in no event be liable for any accident or any form of damage that anyone incurs in or near the buildings or sites intended for contribution, storage or viewing, or where the auction is held or goods sold can be collected, unless the damage is caused by an intentional act or wilful recklessness on the part of the auctioneer and/or assistants or staff members whom the auctioneer engages and/or insofar as the damage is covered by the auctioneer's insurance.
- 13.4 Buildings or sites are entered at one's own risk.

### **Article 14 Additional rights and obligations of the Contributor/natural person (not acting in a professional capacity)/service at a distance**

- 14.1 The following provisions apply if an agreement is concluded between the auctioneer and a Contributor/natural person who is not acting in a professional capacity in which context, within the framework of a system for service at a distance, until the time at which the agreement is concluded, exclusive use is made of one or more techniques for communication at a distance.
- 14.2 For a period of seven working days, calculated as from the day on which the agreement is concluded, the Contributor/natural person is entitled to dissolve the agreement free of charge without having to provide any reason. Under certain circumstances, that term will be three months as from the date on which the Agreement is concluded. However, in that context the agreement must be dissolved in writing (by e-mail, letter or fax).
- 14.3 The Contributor/natural person may not avail himself/herself of the above-mentioned right if the auctioneer has commenced performance of the Agreement with his/her consent before the above-mentioned term has lapsed.
- 14.4 Notwithstanding the provisions contained in Article 7:46f of the Dutch Civil Code regarding the commencement of default, the statutory provisions contained in Articles 6:81 to 6:83 of the Dutch Civil Code apply.

### **Article 15 Miscellaneous**

- 15.1 If any provision contained in these General Terms and Conditions is null, nullified or non-binding, the other provisions will continue to apply in full. In the event that one or more provisions is/are null, nullified or non-binding, the Contributor and the auctioneer will agree on replacement provisions that are valid and that approximate the content and purport of the null, nullified or non-binding provision(s) as closely as possible.
- 15.2 These General Terms and Conditions are governed exclusively by Dutch law.

- 15.3 All disputes with respect to, arising from or related to an agreement concluded between the auctioneer and the Contributor, the conclusion of an agreement or these General Terms and Conditions will be submitted for resolution exclusively to the competent court of Amsterdam, the Netherlands, subject to the auctioneer's right to submit the dispute to the competent court in the Contributor's district.

**The Dutch Federation of Valuers, Brokers and Auctioneers in Movable Goods (*Federatie Taxateurs Makelaars Veilinghouders in roerende zaken*).**

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