

## CONDITIONS OF SALE

The auctions at NAGEL AUKTIONEN GmbH & Co. KG (hereinafter referred to as the "Auctioneer") are held according to the following Conditions, which are accepted by personal, written, telephone or online participation over the Internet. These Conditions apply analogously to sale by private contract if the conditions for sale by private contract are not primarily agreed or included.

- 1. FUNDAMENTALS OF THE AUCTION AND QUALITY DEFECTS**
- A)** The Auctioneer holds public auctions within the scope of §383 Paragraph 3 Sub-Clause 1 of the German Civil Code in its own name as consignee and for the account of the depositors (consignors) whose names are not disclosed. **B)** All property items offered for auction can be viewed and inspected prior to the auction. The property items are second-hand. The catalogue descriptions are made to the best of the author's knowledge and belief, but are for purposes of information exclusively and are not part of the contractually agreed properties and condition of the items, in particular they do not constitute guarantees in the legal sense of the term. The same applies to verbal or written information of all kinds, as well as the designation of the items when called. If an Internet catalogue is made in addition, the information in the printed version is nonetheless authoritative. Impairments in the state of the items' preservation are not stated in every case, so that lack of information likewise does not furnish grounds for an agreement on the quality of the items. The Auctioneer reserves the right to make corrections to catalogue information. These corrections take the form of written notices posted at the place of the auction and verbal corrections made by the Auctioneer immediately prior to the auction of the specific item. The corrected information takes the place of the catalogue descriptions. All items are offered for auction in the state in which they are found at the time of the auction. The Auctioneer assumes no liability for faulty translations of the catalogue texts from German into other languages. **C)** In the event of quality defects claimed within 12 months after the knockdown, the Auctioneer shall undertake to assert his claims against the Consignor insofar as the buyer has completely paid the Auctioneer's bill. The valuation of a recognized expert proving the defect and made at the expense of the buyer is necessary for the assertion of a claim for a quality defect. If claims made against the Consignor are successful, the Auctioneer shall refund only the purchase price to the buyer, matching payment with the return of the property. The buyer is still under obligation to pay the premium as compensation for the services of the Auctioneer. In all other respects, the Auctioneer shall assume no liability for quality defects.
- 2. BIDS, KNOCKDOWN**
- A)** Each bidder must indicate his name and address before the start of the auction. This holds even if he takes part in the auction as a representative. In this case, he must also indicate the name and address of the party he is representing. In cases of doubt, the bidder shall make acquisitions in his own name and for his own account. **B)** Each bidder must make a cash deposit before the start of the auction. **C)** In order to ensure that written bids are properly executed, they must be made on the form provided for this purpose and received by the Auctioneer at least 48 hours before the start of the first day of the auction. The bidder is required to provide evidence of the receipt. For a written bid to be effective, it must contain detailed information on the person or company of the bidder as well as the lot number. A telephone number at which the bidder can regularly be reached must be indicated when the bid is made. The bid is restricted exclusively to the lot number indicated. Written bids are only used by the Auctioneer with the amount that is necessary to bid over another bid that has been made. Telephone bids will be accepted by telephoning the bidder before the desired lot is called. This is only done for lots with an estimated price of € 750.00 or more. The condition for taking part by telephone is a written notice received by the Auctioneer at the latest 48 hours before the start of the first day of the auction. It is possible to make online bids at some auctions ([www.auction.de](http://www.auction.de)). The Auctioneer shall assume no liability for the formation or maintenance of telecommunications connections, nor for the orderly transmission and (timely) receipt of online bids to the Auctioneer. What occurs in the hall (for example, with regard to corrections as stated in Number 1 b of these Conditions) shall be authoritative for the course of the auction. Only those bids made in the hall are binding. **D)** The Auctioneer can reject bids if there are valid reasons for doing so. This

applies in particular if bidders cannot furnish, at the demand of the Auctioneer, sufficient security prior to the auction commensurate with the value of the bid. If a bid is rejected, the bid made immediately prior to it shall remain binding. **E)** The Auctioneer shall reserve the right to combine or separate lot numbers, call them out of sequence, withdraw them if there is a valid reason, or auction them off subject to reservation (UV-Zuschlag). The lot number is the number under which the items are called in the auction, listed in the auction catalogue, or offered for sale by private contract. **F)** The knockdown shall follow after the highest bid has been called three times. If several persons make the same bid and no higher bid is made after being called three times, the matter will be decided by drawing lots. If identical written bids are received, the knockdown will be granted to the first bid received. If there are doubts regarding whether or to whom the knockdown has been granted, or if a bid submitted on time is overlooked, or if the highest bidder wishes to withdraw his bid, the Auctioneer is entitled to withdraw the knockdown, which is thereby invalidated, and to offer the property for auction once again. Any objections against the knockdown are to be raised immediately, i.e., before the next lot is called. The Auctioneer is entitled to refuse the knockdown if there is a valid reason for doing so. **G)** The estimated price is normally not a limit; a knockdown may also be made below the estimated price. In order to protect the consigned property, the Auctioneer is entitled to knockdown to the consignor below the agreed limit. A reversal is made in this case. **H)** If the limit agreed with the consignor is not reached, or for other valid reasons, the Auctioneer is entitled to knock down subject to reservation (UV-Zuschlag). In the event of a subsequent bid equivalent to the limit, the property may be knocked down to another bidder or sold to another bidder in a subsequent sale with no further consultation being required. Bids with awards subject to reservation are binding on the bidder for 5 weeks but may be subject to change without notice by the Auctioneer. In particular, any claims of the bidder against the Auctioneer shall be excluded if the knockdown subject to reservation should be unsuccessful. **I)** A bid will lapse if it is rejected by the Auctioneer, if the auction is closed without a knockdown, or if the property is called for auction again. An invalid overbid does not result in the previous bid being invalid. **J)** A knockdown called by the Auctioneer obligates the bidder to accept the item and make payment. Ownership of the auctioned property only passes to the buyer when all claims of the Auctioneer have been settled in full. The risk of fortuitous loss or fortuitous deterioration of the property passes to the buyer simultaneously with the knockdown. **K)** The sale of unsold lots is part of the auction, in which interested parties place their orders for submitting bids of a specific amount in writing. The provisions of §§312b et seq. regarding distance contracts do not apply.

- 3. PURCHASE PRICE, TURNOVER TAX**
- A)** In accordance with § 25a of the German Turnover Tax Act (UStG), all deliveries are subject to a differential tax, with a premium of 33% being levied on the hammer price. This premium includes statutory turnover tax on the total difference. Turnover tax is not stated separately on the invoice. Consignments which are subject to turnover tax (marked by \* with the lot no.), such as those from non-EU countries, for example, are invoiced at the standard tax rate with a premium of 27 % being levied on the hammer price. The turnover tax is payable on the hammer price plus the premium. **B)** In order to settle the statutory right of stoppage in transit (§ 26 of the German Copyright Act - UrhG), the Auctioneer pays a levy on to the "Ausgleichsvereinigung KUNST" association on the sale proceeds for all original works of fine art and photographs created since 1900. The buyer bears half of the applicable levy in force on the invoice date (levy rate in January 2012: 2.1% of the knockdown price). **C)** If it should be necessary to obtain CITES certificates for the purpose of granting special exemption from the prohibition of marketing objects covered by this Convention, then the cost

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thereof shall be borne by the purchaser. **D)** Statutory value-added tax (MwSt.) is currently 19% (September 2008). Works of art, as well as items from collections, which are marked in the catalogue with an \* before the estimated price are subject to the reduced value-added tax rate of 7 % in the event that standard taxation applies. **E)** Tax exemption is excluded for deliveries within the European Union. In the case of export deliveries to non-EU countries, turnover tax is refunded to the buyer as soon as the export and acceptance documentation has been received by the Auctioneer. **F)** Invoices issued during or immediately following the auction require verification; errors excepted.

- 4. DUE DATE, PAYMENT AND DEFAULT A)** Buyers taking part in the auction in person must pay the final purchase price (knockdown price plus premium and turnover tax) to the Auctioneer immediately following the knockdown in cash or by a confirmed cheque. In the case of buyers who have submitted written or telephonic offers, the amount due is payable upon receipt of the invoice. The buyer waives the enforcement of any retention rights in connection with transactions or previous transactions conducted within the scope of the present business relationship. The buyer is only permitted to offset any counterclaims if these are undisputed or have been declared by declaratory judgment. If the buyer is an entrepreneur, he hereby waives the performance refusal right under § 320 (§ 322) of the German Civil Code (BGB). **B)** In the event of payment delay, private buyers (consumers) must pay default interest equivalent to 5 % of the discount rate of the European Central Bank and commercial buyers (companies), 8 % of the relevant discount rate p.a. If payment is made in foreign currency, any exchange losses and currency conversion fees must be borne by the buyer. The Auctioneer is also entitled to lodge claims against the buyer for culpable neglect of duties. After the second formal reminder, the Auctioneer is entitled to levy a default surcharge equivalent to 3 % of its total claim as compensation for damages incurred unless the buyer is able to prove that no damage or a much lower level of damages has been incurred. Instead of the flat-rate damage compensation amount, the Auctioneer may demand reimbursement of the specific damages incurred. These damages may also be calculated in such a way that the property item in question will be re-auctioned in another auction with a limit determined at the dutiful discretion of the Auctioneer and the defaulting buyer will be liable for any reduced proceeds in comparison with the previous auction and also for the costs of the repeat auction and including the commission and disbursements of the Auctioneer. The defaulting buyer will not be entitled to any additional proceeds in this case. His rights in connection with the previous knockdown will lapse concurrently with the new knockdown. All claims of the Auctioneer against the buyer will be due immediately in the event of delay. **C)** The Auctioneer is entitled to forward information on defaulting customers to the Association of German Art Auctioneers or its members.

- 5. COLLECTING, SHIPPING AND STORING ITEMS A)** The buyer is obliged to take receipt of the property items immediately after the auction. Buyers who have participated in the auction in writing or by telecommunication are obliged to collect the property items no later than 14 days after receipt of the invoice. Items purchased in an auction shall only be handed over when all outstanding accounts have been settled. **B)** If the buyer should be delayed in taking over the property, the Auctioneer is entitled to store the property items at the cost and risk of the buyer on its own premises or with third parties. The buyer will also bear the costs of any necessary insurance. A cost reimbursement of up to € 6.00 (plus value-added tax) per item and day or the relevant rate of the storage company shall be charged for the storage. The buyer reserves the right to prove that costs have not been incurred, or not in the aforesaid amount. The date for withdrawing stored property items is to be agreed with the Auctioneer or designated third parties. **C)** The packing, insurance and

shipment of auctioned items shall be made at the cost and risk of the buyer; the Auctioneer merely serves as agent for these services. Shipping orders will only be executed if the Auctioneer or the company commissioned with this task has received the appropriate shipping order signed by the buyer and after the calculated shipping costs and all other claims of the Auctioneer have been settled. **D)** Should the buyer be at least 12 months late in collecting the items, the Auctioneer shall be entitled to turn the items to account. The Auctioneer is entitled to deduct all claims against the buyer from the proceeds.

- 6. LIABILITY** The Auctioneer shall bear unlimited liability for acts of wilful intent and gross negligence. In the event of negligent violation of essential contractual obligations, the Auctioneer shall be liable to the amount of the limit or the estimated price. The Auctioneer shall not be held liable for ordinary negligence involving violation of simple, that is, non-essential, obligations. This exclusion of liability shall also apply to the personal liability of the Auctioneer's legal representatives, senior employees, assistants and vicarious agents.
- 7. GENERAL A)** All legal relationships between the bidder or buyer and the Auctioneer are covered in these Conditions. The bidder's or buyer's general terms of business shall not be applicable. There are no ancillary verbal agreements. Changes must be made in writing to be effective. The original German version of the Conditions shall be authoritative. **B)** The place of fulfilment and legal venue, if such can be agreed, is Stuttgart. German laws shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. The costs of any litigation abroad shall be borne by the buyer, insofar as they are not reimbursable in accordance with the respective national laws. **C)** If one or more provisions of these Assignment Conditions are wholly or partially invalid, the validity of the other provisions will remain in full force and effect.

**Uwe Jourdan**

Publicly appointed and sworn auctioneer

**Andreas Heilig**

Publicly appointed and sworn auctioneer