

# General Terms of Business for Making Purchases at [www.fine-art-auctions.de](http://www.fine-art-auctions.de) /.com

## 1. General

1.1 Exclusively on the basis of the following General Terms of Business ('Terms'), at the same time drawing the consumer's attention to the Duties to Supply Information for Distance Selling Contracts and the Duties to Supply Information for Concluding Contracts in e-Commerce Transactions including the corresponding Cancellation Policy, the seller specifically named in connection with the item (referred to hereinafter as the 'Seller') handles purchase requests/orders at Internet auctions staged at the Internet portal [www.fine-art-auctions.de](http://www.fine-art-auctions.de) /.com. The 'fine-art-auctions' website is a product of 'art directory GmbH' based in Munich, a market-place on which art works in general may be offered and sold by reputable art dealers in their own name but for a client's account (commission agreement between the art dealer and its client). 'art directory GmbH' does not itself offer any items, and it is not a contractual partner.

1.2 These General Terms of Business are binding for any sales transactions by the Seller. The Seller's goods, services and offers are provided exclusively on the basis of these Terms. The Buyer's terms of business and purchase are expressly refused; they shall only obligate the Seller if the latter has expressly declared that it agrees to them. These Terms shall be deemed accepted at the latest on receipt of the goods out of the first order. These Terms also apply to all future business relations, even if they are not expressly agreed anew.

1.3 These General Terms of Business do not apply to conventional auctions held by the Seller. This expressly also applies to post-auction sales. Auctions and related post-auction sales shall each be exclusively governed by the Terms of Delivery & Auction in force at the time.

## 2. Purchase Contract

2.1 The items offered on the Internet by the Seller constitute an offer for sale, whereby the Seller fixes the start price and the period allowed (bidding period) during which the bid from the highest bidder can be accepted on expiry of the deadline. The bidder accepts the offer by making a bid using the bid function. The bid remains in force until another bidder makes a higher bid during the bidding period, and it only then loses effect. When the bidding period ends, either on expiring or due to the Seller prematurely terminating the offer, a purchase contract for the item is brought about between the Seller and the highest bidder, unless the bidder has the statutory right to withdraw his bid. In any such case (legitimate withdrawal of a bid) the purchase contract is then brought about with the bidder originally making the next highest bid in terms of amount.

2.2 Each bidder may submit a maximum bid at an auction. This is then equivalent to the highest maximum amount which it is willing to pay for the item. Other bidders have no access to this maximum bid. If other interested customers bid for the item, then the bid applying at the time automatically gradually increases, meaning that a bidder who has made a maximum bid remains the highest bidder until its maximum bid is outbid by another bidder.

2.3 The Seller may also mark offers with a 'buy now' option at a fixed sales price. This offer may be accepted by any bidder, but only as long as either no bid has been made for the item, or bids have not yet reached the minimum price fixed by the Seller. In this case, a purchase contract for the item at the quoted fixed price is brought about - irrespective of the length of the bidding period, and without an auction being held or continued - as soon as the bidder/Buyer effectively exercises this option.

2.4 Sales operations termed an 'Internet auction' are not an auction as defined in Sect. 34 b) of the German Trade Code [GewO] and Sect. 156 of the German Civil Code [BGB]. The 'Internet auction' is not a public available auction as defined in Sect. 312g (2) No. 10 of the German Civil Code [BGB].

2.5 Making bids using automated data processing processes (e.g. sniper programs) is prohibited.

2.6 In the event that - for whatsoever reason - a contract is not actually reached between the Seller and a buyer, the minimum price is not achieved, the Seller is entitled to make so-called sub-bidders an offer to acquire the item at a fixed price.

2.7 As regards exact procedure for handling purchase contracts, reference is made to the relevant information provided at [www.fine-art-auctions.com](http://www.fine-art-auctions.com), and to the provisions on compulsory information in e-commerce, which are available at [www.fine-art-auctions.com/terms.php](http://www.fine-art-auctions.com/terms.php).

2.8 Payments have to be made in EUR (€) to the Seller in cash on delivery of the goods, by direct debit, by bank remittance, or by credit card. Further specifics are given in the Duties to Supply Information for Concluding Contracts in e-Commerce Transactions, which are available at [www.fine-art-auctions.com/terms.php](http://www.fine-art-auctions.com/terms.php). Cheques and bills of exchange are only accepted by special arrangement and only by way of performance, and all costs and taxes are charged; the Seller bears no liability for punctually paying in cheques or bills of exchange, or for any protest, or for notification or return in the case of cheques or bills of exchange that are not honored. If the Seller has agreed to non-cash payment, then all the costs and fees for remittance (including the bank charges deducted from the Seller) shall be at the Buyer's expense.

## 3. Hand-Over / Delivery

3.1 After Payment, the item purchased will be sent to the Buyer by insured post unless Item 3.2 below applies. The cost of hand-over, acceptance of delivery and dispatch to some place (inside the EU) other than the place of performance shall be borne by the Seller on principle. On dispatch, additional fees – in particular c.o.d. costs and custom duties – may be incurred which are charged by the carrier directly and are collected from the recipient on delivery of the consigned goods. These fees are not included in the Seller's carriage costs and must be paid by the purchaser in addition as the case may be.

3.2 Alternatively there is the option of collection of the purchased item by the Buyer. After appropriate notification and prior arrangement, the Buyer can collect the purchased item from the Seller. The item must be collected immediately, at latest 14 days after termination of the offer and purchase of the item by the Buyer. If the Buyer defaults in this obligation, failing to collect the item and letting a deadline that has been set expire to no avail, or if the Buyer firmly and finally refuses collection, then the Seller may withdraw from the purchase contract and demand compensation, subject to the provision that it is allowed to sell the item again and assert its losses in the same way as in cases of a buyer defaulting in payment (see Item 7 below), without the Buyer being entitled to any extra proceeds from the renewed sale. Moreover, in the event of default the Buyer also owes reasonable compensation for all the recovery costs incurred by its delay. The Buyer opts for collection or dispatch after making its auction purchase; see the Duties to Supply Information for Concluding Contracts in e-Commerce Transactions, which are available at [www.fine-art-auctions.com/terms.php](http://www.fine-art-auctions.com/terms.php).

3.3 The risk of the object of purchase being damaged or lost during consignment shall be borne by the Buyer, insofar as it is planning to use the object of purchase in connection with its commercial business or self-employed operations. Risk shall pass to the Buyer as soon as the consignment is handed over to the carrier or its representative, or has left the Seller's business premises for dispatch. In the case of a consumer within the meaning of Sect. 13 of the German Civil Code [BGB], risk in relation to the item purchased shall not pass to the consumer until it has gained possession of the item purchased unless the Buyer (consumer) instructed the freight forwarder, the carrier or the person or institution consigned with shipping, the selling entrepreneur not having named this person or institution to the Buyer (Sect. 474 (4) of the German Civil Code [BGB]).

3.4 Export deliveries to other EU countries are exempted from value-added tax on disclosure of the VAT ID. Export deliveries to non-member states (outside the EU) are exempted from value-added tax; if the items bought at an auction are taken out of the country by the Buyer, the value-added tax will be refunded to it as soon as proof of export is supplied to the Seller (subject to the law being changed).

#### 4. Statutory Value-Added Tax

The purchase price given in EUR includes statutory value-added tax, unless an exception in accordance with Item 3.4 above applies.

#### 5. Reservation of Title

5.1 The Seller is under no obligation to hand over the item before all the amounts owed by the Buyer have been paid.

5.2 Title to the object of purchase shall not pass to the Buyer until the invoiced amount owing has been paid in full. In the event that the Buyer has already resold the object of purchase before paying the amount invoiced by the Seller or before paying said amount in full, the Buyer assigns all its receivables created on such resale to the Seller up to the invoiced amount still outstanding. The Seller accepts this assignment.

5.3 If the Buyer is a public corporation, a special trust under public law or an entrepreneur who concluded the purchase contract in the context of its commercial or self-employed operations, then title shall be reserved in relation to all the Seller's claims vis-a-vis the Buyer that have been created during the on-going business relationship and by other items, until such time as the receivables to which the Seller is entitled in connection with the purchase have been paid.

#### 6. Setoff, Right of Retention

6.1 Vis-a-vis the Seller, the Buyer may only offset uncontested claims or claims which have been declared res judicata.

6.2 Right of retention on the part of the Buyer is excluded. The right of retention in the case of Buyers who are not entrepreneurs within the meaning of Sect. 14 of the German Civil Code [BGB] is only excluded insofar as such rights are not based on the same contractual relationship.

#### 7. Default in Payment

7.1 If the Buyer defaults in making a payment, then the Seller - notwithstanding further claims - may demand default interest at the usual interest rate charged by banks for outstanding current account loans, or at a minimum the statutory rate of default interest pursuant to Sect. 288 and Sect. 247 of the German Civil Code [BGB]. When default occurs, all the Seller's demands shall fall due for immediate payment, also if cheques or bills of exchange have been accepted.

7.2 If in cases of late payment the Seller demands compensation in lieu of performance, and if the item is sold again, then the original Buyer - whose rights created on previously making a successful bid extinguish - shall be liable for any losses thus sustained, such as e.g. storage costs, shortfalls and lost profits. It shall not be entitled to any extra proceeds attained on renewed sale, nor will it be allowed to make another offer.

#### 8. Guaranty of Authenticity, Warranty

8.1 In view of its long-standing experience and its highly qualified executives and staff, and in view of its investigatory possibilities and ability to obtain security, the Seller constantly endeavours and is able to provide particulars about the art works that are as precise and truthful as possible. The Seller therefore guarantees that the object sold is genuine, and accordingly it extends the statutory guaranty period for the item's authenticity to 5 years. The item's authenticity shall be understood to exclusively mean the genuine origin of the work, i.e. the capacity in which the work was created by the artist/author whose name it bears (authenticity of the creator of the work), or - if the latter is not named - that the work was created at the time, among the people, in the era and under the circumstances that have been passed down by tradition.

8.2 Except for the authenticity of the work guaranteed in Item 8.1 above, however, further specifications of the items are only made to the best of our knowledge, and even on the most meticulous investigation they cannot constitute contractually agreed qualities or characteristics within the meaning of Sect. 434 of the German Civil Code [BGB], instead of which they merely serve as information for the Buyer - unless the Seller expressly assumes a guaranty in writing for the respective quality or characteristic. This also applies to expertises (apart from the expertise on authenticity pursuant to Item 8.1). The fact that the item has been examined by the Seller or by a business or expert acting on its instructions does not in itself constitute a quality or characteristic of the object of purchase.

8.3 Vis-a-vis entrepreneurs within the meaning of Sect. 14 of the German Civil Code [BGB], all guarantees apart from the guaranty for the authenticity of the work pursuant to Item 8.1 above are excluded for all manner of defects in the goods sold. However, in case of material defects which destroy or significantly reduce the value or the serviceability of the item and of which the purchaser notifies the auctioneer within 12 months of his bid being accepted, the auctioneer undertakes to assign any claim which it holds against the consignor or - should the purchaser decline this offer of assignment - to itself assert such claims against the consignor. In the event of the auctioneer successfully prosecuting a claim against the consignor, the auctioneer shall remit the resulting amount to the purchaser up to the value of the hammer price, in return for the item's surrender. The purchaser will not be obliged to return this item to the auctioneer if the auctioneer is not itself obliged to return the item within the scope of its claims against the consignor or another beneficiary. The purchaser will only hold these rights (assignment or prosecution of a claim against the consignor and remittance of the proceeds) subject to full payment of the auctioneer's invoice. In order to assert a valid claim for a material defect against the auctioneer, the purchaser will be required to present a report prepared by an acknowledged expert (or by the author of the catalog, or else a declaration from the artist himself or from the artist's foundation) documenting this defect.

8.4 Vis-a-vis consumers within the meaning of Sect. 13 of the German Civil Code [BGB], the guaranty for used goods - apart from the guaranty for the authenticity of the work pursuant to Item 8.1 above - is limited to one year after commencement of the statutory prescriptive period. In all other respects the statutory regulations shall apply.

## 9. Liability

All the Buyer's compensation claims vis-a-vis the Seller, its statutory representatives, employees and vicarious agents - for whatsoever legal cause - are excluded. This does not apply to losses sustained due to wilful or grossly negligent conduct on the part of the Seller, its statutory representatives or vicarious agents. Exemption from liability shall also be inapplicable in case of assumption of guarantee or warranty for a characteristic, if these constitute the grounds for liability. Liability for losses resulting from mortal injury, bodily harm or health damage remains unaffected.

## 10. Disruptions, System Failure

As technology generally stands, it is as a matter of principle not possible to develop or keep hard- and software entirely free of defects. Similarly, it is not possible to completely exclude faults and problems in Internet communications. Consequently, the Seller cannot assume any liability or guaranty for the permanent and fault-free availability and usage of its Website, insofar as the fault is beyond its control. Due to this circumstance, the Seller therefore also assumes no liability in the event that by reason of any such fault there may be no bids submitted, or only incomplete or late bids which would have led to a contract being reached if the fault had not occurred. Accordingly, the Seller similarly refuses to assume any costs incurred on the bidder due to such fault.

If no bids can be made for items due to a system failure, then the remaining time between the occurrence of the fault and the scheduled auction closure shall be recorded and added on after the fault has been eliminated, meaning that the auction closure originally fixed is deferred by the duration of the fault. After the fault has been eliminated, the auction shall be continued with exactly the same bids and stage of procedure as applied at the time when the fault occurred.

## 11. Final Provisions

11.1 Oral ancillary agreements must be done in writing in order to become effective. The same applies to any waiver of the requirement for written form.

11.2 In business with registered merchants, public corporations and special trusts under public law, it is further agreed that Munich shall be place of performance and place of jurisdiction (including proceedings involving cheques and bills of exchange). Moreover, Munich shall always be venue if the Buyer does not have a general place of jurisdiction in Germany.

11.3 The legal relations between the Seller and the Buyer shall be governed by German law, excluding CISG.

11.4 Should one or more terms of these General Terms of Business be or become ineffective, the effectiveness of the remaining terms shall remain unaffected. Sect. 306 par. 2 of the German Civil Code (BGB) shall apply.

11.5 These General Terms of Business are available in German and in English. The German version shall be decisive at all times, whereby German law shall apply exclusively with regard to the meaning and interpretation of the terms used herein.

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