

Special Conditions Auction of NFT Cryptocurrency Payments

N1. Special Conditions

Insofar as VAN HAM Kunstauktionen GmbH & Co. KG (hereinafter referred to as "VAN HAM") sells NFTs of digital objects as well as related objects, experiences or associated rights both in public auctions pursuant to section 474 para. 1 sentence 2, section 383 para. 3 sentence 1 of the German Civil Code (BGB) and in the context of online auctions, these Terms and Conditions shall apply in addition to the Terms and Conditions of Auction and the General Terms and Conditions of Business of the VAN HAM online portal as a supplement and partial replacement, insofar as conditioned by the nature of an NFT. VAN HAM may conduct such an auction as a public auction, an online auction or a combination thereof. According to the type of auction selected and announced by VAN HAM, the respective Terms and Conditions shall apply.

N2. NFT

At auction are digital works, in particular so-called Non-Fungible Tokens ("NFT"), i.e. a cryptographic token that cannot be exchanged for the same value and that contains a unique identification of the object to be auctioned as metadata.

With regard to the auctioned objects, the NFTs contain metadata which, among other things, also implement the name and description of the object in the code of the NFT. It is not the object itself that is auctioned – unless and insofar an embodied representation is also auctioned – but the NFT. The concrete type of linking, the transmission of the NFT and its storage are, depending on the object to be auctioned, presented in the description of the auctioned object.

VAN HAM informs the customer that with the successful acceptance of a bid in the auction, ownership of the content is not acquired in the sense of civil law, nor are exclusive rights of use acquired to the content of the files linked to the NFT. The customer merely acquires the registration as "owner" of the NFT in the blockchain, i.e. a purely virtual object, unless a physical representation is included in the auction according to the description of the auctioned object. Insofar as individual rights of use are transferred to the auctioneer exclusively or non-exclusively, these are shown in the description of the auctioned object.

VAN HAM is neither miner nor issuer of the NFT and also not the creator of the token. VAN HAM acts only as a commission agent of the seller of the NFT.

VAN HAM, within the exclusion of liability pursuant to the Terms and Conditions of Auction and the General Terms and Conditions of Business of the VAN HAM online portal – not liable for loss or damage due to changes to the digital object referenced by the NFT, or a loss or restrictions of access thereto

N3. Chain limitations and risks with NFT and Blockchain

NFT technology, blockchain technology, and related technological platforms are not yet sufficiently secure in terms of their legal and actual design and currently represent a technology that is still experimental.

VAN HAM points out that by purchasing in an auction, through which the bidder acquires virtual or digital objects stored in a blockchain, experimental technology regarding so-called "smart contracts" and blockchain technology is used.

By participating in the auction, the customer declares that he has sufficient knowledge regarding these circumstances and is sufficiently experienced in dealing with this technology. Furthermore, the customer declares that it is aware of and can assess the risks associated with technological and cryptographic systems such as blockchain, NFT, smart contracts, consent algorithms, cryptocurrencies, decentralized or peer-to-peer networks and systems as well as the actual digital transmission paths with regard to the auctioned NFT.

The customer further declares that it is aware that such systems do not necessarily function error-free. In particular, programming errors may occur, time stamp errors, there may be attacks on these systems (including hacking, theft, brute force), changes in the protocol rules of the blockchain (so-called "forks"), hardware or software and Internet connection errors, third parties may gain unauthorized access to this data, as well as other technological risks that may affect the corresponding smart contracts and the NFTs. The customer is aware of the risk of complete or partial loss of value of the auctioned object if he loses access to his Wallet, or if access is blocked due to technological limitations.

VAN HAM is neither proficient in the field of information technology, nor is VAN HAM an expert with regard to related technologies. VAN HAM merely auctions the NFT and, within the framework in which this is described in the auction, gives the opportunity to acquire corresponding digital goods.

VAN HAM cannot ensure, especially in view of the technology used, that the NFT and its transmission will allow permanent access to the artwork.

VAN HAM points out to the customer that the prices for blockchain goods, in particular also NFTs, are not predictable and may fluctuate strongly. The relevant objects have no or only little inherent material value and the objects purchased at auction by the customer may, depending on market conditions, partially or completely lose the value attributed to them in an auction by the customer. VAN HAM cannot make any statement as to the true value of the rights you have purchased, including NFTs.

N4. Prerequisite for participation in the auction

In addition to the requirements for participation in auctions, whether off- or online, the customer must be technically ready to receive NFTs and pay the purchase price through cryptocurrencies. VAN HAM does not check whether the customer meets the technical requirements. VAN HAM states the technical requirements for the acquisition of the NFT in the course of the transfer. As a rule, this includes the ability to make payments through the cryptocurrency ETH (Ethereum ETH), to be able to trigger smart contracts based on Ethereum and to be able to receive the NFT within the framework of this system.

N5. Payment in case of award

For the objects covered by these special conditions, payment may be effected in EUR or in cryptocurrency (section 1 para. 11 sentence 4 of the Banking Act, KWG). As cryptocurrency, VAN HAM exclusively accepts ETH. The amount to be paid in the cryptocurrency is determined by converting the invoice amount into the corresponding cryptocurrency at the time of the award of the auction. In addition to the invoice amount, the customer shall also pay surcharges due to the use of the cryptocurrency, in particular network fees. A customer can only participate in the auction, bid and purchase by auction with ETH if his wallet contains Ether from a regulated exchange that was set up in the name of the customer and is in his name. Payment in cryptocurrency must be made from a compatible wallet that has been topped up with credit from one of the following regulated exchanges: bsdex.de, bisonapp.com, bitcon.de, nuri.com or bitpanda.com. VAN HAM does not accept partial payments from more than one platform.

The customer declares that he is the beneficial owner of the wallet with which the payment will ultimately be made. VAN HAM reserves the right to request additional evidence for the ownership of the customer of the digital wallet.

Payments have to be made within 10 (ten) business days after the receipt of the invoice. Payments in cryptocurrency must be made during business days and during VAN HAM's regular business hours, i.e. between 9 am and 5 pm.

Payments in cryptocurrency not made in compliance with the stipulations made herein may be declined by VAN HAM. In this case, the customer must effect the payment of the invoice amount in EUR. VAN HAM, in its discretion, refunds to the customer the payment made in cryptocurrency, deducting any third party cost associated with the payment, in cryptocurrency, or the invoiced amount in EUR.

VAN HAM informs the customer that payment with cryptocurrency has inherent risks, that are outside the sphere of risk of VAN HAM. Risks include, but are not limited to, the use of defective or unsuitable hardware, defective or unsuitable software or internet connections and access, or the risk of hacking the digital wallet and unauthorized access to the information stored in the digital wallet, or theft or unauthorized usage of cryptocurrency, exchange fluctuation and changes to the regulatory treatment of cryptocurrency and the payment process.

N6. Advance performance

VAN HAM is obliged to provide the service only after receipt and crediting of the invoice amount (in cryptocurrency). VAN HAM does not carry the risk, whether payments in cryptocurrency are received by VAN HAM.

N7. Performance by VAN HAM

To receive the NFT, the customer must be owner of a digital wallet that is capable of receiving NFT's and supports this technology. The customer must be the owner of the digital wallet and have access to it. VAN HAM informs the customer that not every digital wallet can receive and store NFT's. The customer must ascertain that his digital wallet has the required capabilities, as there is a threat for the loss of access to the NFT.

VAN HAM will itself, or through the seller, or the artist, transfer the auctioned NFT into a digital wallet identified by the customer, who must comply with these special conditions. VAN HAM reserves the right to request additional, reasonable safety

measures in the course of the transfer to secure the receipt of the NFT by the customer. The transfer will only be made to the digital wallet address specified by the customer, which VAN HAM will not examine. As far as VAN HAM transfers the NFT to the address specified by the customer, the customer carries the risk of transfer and receipt.

N8. Transfer of risk

After the transmission of the NFT to the customer's Wallet, the customer is solely responsible for the safe storage of the NFT. Any risk of loss is thus transferred to the customer.

N9. Return

In the case of online auction, the right of withdrawal ends when, with your consent, the transmission of the NFT has begun.

N10. Surcharge

The surcharge (Auction Terms and Conditions, V6.1, V6.2, V6.4; General Terms and Conditions of the VAN HAM Online Portal 05.3.) shall be stated in EUR and shall be payable in the currency (cryptocurrency (ETH) or EUR) in which the payment is made pursuant to clause N5. For the conversion in case of payment in cryptocurrency, the time specified in clause N5 shall apply.

N11. Resale right levy (Royalties)

If a resale right fee is to be paid, it shall be paid in the currency in which the payment is made according to clause N5. For the conversion in case of payment in cryptocurrency, the time specified in clause N5 shall apply. As far as in the smart contract of the NFT stipulates that a certain percentage shall be paid from the seller to the creator, VAN HAM will take heed of this. The percentage of the royalties will be identified in the description of the object in the catalogue.

N12. Physical objects auctioned along with the artwork

As far as in addition to the NFT also an embodiment of the artwork, such as a print, a visually or aurally perceptible embodiment or rights are sold, it is a single contract, in which the physical object is only an ancillary service. Depending on the auction format, the Terms and Conditions of Auction or the General Terms and Conditions of the VAN HAM online portal shall apply to dispatch and handover.

N13. Repayments

As far as VAN HAM is obliged to refund the invoice amount or a part of it, which was paid by the customer in cryptocurrency, VAN HAM may refund the amounts in the cryptocurrency used by the customer or in EUR. Any changes in the value of the cryptocurrency between payment and repayment shall not be reimbursed by VAN HAM or the customer.

N14. Language

The English language version of these special conditions serve as a convenience translation only. The German language version is the authoritative version.

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