

## Conditions of Sale

### V1. Auction

V1.1 VAN HAM Kunstauktionen GmbH & Co. KG (hereinafter referred to as VAN HAM) sells in a public auction pursuant to §§ 474 (1) Sent. 2, 383 (3) Sent. 1 of the German Civil Code (BGB), acting as a commissioner on its own behalf and for the account of the Consignors who remain unnamed.

V1.2 Prior to auction the items consigned to be auctioned may be inspected and examined. Here the potential buyers will be liable for any damages to the exhibited objects caused by them.

### V2. Condition, Representations and Warranties

V2.1 The items that are up for auction and available for examination and viewing during the advance viewing are, without exception, used items. These items are in a state of preservation that is consistent with their age and provenance. Objections to the state of preservation shall only be indicated in the catalogue if VAN HAM believes that they significantly affect the overall visual impression of the item. The absence of information on the state of preservation has thus no effect of declaration and does, in particular, not establish any warranty or quality agreement as defined by the sale of goods laws. Potential buyers may request a condition report for every item prior to the auction. Such a report, be it verbal or in writing, shall not contain any diverging individual agreement, and shall express VAN HAM's subjective assessment only. The information contained in the condition report shall be provided to the best of VAN HAM's knowledge and belief. It shall not constitute any warranty or quality agreement and shall serve the purpose of providing non-binding information only. The same applies to general information of any kind, be it verbal or in writing. The actual state of preservation of the item at the time the relevant bid is accepted shall, in all events, be its agreed condition as defined by statutory regulations (§§ 434 et seq. German Civil Code (BGB)). The item is sold in its actual condition at the time of the auction.

V2.2 Any information contained in the catalogue is based on available data published at the time of publication of the catalogue or other generally available scientific insights. If an additional internet catalogue is prepared, the information in the printed version shall nevertheless prevail; the internet catalogue shall only prevail in the event that no printed catalogue exists or the items are auctioned by a so-called silent auction. VAN HAM reserves the right to correct catalogue information on the items that are to be auctioned. Said corrections shall be made by written notice at the auction site and/or announced by the auctioneer immediately before the specific item is to be auctioned. The corrected information shall replace the description in the catalogue.

V2.3 Irrespective of the provisions of Clause V2.1, only the catalogue information regarding the authorship of the item shall form part of the condition agreed with the buyer. VAN HAM does not provide any special warranties that may establish any additional rights (§§ 443, 477 German Civil Code (BGB)). No characteristics other than authorship of the item shall be contractually agreed, even if the item is presented for advertising purposes. The catalogue thus contains only information and descriptions without agreeing on the condition of the item. The same applies to reproductions contained in the catalogue. The purpose of said reproductions is to give potential buyers an idea of the item; they form neither part of the quality agreement nor do they warrant the condition of the item. During the auction procedure only the respective items are sold but not the frames, mounts and picture glass. VAN HAM assumes no liability for parts that are not part of the auctioned item.

V2.4 VAN HAM expressly excludes any liability for potential defects, provided that VAN HAM has complied with its duties of care. The liability for injury to life, body or health remains unaffected.

V2.5 However, if the buyer is able to prove, within one year from handing over of the item, that catalogue information regarding authorship of the item was incorrect and did not correspond to the generally accepted expert opinion at the date of publication, VAN HAM undertakes to assert its rights vis-à-vis the Consignor, irrespective of Clause V2.4. Where successful recourse is taken against the Consignor, VAN HAM shall reimburse the buyer for up to a maximum of the full purchase price which the consignor has achieved. VAN HAM additionally undertakes to return its commission in full within a period of one year, if the item proves not to be authentic. This is subject to there being no third party claims to the item, and the item being returned to the VAN HAM head office in Cologne in an unaltered state. Inaccuracy shall be considered to have been proven if an internationally recognised expert on the author listed in the catalogue refuses to have the item included in the catalogue of works (Catalogue Raisonné) prepared by the expert, among others.

V2.6 Claims for damages against VAN HAM based on legal and material defects and on other legal grounds (including compensation for futile expenses, lost proceeds or costs of expert opinions) shall be excluded, unless they are based on VAN HAM acting intentionally or grossly negligently, or on VAN HAM breaching material contractual duties.

V2.7 VAN HAM shall not be liable for damages (including compensation of futile expenses, lost proceeds or costs of expert

opinions) in case of simple negligence of itself or its bodies, legal representatives, employees or other vicarious agents, unless in case of breach of material contractual duties. Material contractual duties shall be (i) the duty of handing over the item in its condition at the time of the auction upon receipt of the full sales price, (ii) providing information regarding the authorship of the item, as well as (iii) the duties of advice, protection and care which serve the purpose of protecting life and body of the buyer or its personnel.

In case of a simply negligent breach of material contractual duties, the liability of VAN HAM shall be limited to the compensation of any damage typical and predictable for such a contract, per event causing the damage up to a maximum of twice the amount which the buyer had to pay for the item to which the breached contractual duty relates. In particular any liability for indirect damage shall be excluded.

V2.8 The aforementioned exclusions and limitations of liability shall apply to the same extent for the benefit of the bodies, legal representatives, employees and other vicarious agents of VAN HAM.

V2.9 The limitations of Clauses V2.6 and V2.7 shall not apply to VAN HAM's liability for intentional acts, for guaranteed qualities, for injury to life, body or health or under the product liability law.

V2.10 Any claims against VAN HAM shall come under the statute of limitations, expiring one year after the item awarded by bid has been handed over, provided that they are not based on an intentional violation of rights, or longer periods of limitation are stipulated by statutory law.

### V3. Conduct of Auctions, Bids

V3.1 The estimates stated in the catalogue do not constitute minimum or maximum prices, but shall serve merely as an indication of the market value of the respective items, without any warranty being given as to their accuracy. Information as to the value in currencies other than euros is provided for information purposes only and shall not be binding. Low-value items may be auctioned as group lots outside the catalogue.

V3.2 VAN HAM reserves the right to combine, separate, offer out of sequence or withdraw numbered lots during an auction.

V3.3 Bidders previously unknown to VAN HAM need to submit to VAN HAM a written registration accompanied by a valid identification card that states an official address no later than 24 hours before the start of the auction. If the buyer is a company, an entity, a foundation, or any other type of legal association we will additionally require a current and valid proof of organisation (for example an extract from the commercial register). VAN HAM reserves the right to request a current bank reference or other references or a cash deposit before admitting bidders to the auction.

V3.4 VAN HAM provides each bidder with a bidder number following presentation of a valid identification document with the official address and admission to the auction. Only bids made using this number shall be considered during the auction.

V3.5 All bids shall be considered as made by the bidder on its own behalf and for its own account. If a bidder intends to bid on behalf of a third party, a respective notification shall be given not later than 24 hours prior to the start of the auction, stating the name and address of the represented party and submitting a written power of attorney, as well as a proof of identity of the third party. Otherwise the contract of sale shall be made with the bidder when the bid is accepted.

V3.6 If the Consignor, or a third party instructed by the Consignor, submits a bid on an item consigned by the Consignor, and this bid is accepted, the Consignor's status shall be equivalent to that of any other bidder. The General Auction Terms therefore apply accordingly to the Consignor making a bid for its own items.

V3.7 VAN HAM shall be entitled to place a bid below the limit for the consigned lot on behalf of the Consignor, without being required to disclose such procedure and irrespective of whether or not other bids are placed.

V3.8 The initial bid price shall be determined by VAN HAM; bids are generally submitted in Euros at a maximum of 10% above the previous bid. Bids may be made in person in the auction hall or, in case of absence, in writing, by telephone or over the internet via the online catalogue on VAN HAM's homepage or via a platform approved by VAN HAM.

V3.9 The provisions regarding silent auctions (cf. Clause V1.1) apply to the catalogue numbers marked in the print catalogue with "+".

V3.10 All offers shall be based on the so-called hammer price (the winning bid for a lot at an auction) and shall be exclusive of the premium, VAT (Umsatzsteuer) and, where applicable, resale right (Folgerecht, droit de suite) and customs charges (Zollumlage). When there are equal bids, irrespective of whether they are submitted in the auction hall, by telephone, in writing or over the internet, a decision shall be made by drawing lots. Written bids

or bids submitted via the internet shall only be drawn on by VAN HAM to the extent required to outbid another bid.

V3.11 Bids in absence shall be generally permitted if they are received by VAN HAM at least 24 hours prior to the start of the auction and any additional information pursuant to Clause V3.5 has been provided. Bids shall specify the relevant item, along with 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. VAN HAM provides the service of processing bids in absence for the convenience of clients free of charge. VAN HAM therefore makes no representations regarding the effectuation or error-free processing of bids. This does not apply where VAN HAM is liable for mistakes made intentionally or through gross negligence. Bids in absence shall be deemed equivalent to bids made in person during the auction when bids are accepted.

V3.12 Written bids must be signed by the bidder. In case of written bids, the interested party shall authorise VAN HAM to submit bids on its behalf.

V3.13 Telephone bids are possible for estimates of € 500 and above. In this case a telephone operator present in the auction room shall be authorised to submit bids as per the telephone bidder's instructions. Telephone bids may be recorded by VAN HAM. By applying for telephone bidding, applicants accept that telephone conversations may be recorded. VAN HAM accepts no liability for establishing and maintaining telecommunication connections or for transmission errors.

V3.14 To actively participate in an auction via internet a registration and a subsequent activation by VAN HAM is required. Bids made via the internet may be submitted as "pre-bids" prior to the beginning of an auction, as "live bids" during a live web-cast auction, or as "post-bids" after conclusion of the auction in accordance with the following provisions. Bids received by VAN HAM via internet during an auction shall only be considered for the ongoing auction if it is a live web-cast auction. Apart from that, internet bids shall only be admissible if VAN HAM has approved the bidder for internet bidding by providing the bidder with a user name and password. Internet bids shall only be valid bids if they can be unequivocally matched to the bidder by means of the user name and password. Internet bids shall be recorded electronically. The accuracy of the corresponding records shall be accepted by bidders/buyers, who shall nevertheless be free to furnish evidence to the contrary. Live bids shall be considered equivalent to bids made in the auction hall. VAN HAM accepts no liability for establishing technical connections or for transmission errors in case of internet bids.

V3.15 Subsequent sales form part of the auction. In the event of post-bids, a contract shall only be made once VAN HAM accepts a bid.

V3.16 In case of distance contracts (Fernabsatzverträge), the right of return and rescission shall not apply to written, telephone or internet bids unless the bid was made in a so-called silent auction. Please refer to the cancellation policy (Widerrufsbelehrung) at the end of the present General Auction Terms.

### V4. Acceptance of Bids

V4.1 A bid is accepted after the auctioneer has called the highest bidder's bid three times. When a bid is accepted, a contract of sale is concluded between VAN HAM and the bidder whose bid was accepted. There shall be no entitlement to have a bid accepted. VAN HAM may refuse to accept the bid or accept it conditionally. This applies in particular where a bidder who is not known to VAN HAM 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.

V4.2 Where a bid is rejected, the previous bid shall remain valid. If several individuals place equal bids and no higher bid is made after three calls, the decision shall be made by drawing lots. VAN HAM may revoke acceptance of a bid and re-offer the item if a higher bid made in due time was accidentally overlooked, if the highest bidder does not want the bid to stand, or if there are other doubts as to the acceptance. If no bid is accepted even though a bid was placed, VAN HAM shall be liable to the bidder only in case 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 conditionally accepted bid shall only become effective if VAN HAM confirms the bid in writing within one month from the date of the auction.

### V5 Identification obligations pursuant to German Money Laundering Act

V5.1 To the extent as VAN HAM is obliged under the Money Laundering Act (hereinafter referred to as GwG) to identify customer and/or a beneficial owner behind the customer, customers are obliged to cooperate in this identification. In particular, customers must provide VAN HAM with the information and documents necessary to identify the customer and/or a beneficial owner behind the customer and must notify VAN HAM immediately in writing or in text form of any changes occurring in the course of the business relationship. Beneficial owners within the meaning of the GwG are (i) those natural persons in whose ownership or ulti-

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mately owns or controls the contracting party, or (ii) those natural persons at whose instruction a transaction is ultimately carried out or a business relationship is ultimately established.

**V5.2** In the event that the customer does not comply with his/her identification obligations vis-à-vis VAN HAM for himself herself and/or a beneficial owner behind the customer, or if VAN HAM suspects money laundering for other reasons, VAN HAM shall be entitled to withdraw from the contract if the customer does not clear the suspicion of money laundering immediately, but at the latest within a period of 7 calendar days after a corresponding request by VAN HAM.

**V5.3** VAN HAM's claims for damages against the customer, in particular (but not limited to) claims for reduced proceeds in the post-auction sale, shall remain unaffected by such withdrawal.

**V5.4** The right of withdrawal pursuant to clause V5.2 shall also apply to VAN HAM vis-à-vis the customer in the event that VAN HAM, for its part, has to withdraw from the contract with the client who consigned the item for auction due to suspicion of money laundering against such client.

### **V6. Purchase Price and Payment**

**V6.1** The buyer shall pay the bid price plus a premium of 32 % on the first € 800,000.00 and a premium of 27 % on all sums exceeding this amount up to € 3,000,000 and 18 % on all sums exceeding this amount. This includes statutory VAT, which will, however, not be listed separately due to the margin scheme as per § 25a UStG (German Sales Tax Act). In the case of items subject to regular taxation, which are marked with an “\*” in the printed catalog, a premium of 27 % will be levied on the first € 800,000, 21 % on amounts exceeding this amount up to € 3,000,000 and 15 % on amounts exceeding this amount. Statutory VAT of currently 7 % (paintings, drawings, sculptures, graphics, etc.) or 19 % (arts and crafts, carpets, jewellery, watches, screen prints, offsets, photographs, etc.) shall be levied on the total of the hammer price and the premium.

**V6.2** Items which have been imported from a fiscal third country are marked in the print catalogue with “N”. When VAN HAM hands over such items to the buyer, he/she will become the importer and owes VAN HAM's import VAT of currently 5 %. Items identified like this are subject to margin scheme and are thus offered under on-charging the import VAT as apportionment in the amount of 8 %. Upon request immediately after the auction the invoicing for these objects can be issued with standard taxation and without such apportionment.

**V6.3** Pursuant to § 26 (1) of the German Copyright Act (UrhG), the seller is obliged to pay the statutory resale rights fee on the sales proceeds of all original works of art and original photographic works whose creators died less than 70 years before completion of the sale, whereof the buyer shall bear a proportionate lump-sum charge amounting to:

- 1.5 % of the hammer price up to € 200,000
- 0.5 % of the hammer price in excess of € 200,001 up to € 350,000, respectively
- 0.25 % of the further hammer price of € 350,001 up to € 500,000, and
- 0.125 % of the further hammer price in excess of this price up to five million, with an overall maximum of € 6,250.

**V6.4** When the buyer has purchased an item at a live web-cast auction via an external provider, (p.e. [www.lot-tissimo.com](http://www.lot-tissimo.com); [www.the-saleroom.com](http://www.the-saleroom.com)), he/she shall indemnify VAN HAM for any costs incurred by paying an additional fee in the amount of 3 % of the accepted hammer price to VAN HAM. When the buyer has purchased an item at a live webcast auction via [www.van-ham.com](http://www.van-ham.com) (My VAN HAM), VAN HAM will not charge the buyer any additional costs for the purchase in the live webcast auction.

**V6.5** For buyers entitled to deduct input tax (Vorsteuerabzug), the invoice may, upon request (and after prior notification) be made out in line with standard taxation (Regelbesteuerung). VAT is not levied on shipments to third countries (i.e. outside the EU) nor on shipments to companies in EU member states, provided the VAT ID number is stated. If participants in an auction transfer purchased items to third countries themselves, they shall be reimbursed for VAT as soon as proof of export and purchase (Ausfuhr- und Abnehmernachweis) has been provided to VAN HAM.

**V6.6** Invoices issued during or immediately after an auction must be verified; errors remain reserved to this extent.

**V6.7** Payment of the total amount due upon acceptance of a bid shall be made in cash, via Electronic Cash, by wire transfer or by bank certified cheque. Cheques shall only be accepted on account of performance. Any taxes, costs, transfer or encashment fees (including any bank fees charged to VAN HAM) shall be borne by the buyer. Payment in cash or cash equivalents from 10.000 € per calendar year will be registered according to legal requirements. Buyers who participate in the auction in person shall pay the purchase price to VAN HAM immediately after their bid has been accepted. Without prejudice to the fact that payment is due immediately, bids made in absence may be paid within 14 days of the invoice date without being deemed to be in default.

**V6.8** Auctioned items shall, as a matter of principle, only be handed over after receipt of full payment of all amounts owed by the buyer.

**V6.9** Due to statutory provisions VAN HAM can only accept payments from the registered bidder. Once issued and reviewed (see V6.6) we cannot change the buyer's name on the invoice or re-issue the invoice in the name of a third party.

### **V7. Collection, Assumption of Risk and Export**

**V7.1** Acceptance of a bid establishes an obligation to collect the item. Absent buyers shall collect their items without undue delay after VAN HAM has notified them that their bid has been successful. VAN HAM shall organise 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 obliged to collect the items without undue 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 the item has not yet been handed over.

**V7.2** If the buyer has not collected the items from VAN HAM three weeks after acceptance of the bid and/or relevant notification at the latest, VAN HAM shall request that the buyer collect the items within one week. At the end of said period VAN HAM shall be entitled to have the items at the cost and risk of the buyer delivered to the buyer, or stored in a contract warehouse, or store the uncollected items itself.

VAN HAM shall inform the buyer prior to storage. If VAN HAM stores the items in its own warehouse, up to 1 % p.a. of the hammer price shall be charged for insurance and storage costs. Irrespective of this, VAN HAM may alternatively demand performance of the contract or assert statutory rights for breach of duties. For the purpose of calculating any damage, reference is made to Clauses V6 and V9 of these Terms.

**V7.3** VAN HAM shall under no circumstances be liable for loss of or damage to items that have not been collected or handed over due to non-payment, unless VAN HAM acted with intent or gross negligence.

**V7.4** VAN HAM points out that specific objects (such as, in particular ivory, rhinoceros horn and tortoise shell) are subject to import and export restrictions (especially outside the European Union) which may prevent the shipment of such objects to third countries. It is the buyer's own responsibility to find out whether an acquired object is subject to such a restriction, and whether it is possible to obtain any necessary authorisation in respect of the object in question. Should the buyer instruct VAN HAM with the shipment of the object, unless explicitly provided for otherwise, the customer shall procure the necessary authorisations (e.g. pursuant to the CITES rules), if any, as well as any other permits and documents and make these available to VAN HAM for the purpose of shipment of the object. Any costs, duties or charges etc. related to the import or export of the object shall be borne by the buyer. If known, such objects are identified by “\*” in the printed catalogue. Such reference, however, does not release the buyer from his responsibility to gather information on export terms and other regulations for import by himself. The absence of such a reference to any export terms does not have any meaning and does under no circumstances indicate that there are no such import or export restrictions.

### **V8. Retention of Title, Set-off, Right of Retention**

**V8.1** The title to an item acquired by auction shall only pass to the buyer upon full receipt of all payments owed as per Clauses V6 and V9. In the event that the buyer sells such an item without having satisfied all of VAN HAM's claims, the buyer hereby already assigns by way of security (Sicherungsabtretung) to VAN HAM any claims arising from the resale. VAN HAM hereby accepts such assignment.

**V8.2** The buyer shall only be entitled to set off claims against VAN HAM that are unchallenged and that have been recognised by declaratory judgement or that are based on the same transaction.

**V8.3** The buyer shall have no right of retention based on claims arising from any prior transactions with VAN HAM. Insofar as the buyer is a merchant (Kaufmann), the buyer waives its rights under §§ 273, 320 of the German Civil Code (BGB).

### **V9. Default**

**V9.1** The purchase price shall be due upon acceptance of the bid. The buyer shall be considered in default 14 days from conclusion of the contract, i.e. acceptance of the bid or post-bid. Payment is to be made to VAN HAM in Euros. The same shall apply to cheques which shall only be recognised as fulfilment of the payment obligation once they have been unconditionally credited to the bank account.

**V9.2** In the event of a default in payment, default interest shall be charged at a rate of 1 % per month begun. The buyer shall be entitled to furnish evidence that a lesser or no loss was incurred. Apart from that, in the event of a default in payment

VAN HAM may at its discretion choose to demand performance of the contract of sale or rescind the contract after setting a reasonable period for performance. In the event of rescission, all of the buyer's rights to the item acquired by auction shall lapse, and VAN HAM shall be entitled to claim damages in the amount of the lost proceeds from the non-auctioned item (Consignor's commission and premium). The buyer shall be entitled to furnish evidence that a lesser or no loss was incurred.

If VAN HAM rescinds the contract and the item is re-offered at another auction, the defaulting buyer shall additionally be liable for any shortfall in proceeds compared to the prior auction and for the costs of the repeated auction; the buyer shall not be entitled to receive any surplus proceeds. VAN HAM shall be entitled to exclude such a buyer from making further bids at auctions.

**V9.3** One month after default has occurred, VAN HAM shall be entitled and, upon the Consignor's request, required to disclose the buyer's name and address to the Consignor.

### **V10. Privacy Statement**

The bidder hereby agrees to the bidder's name, address and purchases being stored electronically and processed by VAN HAM for the purpose of performing and implementing the contractual relationship, and for the purpose of providing information about future auctions and offers. Should the bidder fail to meet its contractual duties within the scope of performance and implementation of this contractual relationship, the bidder consents to this fact being included in a blacklist accessible to all auction houses of the German Association of Art Auctioneers (Bundesverband Deutscher Kunstversteigerer e.V.). The future collection and use of data may be objected to by deleting this clause or by submitting a subsequent declaration to VAN HAM, with effect for the future.

### **V11. Silent Auction**

VAN HAM shall conduct a so-called “silent auction” for the items marked in the print catalogue with “+”. These General Auction Terms shall apply accordingly to such “silent auction”; however, bidders may only bid in written form or via the internet. Since the items in “silent auctions” are not called out, no bids can be made in person or by telephone. Bids for a “silent auction” must be submitted to VAN HAM in writing at least 24 hours before the start of the auction in order to be valid.

### **V12. Miscellaneous Provisions**

**V12.1** These General Auction Terms shall govern all relations between the client and VAN HAM. The client's general commercial terms and conditions shall not be valid. No oral side agreements are valid. Any amendments shall be made in writing.

**V12.2** Place of performance is Cologne. If the client is a merchant, an entity under public law or a fund under public law or if the client has no general place of jurisdiction in the Federal Republic of Germany, the Courts of Cologne shall have jurisdiction over any disputes between VAN HAM and the client. Mandatory statutory provisions on exclusive places of jurisdictions shall remain unaffected by this provision.

**V12.3** German law shall apply; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

**V12.4** The aforementioned provisions shall also apply mutatis mutandis to the private sale of items consigned for auction and, in particular, to post-sales, which are not governed by the provisions on distance sales as they form part of the respective auction.

**V12.5** In the event that any of the above provisions are invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a valid provision which most closely resembles the commercial content of the invalid provision. This applies correspondingly if the contract contains a gap in need of amendment. In cases of doubt the German version of the General Auction Terms shall prevail. Translations into other languages merely support the textual orientation.

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Managing Director Markus Eisenbeis  
(auctioneer for art and antiques, officially appointed and sworn by the Cologne Chamber of Commerce and Industry)