

# KOLLER WEST AUCTION CONDITIONS

By participating in the auction the bidder accepts the following Auction Conditions of Koller Auctions Ltd ("**Koller**").

## 1. Legal status of the parties

The auction items are auctioned by Koller in the name and on the account of the seller (the "Seller"). The bid in Swiss francs is accepted from the highest bidder (the "**Purchaser**") recognised by Koller in the course of the auction resulting in the conclusion of a purchase contract between the Seller and the Purchaser.

## 2. Surcharge

2.1 In addition to the bid price, the Purchaser must pay a surcharge of 25 % on such bid price.

2.2 If the winning bid is placed in the course of an internet live online auction („Live auctions“), there will be an additional 3% added to the surcharge. Bidders are subject to Koller's terms and conditions as listed on the Live auction website, which may differ in some respects from those listed here.

2.3 The Purchaser must pay Swiss value added tax ("**VAT**") on the surcharge. The stated percentage of the surcharge relates to the successful bid for each individual item.

2.4 The full tax is charged on all items marked \* in the auction catalogue, i.e. VAT is charged on the sum of the bid price plus the surcharge for those items. The VAT will be refunded to Purchasers providing a validly stamped export declaration.

2.5 The Purchaser agrees that Koller also receives a commission from the Seller.

## 3. Disclaimer

3.1 The items are auctioned in the condition existing at the time of the successful bid.

3.2 The items are described to the best of our knowledge and belief. However, Koller cannot accept any liability for the details provided in the catalogue. The items can be inspected during the pre-view. The Purchaser is therefore invited

to inspect an item prior to the auction and, possibly with the support of an independent specialist advisor, to form its own opinion of the correspondence between the lot and the catalogue description. For the specifications of the items the print edition of the catalogue in the German language (including any later amendments) shall be exclusively applicable. Koller reserves the right to call in experts or specialists of its choice to give an opinion and to rely upon that opinion. Koller cannot be held liable for the correctness of such opinions. Neither any such expert opinions or reports, nor the descriptions of items provided by Koller or other statements pertaining to an item (including statements pertaining to the value thereof) constitute explicit or implicit warranties. **No guarantee or warranty whatsoever is given in respect of legal and material defects.**

3.3 The liabilities of the Seller vis-à-vis the Purchaser are limited to the same extent as the liabilities of Koller vis-à-vis the Purchaser.

## 4. Participation in the auction

4.1 Any party may participate in an auction as a Purchaser. However, Koller reserves the right at its complete discretion to prevent any person entering its premises or attending or participating in its auctions.

4.2 Purchasers who are not personally known to Koller must register at least 48 hours before the auction, using the form provided for this purpose. The registration form must be signed, with legal effect, and a copy of the passport of the Purchaser must be enclosed, as well as current, valid credit card information. In the event of payment default by the Purchaser, Koller shall be entitled to charge the Purchaser's credit card in accordance with the details provided on the registration form, for the entire amount of the invoice, plus the credit card processing fees.

4.3 If a Purchaser who is unknown to Koller is planning to bid for items with upper estimated values of more than CHF 15,000.00, he shall be required to present to Koller in advance a certificate of creditworthiness issued by a bank approved by Koller.

4.4 In the case of bids for items with upper estimated values of more than CHF 30,000.00, Koller may demand that the Purchaser first remits 20% of the lower estimated value as security. Following the auction, Koller will offset this sum against its claims and the claims of the Seller, and will reimburse any possible surpluses to the Purchaser without delay.

## 5. Auction

5.1 Koller may initiate the auctioning of an item below the minimum selling price agreed upon with the Seller. A bid placed at an auction is a binding offer. The bidder shall remain bound by his bid until this is either outbid or rejected by Koller. Double bids shall immediately be called once again; in case of doubt, the auction management shall decide.

5.2 Koller may refuse a bid either without giving reasons or if a Purchaser fails to fulfil the conditions for participation in an auction pursuant to the above Clauses 4.2 to 4.4. Koller may also knock down or withdraw auctioned items without a sale even if this is not apparent to the auction participants.

5.3 Koller reserves the right to combine, separate or omit numbered lots in the catalogue or to offer them out of sequence. Koller reserves the right to sell lots "conditionally" at its sole discretion, in which event the hammer price will be considered as conditional and the highest bidder will remain bound by his bid for 14 days following the auction. The highest bidder will be released from all obligations if he does not receive a statement from Koller within this period declaring the hammer price as final.

5.4 Written bids from potential Purchasers who cannot attend the auction in person are accepted up to 48 hours before the bidding begins.

5.5 Potential Purchasers may bid by telephone if they have given written notice at least 48 hours before the auction starts. Koller does not accept telephone bids for amounts under CHF 500.00 and Purchasers are requested to leave a written bid or participate in the salesroom.

5.6 Potential Purchasers who intend to place their bids in the course of an On-line Auction via the internet may participate in the auction once their registration applications have been approved by Koller. Koller reserves the right to decline registration applications at its discretion.

5.7 Koller refuses all liability for any kind of bids as well as advance notifications of telephone bidding which are not taken into consideration. Telephone bidders and persons giving written instructions are also subject to the provisions of Clause 5 relating to proof of identity and financial soundness. In the case of Purchasers who place bids in the course of an Online Auction via the internet, Clause 5 only applies with regards to financial soundness.

## **6. Transfer of title**

Ownership of an auctioned item shall be transferred to the Purchaser as soon as the purchase price and the surcharge (incl. VAT) have been comprehensively paid and Koller has attributed these payments to the corresponding item.

## **7. Collection of the auctioned items**

7.1 The auctioned items must be collected at the Purchaser's own expense within 7 days from the end of the auction during official opening hours. If time permits, the items may be handed over after each auction session. The handover shall be performed following comprehensive payment of the purchase price as well as the surcharge (incl. VAT) and the attribution of this sum to the auctioned item by Koller. Cheques offered as payment must be confirmed by the drawee bank before the auctioned item is handed over.

7.2 During the aforementioned period Koller shall be liable for loss, theft, damage or destruction of items which have been auctioned and paid for, but only up to the total of the auction price, surcharge and VAT. Koller ceases to have liability after the aforementioned period, and the Purchaser shall be responsible for ensuring adequate insurance cover for the auctioned item. No liability can be assumed for frames and glass. If the auctioned items are not collected within 7 days, Koller will store the works at a company of their choice at the purchaser's own risk

and expense or on their own premises at a daily rate of CHF 10.- per object.

7.3 Transport orders may be sent to Koller in writing. Unless otherwise agreed in writing, transport insurance shall be taken out for the sold items at the expense of the Purchaser. Glazed pictures and fragile items shall not be sent by Koller.

## **8. Payment for the auctioned items**

8.1 The invoice for a successful bid for an auctioned item is payable within 7 days from the end of the auction. Payments by credit card are only possible with the approval of Koller's accounting department, and are subject to processing fees amounting to between 2 and 4% of the invoiced amount, payable by the purchaser and added to the invoice total. Irrespective of the Purchaser's instructions, Koller may use any payments by the Purchaser as settlement for any debt owed by the Purchaser to Koller or the Seller and set off any debt which it owes to the Purchaser against its own claims. If the Purchaser defaults on a payment, default interest of 10 % p.a. shall be charged on top of the invoiced sum. If Koller does not receive payment for purchases within seven (7) days following the auction, Koller reserves the right to charge the Purchaser's credit card for the full amount of the invoice, without further notification to the Purchaser. In such cases the credit card processing fees of 2 – 4% as described above are also applicable.

8.2 If the Purchaser does not pay or does not pay promptly, Koller may moreover in its own name and in the Seller's name optionally (i) insist on the fulfilment of the purchase agreement or (ii) without further notice withdraw from the purchase agreement and waive the subsequent performance of the Purchaser or assert a claim for compensation for non-performance; in the latter case Koller shall also be entitled, irrespective of a possible minimum sales price, to sell the item either directly or on the occasion of an auction, and may use the proceeds to reduce the debts of the Purchaser. Any possible sales price above the original hammer price shall be paid out to the Seller. The Purchaser is liable to Koller and the Seller for all prejudice caused by non-payment or late

8.3 Koller retains a right of retention and a lien on all the Purchaser's items in its custody until full payment of all monies owed. Koller may exercise such liens in accordance with the legislation on the enforcement of debts or by private sale (including in its own name). The plea of prior lien exploitation pursuant to Art. 41 of the Swiss Debt Collection and Bankruptcy Act is excluded.

## **9. Representation**

Each Purchaser shall be personally liable for the bid placed by him. Proof of the power of representation may be requested from persons bidding as agents for a third party or as an organ of a corporate body. The agent shall be jointly and severally liable with his principal for the fulfilment of all obligations.

## **10. Miscellaneous provisions**

10.1 The auction shall be attended by an official from the city of Zurich. The attending official, the local authority and the state have no liability for the acts of Koller.

10.2 Koller reserves the right to publish illustrations and photographs of sold items in its own publications and the media and to publicise its services therewith.

10.3 The aforementioned provisions form part of each individual purchase agreement concluded at the auction. Amendments are binding only with Koller's written agreement.

10.4 The present Auction Conditions and all amendments thereof are governed by **Swiss law**.

10.5 The courts of the Canton of Zurich shall be exclusively responsible for settling disputes (including the assertion of offsetting and counterclaims) which arise out of or in conjunction with these Auction Conditions (including their validity, legal effect, interpretation or fulfilment). Koller may, however, initiate legal proceedings before any other competent court.