

# AUCTION CONDITIONS (CLASSIC AUCTIONS)

These conditions apply solely to items which are auctioned by Koller (according to the definition below) live in the saleroom.

By participating in the auction the bidder accepts the following Auction Conditions of Koller Auctions Ltd, Hardturmstrasse 102, 8005 Zurich, Switzerland ("Koller").

## 1. Legal status of the parties

The auction items are auctioned by Koller in the name of and on the account of the seller of the auctioned item ("Seller"). Koller acts on behalf of and for the account of the Seller as his agent as defined in article 32, section 1 of the Swiss Code of Obligations ("CO"). The hammer price is determined by the bidder recognised by Koller as having made the highest bid in Swiss Francs in the course of an auction ("Purchaser"), resulting in the conclusion of a purchase contract between the Seller and the Purchaser ("Purchase Contract"). Koller is thereby not a party to the Purchase Contract.

## 2. Surcharge (New as of 1 September 2023)

2.1 In addition to the bid price, the Purchaser must pay a surcharge on such bid price calculated as follows:

- i. on a successful bid of up to and including CHF 400 000: 25%
- ii. on a successful bid over CHF 400 000 up to and including CHF 1 000 000: 25% on the first CHF 400 000 and 22% on the difference between CHF 400 000 and the bid.
- iii. on a successful bid over CHF 1 000 000: 25% on the first CHF 400 000, 22% on CHF 600 000 and 15% on the difference between CHF 1 000 000 and the bid.

2.2 If the winning bid is placed over the internet in the course of a saleroom auction which is broadcast online ("Live Auction"), or leaves a pre-sale bid through an independent bidding platform which is linked with Koller, 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 corresponds 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 has the possibility to receive a commission from the Seller.

## 3. Guarantee

3.1 Koller shall rescind the purchase (subject to Sections 3.2 and 3.3 below) in the name of the Seller and shall reimburse the purchase price and the surcharge (incl. VAT) to the Purchaser if an item proves to be a forgery. A "forgery" shall be deemed to exist if the item, in the reasonable opinion of Koller, is an imitation created with the intention of causing a deception with respect to the authorship, age, period, culture or origin, if the correct description of such content is not reflected in the auction

catalogue (taking account of any additions), and if this circumstance significantly impairs the value of the item in comparison to an item corresponding to the catalogue description. An item shall not be deemed to have been forged if it is merely damaged and/or has been subjected to restoration work and/or modifications of any nature whatsoever.

3.2 A rescission in accordance with the above provision shall not take place at the discretion of Koller if:

- i. the description of the item in the auction catalogue was supported by the view of a specialist or by the prevailing view of specialists, or if the description in the auction catalogue suggested that differences of opinion exist in this respect;
- ii. the forgery was not identifiable as such at the time of the successful bid in accordance with the current state of research and with the generally acknowledged and usual methods, or only with disproportionate effort;
- iii. the forgery (based on Koller's conscientious assessment) was produced before 1880; or
- iv. the purchased item is a painting, watercolour, drawing or sculpture which according to the details set out in the auction catalogue was created prior to 1880.

3.3 The Purchaser may request rescission from Koller (as the agent of the Seller) from the day of the successful bid for a period of two (2) years (three (3) weeks for jewellery). It shall be granted exclusively to the Purchaser and may not be assigned to any third party. Assertion of the claim shall be conditional upon the Purchaser making a complaint to Koller by registered letter immediately after the discovery of the defect, and returning the purchased item to Koller in the same condition as it was handed over to him and unencumbered by third parties' claims. The Purchaser must provide proof that the item is a forgery. Koller may demand that the Purchaser obtains at his own expense expert opinions from two independent individuals who are recognised experts in the field. However, Koller shall not be bound by any such expert opinion, and reserves the right to obtain additional expert advice at its own expense.

3.4 Koller may at its complete discretion waive the assertion of grounds for exclusion pursuant to the above Section 3.2 or the fulfilment of preconditions pursuant to the above Section 3.3.

3.5 The claims of the Purchaser against Koller as the agent of the Seller under Section 3.1 are limited to the reimbursement of the purchase price and surcharge (incl. VAT) paid by the Purchaser. Further or other claims of the Purchaser are excluded under any legal title (including error according to art. 23 ff. CO) whatsoever.

## 4. Disclaimer

4.1 The items are auctioned in the condition existing at the time of the successful bid. The auctioned items are "used" objects and are therefore generally not in pristine condition.

4.2 Each item in the auction catalogue is listed with a description and an illustration. The information in the auction catalogue, as well as the condition reports issued by Koller, are

intended to provide an overall impression and a non-binding assessment by Koller. 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 may be inspected during the preview. The Purchaser is therefore invited to inspect an item prior to the auction and, possibly with the assistance of an independent specialist advisor, to form his own opinion of the concordance between the item and the catalogue description. Concerning the descriptions of the items, the German-language print edition of the catalogue (including any later amendments) shall be exclusively applicable. Koller reserves the right to call upon experts or specialists of its choice to give an opinion and to rely on 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, nor other statements pertaining to an item (including statements pertaining to the value thereof) constitute explicit or implicit warranties.

4.3 Subject to Article 3 above, no guarantee or warranty whatsoever is given in respect to legal and material defects. 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.

## 5. Participation in the auction

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

5.2 Bidders 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 bidder's passport 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.

5.3 Koller may demand in advance from any bidder a certificate of creditworthiness issued by a bank approved by Koller.

5.4 In the case of bids for items with upper estimated values of more than CHF 30 000, Koller may demand that the bidder 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/bidder without delay.

## 6. Auction

6.1 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 uncertainty, the auction management shall decide.

6.2 Koller may refuse a bid without providing justification if a Purchaser fails to fulfil the conditions for participation in an auction pursuant to the above Sections 5.2 to 5.4. Koller may also pass or withdraw auctioned items without a sale even if this is not apparent to the auction participants.

6.3 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.

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

6.5 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 lots estimated under CHF 500, and bidders are requested to leave a written bid or participate in the salesroom for such items.

6.6 Potential Purchasers who intend to place their bids in the course of a Live Auction 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.

6.7 Koller shall not be liable for any bids including 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 Article 5 relating to proof of identity and financial soundness.

## 7. 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 in **Swiss francs** and Koller has attributed these payments to the corresponding item.

## 8. Collection of the auctioned items

8.1 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. The place of performance for the purchase contract between the Purchaser and the Seller is therefore the registered office of Koller. If time permits, the items may be handed over after each auction session. The handover shall take place 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.

8.2 During the aforementioned period, Koller shall be liable for loss, theft, damage or destruction of items which have been auctioned and paid for, although solely due to intentional or grossly negligent acts on the part of Koller, and 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.

8.3 Shipping orders may be given to Koller in writing. All shipping costs shall be borne by the Purchaser. Unless otherwise agreed in writing, transport insurance shall be contracted for the sold items at the expense of the Purchaser. Glass-covered pictures and fragile items shall not be sent by Koller.

## 9. Payment for the auctioned items

9.1 The invoice for a successful bid for an auctioned item is payable in **Swiss francs** 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.

9.2 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, and will be charged to the Purchaser's credit card.

9.3 If the Purchaser does not pay or does not pay promptly, Koller may moreover in its own name and in the Seller's name either (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 any minimum sales price, to sell the item either directly or in an auction, and may use the proceeds to reduce the debts of the Purchaser. Any amount realised 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 payment.

9.4 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.

## 10. Representation

Each Purchaser shall be personally liable for each bid he places, and for the purchase contract between the Purchaser and the Seller. 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.

## 11. Miscellaneous provisions

11.1 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.

11.2 Koller reserves the right to transfer any or all rights and obligations from these Auction Conditions to a third party or to have these carried out by a third party. The bidder and/or Purchaser does not have the right to transfer any rights from these Auction Conditions to a third party.

11.3 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.

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

11.5 Should certain provisions of these Auction Conditions be or become partially or fully invalid and/or unenforceable, this does not affect the validity of the remaining provisions. The invalid and/or unenforceable provisions shall be replaced by those which most closely approximate the economic meaning and intended economic purpose of said provisions. The same shall be applicable to any possible gaps or loopholes in the provisions.

11.6 The present Auction Conditions and all amendments thereof are governed by Swiss law, under exclusion of possible references to Switzerland's Federal Code on Private International Law (CPIL), and under exclusion of the Vienna C.I.S.G. Convention (UN Convention).

11.7 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.

11.8 In the event of any discrepancy between the different language versions of these Auction Conditions, the German language version shall prevail.

Zurich, 1 August 2023