

# COMPULSORY AUCTION ON BEHALF OF THE FEDERAL CUSTOMS ADMINISTRATION (FCA)

## **Bidding terms and conditions**

*(The German version is authoritative for the application and interpretation of these bidding terms and conditions)*

The auctions of the items proposed in these catalogues ("modern and contemporary art"; compulsory auction and "Fabergé et objets de vertu; compulsory auction) are **compulsory enforcement auctions** (section 1) carried out by Koller Auktionen AG ("Koller") on behalf of and based on information provided by the Swiss Confederation, represented by the Federal Customs Administration ("FCA").

By participating in these compulsory enforcement auctions, the bidder agrees to be subject to the following bidding terms and conditions. These bidding terms and conditions are part of each individual purchase made at the compulsory enforcement auction.

**The bidder is explicitly informed that the auctions can be cancelled or postponed at short notice without the bidder being able to derive any claims therefrom against Koller or the FCA.**

### **1. Legal status of the parties**

The items are sold by Koller by compulsory enforcement auction on behalf of the FCA and in the name of the owners represented by the FCA. The lot goes to the bidder recognised by Koller as having made the highest bid in Swiss francs in the course of the auction ("successful bidder"). This is not a purchase contract under private law, but rather a compulsory enforcement procedure. Details on this can be found in section 5. Koller is not thereby a party to a purchase contract under private law and/or to the purchase under enforcement law.

### **2. Premium**

2.1 In addition to the hammer price, the successful bidder must pay a premium on the hammer price, calculated as follows:

- i. for a hammer price of up to CHF 10,000: **25%**
- ii. for a hammer price from CHF 10,000 to CHF 400,000: **25%** on the first CHF 10,000 and **22%** on the difference between CHF 10,000 and the hammer price
- iii. for a hammer price over CHF 400,000: **25%** on the first CHF 10,000; **22%** on CHF 390,000 and **15%** on the difference

between CHF 400,000 and the hammer price

The premium percentage rates indicated refer to the hammer price for each individual item.

2.2 If the winning bid is placed live over the internet in the course of a saleroom auction that is broadcast online ("live auction"), or submits a pre-sale bid via an external page linked to Koller, an additional premium of 3% of the hammer price will be charged. In addition, the terms and conditions published on the live auction website apply to bids submitted within the framework of a live auction. These may differ from those published here.

2.3 The successful bidder must pay Swiss value added tax ("VAT") on the premium.

### **3. Total exclusion of liability**

**All warranties, liability and guarantee claims are excluded.** The items are auctioned in the condition existing at the time of the successful bid. The auctioned items are "used" goods. Naturally, they are no longer in mint condition. Each item in the auction catalogue is listed with a description and an illustration. The information in the auction catalogue and the condition reports issued by Koller, which can be requested prior to the auction, merely provide an overall impression and a non-binding assessment by Koller. The items may be inspected during the preview. Accordingly, bidders are invited to inspect items of interest before the auction and to form their own opinion of the conformity of the item with the catalogue description, possibly with the assistance of an independent specialist advisor. Concerning the item descriptions, solely the German-language print edition of the catalogue (including any later additions) is authoritative, but not binding. The items are described to the best of knowledge and belief, but neither Koller nor the FCA can be held liable in any way for the details provided in the catalogue. Koller and the FCA expressly reserve the right to call upon experts or specialists of their choice to give an opinion and to rely on that opinion. Neither Koller nor the FCA can be held responsible for the accuracy of such opinions. Such expert opinions or reports, object descriptions or other verbal or written statements made by Koller about an item – especially, but not exclusively, pertaining to authenticity, condition, mass, material, age, period, artist, author, origin, listed exhibitions, literature and value – do not constitute explicit or implicit warranties.

Neither Koller nor the FCA shall give any guarantee or warranty for the remedy of defects discovered afterwards with regard to the items sold, particularly concerning their authenticity. All liability for legal and material defects is excluded. The FCA's obligations vis-à-vis the bidder/successful bidder are limited to the same extent as Koller's commitments vis-à-vis the bidder/successful bidder.

### **4. Participation in the auction**

4.1 In general, anyone may participate in the auction as a bidder. However, Koller and the FCA reserve the right to prevent a person from entering the preview or from attending or participating in the auction. Employees of the FCA and Koller are prohibited from bidding.

4.2 Bidders in the auction room must register at Koller's premises prior to the auction using the form provided for that purpose. The duly signed registration form must be accompanied by a copy of the bidder's valid passport. Bidders who are not sufficiently known to Koller must also enclose a copy of their credit card.

4.3 Written bids from bidders who are unable to attend the auction in person will be accepted by Koller up to 24 hours before the auction begins. A copy of the bidder's valid passport must be included with the auction bid. Bidders who are not sufficiently known to Koller must also enclose a copy of their credit card.

4.4 Bidders may bid by telephone if they have notified Koller in writing at least 24 hours before the auction begins. A copy of the bidder's valid passport must be enclosed with the registration for telephone bidding. Bidders who are not sufficiently known to Koller must also enclose a copy of their credit card.

4.5 Koller may require any bidder to provide advance proof of creditworthiness issued by a bank approved by Koller.

4.6 Koller and the FCA may require any bidder to transfer up to 30% of the minimum hammer price in advance as security. This security will be offset against any claims after the auction. Any surplus will be refunded to the bidder/successful bidder.

### **5. Auction**

5.1 Each item to be auctioned is called individually. Koller reserves the right, after

consultation with the FCA, to combine, separate or omit numbered lots in the catalogue, or to offer them out of sequence.

5.2 The lot will go to the highest bidder recognised by Koller after three calls for the highest bid, provided that his or her bid corresponds at least to the minimum hammer price. The minimum hammer price is indicated in the auction catalogue.

**5.3 After consultation with the FCA, Koller may also initiate the auctioning of an item below the minimum hammer price as well as sell it below that minimum hammer price.**

5.4 A bid placed at the auction is a binding offer. Bidders are bound by their bids until they are either outbid or rejected. Double bids are immediately called once again. The auction management decides in case of doubt.

5.5 The person who wins the bid is bound by his or her bid, which results in a binding purchase.

5.6 All successful bidders are personally liable for the knockdown awarded to them and for the purchase contract entered into by them. Proof of power of representation may be requested from persons who bid as agents in the name of a third party or as governing bodies of a legal entity. Such an agent shall have unlimited joint and several liability with the person represented for the fulfilment of all obligations.

5.7 Bidders who wish to place their bids online in the course of a live auction may participate in the auction after having been admitted to the auction by Koller on the basis of a registration application. Koller and the FCA reserve the right to reject registration applications.

5.8 Koller and the FCA decline all liability for bids of any kind not taken into consideration, as well as for registrations for written, telephone and online bids not taken into consideration.

**6. Transfer of title**

Ownership of an auctioned item is transferred to the successful bidder as soon as the purchase price and the premium, including VAT, have been paid in full and Koller has assigned these payments to the corresponding item.

**7. Payment for the auctioned items**

7.1 The invoice for a successful bid for an auctioned item must be paid within 7 days of the end of the auction. Payments by credit card are possible only after consulting Koller's accounting department and are subject to a processing fee of between 2% and 4%, which is to be paid by the successful bidder and is levied on the invoice amount.

7.2 If the successful bidder's payment is late, default interest of 10% p.a. may be charged on the premium. The FCA reserves the right to charge default interest on the hammer price. If the successful bidder fails to pay the invoice amount within 7 days of the end of the auction, Koller will be entitled, without further consultation with the successful bidder, to debit the invoice amount owed to the credit card of the successful bidder. In such cases, a processing fee of between 2% and 4% will be levied on the invoice amount, and it too will be debited to the credit card.

7.3 If the successful bidder does not pay or does not pay on time, the FCA will decide on the next steps based on Article 22 paragraph 3 of the FDF Customs Ordinance of 4 April 2007 (CustO-FDF; SR 631.011). The successful bidder shall be liable to Koller and the FCA for all prejudice resulting from non-payment or late payment.

**8. Collection of the auctioned items**

8.1 Successful bidders must collect the auctioned items at their own expense within 7 days of the end of the auction during Koller's opening hours. The place of performance is thus Koller's place of business. If time permits, the items will be handed over after each auction session. The handover will take place after full payment of the hammer price and premium (including VAT) and the assignment of this amount to the auctioned item by Koller.

8.2 During the aforementioned period, Koller and/or the FCA will be liable for the loss, theft, destruction of or damage to the auctioned items, but only in the event of intentional or gross negligence and only up to the amount of the hammer price, premium and VAT. No liability can be assumed for frames and glass. An auctioned item is appropriately insured by the FCA until full payment has been made to Koller (section 7.1). The aforementioned liability of Koller and/or the FCA will end as soon as Koller has received payment in full, and the successful bidder will be responsible

for ensuring appropriate insurance for the item purchased at auction and paid for in full. If the auctioned and fully paid for items are not collected within 7 days, Koller will, after consultation with the FCA, store them either at a company of its choice at the cost and risk of the successful bidder or at its own premises at a daily rate of CHF 10 per item.

8.3 Koller accepts shipping orders in writing. Shipping costs are borne by the successful bidder. Unless otherwise agreed in writing, the auctioned items will be insured for transport by Koller at the expense of the successful bidder. Glass-covered pictures and fragile items will not be shipped by Koller.

**9. Miscellaneous provisions**

9.1 The auction will take place with the participation of an official from the city of Zurich. The official present, the commune and the state will have no liability for the actions of Koller.

9.2 The above terms and conditions form an integral part of each individual purchase made at the auction. Amendments will be binding only with the written consent of Koller and the FCA.

9.3 These bidding terms and conditions and all amendments thereto are subject to Swiss law, to the exclusion of any references in the Federal Act on International Private Law (IPLA) and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention).

9.4 The courts of the canton of Zurich will be responsible for settling disputes arising out of a purchase made as a result of the compulsory enforcement auction.

Zurich, 01.10.2019