



## GENERAL TERMS & CONDITIONS OF BUSINESS

The Auctioneer carries on business on the following terms and conditions and on such other terms or conditions as may be expressly agreed with the Auctioneer or set out in any relevant Catalogue. Conditions 12-21 relate mainly to buyers and conditions 22-32 relate mainly to sellers. Words and phrases with special meanings are defined in condition 1. Buyers and sellers are requested to read carefully the Cataloguing Practice and Catalogue Explanation contained in condition 2.

## DEFINITIONS AND GENERAL CONDITIONS

1. In these conditions the following words and expressions shall have the following meanings:

- Auctioneer – Herman & Wilkinson Auction Rooms Ltd.
- Auctioneer's Commission - The commission payable to the Auctioneer by the buyer and seller specified in conditions 13 and 25.
- Catalogue - Any advertisement, brochure, estimate, price or other publication.
- Forgery - A Lot which was made with the intention of deceiving with regard to authorship, culture, source, origin, date, age or period and which is not shown to be such in the description therefore in the Catalogue and the market value for which at the date of the auction was substantially less than it would have been had the Lot been in accordance with the Catalogue description.
- Hammer Price - The price at which a Lot is knocked down by the Auctioneer to the buyer.
- Lot - Any item which is deposited with the Auctioneer with a view to its sale at auction and, particular, the item or items described against any Lot number in any Catalogue.
- Proceeds of Sale - The net amount due to the seller being the Hammer Price of the Lot after deducting the Auctioneer's Commission thereon under condition 25 the seller's contribution towards insurance under condition 26, such VAT as is chargeable and any other amounts due by the seller to the Auctioneer in whatever capacity howsoever arising.
- Registration Form or Register - The registration form (or, in the case of persons who have previously attended at auctions held by the Auctioneer and completed registration forms, the register maintained by the Auctioneer which is compiled from such registration forms) to be completed and signed by each prospective buyer or, where the Auctioneer has acknowledged pursuant to condition 12 that a bidder is acting as agent on behalf of a named principal, each such bidder prior to the commencement of an auction.
- Vendor Form - The form to be completed and signed by each seller prior to the consignment of an auction.
- Total Amount Due - The Hammer Price of the Lot sold, the Auctioneer's Commission due thereon under condition 13, such VAT as is chargeable and any additional interest, expenses or charges due hereunder.
- V.A.T. - Value Added Tax.

## Cataloguing Practice & Catalogue Explanations

2. Terms used in Catalogues have the following meanings and the Cataloguing Practice is as follows:

- The first name or names and surname of the artist - In the opinion of the Auctioneer a work by the artist.
- The initials of the first name(s) and the surname of the artist - In the opinion of the Auctioneer a work of the period of the artist and which may be in whole or in part the work of the artist.
- The surname only of the artist - In the opinion of the Auctioneer a work of the school or by one of the followers of the artist or in his style.
- The surname of the artist preceded by 'after' - In the opinion of the Auctioneer a copy of the work of the artist.
- Signed/Dated/Inscribed - In the opinion of the Auctioneer the work has been signed/dated/inscribed by the artist.
- With Signature/With date/With inscription' - In the opinion of the Auctioneer the work has been signed/dated/inscribed by a person other than the artist.
- Attributed to - In the opinion of the Auctioneer, probably a work of the artist.
- Studio of/Workshop of - In the opinion of the Auctioneer a work executed in the studio of the artist and possibly under his supervision.
- Circle of - In the opinion of the Auctioneer a work of the period of the artist and showing his influence.  
by a pupil.
- Manner of - in the opinion of the Auctioneer a work executed in artist's style but of a later date.

None of the terms above are appropriate but in the Auctioneer's opinion the work is a work by the artist named.

## GENERAL CONDITIONS Auctioneer Acting as Agent

3. The Auctioneer is selling as agent for the seller unless it is specifically stated to the contrary. The Auctioneer as agent for the seller is not responsible for any default by the seller or the buyer. The auctioneer reserves the right to bid on behalf of the seller.

## Auctioneer Bidding on behalf of Buyer

4. It is suggested that the interests of prospective buyers are best protected and served by the buyers attending at an auction. However, the Auctioneer will, if instructed, execute bids on behalf of a prospective buyer. Neither the Auctioneer nor its employees, servants or agents shall be responsible for any neglect or default in executing bids or failing to execute bids.

## Admission to Auctions

5. The Auctioneer shall have the right exercisable in its absolute discretion to refuse admission to its premises or attendance at its auctions by any person.

## Acceptance of Bids

6. The Auctioneer shall have the right exercisable in its absolute discretion to refuse any bids, advance the bidding in any manner it may decide, withdraw or divide any Lot, combine any two or more Lots and, in the case of a dispute, to put any Lot up for auction again.

## Indemnities

7. Any indemnity given under these conditions shall extend to all actions, proceedings, claims, demands, costs and expenses whatever and howsoever incurred or suffered by the person entitled to the benefit of the indemnity and the Auctioneer declares itself to be a trustee of the benefit of every such indemnity for its employees, servants or agents to the extent that such indemnity is expressed to be for their benefit.

## Representations in Catalogues

8. Representations or statements made by the Auctioneer in any Catalogue as to contribution, authorship, genuineness, source, origin, date, age, provenance, condition or estimated selling price or value is a statement of opinion only. Neither the Auctioneer nor its employees, servants or agents shall be responsible for the accuracy of any such opinions. Every person interested in a Lot must exercise and rely on their own judgment and opinion as to such matters.

9. The headings of the conditions herein contained are inserted for convenience of reference only and are not intended to be part of, or to effect, the meaning or interpretation thereof.

## Governing Law

10. These conditions shall be governed by and construed in accordance with Irish Law.

## Notices

11. Any notice or other communication required to be given by the Auctioneer hereunder to a buyer or a seller shall, where required, be in writing and shall be sufficiently given if delivered by hand or sent by post to, in the case of the buyer, the address of the buyer specified in the Registration Form or Register, and in the case of the seller, the address of the seller specified in the Vendor Form or to such other address as the buyer or seller (as appropriate) may notify the Auctioneer in writing. Every notice or communication given in accordance with this condition shall be deemed to have been received if delivered by hand on the day and time of delivery and if delivered by post three (3) business days after posting.

## CONDITIONS WHICH MAINLY CONCERN THE BUYER

### The Buyer

12. The buyer shall be the highest bidder acceptable to the Auctioneer who buys at the Hammer Price. Any dispute which may arise with regard to bidding or the acceptance of bids shall be settled by the Auctioneer. Every bidder shall be deemed to act as principal unless the Auctioneer has prior to the auction, acknowledged in writing that a bidder is acting as agent on behalf of a named principal.

### The Commission

13. The buyer shall pay the Auctioneer a commission at the rate of 20% of the Hammer Price, exclusive of VAT at the applicable rate on all individual lots.

### Payment

14. Unless credit terms have been agreed with the Auctioneer before the auction the buyer of a Lot shall pay to the Auctioneer within one (2) days from the date of the auction the Total Amount Due. Notwithstanding this, the Auctioneer may, in its sole discretion, require a buyer to pay a deposit of 25% of the Total Amount Due at the conclusion of the auction.

The Auctioneer may apply any payments received by a buyer towards any sums owing from that buyer to the Auctioneer on any account whatever regardless of any directions of the buyer or his agent in that regard whether express or implied.

The Auctioneer shall only accept payment from successful bidders in cash, draft in Euro or by the bidder's own cheque drawn on an Irish bank account vouched to the satisfaction of the Auctioneer. Cheques drawn by third parties, whether in the Auctioneer's favour or requiring endorsement, shall not be accepted. We also accept payment by credit card (Visa & Mastercard) and American Express (4% administration charge). We also accept debit card payments by way of Laser, with no surcharge, however the cardholder in person can only make the payment.

### Reservation of Title

15. Notwithstanding delivery or passing of risk to the buyer the ownership of a Lot shall not pass to the buyer until he has paid to the Auctioneer the Total Amount Due.

### Collection of Purchases

16. The buyer shall at his own expense collect the Lot purchased not later than seven (2) days after the date of the auction but (unless credit terms have been agreed with the Auctioneer pursuant to condition 14) not before payment to the Auctioneer of the Total Amount Due.

The buyer shall be responsible for any removal, storage and insurance charges in respect of any Lot which is not taken away within seven (2) days after the date of the auction.

The purchased Lot shall be at the buyer's risk from the earlier of the time of collection or the expiry of (2) days from the date of the auction. Neither the Auctioneer nor its employees, servants or agents shall thereafter be liable for any loss or damage of any kind howsoever caused while a purchased Lot remains in its custody or control after such time.

### Packaging and Handling of Purchased Lots

17. Purchased Lots may be packed and handled by the Auctioneer, its employees, servants or agents. Where this is done it is undertaken solely as a courtesy to buyers and at the discretion of the Auctioneer. Under no circumstances shall the Auctioneer, its employees, servants or agents be liable for damage of any kind and howsoever caused to glass or frames nor shall the Auctioneer be liable for the errors or omissions of, or for any damage caused by, any packers or shippers which the Auctioneer has recommended.

### Non-Payment or Failure to Collect Purchased Lots

18. If a buyer fails to pay for and/or collect any purchased Lot by the dates herein specified for payment and collection the Auctioneer shall, in its absolute discretion and without prejudice to any other rights or remedies it may have, be entitled to exercise one or more of the following rights or remedies without further notice to the buyer:

- (a) To issue court proceedings for damages for breach of contract;
- (b) To rescind the sale of that Lot or any other Lots sold to the buyer whether at that or at any other auction;
- (c) To resell the Lot or cause it to be resold whether by public auction or private sale. In the event that there is a deficiency between the Total Amount Due by the buyer and the amount received by the Auctioneer on such resale after deduction of any necessary expenses the difference shall be paid to the Auctioneer by the buyer. Any surplus arising shall belong to the seller;
- (d) To store (whether at the Auctioneer's premises or elsewhere) and insure the purchased Lot at the expense of the buyer;
- (e) To charge interest on the Total Amount Due at the rate of 2% over and above the base rate from time to time of Bank of Ireland or if there be no such rate, the nearest equivalent thereto as determined by the Auctioneer in its absolute discretion from the date on which payment is due hereunder to the date of actual payment;
- (f) To retain that Lot or any other Lot purchased by the buyer whether at the same or any other auction and release same to the buyer only after payment to the Auctioneer of the Total Amount Due;
- (g) To apply any sums which the Auctioneer received in respect of Lots being sold by the buyer towards settlement of the Total Amount Due.
- (h) To exercise a lien on any property of the buyer in the possession of the Auctioneer or whatever reason.

### Liability of Auctioneer and Seller

19. Prior to auction ample opportunity is given for the inspection of the Lots on sale and each buyer by making a bid acknowledges that he has, by exercising and relying on his own judgment, satisfied himself as to the physical condition, age and Catalogue description of each Lot (including but not restricted to whether the Lot is damaged or has been repaired or restored). All Lots are sold with all faults and imperfections and errors of description. None of the seller, the Auctioneer nor any of their employees, servants or agents shall be responsible for any error of description or for the condition or authenticity of any Lot. No warranty whatsoever is given by the seller or Auctioneer or by any of their

employees, servants or agents in respect of any Lot and any condition or warranty express, or implied by statute or otherwise is hereby specifically excluded.

#### **Forgeries**

20. Any amount paid by a buyer in respect of a Lot which, if it is proved within three (3) years of the date of the auction at which it was purchased, to have been a Forgery shall be refunded to the seller subject to the provisions hereof, provided that:

(a) The Lot has been returned by the buyer to the Auctioneer within three (3) years of the date of the auction in the same condition in which it was at the time of the auction together with evidence proving that it is a Forgery, the number of the Lot and the date of the auction at which it was purchased;

(b) The Auctioneer is satisfied that the Lot is a Forgery and that the buyer has and is able to transfer good and marketable title to the Lot free from any third party claims;

#### **FURTHER PROVIDED THAT the buyer shall have no rights hereunder if:**

(i) The description of the Lot in the Catalogue at the time of the auction was in accordance with the then generally accepted opinion of scholars or experts or fairly indicated that there was a conflict of such opinion;

(ii) The only method of establishing at the time of the auction in question that the Lot was a Forgery would have been by means of scientific processes which were not generally accepted for use until after the date of the auction or which were unreasonably expensive or impractical.

The buyer's sole entitlement under this condition is to a refund of the actual amount paid by him in respect of the Lot. Under no circumstances shall the Auctioneer be liable for any damage, loss (including consequential, indirect or economic loss) or expense suffered or incurred by the buyer by reason of the Lot being a Forgery.

The benefit of this condition shall be solely and exclusively for the buyer and shall not be assignable. The buyer shall for the purpose of this condition be the person to whom the original invoice in respect of the sale of the Lot is made.

#### **Photographs**

21. The buyer authorises the Auctioneer at any time to make use of any photographs or illustrations of the Lot purchased by the buyer for such purposes as the Auctioneer may require.

#### **22. New VAT Regulations**

22a) All lots are sold within the Auctioneer's VAT margin scheme. Revenue Regulations require that the buyers premium must be invoiced at a rate which is inclusive of VAT. This VAT is not recoverable by any VAT registered buyer.

#### **CONDITIONS WHICH MAINLY CONCERN THE SELLER**

##### **Auctioneer's Discretion**

23. With regard to the sale of any Lot the Auctioneer shall have the following powers exercisable solely in the discretion of the Auctioneer:

(i) To decide whether to offer any Lot for sale or not;

(ii) To decide whether a particular Lot is suitable for sale by the Auctioneer and, if so, to determine which auction, the place and date of sale, the conditions of sale and the manner in which such sale should be conducted;

(iii) To determine the description of any Lot in a Catalogue.

(iv) To decide whether the views of any expert shall be obtained and to submit Lots for examination by any such experts.

(v) To determine what illustration of a Lot (if any) is to be included in the Catalogue.

##### **Seller's Warranty and Indemnity**

24. The seller warrants to the Auctioneer and to the buyer that he is the true owner of the Lot or is legally authorised to sell the Lot on behalf of the true owner and can transfer good and marketable title to the Lot free from any third party claims. As regards Lots not held by the Auctioneer on its premises or under its control the seller warrants and undertakes to the Auctioneer and the buyer that the Lot will be available and in a deliverable state on demand by the Auctioneer or buyer. The seller shall indemnify the Auctioneer and the buyer or any of their respective employees, servants or agents against any loss or damage suffered by any of them in consequence of any breach of the above warranties or undertakings by the seller.

##### **Reserves**

25. We do not take reserves on items consigned for sale, however; subject to the Auctioneer's discretion at the time of consignment, the seller shall be entitled to place a reserve on any Lot where the auctioneer is agreeable. All reserves must be agreed in advance by the Auctioneer and entered on the Vendor Form. This also applies to changes in reserves. A reserve may not be placed upon any Lots under €5000 in value. The reserve shall be the minimum Hammer Price at which the Lot may be sold by the Auctioneer. A reserve once in place may only be changed with the consent of the Auctioneer. A commission shall be charged on the 'knock-down' bid for Lots which fail to reach the reserve price. Such commission shall be 5% of the 'knock-down' bid. This commission and any VAT payable thereon must be paid before removal of the Lot after the auction. The minimum commission hereunder shall be €50. The Auctioneer may in its sole discretion sell a Lot at a Hammer Price below the reserve thereon but in such case the Proceeds of Sale to which the seller shall be entitled shall be the same as they would have been had the sale been at the reserve. Unless a reserve has been placed on a Lot in accordance with the provisions set out above such Lot shall be put up for sale without reserve. In the event that any reserve price is not reached at auction then for so long as the Lot remains with the Auctioneer and to the extent that the Lot has not been re-entered in another auction pursuant to condition 31 the seller authorises the Auctioneer to sell the Lot by private treaty at not less than the reserve price. The Auctioneer shall ensure that in such a case those conditions herein which concern mainly the buyer shall, with any necessary modification, apply to such sale.

##### **Commission**

26. The Seller shall pay the Auctioneer commission at the rate of 20% on the Hammer Price of all Lots sold on behalf of the seller at Irish Art Sales and 18% on all other Sales together with VAT thereon at the applicable rate. Minimum charges are detailed below. The seller authorises the Auctioneer to deduct from the Hammer Price paid by the buyer the Auctioneer's Commission under this condition; VAT payable at the applicable rates and any other amounts due by the seller to the Auctioneer in whatever capacity whatsoever arising. The seller agrees that the Auctioneer may also receive commission from the buyer pursuant to condition 13.

Minimum Charges: Each individual lot is subject to a minimum fee of €3.00 plus VAT, with a minimum charge per account of €50.00 plus VAT.

##### **Insurance**

27. Unless otherwise instructed by the seller, all Lots (with the exception of motor vehicles) deposited with the Auctioneer or put under its control for sale shall automatically be insured by the Auctioneer under the Auctioneer's own fine arts policy for such sum as the Auctioneer shall from time to time in its absolute discretion determine. The seller shall pay the Auctioneer a contribution towards such insurance at the rate of 1.5% of the Hammer Price plus VAT. If the seller instructs the Auctioneer not to insure a Lot then the Lot shall at all times remain at the risk of the seller who undertakes to indemnify

the Auctioneer and hold the Auctioneer harmless against any and all claims made or proceedings brought against the Auctioneer of whatever nature and howsoever and whosoever occurring for loss or damage to the Lot. The sum for which a Lot is covered for insurance under this condition shall not constitute and shall not be relied upon by the seller as a representation, warranty or guarantee as to the value of the Lot or that the Lot will, if sold by the Auctioneer, be sold for such amount. Such insurance shall subsist until such time as the Lot is paid for and collected by the buyer or, in the case of Lots sold which are not paid for or collected by the buyer by the due date hereunder for payment or collection such due date or, in the case of Lots which are not sold, on the expiry of seven (7) days from the date on which the Auctioneer has notified the seller to collect the Lots.

##### **Illustration Charges:**

27a. Catalogue illustrations are included at the discretion of the Auctioneer. Illustration charges will be calculated on the particular category of sale. These charges are subject to change. Illustration charges are a minimum of €5.00 plus VAT per lot. All lots illustrated and not sold are charged at the same rate.

##### **Rescission of Sale**

28. If before the Auctioneer has paid the Proceeds of Sale to the seller the buyer proves to the satisfaction of the Auctioneer that the Lot sold is a Forgery and the requirements of condition 20 are satisfied the Auctioneer shall rescind the sale and refund to the buyer any amount paid to the Auctioneer by the buyer in respect of the Lot.

##### **Payment of Proceeds of Sale**

29. The Auctioneer shall remit the Proceeds of Sale to the seller not later than thirty (30) days after the date of the auction, provided however that, if by that date, the Auctioneer has not received the Total Amount Due from the buyer then the Auctioneer shall remit the Proceeds of Sale within seven (7) working days after the date on which the Total Amount Due is received from the buyer. If credit terms have been agreed between the Auctioneer and the buyer the Auctioneer shall remit to the seller the Proceeds of Sale not later than thirty (30) days after the date of the auction unless otherwise agreed by the seller. If before the Total Amount Due is paid by the buyer the Auctioneer pays the seller an amount equal to the Proceeds of Sale then title to the Lot shall pass to the Auctioneer. If the buyer fails to pay the Auctioneer the Total Amount Due within fourteen (14) days after the date of the auction, the Auctioneer shall endeavour to notify the seller and take the seller's instructions on the course of action to be taken and, to the extent that it is in the sole opinion of the Auctioneer feasible, shall endeavour to assist the seller to recover the Total Amount Due from the buyer provided that nothing herein shall oblige the Auctioneer to issue proceedings against the buyer in the Auctioneer's own name. If circumstances do not permit the Auctioneer to take instructions from the seller or, if after notifying the seller, it does not receive instructions within seven (7) days, the Auctioneer reserves the right, and is hereby authorised by the seller at the seller's expense, to agree special terms for payments of the Total Amount Due, to remove, store and insure the Lot sold, to settle claims made by or against the buyer on such terms as the Auctioneer shall in its absolute discretion think fit, to take such steps as are necessary to collect monies due by the buyer to the seller and, if necessary, to rescind the sale and refund money to the buyer. All payments will be issued by bank transfer only.

##### **Payment of Proceeds to Overseas Sellers**

30. If the seller resides outside Ireland the Proceeds of Sale shall be paid to such seller in Euro unless it was agreed with the seller prior to the auction that the Proceeds of Sale would be paid in a currency (other than Euro) specified by the seller in which case the Proceeds of Sale shall be paid by the Auctioneer to the seller in such specified currency (provided that that currency is legally available to the Auctioneer in the amount required) calculated at the rate of exchange quoted to the Auctioneer by its bankers on the date of payment. All payment instructions must be in writing.

##### **Charges for Withdrawn Lots**

31. Once catalogued, Lots withdrawn from sale before proofing/publication of Catalogue will be subject to commission of 5% of the Auctioneer's latest estimate of the auction price of the Lot withdrawn together with VAT thereon and any expenses incurred by the Auctioneer in relation to the Lot. If Lots are withdrawn after proofing or publication of Catalogue they will be subject to a commission of 10% of the Auctioneer's latest estimate of the auction price of the Lot withdrawn together with VAT thereon and any expenses incurred by the Auctioneer in relation to the Lot. All commission hereunder must be paid for before Lots withdrawn may be removed.

##### **Unsold Lots**

32. Where any Lot fails to sell at auction the Auctioneer shall attempt to re-offer the lot for sale. If the auctioneer deems a lot unsaleable the lot will be disposed of without notice to the seller. A scaled charge for disposal will be applied to the sellers account for the disposal of the lot. This charge is subject to VAT.

##### **Auctioneer's Right to Photographs and Illustrations**

33. The seller authorises the Auctioneer to photograph and illustrate any Lot placed with it for sale and further authorises the Auctioneer to use such photographs and illustrations and any photographs and illustrations provided by the seller at any time in its absolute discretion (whether or not in connection with the auction).

##### **VAT**

34. It is presumed unless stated to the contrary, that the items listed herein are auction scheme goods as defined in the Finance Act 1995.

##### **Artist's Resale Rights (Droit de Suite)**

35. Government Regulations (S.1. 312/2006), under this legislation a royalty (Droit de Suite) is payable to living & heirs of deceased artists of E.U. Nationality (Deceased Artists up to 70 years from the date of death). All works resold for €3,000 or more, other than sold by the artist or the artist's agent is applicable to ARR (Artist Resale Rights). The resale royalty payable is calculated as follows

- From €3,000 to €50,000 4%
- From €50,000.01 to €200,000 3%
- From €200,000.01 to €350,000 1%
- From €350,000.01 to €500,000 0.5%
- Exceeding €500,000 0.25%

The total amount of royalty payable on any individual sale shall not exceed €12,500. The seller is liable for payment (paragraph 7.1 of Government Regulations (S.1. 312/2006) of this royalty on completion of the sale. The artist or their representative or heir may request from the Auctioneer any information necessary to secure payment. Unless otherwise directed by the vendor, the Auctioneer will automatically deduct the amount due from the proceeds of sale and will hold in trust for the artist or their representative the said sum.