

General Terms of Business for purchases on  
onlineonly.kettererkunst.de / onlineonly.kettererkunst.com

## **1. General**

**1.1** Ketterer Kunst GmbH & Co KG (referred to hereinafter as the 'Seller') handles purchase requests/orders at Internet auctions staged at the Internet portal onlineonly.kettererkunst.de / onlineonly.kettererkunst.com exclusively on the basis of the following General Terms of Business ('Terms'), at the same time drawing the consumer's attention to the "Duties to Supply Information for Distance Selling Contracts", the "Notifications of the Applicability of the Rules of the Purchase of Consumer Goods" and the "Duties to Supply Information for Concluding Contracts in E-Commerce Transactions" including the corresponding "Cancellation Policy". In general, the 'Ketterer Internet Auctions' website offers art works in its own name but for a client's account (commission contract between the seller and its client).

**1.2** These General Terms of Business are binding for any sales transactions by the Seller. The Seller's goods, services and offers are provided exclusively on the basis of these Terms. The Bidder's/Buyer's terms of business and purchase are expressly refuted; they shall only obligate the Seller if the latter has expressly declared that it agrees to them. These Terms shall be deemed accepted at the latest on receipt of the goods out of the first order. These Terms also apply to all future business relations, even if they are not expressly agreed anew.

**1.3** These General Terms of Business do not apply to conventional auctions held by the Seller. This expressly also applies to post-auction sales. Auctions and related post-auction sales shall each be exclusively governed by the Terms of Delivery & Auction in force at the time.

**1.4** According to the Money Laundering Act (GwG), the seller is obliged to inform the bidder / acquirer or those interested in an acquisition (that is as early as in the initial phase) and, if applicable, a representative and the "beneficial owner" within the meaning of Section 3 GwG for the purpose of executing the order and to record and store the data and information obtained. The aforementioned bidder / purchaser or person interested in acquisition or his representative is obliged to cooperate, in particular to present the necessary identification papers, in particular on the basis of a national passport or passport, identity card or passport or identity card substitute that is recognized or approved with regard to immigration laws. The seller is entitled to make a copy or other reproduction of this on a media carrier (scan, image file, etc.) in compliance with data protection regulations. In the case of legal entities or partnerships, an extract from the commercial or cooperative register or a comparable official register or directory must be requested. The bidder / purchaser or anyone interested in the acquisition assures that the identification papers and information provided by him for this purpose are correct and that he or the person he represents is the "beneficial owner" within the meaning of Section 3 of the GwG.

## **2. Purchase Contract**

**2.1** The items offered on the Internet by the Seller constitute an offer for sale, whereby the Seller fixes the start price and the period allowed (bidding period) during which the bid from the highest bidder can be accepted on expiry of the deadline. The bidder accepts the offer by making a bid using the bid function. The bid remains in force until another bidder makes a higher bid during the bidding period, and it only then loses effect. When the bidding period ends, either on expiring or due to the Seller prematurely terminating the offer, a purchase contract for the item is brought about between the Seller and the highest bidder, unless the bidder has the statutory right to withdraw his

bid. In such case (legitimate withdrawal of a bid) the purchase contract is then brought about with the bidder originally making the next highest bid in terms of amount.

**2.2** Each bidder may submit a maximum bid at an auction. This is then equivalent to the highest maximum amount which it is willing to pay for the item. Other bidders have no access to this maximum bid. If other interested customers bid for the item, then the bid applying at the time automatically gradually increases, meaning that a bidder who has made a maximum bid remains the highest bidder until its maximum bid is outbid by another bidder.

**2.3** Sales operations termed an 'Internet auction' are not an auction as defined in Sect. 34 b) of the German Trade Code [GewO] and Sect. 156 of the German Civil Code [BGB]. The 'Internet auction' is not a public available auction as defined in Sect. 312g (2) No. 10 of the German Civil Code [BGB].

**2.4** Making bids using automated data handling processes (e. g. so-called sniper programs) is prohibited.

**2.5** In the event that - for whatsoever reason - a contract is not actually reached between the Seller and a buyer and that the minimum price is not achieved, the Seller is entitled to make so-called sub-bidders an offer to acquire the item at a fixed price.

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**2.7** Payments are to be made to the seller by bank transfer in EUR (€). The explanations on the information obligations for contracts in electronic business dealings regulate further details, which can be viewed at [+ onlineonly.kettererkunst.com/terms.php](https://www.kettererkunst.com/terms.php). If the seller has agreed to non-cash payment, all costs and fees of the transfer (including bank charges deducted from the seller) shall be borne by the buyer.

### **3. Hand-Over / Delivery**

**3.1** After Payment, the item purchased will be sent to the Buyer by insured post unless Item 3.2 below applies. The costs of handover, acceptance and shipping to a location other than the place of delivery are regulated in Section 4.6 (additional transport costs). Shipping may cause additional charges, in particular cash on delivery costs or customs fees, which are levied directly by the transport company and will be collected from the recipient when the goods are handed over. Such fees are not included in the seller's shipping costs and may have to be paid additionally by the buyer, provided they are not included in the costs the seller is legally obligated to bear within the meaning of Section 270a BGB.

**3.2** Alternatively there is the option of collection of the purchased item by the Buyer. After appropriate notification and prior arrangement, the Buyer can collect the purchased item from the Seller. The item must be collected immediately, at latest 14 days after termination of the offer and purchase of the item by the Buyer. If the Buyer defaults in this obligation, failing to collect the item and letting a deadline that has been set expire to no avail, or if the Buyer firmly and finally refuses collection, then the Seller may withdraw from the purchase contract and demand compensation, subject to the provision that it is allowed to sell the item again and assert its losses in the same way

as in cases of a buyer defaulting in payment (see Item 7 below), without the Buyer being entitled to any extra proceeds from the renewed sale. Moreover, in the event of default the Buyer also owes reasonable compensation for all the recovery costs incurred by its delay. The Buyer opts for collection or dispatch after making its auction purchase; see the Duties to Supply Information for Concluding Contracts in e-Commerce Transactions, which are available at [+ onlineonly.kettererkunst.com/terms.php](https://www.kettererkunst.com/terms.php).

**3.3** The risk of the object of purchase being damaged or lost during consignment shall be borne by the Buyer, insofar as it is planning to use the object of purchase in connection with its commercial business or self-employed operations. Risk shall pass to the Buyer as soon as the consignment is handed over to the carrier or its representative, or has left the Seller's business premises for dispatch. For consumers within the meaning of Section 13 of the German Civil Code (see section 8.3 for a definition), the risk of the purchased item only passes when they have gained possession of the purchased item, unless the buyer (consumer) has contacted the freight forwarder, carrier or other person or institution designated for the shipment, and the entrepreneur has not previously named this person or institution to the buyer (§ 475 Para. 2 BGB).

#### **4. Purchase price / due date / duties / other costs / final price**

**4.1** The purchase price is due with the highest bid when the time expires.

**4.2** Payments from the buyer to the seller are generally only to be made by transfer to account specified by the seller. The fulfillment of the payment does not come into effect until it is finally credited to the seller's account.

All costs and fees of the transfer (including the bank charges deducted from the seller) are borne by the buyer, as far as legally permissible and not prohibited within the meaning of Section 270a BGB.

**4.3** Depending on the consignor's specifications, the sale is subject to differential or regular taxation. The bidder will be regularly informed about the type of taxation on the bidding site before the bid is submitted. In the case of differential taxation according to Section 25a UStG, the respective highest bid including the applicable sales tax is shown. With standard taxation, the respective highest bid is shown as the "net bid". In addition, the total price including sales tax is indicated.

#### **4.4 Buyer's Premium and Droit de suite charge**

##### **4.4.1 Works of art subject to differential taxation**

With differential taxation, a surcharge is levied per individual object as follows:

- Hammer price up to 800,000 euros: from this 32% buyer's premium.
- A premium of 27% is charged on the part of the hammer price that exceeds 800,000 euros and added to the premium that incurs on the part of the hammer price up to 800,000 euros.
- The purchase price includes sales tax, currently at 19%.

**4.4.2** Works of art marked with an "N" in the image were imported into the EU for sale. These are offered subject to differential taxation. In addition to the buyer's premium, the import sales tax paid by the seller, currently 7% of the invoice amount, is charged.

#### **4.4.3 Works of art subject to regular taxation.**

With regular taxation, a surcharge is levied per individual object as follows:

- Hammer price up to 800,000 euros: from this 27% buyer's premium.
- A buyer's premium of 21% is charged on the part of the hammer price that exceeds 800,000 euros and added to the premium that incurs on that part of the hammer price up to 800,000 euros.
- The statutory sales tax of currently 19% is levied on the sum of the hammer price and premium.

Regular taxation can be applied to businesses entitled input tax reduction on art and antiques.

**4.5** Export deliveries to EU countries are exempt from sales tax on presentation of the VAT number. Export deliveries to third countries (outside the EU) are exempt from VAT; if the auctioned items are exported by the buyer, the sales tax will be reimbursed as soon as the seller has the export certificate.

**4.6** Additional transport costs vary depending on the place of delivery, weight and size of the object and are to be paid additionally by the buyer. They are specified individually on the object before the bid is submitted and before the bid is accepted.

**4.7** For original works of visual art and photographs subject to resale rights by living artists, or by artists who died less than 70 years ago, an additional droit de suite charge in the amount of the currently valid percentage rates (see below) specified in section 26 para. 2 UrhG (German Copyright Act) is levied in order to compensate the auctioneer's expenses according to section 26 UrhG.

4 percent for the part of the sale proceeds from 400.00 euros up to 50,000 euros, another 3 percent for the part of the sales proceeds from 50,000.01 to 200,000 euros, another 1 percent for the part of the sales proceeds from 200,000.01 to 350,000 euros, another 0.5 percent for the part of the sale proceeds from 350,000.01 to 500,000 euros and a further 0.25 percent for the part of the sale proceeds over 500,000 euros.

The maximum total of the resale right fee is EUR 12,500.

## **5. Reservation of Title**

**5.1** The Seller is under no obligation to hand over the item before all the amounts owed by the Buyer have been paid.

**5.2** Title to the object of purchase shall not pass to the Buyer until the invoiced amount owing has been paid in full. In the event that the Buyer has already resold the object of purchase before paying the amount invoiced by the Seller or before paying said amount in full, the Buyer assigns all its receivables created on such resale to the Seller up to the invoiced amount still outstanding. The Seller accepts this assignment.

**5.3** If the Buyer is a public corporation, a special trust under public law or an entrepreneur who concluded the purchase contract in the context of its commercial or self-employed operations, then title shall be reserved in relation to all the Seller's claims vis-a-vis the Buyer that have been created during the on-going business relationship and by other items, until such time as the receivables to which the Seller is entitled in connection with the purchase have been paid.

## **6. Set-off Right, Right of Retention**

**6.1** Vis-a-vis the Seller, the Buyer may only offset uncontested claims or claims which have been declared res judicata.

**6.2** Right of retention on the part of the Buyer is excluded. The right of retention in the case of Buyers who are not entrepreneurs within the meaning of Sect. 14 of the German Civil Code [BGB] is only excluded insofar as such rights are not based on the same contractual relationship.

## **7. Default of payment, withdrawal, claims for compensation by the seller**

**7.1** If the Buyer defaults in making a payment, then the Seller - notwithstanding further claims - may demand default interest at the usual interest rate charged by banks for outstanding current account loans, or at a minimum the statutory rate of default interest pursuant to Sect. 288 and Sect. 247 of the German Civil Code [BGB].

**7.2** If in cases of late payment the Seller demands compensation in lieu of performance, and if the item is sold again, then the original Buyer - whose rights created on previously making a successful bid extinguish - shall be liable for any losses thus sustained, such as e.g. storage costs, shortfalls and lost profits. It shall not be entitled to any extra proceeds attained on renewed sale, nor will it be allowed to make another offer.

**7.3** The seller is entitled to withdraw from the contract if it turns out, after the conclusion of the contract, that he is or was not entitled to execute the contract due to a legal provision or official instruction, or that there is an important reason that makes the execution of the contract, also in consideration of the buyer's legitimate interests, unreasonable for the seller. Such an important reason exists in particular if there are indications of the existence of elements of an offense according to §§ 1 Paragraph 1 or 2 of the Money Laundering Act (GwG) or in case of missing, incorrect or incomplete disclosure of the identity and economic background within the meaning of the Money Laundering Act (GwG), as well as in case of insufficient participation in the fulfillment of the obligations following from the Money Laundering Act (GwG), regardless of whether by the buyer or the consignor. The seller will endeavor to clarify the matter without undue delay as soon as he becomes aware of the circumstances justifying the withdrawal.

## **8. Warranty**

**8.1** The subject matter of the contract is a used item. The catalog descriptions and illustrations made to the best of our knowledge and belief, as well as representations in other media of the seller (internet, other applications, etc.) do not constitute a guarantee and are not contractually agreed properties within the meaning of § 434 BGB (German Civil Code), but only serve to inform the buyer, unless because a guarantee is given expressly and in writing by the seller for the corresponding quality or property, or something different results from the following section 8.3, especially for negative quality features. This also applies to expertises. The fact of an appraisal by the seller or a company/ appraiser commissioned by him as such does not represent any quality or property of the object of purchase.

**8.2** Vis-a-vis entrepreneurs within the meaning of Sect. 14 of the German Civil Code [BGB], all guarantees are excluded for all manner of defects in the goods sold. However, in case of material defects which destroy or significantly reduce the value or the serviceability of the item and of which the purchaser notifies the auctioneer within 12 months of his bid being accepted, the auctioneer undertakes to assign any claim which it holds against the consignor or - should the purchaser decline this offer of assignment - to itself assert such claims against the consignor. In the event of

the auctioneer successfully prosecuting a claim against the consignor, the auctioneer shall remit the resulting amount to the purchaser up to the value of the hammer price, in return for the item's surrender. The purchaser will not be obliged to return this item to the auctioneer if the auctioneer is not itself obliged to return the item within the scope of its claims against the consignor or another beneficiary. The purchaser will only hold these rights (assignment or prosecution of a claim against the consignor and remittance of the proceeds) subject to full payment of the auctioneer's invoice. In order to assert a valid claim for a material defect against the auctioneer, the purchaser will be required to present a report prepared by an acknowledged expert (or by the author of the catalog, or else a declaration from the artist himself or from the artist's foundation) documenting this defect.

**8.3** Consumers according to § 13 BGB are entitled to the statutory warranty rights according to § 437 BGB, subject to the following regulations, otherwise unrestricted.

**A consumer is any natural person who enters into a legal transaction for purposes that are predominantly neither related to their commercial nor self-employed activities.**

If the buyer is a consumer according to § 13 BGB, he is expressly informed of the following and declares before submitting his binding purchase offer by means of a separate declaration, which he either makes in form of pressing a button or ticking a box, with which he declares his additional agreement the following:

**He has been informed of the respective work, in particular its object description, and has taken note of it. Should this information result in so-called negative quality characteristics, which in particular deviate or could deviate from objective requirements for the object, such as: [retouchings, restorations, special characteristics regarding the quality of the sheet or image carrier, etc.], he expressly agrees to these.**

**At the same time, the buyer is aware that the seller limits the warranty for used items to one year after the start of the statutory limitation period and expressly agrees to this.**

In all other respects the statutory regulations shall apply.

## **9. Liability**

All claims for damages of the buyer against the seller, its legal representatives, employees, vicarious agents are excluded - regardless of the legal reason and also in the event of the resignation of the seller in accordance with Section 7.3. This does not apply to damage based on willful or grossly negligent behavior on the part of the seller, their legal representatives or vicarious agents. The exclusion of liability does not apply to the assumption of a guarantee or the negligent breach of essential contractual obligations by the seller, but in the latter case the amount is limited to the damage that is foreseeable and typical for the contract when the contract is concluded. Liability for losses resulting from mortal injury, bodily harm or health damage remains unaffected.

## **10. Disruptions, System Failure**

As technology generally stands, it is as a matter of principle not possible to develop or keep hard- and software entirely free of defects. Similarly, it is not possible to completely exclude faults and problems in internet communications. Consequently, the Seller cannot assume any liability or guaranty for the permanent and fault-free availability and usage of its Website, insofar as the fault is beyond its control. Due to this circumstance, the Seller therefore also assumes no liability in the event that by reason of any such fault there may be no bids submitted, or only incomplete or late bids which would have led to a contract being reached if the fault had not occurred. Accordingly, the Seller similarly refuses to assume any costs incurred on the bidder due to such fault. If no bids can be made for items due to a system failure, then the remaining time between the occurrence of the fault and the scheduled auction closure shall be recorded and added on after the fault has been



eliminated, meaning that the auction closure originally fixed is deferred by the duration of the fault. After the fault has been eliminated, the auction shall be continued with exactly the same bids and stage of procedure as applied at the time when the fault occurred.

## **11. Right of cancellation for consumers with cancellation policy**

The consumer according to § 13 BGB (German Civil Code) has the right to withdraw from this contract within fourteen days without specifying a reason. The cancellation period is fourteen days from the day on which he or a third party named by him who is not the carrier, took possession of the goods.

In order to effectively exercise the right of withdrawal, the consumer must contact the provider

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by means of a clear statement (e.g. a letter sent by mail, fax or e-mail) of his decision to revoke this contract. This can be done using the attachment or the attached model cancellation form on [+ onlineonly.kettererkunst.com/terms\\_page4.php](http://onlineonly.kettererkunst.com/terms_page4.php), which is not mandatory. To meet the cancellation deadline, it is sufficient for the buyer to send the notification regarding the exercise of the right of cancellation before the cancellation period has expired.

### **Consequences of revocation**

If the Buyer withdraws from this contract, the Provider shall owe him all payments received from the Buyer, including delivery costs within the EU (except for the additional costs resulting from the Buyer choosing a different type of delivery than the cheapest standard delivery offered by the Provider) immediately and at the latest within fourteen days from the day on which the provider received the notification of the cancellation of this contract. For this repayment, the Provider uses the same means of payment that the buyer used in the original transaction, unless expressly agreed otherwise; under no circumstances will the buyer be charged any fees for this repayment. Goods that cannot be shipped by parcel will be picked up by the Provider. In the case of goods that can be sent by parcel, the Provider may refuse repayment until he has received the goods back or until the buyer has provided proof that he has sent the goods back, whichever is earlier.

Goods that can be sent as a parcel must be returned or handed over by the buyer immediately and in any case no later than fourteen days from the day on which he informed the Provider of the cancellation of this contract, to

**Ketterer Kunst GmbH & Co KG Joseph-Wild-Str. 18 81829 Munich**

The deadline is met if the Buyer sends the goods before the period of fourteen days has expired. The Buyer bears the direct costs of returning the goods. He only has to pay for any loss in value of the goods if this loss in value is due to the handling of the goods that is not necessary for checking the condition, properties and functioning of the goods.

## **12. Final Provisions**

**12.1** Oral ancillary agreements must be done in writing in order to become effective. The same applies to any waiver of the requirement for written form.

**12.2** In business with registered merchants, public corporations and special trusts under public law, it is further agreed that Munich shall be place of performance and place of jurisdiction (including proceedings involving cheques and bills of exchange). Moreover, Munich shall always be venue if the Buyer does not have a general place of jurisdiction in Germany.

**12.3** The legal relations between the Seller and the Buyer shall be governed by German law, excluding CISG.

**12.4** Should one or more terms of these General Terms of Business be or become ineffective, the effectiveness of the remaining terms shall remain unaffected. Sect. 306 par. 2 of the German Civil Code (BGB) shall apply.

**12.5** These General Terms of Business are available in German and in English. The German version shall be decisive at all times, whereby German law shall apply exclusively with regard to the meaning and interpretation of the terms used herein.

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