

# Rules of procedure

Version 1/1/2020

## Authorisation

### §1

- (1) The *Auktionshaus im Kinsky GmbH* (hereinafter referred to as “the auction house”) conducts public auctions pursuant to the provisions of these Rules of Procedure. Legal provisions shall only be effective in a subsidiary manner. Mandatory legal provisions, such as those applying under the Consumer Protection Act, shall not be affected.
- (2) Items for auction or direct sale are:
  - a) movable objects, in particular works of art and articles of value which were delivered to the auction house for voluntary auction;
  - b) objects consigned for self-help sale according to the provisions of the Austrian Commercial Code (Unternehmensgesetzbuch);
  - c) legally and administratively seized property;
  - d) property designated for sale through auctions by public authorities;
  - e) movable objects acquired by the auction house.
- (3) The auction shall be made on behalf of and on account of the consignor or in the name of the auction house, but on account of the consignor.
- (4) The auction house also sells the above mentioned objects on behalf of the owner (“private sale”)

## Proof of identity

### §2

The auction house may ask the consignor to provide proof of identity, if the consignor offers objects for auction, where there is reasonable doubt about the consignor’s right of disposal.

## Acceptance, refusal and exclusion of property

### §3

- (1) All movable objects, in particular works of art and objects of value, with the exception of objects referred to in §4, may be accepted for auction.
- (2) The auction house is entitled to refuse acceptance of objects for auction, also without giving reasons.
- (3) The auction house is entitled to withdraw items already accepted from the auction at any time, in particular when doubts arise as to the authenticity of the items or the consignor’s right of disposal.

### §4

The following objects are not accepted: Objects whose sale by auction is not permitted by law and such objects that seem to have illegally come into the possession of the consignor or have been exported illegally and any and all objects declared stolen by public authorities.

## Examination for purity, hallmarking, customs clearance

### §5

- (1) Platinum, gold and silver objects which are not hallmarked will only be accepted on condition that the consignor bears the costs of purity examination and hallmarking.
- (2) When deciding whether precious metal objects shall be hallmarked or not, the auction house shall seek consultation with the hallmarking authority.
- (3) The costs of legally required examination by the hallmarking authority shall be borne by the consignor.

## Property of foreign origin

### §6

Concerning acceptance of objects of foreign origin, the auction house is entitled to demand proof of payment of customs duties and submission of the official export license.

## Auction agreement, consignment document

### §7

- (1) Acceptance of objects for auction shall be laid down in an auction agreement including a consignment list which is to be signed by the consignor or the consignor’s representative.
- (2) The consignor will receive copies of the auction agreement and the Rules of Procedure.
- (3) Disadvantages arising from incorrect or incomplete information, in particular with regard to the objects delivered, shall be at the expense of the consignor.
- (4) The consignment list serves as confirmation of acceptance of the objects submitted for auction and contains information about the minimum reserve prices, auction dates, illustrations in the catalogue and commissions due to the auction house.

### §8

- (1) By accepting the auction agreement the consignor agrees to the terms and conditions set forth in the auction agreement and to the provisions of the Rules of Procedure including the table of fees published in the current auction catalogue. Objections shall be effective only if submitted in writing prior to the auction.
- (2) Payment of the auction proceeds, cancellation of the auction order and return of unsold objects shall be made upon presentation of the copy of the auction agreement.
- (3) The auction house is entitled to request proof of the authorisation of disposal from the bearer of the copy of the auction agreement.

## Procedure for refused consignments

### §9

- (1) Items which have been submitted to the auction house but whose acceptance has been refused will be stored at risk of the consignor and against payment of storage fees – also outside the auction house, as required. The same shall apply to objects which the auction house has withdrawn from auction.

- (2) If the consignor fails to collect such items within the period specified despite having been requested to do so, the auction house is entitled to send the items to the seller at the seller’s cost and risk or auction them at an agreed price or to destroy them if worthless.

## Valuation, description, determination of the minimum reserve prices and their reduction

### §10

- (1) The auction house experts shall estimate the value of the objects consigned for auction and describe them. They shall establish the estimates and the minimum reserves as agreed with the consignor. The auction house assures the consignor that the expert reports are prepared carefully. But it does not warrant the accuracy of the expert reports towards the consignor.
- (2) The object shall not be knocked down below the agreed minimum reserve (seller’s limit). The minimum reserve price usually corresponds to the lower estimate.
- (3) If the agreed minimum reserve price is not reached during the auction, the item shall be knocked down only with reservation.
- (4) The consignor authorises the auction house irrevocably to conduct negotiations with prospective buyers, offer the objects for sale and sell them at the minimum reserve for a period of one month following the auction.
- (5) Items not auctioned at the agreed terms and conditions and not withdrawn nor collected by the consignor in spite of preceding requests to do so, may, without further notice, be auctioned by the auction house at standard market conditions or utilised otherwise or returned to the consignor at the consignor’s cost and risk or stored at the consignor’s cost and risk.

## Post-auction sale and direct sale

### §11

- (1) Unsold items are considered as accepted for direct sale and may thus be sold directly by the auction house at the minimum reserve price until collected by the consignor.
- (2) All provisions set forth in the Rules of Procedure for items submitted to auction shall apply equally to items offered via direct sales.
- (3) The auction house and the consignor shall decide if an object is to be provided for auction or direct sale.
- (4) Objects offered in direct sale shall be sold for less than the agreed reserve.

## Right of lien

### §12

- (1) The auction house shall have a right of lien on all items delivered to it and all objects auctioned by the buyer and a right of retention as a security for any and all claims the auction house has against the consignor and /or the buyer.
- (2) For items given to the auction house as pledge, the reservation of the consignor with regard to the minimum reserve price and auction details shall be ineffective. The auction house is thus entitled to utilise such items at the terms and conditions laid down by the auction house if the outstanding claim has not been settled although it has fallen due and utilisation has been threatened.
- (3) The auction house is entitled to demand provision of security for all liabilities even if they have not become due, and to make its own service contingent on the provision of such securities.

## Granting of advances

### §13

- (1) The auction house may grant an advance on the expected proceeds of the auction or arrange the granting of such an advance by third parties. The auction house charges interest on the advance granted to the consignor.
- (2) For items for which an advance on the proceeds of the auction has been granted, the auction house is entitled to make all dispositions of the consignor that could endanger the repayment of the advance contingent on the consignor’s prior repayment of all claims or otherwise ignore such dispositions.
- (3) If the proceeds from selling an item do not cover the advance granted, the auction house may demand immediate repayment of the advance. Advances including interest shall fall due for repayment upon expiry of the third day following unsuccessful auction at the latest. The auction house has the right to declare the advance due for important cause. If an object on which an advance was granted remains unsold and the advance has not been repaid, the auction is entitled to utilise the item without regard to previous agreements or reservations of the consignor on the minimum reserve price and other auction details.

## Transport

### §14

The costs of transporting works of art consigned for auction to the auction house shall be covered by the consignor, if not otherwise agreed.

## Pre-auction viewing

### §15

- (1) Items consigned for auction will be exhibited prior to the auction. The auction house will give the general public an opportunity of viewing and examining the exhibited objects for their quality and state.
- (2) The location and duration of the exhibition shall be determined by the auction house.
- (3) The auction house is entitled to present the objects for pre-auction viewing also outside of its business premises.

### §16

All objects shall be illustrated, described and provided with lower and upper estimates in the auction catalogue. The description shall contain a reference to another type of taxation, unless the object is subject to the provisions of margin scheme taxation.

#### §17

- (1) The time and place of the exhibitions for pre-auction viewing and auctions shall be specified in the auction catalogues and public notices.
- (2) The forthcoming auction of works of art shall be notified to the Austrian Federal Monuments Office (Bundesdenkmalamt).

#### Conduct of auctions

##### §18

Auctions shall take place at the head office of the auction house. They shall be conducted by the auctioneer of the auction house.

##### §19

- (1) Auction of an item is started by stating the catalogue number and the starting price as determined by the auctioneer at his discretion.
- (2) The auctioneer is entitled to separate, combine and withdraw lots and to conduct the auction in an order deviating from the catalogue number sequence.
- (3) The item shall be knocked down to the highest bidder. Items not subject to reservation shall, in any case, be knocked down if the minimum reserve price (seller's limit) has been reached.

##### §20

- (1) Each bidder shall be considered to act in his or her own name, except if the bidder submits written proof identifying him as a representative of a specified prospective buyer.
- (2) The auction house is entitled to request the bidder to make a down payment of the estimate of the items the bidder has declared to buy at the auction. Should the bidder thereafter delay payment of the purchase price despite having been granted a respite, the auction house is entitled to use down payment for covering the damage it has incurred.
- (3) Bids shall be made in a clear manner. If only the starting price is offered, and unless a higher minimum sales price was agreed with the seller, the item shall be knocked down at the starting price.
- (4) As a rule, bids are increased in increments of approximately 10 per cent of the previous bid. Bids may also be accepted to protect the piece of art.
- (5) All prices indicated in the catalogue and at the auction shall be in Euros, except if special reference is made to another currency. Information given by the auction house on the equivalent in other currencies and exchange rates shall be non-binding.
- (6) If no bid is made, the item should be put back. However, it may be offered again at a lower starting price at the same auction.
- (7) In case of disagreement on a double bid, or if a bid was overlooked, the auctioneer is entitled to cancel an already accepted bid and to re-auction or continue auctioning the items concerned.
- (8) The auction house may reject bids without specifying the reasons if it is to be feared that the bidder will not pay the highest bid. If a bid is rejected, the previous bid shall remain effective.
- (9) Agreements made between prospective buyers in order to reduce the highest bid, on not making bids, on unobjective bidding consortia, on compensation payments, on rings etc. are prohibited. The auctioneer is entitled to exclude anyone violating the above provision from the auction. Moreover, violators shall make up for any damage caused by forbidden collusion.

##### §21

- (1) Auctions shall be public.
- (2) No bidder shall be preferred or disadvantaged in any way.
- (3) Any behaviour suited to disturb or disrupt the proper conduct of the auctions and any attempt to stop or deter auction participants from bidding is not permitted.

#### Purchase price, payment, deferment of payment

##### §22

- (1) Domestic buyers shall pay the purchase price within 8 days from the fall of the hammer, foreign buyers within 14 days.
- (2) If a buyer does not fulfil his or her payment obligation, the auction house is entitled to cancel the knock-down, re-auction the item or knock the item down to a bidder having submitted a bid below.
- (3) The purchase price shall consist of the highest bid and the buyer's commission (margin scheme VAT-taxation) or, in case of regular VAT-taxation, the highest bid, the buyer's commission and value-added tax.
- (4) For works of art marked with an \* in the catalogue, the statutory resale royalty shall be charged additionally at the legally stipulated amount.
- (5) The resale royalty shall be 4% of the first € 50,000 of the highest bid (minus VAT that may be contained in the seller's commission), 3% of any further € 150,000, 1% of any further € 150,000, 0,5% of any further € 150,000 and 0,25% of any further bids, i.e. all those exceeding € 500,000 but not more than € 12,500 in total. For hammer prices below € 2,500 no resale royalty shall be charged.
- (6) The auctioned item shall be handed out only after complete payment including all fees, interest and costs incurred since the item was knocked down.
- (7) At its discretion, the auction house may set off payments of a buyer against any debt the buyer may have to pay to the auction house, notwithstanding any allocation on the part of the buyer.

#### Re-auction of unpaid items

##### §23

- (1) Items for which the highest bid has not, or only partly, been paid may be re-auctioned by the auction house. At the re-auction, an item may be offered at a lower price without regard to the highest bid made in the first auction or the originally agreed minimum reserve price and estimate.

- (2) Re-auctions shall be subject to the same terms and conditions as the original auction. The defaulting buyer shall be deemed as a consignor but shall be liable for the complete loss.

#### Guarantee of authenticity

##### §24

- (1) The valuation, expert classification and description of the items shall be made by specialists of the auction house, unless specified otherwise in the catalogue. The auction house shall guarantee the authenticity and thus the fact that an item actually originates from the artist mentioned in the catalogue.
- (2) If a buyer proves that the bought item is not authentic within two years from the auction, the seller shall refund to the buyer the purchase price against return of the object. The seller shall not have to provide such guarantee if the object has been changed after the auction.
- (3) For old master paintings a guarantee of authenticity shall apply only to such works that have already been counterfeited originally. The seller shall not have to provide a guarantee if the information given by the auction house at the time of publication of the catalogue was in line with the latest findings of science and research.
- (4) Except when made on the creator, all data provided, in particular on the technique, signature, material, condition, provenance, time or origin etc. shall be based on the scientific findings published or otherwise accessible to the general public and obtained by the experts of the auction house. The auction house does not guarantee the accuracy of such data. The objects shall rather be sold "as is" only. This shall apply also to illustrations in the catalogue that serve demonstration purposes only.
- (5) The catalogue and expert's report contain only such defects and damage of an item that materially impair its artistic or commercial value. The auction house accepts no liability for a certain condition.
- (6) The auction house is entitled to correct statements made in the catalogue prior to the auction. Such corrections shall be announced on the notice board or on its website or by the auctioneer immediately before offering the item concerned. In this case, the auction house shall only be liable for the corrected statements.
- (7) All items put up for auction may be examined by prospective buyers before the auction, and they are considered as used items. Claims for damages, in particular for loss of income and consequential damage, shall be excluded.
- (8) Statements made in the catalogues and expert reports shall have the following meaning:
  - a) "First and last name of the artist including biographical data, place and the note "signed" or "monogrammed": Undoubtedly, a work by the artist.
  - b) "Attributed": Probably, but not necessarily an authentic work by the artist.
  - c) "Inscribed": Possibly a work by, but not signed by, the artist.
  - d) "Workshop": A work probably produced in the immediate environment of the artist.
  - e) "School": A work created in close proximity to the artist or a regional group of artists, in terms of style and time.
  - f) "Circle": A work created under the influence of the artist in a broad sense.
  - g) "Follower": A work created in the style of the artist, but possibly at a later time.
  - h) "In the manner of": Imitation or copy of a work by the artist of an uncertain date.
- (9) No claims for warranty or damages shall exist for items auctioned under execution proceedings.

#### Collection of items bought at auction

##### §25

- (1) Unless items purchased by domestic buyers are collected within 8 days, interest for delayed payment and storage fees will be charged. The period for collection by foreign buyers shall be 30 days.
- (2) The packaging of items bought at auction, in particular for transport, is a voluntary service provided by the auction house, for which it assumes no liability.
- (3) Items bought at auction shall be shipped only with instruction of the buyer. The buyer shall bear all costs of shipment and insurance and assume all risks involved.
- (4) Items which have not been collected within two months after the auction may be out for a new auction, without notification of the buyer, in accordance with §23 of the Rules of Procedure. However, the auction house is entitled to store, or arrange storage of any items bought at auction, paid for, but not collected, at the expense and risk of the buyer (even outside its business premises).
- (5) The ownership of items bought at auction shall pass onto the buyer upon payment of the purchase price and the buyer's commission.

#### Insurance, liability for loss or damage

##### §26

- (1) All items accepted for auction shall be insured against the risk of loss and damage up to the due date of the purchase price.
- (2) The insurance value for items entered into the auction shall be the mid of the high and the low estimate.
- (3) The auction house shall be liable towards the consignor from the time of acceptance of the item up to the fall of the hammer, and, towards the buyer, for 8 days following the auction (for foreign buyers, this period shall cover 30 days following the auction). Thereafter, the auctioned item shall be insured only if the buyer has agreed insurance with the auction house. In such case, the buyer shall bear the costs of insurance.
- (4) In case of loss or total damage, the auction house shall refund the consignor the insurance price, and the buyers the purchase price. In case of damage, the auction house shall refund the reduction in value and the costs of restoration. The value reduction shall be determined by the experts of the auction house or the insurance.
- (5) The auction house shall accept no liability for damage caused by natural disasters, acts of God, climate fluctuations, pests or the like, nor for reduction in value resulting from long storage, unless the damage is also due to gross negligence by the auction house.

#### Payment of the proceeds of the auction

##### §27

- (1) The proceeds of the auction shall be made available to the seller after payment of the highest bid, the buyer's commission, the resale royalty, if any, but no earlier than four weeks after the auction. However, the auction house may pay proceeds of the auction at an earlier time regardless of actual receipt of the purchase price.
- (2) The auction house shall deduct from the highest bid the seller's commission, illustration and other fees, costs incurred, advances and interest.
- (3) After the auction, the auction house shall provide the consignor with a statement of accounts indicating the seller's commission and the highest bid.
- (4) If the buyer makes a complaint concerning a defect of the item bought at auction within the collection period set forth in §25 or within the statutory warranty period, payment to the consignor may be suspended pending clarification of mutual claims.
- (5) Payment shall be made in cash, by cheque or transfer, whereas the consignor shall bear the costs arising from the consignor's selected mode of payment.
- (6) The auction house is not obliged to inform the consignor of the auction result.
- (7) If the consignor has been granted a loan by a financial institution as an advance on the proceeds expected from the auction proceeds as mediated or arranged by the auction house, the auction house shall cover its own claims first and thereafter the claims towards the financial institution. The remaining balance shall be paid to the consignor.
- (8) In case of a complaint accepted by the auction house the consignor shall repay any auction proceeds already paid to him immediately after having been requested to do so by the auction house.
- (9) The auction house shall not disclose the name of the buyer or the seller to the other party, unless mutual claims, such as for payment of the highest bid or reduction of the purchase price, have been asserted.

#### Table of fees

##### §28

The type and level of commissions, fees and costs as well as provisions on their collection shall be published in the auction catalogues. The commissions, fees and costs as published in the most recent catalogue shall apply (table of fees).

#### Photographs, illustrations

##### §29

The consignor shall, at no cost, grant the auction house the unrestricted right to take photos of the items accepted for auction, to illustrate them and to reproduce and distribute such photographs and illustrations without restrictions with regard to time or place, regardless of whether or not reference is made to the auction at which the illustrated item is to be put up for auction or has been auctioned. This shall apply also to any and all photographs and illustrations the consignor has provided as well as the rights of reproduction and distribution under copyright to which the consignor is entitled.

#### Reimbursement of expenses

##### §30

- (1) The consignor shall reimburse the auction house any and all costs and expenses caused by the consignor or the buyer in connection with a business transaction, such as bank charges, postage stamps, customs duties, cleaning and restoration costs, freight costs, claims raised by collection agencies etc.
- (2) If the consignor withdraws an order for auction, the consignor shall, in addition to the withdrawal fee, reimburse all costs incurred in connection with advertising the item, even if other items not consigned by the seller have been included in such advertising activities.

#### Purchase orders

##### §31

- (1) Prospective Buyers may make both written and oral bids. By sending a written offer the bidder accepts the Rules of Procedure. Written offers shall be treated as offers made at the auction.
- (2) Written bids shall contain the catalogue number, the item and the highest bid (excluding the buyer's commission and value-added tax), the name, address, telephone number and signature of the bidder. Missing or unclear details shall be at the bidder's expense. The auction house shall make every effort to execute such orders in the best possible manner, but it shall assume no warranty for their fulfilment.
- (3) If several written bids offering the same amount for the same item are received, the item shall be knocked down to first bid received.
- (4) The auction house is entitled to reject purchase orders without giving reasons or make them depend on a down payment prior to the auction.
- (5) Potential buyers may also participate in the auction via telephone. In such case, written notification shall be sent to the auction house at least one day before the auction takes place. Such written announcement shall contain the item and the catalogue number, as well as the bidder's name, address and telephone number. The auction house shall make every effort to provide the telephone connection in the best possible manner, but shall not assume any warranty for its execution.
- (6) Prospective buyers may submit their bids also via broker (Sensal). By submitting bids via broker the bidder acknowledges the terms of the auction and provisions of the Rules of Procedure. Such orders shall be subject to the same terms and conditions as written bids. Brokers are no employees of the auction house, but act in the name of the prospective buyer.
- (7) Bids offering the same amount and submitted via a broker shall take precedence over auction room bidders, written bids and telephone bidders.
- (8) If an item is knocked down to a bidder submitting the bid via the broker, the buyer shall pay a broker's fee of 1.2% of the highest bid in addition to the purchase price.

#### Acceptance of a bid and sales on the Internet

##### §32

- (1) Prospective buyers may submit their bids also on the Internet ([www.imkinsky.com](http://www.imkinsky.com)). By submitting bids on the Internet or sending an e-mail ([office@imkinsky.com](mailto:office@imkinsky.com)) to the auction house the bidder accepts the terms and conditions of the auction and the provisions of the Rules of Procedure, and such bids shall be subject to the terms and conditions applying to written bids.
- (2) Online bids shall be considered as written bids. Bids shall be established by the auction house accepting the prospective buyer's bid and if the auction house receives no higher bid within the time limit it has set.

#### Acceptance of a bid with reservation, post-auction sale

##### §33

- (1) If the highest bidder at an auction is not prepared to offer at least the minimum reserve price agreed with the consignor, the auctioneer is entitled to knock down the item "with reservation" in order to obtain the consignor's consent to selling the item below the minimum reserve price.
- (2) If an item is knocked down "with reservation", the highest bidder shall be bound to his or highest bid for a period of 14 working days.
- (3) The auction house shall inform the highest bidder if the bid was accepted or rejected. However, this shall not constitute a requirement for making the acceptance effective.

#### Export restrictions for objects of cultural value

##### §34

- (1) Some works of art may be exported from Austria with the permission of the Federal Monuments Office only. The auction house shall obtain such permissions only by special request of the buyer and after payment of the costs involved.
- (2) The auctioneer shall inform bidders at the start or during an auction about works of art which, because of their artistic, historic or art historic significance, are unlikely to obtain an export licence.

#### Rules of the house

##### §35

- (1) Persons disturbing or disrupting the auction may be expelled from the business premises.
- (2) The auction house is entitled to deny unruly persons access to its business premises.

#### Place of performance and jurisdiction

##### §36

- (1) The place of performance for the contract concludes between the auction house, the consignors and the bidders shall be the registered place of business of the auction house.
- (2) The legal agreements and contracts concluded between the auction house, the consignors, buyers and bidders shall be governed by Austrian law.
- (3) The auction house, the consignor, the buyer and the bidders agree to settle all disputes arising from, about, and in connection with the contracts they have entered into at the court having local jurisdiction for the first district of Vienna.

#### Disclaimer concerning translations

##### §37

These Rules of Procedure texts in English are for the sake of convenience only. The auction house assumes no liability for the correctness of the translation. Only the German version of the Rules of Procedure shall be authoritative and binding.

Vienna, 1/1/2020