

## TERMS OF SALE

Both the sale of goods at our auctions and your relationship with us are governed by the Terms of Consignment (primarily applicable to sellers) the Terms of Sale (primarily applicable to bidders and buyers) and any notices displayed in the saleroom or announced by us at the auction (collectively, the "Conditions of Business"). The Terms of Consignment and Terms of Sale are available at our saleroom on request.

Please read these Terms of Sale carefully. Please note that if you register to bid and/or bid at auction this signifies that you agree to and will comply with these Terms of Sale.

Please note that these Terms of Sale relate to auctions held at our premises only. We have separate terms for online only auctions.

### 1 Definitions and interpretation

#### 1.1 To make these Terms of Sale easier to read, we have given the following words a specific meaning:

"Auctioneer"	means Duggleby Stephenson of York and Valuers, a partnership or company registered in England and Wales with registration number OC422016 and whose registered office is located at The Saleroom, York Auction Centre, Murton, YO19 5GF or its authorised auctioneer, as appropriate;
"Bidder"	means a person participating in bidding at the auction;
"Buyer"	means the person who makes the highest bid for a Lot accepted by the Auctioneer;
"Deliberate Forgery"	means: (a) an imitation made with the intention of deceiving as to authorship, origin, date, age, period, culture or source; (b) which is described in the catalogue as being the work of a particular creator without qualification; and (c) which at the date of the auction had a value materially less than it would have had if it had been as described;
"Hammer Price"	means the level of the highest bid for a Lot accepted by the Auctioneer by the fall of the hammer;
"Lot(s)"	means the goods that we offer for sale at our auctions;
"Premium"	means the premium that we will charge you on your purchase of a Lot to be calculated as set out in Clause 4;
"Reserve"	means the minimum hammer price at which a Lot may be sold;
"Sale Proceeds"	means the net amount due to the Seller;
"Seller"	means the persons who consign Lots for sale at our auctions;
"Terms of Consignment"	means the terms on which we agree to offer Lots for sale in our auctions as agent on behalf of Sellers;
"Terms of Sale"	means these terms of sale, as amended or updated from time to time;

<b>"Total Amount Due"</b>	means the Hammer Price for a Lot, the Premium, any applicable artist's resale right royalty, any VAT due and any additional charges payable by a defaulting buyer under these Terms of Sale;
<b>"Trader"</b>	means a Seller who is acting for purposes relating to that Seller's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf;
<b>"VAT"</b>	means Value Added Tax or any equivalent sales tax; and
<b>"Website"</b>	means our website available at <a href="https://www.davidduggleby.com">https://www.davidduggleby.com</a>

In these Terms of Sale the words 'you', 'yours', etc. refer to you as the Buyer. The words "we", "us", etc. refer to the Auctioneer. Any reference to a 'Clause' is to a clause of these Terms of Sale unless stated otherwise.

## **2 Information that we are required to give to Consumers**

- 2.1 A description of the main characteristics of each Lot as contained in the auction catalogue.
- 2.2 Our name, address and contact details as set out herein, in our auction catalogues and/or on our Website.
- 2.3 The price of the Goods and arrangements for payment as described in Clauses 4, 5, 7 and 8.
- 2.4 The arrangements for collection of the Goods as set out in Clauses 8 and 9.
- 2.5 Your right to return a Lot and receive a refund if the Lot is a Deliberate Forgery as set out in Clause 13.
- 2.6 We and Trader Sellers have a legal duty to supply any Lots to you in accordance with these Terms of Sale.
- 2.7 If you have any complaints, please send them to us directly at the address set out on our Website.

## **3 Bidding procedures and the Buyer**

- 3.1 You must register your details with us before bidding and provide us with any requested proof of identity and billing information, in a form acceptable to us. You must also satisfy any security arrangements we have in place before entering the auction room to view or bid.
- 3.2 We strongly recommend that you attend the auction in person. You are responsible for your decision to bid for a particular Lot. If you bid on a Lot, including by telephone and online bidding, or by placing a commission bid, we assume that you have carefully inspected the Lot and satisfied yourself regarding its condition.
- 3.3 If you instruct us in writing, we may execute commission bids on your behalf. Neither we nor our employees or agents will be responsible for any failure to execute your commission bid, unless our failure to do so is unreasonable. Where two or more commission bids at the same level are recorded we have the right to prefer the first bid made (where this can be reasonably ascertained) by extending this bid by one increment.
- 3.4 The Bidder placing the highest bid for a Lot accepted by the Auctioneer will be the Buyer at the Hammer Price. Any dispute about a bid will be settled at our discretion. We may reoffer the Lot during the auction or may settle the dispute in another way. We will act reasonably when deciding how to settle the dispute.
- 3.5 Bidders will be deemed to act as principals, even if the Bidder is acting as an agent for a third party.
- 3.6 We may bid on Lots on behalf of the Seller up to one bid below the Reserve.
- 3.7 We may refuse to accept any bid if it is reasonable for us to do so.
- 3.8 Bidding increments will be at our sole discretion (but will be in line with standard auction practice).

#### **4 The purchase price**

As Buyer, you will pay:

- a. the Hammer Price;
- b. a premium of 21% of the Hammer Price;
- c. any internet premiums payable on the sale of the Lot;
- d. any artist's resale right royalty payable on the sale of the Lot; and
- e. any VAT due.

#### **5 VAT**

- 5.1 You shall be liable for the payment of any VAT applicable on the Hammer Price and premium due for a Lot. Please see the symbols used in the auction catalogue for that Lot and the "Information for Buyers" in our auction catalogue for further information.
- 5.2 We will charge VAT at the current rate at the date of the auction.

#### **6 The contract between you and the Seller**

- 6.1 The contract for the purchase of the Lot between you and the Seller will be formed when the hammer falls accepting the highest bid for the Lot at the auction.
- 6.2 You may directly enforce any terms in the Terms of Consignment against a Seller to the extent that you suffer damages and/or loss as a result of the Seller's breach of the Terms of Consignment.
- 6.3 If you breach these Terms of Sale, you may be responsible for damages and/or losses suffered by a Seller or us. If we are contacted by a Seller who wishes to bring a claim against you, we may in our discretion provide the Seller with information or assistance in relation to that claim.
- 6.4 We normally act as an agent only and will not have any responsibility for default by you or the Seller (unless we are the Seller of the Lot).

#### **7 Payment**

- 7.1 Immediately following your successful bid on a Lot you will:
  - 7.1.1 give to us, if not already provided to our satisfaction, proof of identity in a form acceptable to us (and any other information that we require in order to comply with our anti-money laundering obligations); and
  - 7.1.2 pay to us the Total Amount Due in cash (for which there is an upper limit of 15,000 euros equivalent) or in any other way that we agree to accept payment.
- 7.2 If you owe us any money, we may use any payment made by you to repay these debts.

#### **8 Title and collection of purchases**

- 8.1 Once you have paid us in full the Total Amount Due for any Lot, ownership of that Lot will transfer to you. You may not claim or collect a Lot until you have paid for it.
- 8.2 You will (at your own expense) collect any Lots that you have purchased and paid for either:
  - 8.2.1 not later than five business days following the day of the auction; or
  - 8.2.2 not later than five business days following the date that we have received payment of the Total Amount Due in cleared funds, if later.
- 8.3 If you do not collect the Lot within this time period, you will be responsible for any reasonable removal, storage and insurance charges in relation to that Lot.
- 8.4 Risk of loss or damage to the Lot will pass to you when you (or your agents) take physical possession of the Lot.

- 8.5 If you do not collect the Lot that you have paid for within ninety days after the auction, we may sell the Lot. We will pay the proceeds of any such sale to you, but will deduct any storage charges or other sums that we have incurred in the storage and sale of the Lot. We reserve the right to charge you a selling commission at our standard rates on any such resale of the Lot.

## **9 Remedies for non-payment or failure to collect purchases**

- 9.1 Please do not bid on a Lot if you do not intend to buy it. If your bid is successful, these Terms of Sale will apply to you. This means that you will have to carry out your obligations set out in these Terms of Sale. If you do not comply with these Terms of Sale we may (acting on behalf of the Seller and ourselves) pursue one or more of the following measures:

- 9.1.1 take action against you for damages for breach of contract;
- 9.1.2 reverse the sale of the Lot to you and/or any other Lots sold by us to you;
- 9.1.3 resell the Lot by auction or private treaty (in which case you will have to pay any difference between the price you should have paid for the Lot and the price we sell it for as well as the charges outlined in Clause 8.5). Please note that if we sell the Lot for a higher amount than your winning bid, the extra money will belong to the Seller;
- 9.1.4 remove, store and insure the Lot at your expense;
- 9.1.5 if you do not pay us within five business days of your successful bid, we may charge interest at a rate not exceeding 1.5% per month on the total amount due;
- 9.1.6 keep that Lot or any other Lot sold to you until you pay the Total Amount Due;
- 9.1.7 reject or ignore bids from you or your agent at future auctions or impose conditions before we accept bids from you; and/or
- 9.1.8 if we sell any Lots for you, use the money made on these Lots to repay any amount you owe us.

- 9.2 We will act reasonably when exercising our rights under Clause 9.1. We will contact you before exercising these rights and try to work with you to correct any non-compliance by you with these Terms of Sale.

## **10 Health and safety**

Although we take reasonable precautions regarding health and safety, you are on our premises at your own risk. Please note the lay-out of the premises and security arrangements. Neither we nor our employees or agents are responsible for the safety of you or your property when you visit our premises, unless you suffer any injury to your person or damage to your property as a result of our, our employees' or our agents' negligence.

## **11 Warranties**

- 11.1 The Seller warrants to us and to you that:
- 11.1.1 the Seller is the true owner of the Lot for sale or is authorised by the true owner to offer and sell the lot at auction;
  - 11.1.2 the Seller is able to transfer good and marketable title to the Lot to you free from any third party rights or claims; and
  - 11.1.3 as far as the Seller is aware, the main characteristics of the Lot set out in the auction catalogue (as amended by any notice displayed in the saleroom or announced by the Auctioneer at the auction) are correct.
- 11.2 If, after you have placed a successful bid and paid for a Lot, any of the warranties above are found not to be true, please notify us in writing. Neither we nor the Seller will be liable to pay you any sums over and above the Total Amount Due and we will not be responsible for any inaccuracies in the information provided by the Seller except as set out below.
- 11.3 Please note that many of the Lots that you may bid on at our auction are second-hand.
- 11.4 If a Lot is not second-hand and you purchase the Lot as a Consumer from a Seller that is a Trader, a number of additional terms may be implied by law in addition to the Seller's warranties

set out at Clause 11.1 (in particular under the Consumer Rights Act 2015). These Terms of Sale do not seek to exclude your rights under law as they relate to the sale of these Lots.

- 11.5 Save as expressly set out above, all other warranties, conditions or other terms which might have effect between the Seller and you, or us and you, or be implied or incorporated by statute, common law or otherwise are excluded.

## **12 Descriptions and condition**

- 12.1 Our descriptions of the Lot will be based on: (a) information provided to us by the Seller of the Lot (for which we are not liable); and (ii) our opinion (although it is likely that we will not be able to carry out a detailed inspection of each Lot).
- 12.2 We will give you a number of opportunities to view and inspect the Lots before the auction. You (and any independent consultants acting on your behalf) must satisfy yourself about the accuracy of any description of a Lot. We shall not be responsible for any failure by you or your consultants to properly inspect a Lot.
- 12.3 Representations or statements by us as to authorship, genuineness, origin, date, age, provenance, condition or estimated selling price involve matters of opinion. We undertake that any such opinion will be honestly and reasonably held and accept liability for opinions given negligently or fraudulently.
- 12.4 Please note that Lots (in particular second-hand Lots) are unlikely to be in perfect condition. Lots are sold "as is" (i.e. as you see them at the time of the auction). Neither we nor the Seller accept any liability for the condition of second-hand Lots or for any condition issues affecting a Lot if such issues are included in the description of a Lot in the auction catalogue (or in any saleroom notice) and/ or which the inspection of a Lot by the Buyer ought to have revealed.

## **13 Deliberate Forgeries**

- 13.1 You may return any Lot which is found to be a Deliberate Forgery to us within 14 days of the auction provided that you return the Lot to us in the same condition as when it was released to you, accompanied by a written statement identifying the Lot from the relevant catalogue description and a written statement of defects.
- 13.2 If we are reasonably satisfied that the Lot is a Deliberate Forgery we will refund the money paid by you for the Lot (including any Premium and applicable VAT) provided that if:
- 13.2.1 the catalogue description reflected the accepted view of experts as at the date of the auction; or
- 13.2.2 you personally are not able to transfer good and marketable title in the Lot to us,
- you will have no right to a refund under this Clause 13.2.
- 13.3 If you have sold the Lot to another person, we will only be liable to refund the price that you paid for the Lot. We will not be responsible for repaying any additional money you may have made from selling the Lot.
- 13.4 Your right to return a Lot that is a Deliberate Forgery does not affect your legal rights and is in addition to any other right or remedy provided by law or by these Terms of Sale.

## **14 Our liability to you**

- 14.1 We will not be liable for any loss of opportunity or disappointment suffered as a result of participating in our auction.
- 14.2 In addition to the above, neither we nor the Seller shall be responsible to you and you shall not be responsible to the Seller or us for any other loss or damage that any of us suffer that is not a foreseeable result of any of us not complying with the Conditions of Business. Loss or damage is foreseeable if it is obvious that it will happen or if at the time of the sale of the Lot, we, you and the Seller knew it might happen.
- 14.3 Subject to Clause 14.4, if we are found to be liable to you for any reason (including, amongst others, if we are found to be negligent, in breach of contract or to have made a

misrepresentation), our liability will be limited to the total purchase price paid by you to us for any Lot.

**14.4** Notwithstanding the above, nothing in these Terms of Sale shall limit our liability (or that of our employees or agents) for:

**14.4.1** death or personal injury resulting from negligence (as defined in the Unfair Contract Terms Act 1977);

**14.4.2** fraudulent misrepresentation; or

**14.4.3** any liability which cannot be excluded by law.

## **15 Notices**

**15.1** All notices between you and us regarding these Terms of Sale must be in writing and signed by or on behalf of the party giving it.

**15.2** Any notice referred in Clause 15.1 may be given:

**15.2.1** by delivering it by hand;

**15.2.2** by first class pre-paid post or Recorded Delivery; or

**15.2.3** by email, provided that a copy is also sent by pre-paid post or Recorded Delivery.

**15.3** Notices must be sent:

**15.3.1** by hand or registered post:

a. to us, at our address set out in these Terms of Sale or at our registered office address appearing on our Website; and

b. to you, at the last postal address that you have given to us as your contact address in writing; or

**15.3.2** by email:

a. to us, by sending the notice to both the following email addresses:

[William.duggleby@davidduggleby.com](mailto:William.duggleby@davidduggleby.com)

[auctions@davidduggleby.com](mailto:auctions@davidduggleby.com)

b. to you, by sending the notice to any email address that you have given to us as your contact email address in writing.

**15.4** Notices will be deemed to have been received:

**15.4.1** if delivered by hand, on the day of delivery;

**15.4.2** if sent by first class pre-paid post or Recorded Delivery, two business days after posting, exclusive of the day of posting; or

**15.4.3** if sent by email, at the time of transmission unless sent after 17.00 in the place of receipt in which case they will be deemed to have been received on the next business day in the place of receipt (provided that a copy has also been sent by pre-paid post or Recorded Delivery as set out in Clause 15.2.3).

**15.5** Any notice or communication given under these Terms of Sale will not be validly given if sent by fax, email, any form of messaging via social media or text message.

## **16 Data Protection**

We will hold and process any personal data in relation to you in accordance with our current privacy policy, a copy of which is available on our Website or on request.

## **17 General**

- 17.1 We may, acting reasonably, refuse admission to our premises or attendance at our auctions by any person.
- 17.2 We act as an agent for our Sellers. The rights we have to claim against you for breach of these Terms of Sale may be used by either us, our employees or agents, or the Seller, its employees or agents, as appropriate. Other than as set out in this Clause, these Terms of Sale are between you and us and no other person will have any rights to enforce any of these Terms of Sale.
- 17.3 We may use special terms in the catalogue descriptions of particular Lots. You must read these terms carefully along with any glossary provided in our auction catalogues.
- 17.4 Each of the clauses of these Terms of Sale operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.
- 17.5 We may change these Terms of Sale from time to time, without notice to you. Please read these Terms of Sale carefully, as they may be different from the last time you read them.
- 17.6 Except as otherwise stated in these Terms of Sale, each of our rights and remedies are: (a) are in addition to and not exclusive of any other rights or remedies under these Terms of Sale or general law; and (b) may be waived only in writing and specifically. Delay in exercising or non-exercise of any right under these Terms of Sale is not a waiver of that or any other right. Partial exercise of any right under these Terms of Sale will not preclude any further or other exercise of that right or any other right under these Terms of Sale. Waiver of a breach of any term of these Terms of Sale will not operate as a waiver of breach of any other term or any subsequent breach of that term.
- 17.7 These Terms of Sale and any dispute or claim arising out of or in connection with them (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

## **18 Droit De Suite Royal Charges**

From 14th February 2006 all UK art market professionals (which includes but is not limited to auctioneers, dealers, galleries, agents and other intermediaries) are required to collect a royalty payment for all works of art that have been produced by living artists or artists who have died within the last 70 years. This payment is only calculated on qualifying works of art which are sold for a hammer price more than the UK sterling equivalent of EURO 1,000- the UK sterling equivalent will fluctuate in line with prevailing exchange rates. It is entirely the responsibility of the buyer to acquaint himself with the precise EURO to UK sterling exchange rate on the day of the sale in this regard and the auctioneer accepts no responsibility whatsoever if the qualifying rate is different to the rate indicated. All items in this catalogue that are marked with DDS are potentially qualifying items and the royalty charge will be applied if the hammer price achieved is more than the UK sterling equivalent of EURO 1,000. The royalty charge will be added to all the relevant buyers' invoices and must be paid before items can be cleared. All royalty charges are passed on to the Design and Artists Copyright Society ('DACs') no handling costs or additional fees with respect to these charges will be retained by the auctioneers. The royalty charge that will be applied to qualifying items which achieve a hammer price of more than the UK sterling equivalent of EURO 1,000, but less than the UK sterling equivalent of 50,000 is 4%. For qualifying items that sell for more than the UK sterling equivalent of EURO 50,000 a sliding scale of royalty charges apply – for a complete list of royalty charges and threshold levels please see [www.dacs.org.uk](http://www.dacs.org.uk). There is no VAT payable on this royalty charge.

## **19 Online Bidding**

- 19.1 Duggleby Stephenson of York may offer an online bidding service via a third party for bidders who cannot attend the sale.

In completing the bidder registration on the third party website and providing your credit card details and unless alternative arrangements are agreed with Duggleby Stephenson of York you:

- a) Authorise Duggleby Stephenson of York, if they so wish, to charge the credit card given in part or full payment, including all fees, for items successfully purchased in the auction via the third party, and
- b) Confirm that you are authorised to provide these credit card details to Duggleby Stephenson of York through the third party and agree that Duggleby Stephenson of York are entitled to

ship the goods to the card holder name and card holder address provided in fulfilment of the sale.

Please note that any lots purchased via the-saleroom.com live auction service will be subject to an additional 5% commission charge + VAT, at the current rate, imposed on the hammer price.

Our Conditions of Business are based upon recommended terms of sale by SOFAA