

# Website Terms of Use

Simon De Pury, a sole proprietorship trading under the name De Pury having its place of business at Le Mirabeau 2 Avenue Des Citronniers 98000 Monaco MC Principaute de Monaco, with the dossier fiscal no. 7490B 22359 and French VAT no. FR610001535 (“we”/”us”). Please read these Website Terms of Use (“Terms of Use”) carefully before using [auction.de-pury.com/en](https://auction.de-pury.com/en) (the “Website”).

This version of the Terms of Use was last updated on 12 July 2023.

## 1. Website Terms of Use

- 1.1 These Terms of Use apply to anyone who uses or accesses the Website (“you”), whether or not you register for an account on the Website, bid or purchase lots from us, consign lots to us for sale, or sign up for our newsletters. By using the Website, you confirm that you accept and agree to comply with these Terms of Use. Please also take the time to read our Privacy Notice available on our Website which sets out the terms on how we process any personal data we collect from you, our Cookie Policy available on our Website, and the Terms and Conditions for Sellers and Buyers (which govern our agreement with you if you consign lots to us or purchase lots from us), both of which are available upon request.
- 1.2 We may amend these Terms of Use from time to time. Every time you wish to use our Website, please check these Terms of Use to ensure you understand the terms that apply at that time. If the changes are material, we will let you know by posting a notice on the Website before changes go into effect. If you have any questions about our Terms of Use or on how to use the Website, please contact us at [auctions@de-pury.com](mailto:auctions@de-pury.com) or write to us at the above registered address.

## 2. Accessing our Website

- 2.1 We may change, modify or close down the Website, or change the purpose around which the Website is based. In the event of a substantial change to the purpose of the Website, we shall amend our Terms of Use accordingly.
- 2.2 You are responsible for making all arrangements necessary to have access to our Website. You are also responsible for ensuring that all persons who access our Website through your internet connection are aware of these Terms of Use and other applicable terms and conditions, and that they comply with them.

## 3. Account

- 3.1 While the general use of the Website does not require registration, you are required to register for an account to bid on lots, consign lots to us or to request a valuation. You warrant that the personal information which you are required to provide on registration is accurate and current in all respects. You are responsible for keeping the information you provide up to date.
- 3.2 You must keep your password or any other piece of information that is part of our security procedure safe and treat such information as confidential. You must not disclose it to any third party. If you know or suspect that anyone other than you knows your password, you must promptly notify us in writing.

## 4. Intellectual Property Rights

- 4.1 All text, graphics, user interfaces, visual interfaces, photographs, trade marks, logos, sounds, music, videos and images/ reproductions of artworks, including but not limited to the structure, design, expression, arrangement, and coordination of such material (together the “Content”), on the Website is owned or licensed by or to us, and is protected by intellectual property rights, including copyright and trade marks. By using the Website, you acknowledge that we are the owner or licensee of all intellectual property rights for the Website and the Content. You acknowledge that the Website and the Content may only be used according to these Terms of Use. You acknowledge that the Website and all Content, relevant trade marks, and any other portion thereof may not be reproduced, duplicated, copied, sold, resold, modified or otherwise exploited, in whole or in part, for any purpose without our written consent. All intellectual property rights in the Website and the Content are hereby reserved and our moral rights are hereby asserted.
- 4.2 By bidding on a lot from us, you do not acquire any intellectual property rights in the Content relating to that lot on our Website (such as descriptions, pictures or videos of the lot), and any unauthorised use of the Website or content may violate intellectual property laws, privacy laws, communications regulations, statutes and treaties.
- 4.3 If you breach these Terms of Use, your right to use our Website will cease immediately and you must, at our option, return or destroy any copies of the Content you have made.

## **5. No Reliance on Information**

- 5.1 While we endeavour to ensure that the information on the Website is correct, we cannot guarantee the accuracy and completeness of the Content on the Website. We may make changes to the Content on the Website, including the lots and estimates described on it, at any time without notice.
- 5.2 The Content on the Website is not intended to amount to advice, and we shall not be liable for any loss caused by your reliance on any Content on the Website. The Website and its Content is provided “as is” without any conditions, warranties or other terms of any kind.
- 5.3 Details of lots sold or advertised by us are subject to our Terms and Conditions for Buyers, together with the exclusions contain therein which also apply to any Content about the lots advertised on the Website.
- 5.4 The statements and opinions expressed in the Content on the Website by third parties (including industry experts), are the opinions of those individuals. They do not purport to reflect our own opinions.

## **6. Links to Third Parties**

- 6.1 The Website may contain hyperlinks to various websites and other resources provided by third parties with information outside of our control. These links are provided for your information only. No mention of any organisation, company or individual through a hyperlink shall imply any approval or warranty as to the standing and capability of any such organisations, company or individual on our part. We have no control over the content of those third-party websites or resources and accept no responsibility for them or for any loss or damage that may be suffered in connection with your use of them.

## **7. Connectivity and Technical Issues**

- 7.1 Whilst we try to ensure that the Website is accessible at all times, access may be suspended temporarily and without notice in the case of system failure, maintenance or repair, or for reasons beyond our control. We shall not be held liable if for any reason the Website is unavailable at any time or for any period. We also do not guarantee the speed, accuracy or quality of any content on the Website.
- 7.2 Some bidders or users of the Website may experience technical problems in bidding for a lot which are beyond our reasonable control such as firewalls, loss of internet connection or other technical issues with the bidding software that we use or their own device. Whilst we will endeavour to fix any technical problems that occur on the Website as quickly as possible, we will not be responsible to you for any errors or failures to execute bids, or for any errors or omissions in online bidding, including, without limitation, errors or failures caused by any loss of connection or faults with our bidding software or the Website.
- 7.3 We exercise reasonable skill and care to ensure that our Website is secure and free from viruses and malware; however, we do not guarantee that this is the case. You are responsible for protecting your hardware, software, data, and other material from viruses, malware, and other internet security risks. We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of our Website or to your downloading of any Content on it, or on any Website linked to it.

## **8. User Material and Conduct**

- 8.1 You shall not circumvent, remove, alter, deactivate, degrade or thwart any of the Website’s protections; use any robot, spider, scraper or other automated means to access the Content; decompile, reverse engineer or disassemble any software or other products or processes accessible through the Website; or insert any code or product or manipulate the Website in any way or use any data mining, data gathering or extraction method.
- 8.2 You may link to the Website, provided you do so in a way that is fair and legal and which does not damage our reputation or take advantage of it. In particular, you must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists. The Website must not be framed on any other website. We reserve the right to withdraw linking permission without notice.
- 8.3 If you wish to make any use of Content on the Website, please address your request to us at the above mentioned email or write to us at the above registered address.

## **9. Limitation to our Liability**

- 9.1 Nothing in the Terms of Use limits or excludes our liability for: (a) death or personal injury caused by negligence; or (b) fraud or fraudulent misrepresentation.

- 9.2 To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to our Website and its Content, whether express or implied.
- 9.3 We will not be liable to any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with use of, or inability to use, our Website; or use of or reliance on any Content displayed on our Website. In particular, we will not be liable for any loss of profits, loss of business, goodwill, loss of anticipated savings or for any special, indirect, incidental, or consequential loss, costs, damages, charges or expenses to the fullest extent permitted by law.

## **10. Miscellaneous**

- 10.1 If a court finds that any part of these Terms of Use is not valid, or is illegal or impossible to enforce, that part of these Terms of Use will be treated as being deleted, and the rest of these Terms of Use will not be affected.
- 10.2 Neither party shall be liable for total or partial failure to perform any of its obligations or duties under the Terms of Use to the extent that such failure arises in consequence of any force majeure event, industrial dispute, fire, flood, pandemic, mobilisation, requisition, embargo, currency restrictions, insurrection, acts of government, war, acts of terrorism or any circumstances which are beyond their reasonable control.
- 10.3 Any notice to be given hereunder shall be in writing and sent to or delivered to our email or registered office listed above. Notices are deemed delivered on delivery if by hand or the third day after posting, or if delivered by email, immediately upon transmission if transmitted during normal business hours in the country of the recipient, or otherwise on the following business.
- 10.4 These Terms of Use, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and shall be subject to the non-exclusive courts of England and Wales.

# FAQs for Bidders/Buyers

## 1. What details will you share with the Seller and why are my details being disclosed?

### If you are the Buyer:

Following the Auction, we will share your details with the Seller as you will need to communicate with the Seller directly to arrange the delivery of the Lot. This is because the Seller, rather than us, keeps possession of the Lot as the Auction is online only. We will share your name and the contact details that you provided at registration.

### If you are the Bidder:

Following the Auction, we will also share the names and contact details of all Bidders with the Seller for the purpose of relationship building and information sharing. We do this because we want to ensure that Artists and their galleries can build a relationship with potential buyers, and that you might go on to buy works by the Artist down the line.

For more information, please see our Privacy Notice at Clause 3.

## 2. Can I inspect the Lot in person?

We are an online Auction and Bidders, Sellers and artworks are located all over the world which means we do not have a physical Auction room where you can view the Lots in advance. However, we work hard to make sure that the online catalogue is detailed and includes high resolution images, descriptions and relevant information about the Lot, to allow you to make an informed decision before you bid. If you have any specific questions about a Lot, or need more information, please contact us at [auctions@de-pury.com](mailto:auctions@de-pury.com)

For more information, please see our Buyer Terms at Clause 5.

## 3. Is Sales Tax included or excluded from the purchase price?

While we cannot provide tax advice, we expect that on many occasions the Lot will be exported after the Auction, and so in some cases sales tax may not apply. However, sales tax might apply if the Buyer, the Seller and the Lot are located in the same jurisdiction as well as in other circumstances. You should check the location before bidding on the Lot and contact us at [auctions@de-pury.com](mailto:auctions@de-pury.com) before placing a bid if you want to bid on a Lot in the same jurisdiction as where you are located or where you want the work to be delivered to as we might need to apply sales tax and there may be a delay of at least 90 days to complete the sale.

For more information, please see our Buyer Terms at Clause 10.

## 4. Are there any restrictions on the Lot?

We ask Buyers not to sell the Lot at Auction for 3 years, but you may sell it privately. Whenever you sell the Lot, you will need to give us advance notice and we may share this information with the original Seller.

For more information, please see our Buyer Terms at Clause 13.

## 5. Why are you letting the Seller and Buyer contact each other? Isn't that very unusual for an Auction house?

Absolutely! We think we are offering a unique service to our clients by putting Buyers and Sellers in direct contact. We understand that they may build a relationship and the Buyer might go on to buy more works by the artist. We do this because we want to ensure that Artists and their galleries can take advantage of Auctions as a sales method in the same way as everyone else, but to have control over their pricing. We hope that our clients appreciate this transparency and keep using our services.

## 6. What are the additional costs on top of the Purchase Price?

We charge a Buyer's premium of 18% of the hammer price, and we will add artist resale royalties to our invoice (if applicable). You will be responsible for paying additional costs including packing, crating, shipping, insurance, import tax, duties and tariffs and any other taxes or charges that may apply when moving the Lot. These amounts are not listed on the invoice as you will need to arrange payment directly to the relevant third-party company and/or authority.

For more information, please see our Buyer Terms at Clauses 7 and 9.

**7. The delivery costs are really expensive, and delivery is going to take weeks, can I change my mind and cancel?**

No unfortunately you cannot renege on a sale where either the delivery costs are higher, or where the delivery time is longer than anticipated. This is why it is necessary that you check the location of the Lot on the Website, as well as the dimensions and weights which are listed in the entry on the online sales catalogue, prior to placing a bid on the Lot. The entry will also list the medium and materials used so that you can check if there are any import and/or export restrictions in advance. If you have any specific questions about a Lot, or need more information, please contact us at [auctions@de-pury.com](mailto:auctions@de-pury.com).

For more information, please see our Buyer Terms at Clauses 4, 9 and 10.

**8. When will I receive my Lot?**

After full payment is received, subject to invoicing and sales tax registration requirements which may be necessary (see Question 3 for more details), you will need to arrange collection of the Lot from the Seller. We cannot advise on when you will receive the Lot as this will depend on a variety of factors including where you and the Seller are based and the date and time you agree with the Seller for the delivery of the Lot. You will need to check the location of the lot (including dimensions and weights) prior to placing a bid, and you can start enquiring with third parties (such as shippers and custom authorities) in advance of the Auction to gain a better understanding of how long delivery might take.

# Buyer Terms and Conditions

Please ensure you have read and understood these Buyer Terms and Conditions (“Buyer Terms”) before you place a bid on the Lot (defined below) as they set out the terms and conditions on which we, Simon De Pury, a sole proprietorship trading under the name De Pury having its place of business at Le Mirabeau 2 Avenue Des Citronniers 98000 Monaco MC Principaute de Monaco, with the dossier fiscal no. 7490B 22359 and French VAT no. FR610001535 (“we” or “us”) offer the Lot for sale at Auction. By registering to bid or placing a bid on the Lot, you (“you” or “Buyer” as applicable) acknowledge and agree that these Buyer Terms (together with the Invoice defined below) create a legally binding contract with you and us, and subsequently between you and the Seller (defined below).

## 1. Definitions

1.1. In these Buyer Terms, the following expressions have the following meanings:

“**Auction**” means the online only auction hosted on the Website, the title and date of which are listed on the Website;

“**Business Day**” means any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

“**Buyer’s Premium**” has the meaning set out in Clause 7.1;

“**Buyer Terms**” means these Buyer Terms and Conditions.

“**Cancellation Period**” has the meaning set out in Clause 12.2;

“**Condition Report**” means a report on the physical condition of a Lot prepared by the Seller;

“**Costs**” has the meaning set out in Clause 7.5;

“**Delivery**” means when the Lot is collected by or delivered to you, your representative or your shippers;

“**Due Date**” has the meaning set out in Clause 7.4;

“**Entry**” has the meaning set out in Clause 5.2;

“**Estimate**” means a statement of our opinion of the range within which the Lot is likely to sell at Auction as set out in the Entry;

“**Invoice**” means the invoice which is issued by us to you in respect of the Lot which incorporates these Buyer Terms;

“**Hammer Price**” means the highest bid accepted by us for the sale of the Lot;

“**KYC Documents**” has the meaning set out in Clause 3.2.3;

“**Location**” means current location of the Lot or where the Lot shall be at Delivery as listed on the Website and the Invoice;

“**Lot**” means an artwork offered for sale at the Auction;

“**Lot Closing**” has the meaning set out in Clause 2.1;

“**Limited Guarantee**” has the meaning set out in Clause 5.2;

“**Purchase Price**” means the amount stated on the Invoice payable by you for the purchase of the Lot, including the Hammer Price, the Buyer’s Premium, Artist resale royalties (if applicable) but exclusive of the Costs;

“**Reserve**” means the minimum price at which a Lot may be sold as agreed between the Seller and us;

“**Sales Tax**” means any tax imposed on the sale of goods and services by a recognised governmental tax authority, including but not limited to, sales tax levied by the Inland Revenue Service or VAT levied by the UK or any EU Member State under Council Directive 2006/112/EC;

“**Seller**” has the meaning set out in Clause 2.1;

“**Website**” means <https://auction.de-pury.com/en/>.

## 2. Our Role

- 2.1. We sell the Lot as authorised agent for the seller (“Seller”) and we are not responsible for any breach of these Buyer Terms by the Seller. At the time the Auction of the Lot closes, as represented online by the striking of the virtual “auctioneer’s hammer” (“Lot Closing”), the highest bidder accepted by us becomes the “Buyer”, and a contract for sale shall be formed automatically between Buyer and Seller.
- 2.2. If you are bidding on behalf of another party, both you and the bidder are jointly and severally responsible for (i) compliance with these Buyer Terms and, if you successfully become the Buyer; (ii) payment of the Purchase Price.

## 3. Registration

- 3.1. In order to bid on the Lot, you will need to create an account on the Website. By registering for a bidder profile, you are declaring that you are at least 18 years old and that you consent to us disclosing your name and contact details to the Seller at the end of the Auction. You should ensure that you register well in advance of the Auction start date as the registration process is not instant and it may take time to fully set up your account.
- 3.2. There are three distinct levels of registration for the Auction on the Website, namely, ‘Uncertified’, ‘Basic Certification’ and ‘Advanced Certification’. Each registration level allows a specific level of access to the Auctions and requires you to complete a different level of registration requirements:
  - 3.2.1. **Uncertified:** To first register on the Website, you must provide your name and email address and create a password. If you are Uncertified, you cannot participate in any Auctions.
  - 3.2.2. **Basic Certification:** To participate in an Auction as a bidder and/or Buyer, you must first complete Basic Certification. To complete this level, you must provide: (i) your telephone number (ii) your billing address (iii) your delivery address; and you will also need to (iv) verify the email address you provided when you first registered on the Website. Each of these details will be verified, either by us directly or using third party software, or in the case of verifying your billing address, by Stripe. Basic Certification requires you to pay the registration fee of £3.99 + VAT. Basic Certification enables you to bid on items under a spending limit set in our discretion, which will be notified to you on the Website.
  - 3.2.3. **Advanced Certification:** Only once you have completed your Basic Certification, may you apply for Advanced Certification. Advanced Certification removes the spending limit. In order to obtain Advanced Certification, you must provide (i) proof of your address (e.g. a utility bill dated in the last three months); (ii) proof of your identity (e.g. a copy of your passport or driving licence) (together “KYC Documents”) and you will be required to verify your identity by live photo (selfie). We may ask you for further information to comply with our AML obligations (for example to conduct enhanced due diligence on you) or otherwise in our discretion.
- 3.3. Once you have registered, you should keep your account details strictly confidential and not permit any third party to access your account on your behalf or otherwise as you will be liable for any and all bids made via your account.
- 3.4. If you are bidding as agent on behalf of another party, you agree to disclose this fact to us and to provide such information as we require to enable us to complete our identification and anti-money laundering checks on that third party.
- 3.5. We use Snoofa Ltd as our auction management software and Anti Money Laundering (AML) software to perform the identification and verification checks on your KYC Documents. Please see the Snoofa Policy [here](#) for more details on how this works as well as the Privacy Notice available on the Website to understand how we protect your Personal Data and Sensitive Personal Data (as defined the in the Privacy Notice).
- 3.6. If in our opinion you do not satisfy our bidder registration and AML procedures we may refuse to register you. We reserve the right to disable or deactivate your account at any time during the Auction.

## 4. Buyer Warranties

- 4.1. You warrant, represent and undertake to us (as applicable), at the time of registration and in respect of each bid you make, that:
  - 4.1.1. you are at least 18 years old and legally authorised to enter into a contract to purchase the Lot, or if acting on behalf of someone else, you are duly authorised to enter into a contract to purchase the Lot on their behalf in accordance with these Buyer Terms;
  - 4.1.2. you are not bidding on behalf of the Seller or otherwise knowingly connected to the Seller;

- 4.1.3. in addition to acknowledging and agreeing to Clause 7.8, the funds used to bid and/or to purchase the Lot are not connected with or derived from any criminal activity, including without limitation tax evasion, money laundering or terrorist financing;
- 4.1.4. neither you nor, where you are acting as authorised agent, your principal are the subject of any investigation, have been charged with or convicted of money laundering offences, terrorist activities or other crimes and subject to sanctions in the UK and EU (including sanctions recently imposed in relation to the war in Ukraine);
- 4.1.5. all information you provide to us at registration or otherwise, is true and accurate in all respects;
- 4.1.6. you acknowledge, agree and understand (i) your responsibilities relating to shipping, tax, import and export (as set out in Clauses 9 and 10) and the associated Costs; and (ii) the post sale restrictions set out at Clause 13 below; and
- 4.1.7. you shall tell us as soon as you become aware of or have reason to suspect that any of your warranties, representations or undertakings above are, or may become, untrue.

## 5. Description and Condition of Lot

- 5.1. You acknowledge and agree that the Auction is online only, and you shall not have an opportunity to inspect the Lot. In the event that you have any questions about the Lot, you should contact us at [auctions@de-pury.com](mailto:auctions@de-pury.com).
- 5.2. The online sales catalogue on the Website contains an entry for each Lot ("Entry").
- 5.3. We make every effort to accurately describe the Lot in the Entry including its condition, however, save for the Limited Guarantee contained in Clause 5.5 below:
  - 5.3.1. neither we nor the Seller make or agree to make any representation of fact or contractual promise, guarantee or warranty and undertake no obligation or duty, whether in contract or in tort, in respect of the accuracy or completeness of any statement or representation made in the Entry including the condition of the Lot, which is sold with all faults, inherent defects and deterioration as would be expected of an item of the same fragility as the Lot;
  - 5.3.2. while we use best efforts to ensure any statements and representations made in the Entry are correct, such statements and representations represent our opinion of the Lot only, based upon information provided to us by the Seller, and should not be relied on as statements of fact and cannot be relied upon either by you or a third party;
  - 5.3.3. the sale of the Lot at Auction is not a sale by description;
  - 5.3.4. all dimensions and weights listed in the Entry about a Lot are approximate only;
  - 5.3.5. the Lots are sold "AS IS" and you acknowledge that every imperfection that exists will not be described; and
  - 5.3.6. illustrations and photographs of any Lots are for identification purposes only. A photograph or illustration may not reflect an accurate reproduction of the colour(s), all angles of the Lot, all pertinent details of the Lot or the true condition of the Lot, nor may it be used as precise indications of size. Individual computer monitors may also display colours differently, we are not responsible for the colour accuracy of any Lots displayed on the Website, and we disclaim all liability in this regard.
- 5.4. Pursuant to the Seller Terms, the Seller may provide us with a Condition Report on the Lot. You may request a copy, and if you do so, this will be provided to you by us (on behalf of the Seller) provided we have received it from the Seller. As the Condition Report is prepared by the Seller, we do not assume responsibility to you in respect of it.
- 5.5. The **name of the Artist, title of the Lot and edition number (if applicable), and the Location** set out in the Entry for the Lot are guaranteed by the Seller as to their accuracy ("Limited Guarantee"). In the event that within two (2) years of Delivery, the original Buyer demonstrates to our satisfaction, acting reasonably, that the Limited Guarantee is false, you may have the right to cancel your purchase subject to and in accordance with the conditions set out in Clause 12.1 below..
- 5.6. The Lots should always be handled carefully by those with the necessary expertise. Due to the fragility of certain Lots, you are encouraged to seek specialist advice on the appropriate hanging, installation and ongoing conservation or safekeeping for the Lot, including any maintenance, mounting or installation instructions provided by the Seller (on behalf of the Artist, if applicable).



## **6. Estimate and Reserve**

- 6.1. In most cases, an Estimate is set out in the Entry. Estimates are an expression of our opinion of the expected Hammer Price for the Lot; an Estimate should not be relied on as an estimate of value nor an indication of the actual Hammer Price.
- 6.2. Lots may be offered subject to a Reserve below which the Lot will not be sold. The level of the Reserve shall be confidential between the Seller and us, but it will not be higher than the low Estimate.

## **7. Bidding and Payment**

- 7.1. We will charge a buyer's premium of 18% on the Hammer Price of each Lot ("Buyer's Premium").
- 7.2. Bids may only be submitted whilst the Auction is open, the dates and time of which are set out on the Website. The successful bidder will be the highest bidder accepted by us, unless we decide in exceptional circumstances to cancel or refuse to accept the highest bid pursuant to Clause 7.7, in which case we may determine the next highest bidder as the successful bidder.
- 7.3. The Lot Closing marks the acceptance of the highest bid and identifies the Hammer Price of the Lot. Once your bid has been submitted and accepted by us, the bid is final and you shall not be able to or authorised to, under any circumstances, amend, retract or revoke your bid or attempt to do so.
- 7.4. The Purchase Price for the Lot and any additional sums due is payable no later than seven (7) Business Days of the Auction ("Due Date"). Payment can be made only by the registered bidder. Payment instructions will be provided on the Invoice and will be in the currency of the Auction. If we incur any transfer fees or currency costs in converting the amount into the currency of the Auction, you will bear these costs. You acknowledge that exchange rates may fluctuate and assume sole risk arising out of such fluctuations. Please note that we do not accept payment by cash or crypto currency.
- 7.5. The Purchase Price is exclusive of the costs of packing, crating, shipping, insurance during transit, import tax, duties and tariffs and any other taxes, duties or charges that may apply on the import and/or the export of the Lot (as well as any Sales Tax that may be payable pursuant to Clause 10) (together the "Costs").
- 7.6. Due to the rise in cyber-attacks, you should confirm the details on our Invoice are correct and have not been intercepted by confirming the details with us by telephone before sending electronic payments as we shall not be liable if payment instructions are intercepted, and payments do not reach us. Our telephone number is available on our Website or you can request it by contacting us at the above mentioned email address.
- 7.7. Where we reasonably believe that completing the transaction is or may be unlawful or places us or the Seller under any liability to anyone else or may damage our reputation, or the bid or source of funds may be linked to criminal activity, or we consider that you have breached these Buyer Terms or the Seller has breached the Terms and Conditions for Sellers, then we reserve the right, without liability to you, to: (i) reject, revoke or refuse to accept any bid (even those that have been previously accepted); (ii) withdraw any Lot at any time prior to the Auction; (iii) restart or continue the bidding even if the bidding has finished; (iv) determine the successful bidder or re-offer the Lot for sale; (v) cancel, postpone or make changes to the Auction; or (vi) otherwise regulate the Auction and all associated proceedings as we deem most appropriate.
- 7.8. From time to time, different banks may place temporary restrictions on the ability to accept funds from certain jurisdictions, which is outside of our control. We will therefore be unable to accept payment from you in the event that either you or the funds you are seeking to transfer to us in settlement of the Invoice are located in one of the jurisdictions set out on The Financial Action Task Force (FATF) list available at <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html> (which may be updated from time to time). Prior to bidding on the Lot, you should satisfy yourself that neither you nor the funds used to settle the Invoice fall under the remit of this list as we will not be liable to you in the event that we are required to cancel the sale. In the event that our bank rejects the purchase price from you due to an attempt to pay from a jurisdiction on the list above, you shall remain liable for settling the Invoice. We draw your attention to Clause 8.

## **8. Late Payment**

- 8.1. If you fail to pay the Purchase Price in full (together with any sums due) by the Due Date, we shall be entitled to charge interest on the overdue amount at the rate of eight (8) % per annum above the Bank of England from time to time.
- 8.2. Notwithstanding our right to charge interest, we shall also be entitled, in addition to enforcing any legal rights and remedies we may have (including issuing legal proceedings against you) to cancel the sale of the Lot to you and to re-sell the Lot in any manner we consider appropriate. In the event that we cancel and re-sell the Lot, you shall still be liable to us for any shortfall between the

Purchase Price and the proceeds from any resale plus any and all costs, expenses, losses, damages and legal fees incurred by us as a result of your failure to pay the Purchase Price by the Due Date.

## **9. Delivery and Costs**

- 9.1. Prior to bidding on a Lot at Auction, you must check the dimensions and weight of the Lot (which pursuant to Clause 5.2 are approximate only), the Location, and whether there are any restrictions on export and/or import of the Lot prior to bidding on the Lot, as it is your responsibility to arrange packing, crating, shipping, insurance, import and export (if applicable) and pay all associated Costs. You acknowledge and agree that you cannot renege on a sale of the Lot in the event you fail to arrange packing, shipping, import and/or export of the Lot or where you consider the Costs too high.
- 9.2. While we may provide you with recommendations on which shippers to use, we are not obliged to, and we will never procure shippers on your behalf. Any such support or recommendations are for convenience only and do not constitute or imply any representation, warranty, or assumption of liability on our behalf. We do not pack or ship the Lot nor provide any insurance in relation thereto. We shall not be liable for any damaged or lost property.
- 9.3. You acknowledge and agree that laws, regulations, import requirements, and taxes relating to artworks differ greatly between different jurisdictions. We may provide information to assist you but we cannot warrant or represent the rate of import tax, the correct import classification of a Lot in every country throughout the world, that Lots can be exported or imported into a particular country, or that a Lot will not face delays on import or export into a particular country. You are encouraged to seek professional advice in the destination country prior to bidding on the Lot (if applicable).
- 9.4. The Seller retains possession of the Lot at the Location until Delivery and shall not release the Lot to you before we confirm to the Seller that we have received the full Purchase Price and any other sums due by you in cleared funds. Promptly following the Auction, we shall share your contact details with the Seller. You shall be required to communicate with the Seller in good faith providing all necessary information to arrange, promptly and without delay, for you, your representative or your shipper to attend the Location at the time and date agreed with the Seller to arrange the Delivery. We shall use reasonable endeavours to ensure that the Seller releases the Lot to you at the time and date agreed with you (provided the Seller has been notified by us that we have received the Purchase Price and any other sums due in cleared funds). In the event that the Seller refuses to release the Lot on the agreed date, you must notify us in writing and your sole remedy is the refund of the Purchase Price (and any other sums) paid by you to us.

## **10. Sales Tax**

- 10.1. It is your responsibility to check the Location, as Sales Tax may apply if you are located in the same country as the Lot. In the event the sale attracts Sales Tax, you acknowledge and agree that such Sales Tax is payable by you in addition to the Purchase Price, and you acknowledge and accept that there may be a delay of at least ninety (90) calendar days to complete the sale to you, as it may be necessary for us to register for Sales Tax. It is your responsibility to check the Location prior to making a bid and to notify us in advance in the event that you are bidding on a Lot that is in the same jurisdiction as you.

## **11. Title and Risk**

- 11.1. Title to and risk in the Lot shall pass automatically to you on Delivery

## **12. Cancellation**

- 12.1. Subject to Clause 12.1.1 and 12.1.2 below, if within two (2) years of Delivery, the original Buyer demonstrates to our satisfaction acting reasonably that the Limited Guarantee is false, then the Buyer's sole and exclusive remedy is to cancel its purchase and receive a refund of the Purchase Price, provided that:
  - 12.1.1. the Buyer provides full details and evidence of its assertion that the Limited Guarantee is false; and
  - 12.1.2. the Buyer has returned the Lot in accordance with the return shipping provisions in Clause 12.3 and in the same condition as the Condition Report provided at Delivery by the Seller.
- 12.2. If you are a Consumer pursuant to the EU Consumer Rights Directive and habitually reside in the UK or European Union you have the right to cancel the purchase without cause at any time up to the end of fourteen (14) calendar days after the date that the Lot is made available for Delivery (the "Cancellation Period"). You must notify us of your decision to cancel by a clear statement (e.g. a letter sent by post or email), before the Cancellation Period expires. A model cancellation form is set out below. If you cancel the sale during the Cancellation Period, we will reimburse the Purchase Price without undue delay, and no later than (i) fourteen (14) calendar days after we are notified by the Seller that they have received the Lot; or (ii) (if earlier) fourteen (14) calendar days after the date you provide evidence that the Lot has been shipped. Reimbursement shall be made using the same payment method as the initial purchase.

- 12.3. You must send back the Lot or hand deliver it back to the Location, without undue delay and in any event no later than fourteen (14) calendar days from the day on which you notify us of cancellation. You shall bear the cost of returning the Lot, including any shipping, packing, insurance and import duties incurred as a result of the return. You are liable for any diminished value of the Lot if handling of the Lot went beyond what was necessary to establish the nature and characteristics of the Lot. If the Lot is returned damaged, we will deduct from the refund a reasonable amount for the cost of repair or loss in value resulting from such damage.

**Model Cancellation Form**

To: Simon De Pury (t/a De Pury) ; Email: [auctions@de-pury.com](mailto:auctions@de-pury.com)

I hereby give notice that I cancel my contract for the sale of the following Lot ordered/received on:

Name and address of Consumer:

Signature of Consumer (only if this form is notified on paper) and date:

### 13. Post-Sale Restrictions and Re-Sale

- 13.1. While you are permitted to sell the Lot privately, you warrant, represent and undertake that you shall not consign the Lot for sale to an auction anywhere in the world, whether online or in person, for a minimum period of three (3) years from the date of Delivery. In the event of a future sale of the Lot (whether privately or by auction), you agree that you shall notify us of the sale in advance and that we may share such information with the Seller. Any warranties, representations, undertakings given by us or the Seller, including the Limited Guarantee, do not extend to subsequent buyers of the Lot and cannot be relied on by a third party or subsequent buyer.

### 14. Intellectual Property

- 14.1. You do not acquire any copyright and other intellectual property right in the Lot. You shall not obtain any licence or other rights to publish, disseminate or reproduce the Lot, or any materials relating to the Lot (e.g. images, documents, descriptions) created or produced by us or other parties, including the Seller, other than for private use.

### 15. Connectivity and Technical Issues

- 15.1. We have set out our liabilities with respect to connectivity and technical issues in the Website Terms of Use, available on the Website. Please note that whilst we try to ensure that the Website is accessible at all times, access may be suspended temporarily and without notice in the case of system failure, maintenance or repair, or for reasons beyond our control. We also do not guarantee the speed, accuracy or quality of any content on the Website. Some bidders or users of the Website may experience technical problems in bidding for a Lot which are beyond our reasonable control such as firewalls, loss of internet connection or other technical issues with the bidding software that we use or their own device. Whilst we will endeavour to fix any technical problems that occur on the Website as quickly as possible, we will not be responsible to you for any errors or failures to execute bids, or for any errors or omissions in online bidding, including, without limitation, errors or failures caused by any loss of connection or faults with our bidding software or the Website.
- 15.2. Our final record of bids accepted by us will be taken as absolute and final in all disputes and our record of sale will prevail in the event of a discrepancy between any online records or messages provided to you and our record of sale.

### 16. Liability

- 16.1. Nothing in these Buyer Terms limits or excludes our liability for: (i) death or personal injury caused by negligence; or (ii) fraud or fraudulent misrepresentation.
- 16.2. We do not give any representation, warranty or guarantee or assume any liability of any kind in respect of the Lot's merchantability, fitness for purpose, quality, description (except for the Limited Guarantee), condition, authenticity, rarity, importance, provenance, history, value, marketability or historical relevance and save for where Clause 15.6 applies, we exclude any liability for breach of any term, warranty or condition which may be implied by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.
- 16.3. We are not liable (i) for the statements, data, information and opinions of others including those of the Seller and/or those set out in the Condition Reports or authenticity certificates (if applicable) or previous sales records for the Lot (if applicable) or those of our representatives or employees; (ii) for any deterioration of the Lot after the Auction; and (iii) in circumstances where you fail to comply with any reasonable instructions on the handling, safekeeping or maintenance of the Lot.

- 16.4. We shall not be liable for any loss of profits, loss of business, goodwill, loss of anticipated savings or for any special, indirect, incidental, or consequential loss, costs, damages, charges or expenses to the fullest extent permitted by law.
- 16.5. Notwithstanding the above, if we are found to be liable to you, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with these Buyer Terms, shall be limited to the Purchase Price.
- 16.6. If the Buyer is a Consumer: We shall not be liable for any loss or damage that is not foreseeable (loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by us and the Buyer at the time the contract was entered into).

## 17. Privacy

- 17.1. You acknowledge and agree that you may be provided (directly or indirectly) with the personal details of the Seller, which may constitute Personal Data (and in some cases, Sensitive Personal Data) such as names and contact details of the Seller for the purposes of arranging the Delivery. You shall not disclose this Personal Data to a third party unless otherwise required by law, or where permitted under these Buyer Terms. You agree that you shall at all times comply with our Privacy Notice available on the Website and shall not by act or omission do or cause to be done anything that may put us in breach of our data protection obligations.
- 17.2. We will ask for your express consent (via a tick box when you register as a bidder on the Website) upon registration, for us to share your Personal Data (whether you are a Buyer or a bidder) at the end of the Auction, with the Seller. We will only share your Identity Data and Contact Data with the Seller. For Buyers, this disclosure is necessary for the performance of the contract (namely in order for the Buyer to arrange the Delivery), and for all other bidders (including Buyers) we share this Personal Data with the Seller so that you can build a relationship with the Seller and enable you to go on to buy other works by the Artist. Please see our Privacy Notice at Clause 3 for more information.

## 18. General

- 18.1. These Buyer Terms and the documents referred to in it constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of these Buyer Terms.
- 18.2. If a court finds that any part of these Buyer Terms is not valid, or is illegal or impossible to enforce, that part of these Buyer Terms will be treated as being deleted, and the rest of these Buyer Terms will not be affected.
- 18.3. No variation of any of the terms of these Buyer Terms shall be valid unless it is in writing and signed by or on behalf of each of the parties hereto.
- 18.4. You may not grant a security over or transfer your rights or responsibilities under these Buyer Terms unless we have given our written permission. These Buyer Terms will be binding on your successors, estate and anyone who takes over your rights and responsibilities. Nothing in these Buyer Terms, express or implied, is intended to confer on any person, other than you and us, any rights or remedies under or by reason of these Buyer Terms.
- 18.5. No failure or delay to exercise any right or remedy provided under these Buyer Terms shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.6. Any notice pursuant to or in connection with these Buyer Terms shall be in writing and delivered by hand or by post to our registered office or by email at [auctions@de-pury.com](mailto:auctions@de-pury.com), and in the case of us sending a notice to you, to the email address or postal address provided to us by you on your bidding profile via the Website. Notices are deemed delivered on delivery if by hand or the third day after posting, or if delivered by email, immediately upon transmission if transmitted during normal business hours in the country of the recipient, or otherwise on the following business day.
- 18.7. Neither party shall be liable for total or partial failure to perform any of its obligations or duties under the Buyer Terms to the extent that such failure arises in consequence of any force majeure event, industrial dispute, fire, flood, pandemic, mobilisation, requisition, embargo, currency restrictions, insurrection, acts of government, war, acts of terrorism or any circumstances which are beyond their reasonable control.
- 18.8. These Buyer Terms, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and shall be subject to the non-exclusive courts of England and Wales.

# Seller Terms and Conditions

These Terms and Conditions for Sellers (“Seller Terms”) and the Consignment Form set out the terms and conditions on which we, Simon De Pury, a sole proprietorship trading under the name De Pury having its place of business at Le Mirabeau 2 Avenue Des Citronniers 98000 Monaco MC Principaute de Monaco, with the dossier fiscal no. 7490B 22359 and French VAT no. FR610001535 (“we”/“us”), offers the work you have consigned to us for sale at auction (“Lot”). By signing the attached Consignment Form, you (“you” or “Seller” as applicable) acknowledge and agree that the Consignment Form together with these Seller Terms create a legally binding agreement first between you and us, and subsequently between you and the Buyer (defined below).

## 1. Definitions

1.1. In these Seller Terms, the following expressions have the following meanings:

“**Artist**” means the artist who is the creator and author of the Lot as listed on the Consignment Form;

“**Auction**” means the online only auction hosted on the Website, the title and date of which are listed on the Consignment Form;

“**Bidder**” means any person making a bid on the Lot at Auction;

“**Business Day**” means any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

“**Buyer**” means the person or entity who has made the highest bid that we have accepted (pursuant to the Buyer Terms);

“**Buyer’s Premium**” means the additional fee payable by the Buyer to us, being 18% on the Hammer Price of each Lot;

“**Buyer Terms**” means the terms and conditions upon which we shall sell the Lots to Buyers, a copy of which is enclosed with these Seller Terms;

“**Condition Report**” means a report on the physical condition of a Lot prepared by you;

“**Consignment Agreement**” means these Seller Terms and the Consignment Form together forming the agreement between you and us for the consignment of the Lot;

“**Consignment Form**” means the attached consignment form setting out the agreed key details of the Auction, including the Estimate and the Reserve (if any), as well as the Location;

“**Consignment Period**” means the consignment period set out in the Consignment Form, which shall typically run from the date of the Consignment Form until the earlier of (i) sale of the Lot; or (ii) 30 thirty calendar days after the end of the Auction if the Lot is unsold, unless otherwise agreed;

“**Delivery**” means when the Lot is collected by or delivered to the Buyer, the Buyer’s representative or the Buyer’s shippers;

“**Entry**” has the meaning set out in Clause 5.2;

“**Estimate**” means a statement of our opinion of the range within which the Lot is likely to sell at Auction as set out on the Consignment Form and the Entry;

“**Hammer Price**” means the highest bid accepted by us for the sale of the Lot;

“**KYC Documents**” has the meaning set out in Clause 4.2;

“**Location**” means the current location of the Lot or where the Lot shall be at Delivery as listed on the Consignment Form;

“**Lot(s)**” means the artwork or artworks you have consigned to us for sale at the Auction as listed on the Consignment Form, each being an individual Lot;

“**Purchase Price**” means the amount stated on the Invoice payable by the Buyer for the purchase of the Lot, including the Hammer Price, the Buyer’s Premium, artist resale royalties (if applicable) but exclusive of Costs (as defined in the Buyer Terms);

“**Reserve**” means the minimum price at which a Lot may be sold as set out on the Consignment Form;

“**Sales Tax**” means any tax imposed on the sale of goods and services by a recognised governmental tax authority, including but not limited to, sales tax levied by the Inland Revenue Service or VAT levied by the UK or any EU Member State under Council Directive 2006/112/EC;

“**Seller Terms**” means these Seller Terms and Conditions;

“**Website**” means <https://auction.de-pury.com/en/>; and

“**Withdrawal Fee**” has the meaning set out in Clause 11.1.

## **2. Our Role**

- 2.1. By entering into and signing the Consignment Form, you consent to us selling the Lot as your authorised agent and in accordance with these Seller Terms and the Buyer Terms. You shall be responsible for all statements and representations made by us on your behalf. At the time the Auction for the Lot closes, as represented online by the striking of the virtual “auctioneer’s hammer”, a contract for sale shall be formed automatically between you and the Buyer and you shall be solely responsible for complying with the obligations, warranties and representations of the Seller set out in the Buyer Terms.
- 2.2. If you are consigning on behalf of a third party as an agent, you acknowledge, agree and represent for yourself and on behalf of such third party, that you and the third party shall be jointly and severally liable as the “Seller” under these Seller Terms.

## **3. Seller Warranties**

- 3.1. You warrant, represent and undertake (as applicable), to us and to the Buyer, that at the time of consignment and again upon Delivery:
  - 3.1.1. the Lot is exclusively consigned by you to us to market and offer it for sale at the Auction;
  - 3.1.2. either (i) you are the sole legal and beneficial owner of the Lot, or (ii) you are duly authorised to sell the Lot by the owner in accordance with these Seller Terms and you are not bound by any right of first refusal or pre-emption rights of any third party;
  - 3.1.3. the Lot is free of all liens, charges and encumbrances of any nature;
  - 3.1.4. you have the right to transfer ownership of the Lot to the Buyer without any restrictions or claims by anyone else and at the time that ownership of the Lot passes to the Buyer, the Buyer’s ownership and right of possession will be without any restriction;
  - 3.1.5. there are no restrictions on the Lot save for the industry standard rights, intellectual property rights and moral rights of the Artist;
  - 3.1.6. the Lot does not contain any material:
    - 3.1.6.1. that must be declared on import or is frequently subject to restrictions in the US, UK and EU;
    - 3.1.6.2. that is defamatory, obscene, pornographic, abusive, liable to incite racial hatred, discriminatory, in breach of confidence or in breach of privacy;
    - 3.1.6.3. for which the Artist has not obtained all necessary licences and/or approvals (such as consent from the subject matter if applicable);
    - 3.1.6.4. which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or
    - 3.1.6.5. which is unsafe, contains health and safety hazards, or where the Lot is a digital artwork, is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data);
  - 3.1.7. neither you nor any third party has done (by act or omission) or permitted to be done anything which would render the Lot inauthentic, infringe the Artist’s moral rights or affect the value or marketability of the Lot;

- 3.1.8. all information, including the description, photographs as well as the Condition Report(s) prepared by you or on your behalf provided to us pursuant to Clause 5.1 below is true and accurate in all respects and the Lot conforms in every respect with the description, photographs and Condition Report;
- 3.1.9. the Lot is authentic and by the Artist and is not an edition (unless otherwise stated on the Consignment Form);
- 3.1.10. the proceeds of the Lot are not and will not be connected with any criminal activity, including without limitation tax evasion, money laundering or terrorist financing;
- 3.1.11. neither you nor, where you are acting as authorised agent, your principal are the subject of any investigation, have been charged with or convicted of money laundering offences, terrorist activities or other crimes and subject to sanctions in the UK and EU (including sanctions recently imposed in relation to the war in Ukraine);
- 3.1.12. all requirements, declarations and permissions relating to export and/or import of the Lot in any jurisdiction within which the Lot has been stored or transited have been met;
- 3.1.13. the Lot can be freely exported from the country in which it is currently located in without delay, consents, permissions or licences and does not contain any restricted materials, such as endangered or protected species, or otherwise; and
- 3.1.14. you shall tell us as soon as you become aware of or have reason to suspect that any of your warranties, representations or undertakings above are, or may become, untrue.

#### **4. Registration and Anti Money Laundering**

- 4.1. You acknowledge and agree that it is a condition precedent of the Consignment Agreement that you have completed or will complete your online registration on the Website prior to the Auction.
- 4.2. There are three distinct levels of registration for the Auction on the Website, namely, 'Uncertified', 'Basic Certification' and 'Advanced Certification'. To consign Lots over the 10,000 Euros (or equivalent) threshold, you will be required to complete the highest level of registration, namely the 'Advanced Certification', for which you will need to provide (i) proof of your address (e.g. a utility bill dated in the last three months); (ii) proof of your identity (e.g. a copy of your passport or driving licence) (together "KYC Documents") and you will be required to verify your identity by live photo (selfie). We may ask you for further information to comply with our AML obligations (for example to conduct enhanced due diligence on you) or otherwise in our discretion. If you are consigning as agent on behalf of another party, you agree to disclose this fact to us and to provide such information as we require to enable us to complete our Anti-Money Laundering (AML) checks on that third party. We shall not use this information for any other purpose.
- 4.3. We use Snoofa Ltd as our auction management software and AML software to perform the identification and verification checks on your KYC Documents. Please see the Snoofa Policy here for more details on how this works as well as the Privacy Notice available on the Website to understand how we protect your Personal Data and Sensitive Personal Data (as defined in the Privacy Notice).
- 4.4. If you do not complete the online registration by the deadline, or where, in our opinion you do not satisfy the registration and AML procedures we shall have the right to withdraw the Lot from the Auction pursuant to Clause 11.2.

#### **5. Description of Lot**

- 5.1. Promptly following the signing of the Consignment Form and in any event no later than 10 Business Days before the online catalogue is published, you shall provide us with the following in the format requested by us:
  - 5.1.1. the Location;
  - 5.1.2. information about the Artist (name, date of birth, bio);
  - 5.1.3. a detailed description of the Lot including (but not limited to) date of creation, title, provenance, specific dimensions, weight, medium and materials, frames, mounts or stands, fixings and any requirements for mounting or installation, any maintenance requirements (if applicable) and number of works in an edition (if applicable), and any ancillary objects and/or materials, and additionally, if the Lot is a digital artwork then any specific software or hardware specifications (including minimum versions of the same), memory, band-width, internet or connectivity speed, or any other equipment, machinery, power supply or other service beyond what would be reasonably expected of a residential household;

- 5.1.4. an accurate and up to date Condition Report.
  - 5.1.5. accurate and high resolution photographs of the Lot which show the colour accurately, depict all pertinent details of the Lot including (but not limited to) details of the Artist's signature (if applicable), all angles of the Lot;
  - 5.1.6. where the photographs include items that do not form part of the Lot (for example, mounts, frames or projectors) an inventory of what forms part of the Lot and what is additional material, and specify what is included in the Lot and will be provided to the Buyer; and
  - 5.1.7. information as to the tax status of the Lot and the Seller, including VAT and Sales Tax, in particular whether the Lot is within free circulation or subject to any special VAT or Sales Tax schemes and whether the Seller is registered for VAT and Sales Tax in their jurisdiction.
- 5.2. We shall use the information provided by you pursuant to Clause 5.1 to create an entry for the Lot in our online catalogue ("Entry"). A copy of the Entry will be made available to you prior to the Auction and you must notify us immediately (and in any event before the Auction) in writing if the Entry or any part of it is inaccurate or incorrect. It is your responsibility to ensure that the Lot is as described in the Entry. The Entry will be made available online to bidders in advance of the Auction via an online catalogue and you acknowledge and agree that bidders shall bid for the Lot on the basis of the Entry. You acknowledge and agree that the **name of the Artist, title of the Lot and edition number (if applicable) and the Location** in the Entry for the Lot are guaranteed and in the event that such text turns out to be incorrect, the Buyer shall have the right to rescind their purchase pursuant to Clause 12.1 of the Buyer Terms. In the event the Buyer exercises its right to rescind, you shall be liable to pay us the Buyer's Premium, any interest incurred, including all costs incurred by us, which may include shipping costs, import tax, duties and tariffs and any other taxes, duties or charges, as well as any damages as a result of us having to rescind the sale of the Lot to the Buyer.
- 5.3. Subject to your obligation to notify us of any inaccurate or incomplete information in the Entry, you agree that we shall have sole and absolute discretion as to: (i) the way in which the Lot may be combined or divided into lots at Auction; (ii) the way in which the Lot is included in the Auction; (iii) the way in which any Lot is described and illustrated in the Entry; (iv) the date and place of the Auction; and (v) the manner in which the Auction is conducted.

## 6. Estimate and Reserve

- 6.1. The Consignment Form sets out a proposed Estimate. If you do not agree with our proposed Estimate, you should not sign the Consignment Form. In such event, the consignment will not proceed.
- 6.2. Once agreed with you, the Estimate will be set out in the Entry. Estimates are only an expression of our opinion of the expected Hammer Price for the Lot; an Estimate should not be relied on as guarantee as to the final Hammer Price. It may be necessary for us to vary an Estimate if new information comes to light prior to the Auction. We shall not be held responsible if a Lot does not sell within the range of the provided Estimate and by no means can the sale be cancelled by you in such circumstances.
- 6.3. The Consignment Form also specifies the Reserve which has been agreed with you and any agreed discretion which you have agreed to allow us to accept bids below the Reserve. We have the right to notify or not to notify bidders whether a Lot has a Reserve, however, the amount the Reserve is set at will not be notified to bidders. We are allowed to accept bids below the Reserve provided that we account to you at no less than you would have received had the winning bid been at the Reserve and we shall also have the right to bid on your behalf up to the set Reserve price. The Reserve will not be changed except with your permission.

## 7. Bidding at Auction

- 7.1. You authorise us to charge and retain the Buyer's Premium pursuant to Clause 7.1 of the Buyer Terms.
- 7.2. Auctions (including bidding increments) are conducted according to our discretion.
- 7.3. Neither you nor anyone on your behalf shall be permitted to bid for your own Lot.
- 7.4. Where we reasonably believe that completing the transaction is or may be unlawful or places us or the Buyer under any liability to anyone else or may damage our reputation, or the bid or source of funds may be linked to criminal activity, or we consider that the Seller has breached these Seller Terms or the Buyer has breached the Buyer Terms, then we reserve the right, without liability to you, to: (i) reject, revoke or refuse to accept any bid (even those that have been previously accepted); (ii) restart or continue the bidding even if the bidding has finished; (iii) determine the successful bidder or re-offer the Lot for sale; (iv) cancel, postpone or make changes to the Auction; or (v) otherwise regulate the Auction and all associated proceedings as we deem most appropriate.



- 7.5. If the Lot is unsold, we have the exclusive right to offer the Lot for sale, by subsequent auction or private treaty sale, for a period of thirty (30) calendar days after the Auction, provided that the amount you receive is no less than the Reserve (or such lower amount as you confirm to us in writing).

## **8. Payment**

- 8.1. Payment of the Purchase Price shall be payable to us by the Buyer within seven (7) Business Days of the Auction.
- 8.2. You agree that we are entitled to deduct from the Purchase Price (i) the Buyer's Premium; and (ii) any applicable Artist re-sale royalties.
- 8.3. We will account to you for all sums owed, after any deductions that we are entitled to make pursuant to Clause 8.2, within thirty (30) Business Days of the Auction, provided that we have been paid in full by the Buyer by such date, otherwise within thirty (30) Business Days of receipt of the Purchase Price and any other sums due in cleared funds. If the Buyer has not paid the Purchase Price and all sums due in full by the due date, we may take legal steps against them subject to agreement with you including as to costs, but we are not obliged to do so, and we are entitled to take any action we deem appropriate in the circumstances including rescinding the sale and deeming the Lot to be unsold.
- 8.4. Settlement to you will be by bank transfer and must be made to an account in your name which you have notified to us in the Consignment Form. We will make all payments to you in the currency of the Auction unless expressly agreed otherwise in writing. If we incur any transfer fees or currency costs in making any payment to you, you will bear these costs. You acknowledge that exchange rates may fluctuate and assume sole risk arising out of such fluctuations.

## **9. Location and Collection**

- 9.1. As the Auction is online only, you acknowledge and agree that you shall retain possession of the Lot during the Consignment Period and notify us of the Location. You shall not move, or arrange to move, alter, modify or repair the Lot during the Consignment Period other than with our written consent. You shall continue to assume liability for loss or damage to the Lot while in your possession until the risk of loss or damage to the Lot passes to the Buyer pursuant to Clause 10.1. During the Consignment Period, you must maintain insurance of the Lot equal to the Reserve if set, otherwise the low Estimate. Once sold, you must maintain insurance of the Lot at the value of the Purchase Price in the event that the Purchase Price is higher than the Reserve or low Estimate (as applicable).
- 9.2. Following the Auction, we shall share the details of the Buyer and the Bidders with you. Once we confirm that we have received the Purchase Price and all other sums due in cleared funds, you shall agree a date and time with the Buyer for the Delivery of the Lot (or their authorised representative/shipper). The Buyer shall be responsible for arranging and paying for the shippers and insurance during transit pursuant to the Buyer Terms. You shall be required to communicate with the Buyer in good faith providing all necessary information and access to enable the Buyer to arrange the Delivery. You shall not release the Lot to the Buyer until we confirm receipt of full Purchase Price plus any other sums due in cleared funds. If you do so, it shall be at your own risk.
- 9.3. Prior to Delivery of the Lot, you shall (i) photograph the condition of the Lot immediately before packing and update the Condition Report; (ii) assist with basic packing of the Lot (but not for international freight), taking photographs of the basic packing of the Lot; (iii) coordinate with the Buyer (or the Buyer's authorised representative or shipper) to enable the Buyer (or the Buyer's authorised representative or shipper) to pack and crate the Lot for shipping; (iv) ensure that the Lot is available for Delivery at the date and time agreed with the Buyer, together with the updated Condition Report.
- 9.4. In the event that you refuse to release the Lot at the date and time agreed with the Buyer, we are authorised to refund the Purchase Price (and any other sums paid) to the Buyer and we shall not be liable to pay the Purchase Price to you. In such circumstances, you are liable to pay us the Buyer's Premium that would have been due including all costs incurred by us and any damages as a result of us having to rescind the sale of the Lot to the Buyer.

## **10. Title and Risk**

- 10.1. Title to and risk in the Lot shall pass automatically to the Buyer on Delivery.

## **11. Withdrawal & Cancellation**

- 11.1. Once you have signed the Consignment Form, you are obliged to proceed with the sale of the Lot at Auction. If you withdraw a Lot before the sale for any reason (which must be by notice to us in writing), you shall be required to pay us a withdrawal fee of 75% of what would have been our Buyer's Premium based on the low Estimate, unless the withdrawal is within one week of the Auction in which event the fee will be 100% of the Buyer's Premium ("Withdrawal Fee"), together with any additional charges to cover costs incurred by us before the date of or due to the withdrawal. Such fees will become payable upon demand.

- 11.2. We shall be entitled to withdraw the Lot without liability to you where we reasonably believe (i) there is any doubt as to the Lot's authenticity or attribution; (ii) it is established or alleged that any of your representations or warranties set out in Clause 3 above are inaccurate in any way; (iii) you do not complete the online registration by the deadline, or where, in our opinion you do not satisfy the registration and AML procedures (iv) you breach any provisions of these Seller Terms in any material respect; (v) the Lot suffers from loss or damage after which we consider the Lot to be of insufficient value or in need of repair prior to the Auction; (vi) the Auction at which it was proposed to sell the Lot is postponed for any reason; or (vii) we determine in our absolute discretion that the sale of the Lot at Auction may be detrimental to our reputation. The Withdrawal Fees set out in Clause 11.1 shall apply to our withdrawal and are payable in the event of withdrawal due to Clause 11.2 (i); (ii), (iii), (iv), or (v). Upon withdrawal by us, we will reject the consignment of the Lot upon immediate notice, at which point this Consignment Agreement shall terminate.
- 11.3. You acknowledge that pursuant to EU Directive on Consumer Rights (2011/83/EC), a Buyer (who is a "Consumer") in the EU who purchases a Lot at the Auction has a right to cancel such a sale contract within fourteen (14) calendar days for any reason and without incurring liability for doing so. We will refund any EU Buyer validly exercising this right for payments already made for the purchase of the Lot. We shall promptly inform you in the event of a cancelled sale and the reasons cited by the Buyer.
- 11.4. If the Lot is returned within the statutory returns period you will not be paid. The Buyer is liable for the cost of returning the item to you and you shall keep us fully informed of the date the item was received by you. Upon receipt of the Lot, you shall inspect the Lot having regard to the latest Condition Report updated by you pursuant to Clause 9.3 above, and confirm whether the Lot was received in good condition or whether there is any damage, material change or loss. If the Lot is returned to you damaged or where the Lot is lost, then you and we shall agree in good faith the amount to deduct from the Buyer's refund in accordance with their statutory rights.

## **12. Seller Restrictions During Consignment Period**

- 12.1. In the event you receive (directly or indirectly) any enquiries relating to the Lot during the Consignment Period, you shall direct such enquiries to us and shall not attempt to negotiate any sale of a Lot directly.
- 12.2. You shall not, during the Consignment Period, seek to negotiate or complete the sale of any of your other works to a Buyer introduced by us without our consent.

## **13. Intellectual Property**

- 13.1. You grant a non-exclusive, worldwide, royalty-free licence to display the images of the Lot you have provided to us pursuant to Clause 5.1 and the name of the Artist on the Website, the Entry and our social media and to use the images of the Lot for PR and marketing purposes in connection with the Auction. Save for where Clause 13.4 applies, we reserve the right to continue to display the images of the Lot, the Artist's name and the Entry on the Website and our social media as a record of past sales. You agree that we may overlay watermarks and/or branding, when displaying the images of the Lot.
- 13.2. You warrant and represent that you irrevocably have the right from any copyright holder(s) in the Lot to grant the licence set out above in Clause 13.1 to us and that in marketing, promotion and offering the Lot at Auction, we shall not infringe any third party intellectual property rights.
- 13.3. You shall not obtain any licence or other rights to publish, disseminate or reproduce any materials relating to the Lot (e.g. text, documents, descriptions) created or produced by us, other than for private use or with our consent.
- 13.4. Following an Auction, any Lots that are unsold, will be removed from the Website, social media and Entry. We shall not share records of unsold Lots following the conclusion of an Auction.

## **14. Connectivity and Technical Issues**

- 14.1. We have set out our liabilities with respect to connectivity and technical issues in the Website Terms of Use available on the Website. Please note that whilst we try to ensure that the Website is accessible at all times, access may be suspended temporarily and without notice in the case of system failure, maintenance or repair, or for reasons beyond our control. We also do not guarantee the speed, accuracy or quality of any content on the Website. Some bidders or users of the Website may experience technical problems in bidding for a Lot which are beyond our reasonable control such as firewalls, loss of internet connection or other technical issues with the bidding software that we use or their own device. Whilst we will endeavour to fix any technical problems that occur on the Website as quickly as possible, we will not be responsible to you for any errors or failures of bidders to execute bids, or for any errors or omissions in online bidding, including, without limitation, errors or failures caused by any loss of connection or faults with our bidding software or the Website.
- 14.2. Our final record of bids accepted by us will be taken as absolute and final in all disputes and our record of sale will prevail in the event of a discrepancy between any online records or messages provided to bidders.

## **15. Indemnity**

- 15.1. You agree to indemnify us against all claims, proceedings, liabilities, costs, expenses and losses arising from (i) any actual or alleged breach of any warranty, representation, undertaking or obligation by you to us, whether by act or omission or otherwise; (ii) any error, misdescription or omission in any description of the Lot (in an Entry or otherwise) or any Estimate in relation to it; and (iii) for all reasonable legal and associated costs and expenses incurred in connection with any enforcement action taken by us in addition to any damages to which we may be entitled in the event of any legal dispute.

## **16. Liability**

- 16.1. Nothing in these Seller Terms limits or excludes our liability for: (i) death or personal injury caused by negligence; or (ii) fraud or fraudulent misrepresentation.
- 16.2. We are not liable (whether in negligence, other tort, breach of contract or statutory duty or in restitution or in any other way) whether as a result of an act or an omission, whether before or after this agreement, for any lack of conformity with or inaccuracy, error or misdescription or omission in any description of a Lot or any opinion, Estimate in respect of it (whether made in writing, orally or by conduct or otherwise) or in the setting of any Reserve or for any failure to achieve a sale at Auction or a sale at a higher price than was achieved, except in so far as it is caused by a breach of our duty to exercise reasonable skill and care in the performance of the obligations we have agreed to under these Seller Terms in the case of fraud by us or on our behalf (and we will not be liable to the extent that any breach of obligation by you has caused or contributed to it).
- 16.3. We shall not be liable for any loss of profits, loss of business, goodwill, loss of anticipated savings or for any special, indirect, incidental, or consequential loss, costs, damages, charges or expenses to the fullest extent permitted by law.
- 16.4. Notwithstanding the above, if we are found to be liable to you, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with our contract for sale with you pursuant to these Seller Terms, shall be limited to the Purchase Price.

## **17. Privacy**

- 17.1. You acknowledge and agree that you may be provided (directly or indirectly) with the personal details of the Buyer and Bidders, which may constitute Personal Data (and in some cases, Sensitive Personal Data) such as names and contact details of the Buyer and Bidders. We provide this Personal Data to you for the purposes of enabling the Buyer to arrange the Delivery, and so that you can build a relationship with the Buyer and Bidders. We understand that you may build a relationship and the Buyer/Bidder might go on to buy other works by the Artist. You shall not disclose this Personal Data to a third party unless otherwise required by law, or where permitted under these Seller Terms. You agree that you shall at all times comply with our Privacy Notice available on our Website and shall not by act or omission do or cause to be done anything that may put us in breach of our data protection obligations. Please see our Privacy Notice for more information.

## **18. General**

- 18.1. The Consignment Agreement and the documents referred to in it constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of the Consignment Agreement.
- 18.2. If a court finds that any part of the Consignment Agreement is not valid, or is illegal or impossible to enforce, that part of the Consignment Agreement will be treated as being deleted, and the rest of the Consignment Agreement will not be affected.
- 18.3. No variation of any of the terms of the Consignment Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties hereto.
- 18.4. You may not grant a security over or transfer your rights or responsibilities under the Consignment Agreement unless we have given our written permission. The Consignment Agreement will be binding on your successors, estate and anyone who takes over your rights and responsibilities. Nothing in the Consignment Agreement, express or implied, is intended to confer on any person, other than you and us, any rights or remedies under or by reason of the Consignment Agreement.
- 18.5. No failure or delay to exercise any right or remedy provided under the Consignment Agreement shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.6. Any notice pursuant to or in connection with the Consignment Agreement shall be in writing and delivered by hand or by post to our registered office or by email to [auctions@de-pury.com](mailto:auctions@de-pury.com), and in the case of us sending a notice to you, to the email address or postal address provided to us by you. Notices are deemed delivered on delivery if by hand or the third day after posting, or if delivered by email, immediately upon transmission if transmitted during normal business hours in the country of the recipient, or otherwise on the following business day.

- 18.7. Neither party shall be liable for total or partial failure to perform any of its obligations or duties under the Consignment Agreement to the extent that such failure arises in consequence of any force majeure event, industrial dispute, fire, flood, pandemic, mobilisation, requisition, embargo, currency restrictions, insurrection, acts of government, war, acts of terrorism or any circumstances which are beyond their reasonable control.
- 18.8. The Consignment Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales and shall be subject to the non-exclusive courts of England and Wales.