



Federatie van  
Taxateurs Makelaars Veilinghouders  
in Roerende Zaken

# General Terms and Conditions

Auctioneers in movable goods

15 October 2020



## Table of Contents

Article 1	Definitions	1
Article 2	Applicability	3
Article 3	Organisation of the Auction	4
Article 4	Consignment	4
Article 5	Obligations and guarantees of the Seller	6
Article 6	Obligations of the Auctioneer	8
Article 7	Course of events at the Auction	9
Article 8	Obligations of the Bidder/Buyer	10
Article 9	Establishment of the Purchase/transfer of ownership	12
Article 10	Delivery/receipt of the Item	12
Article 11	Transfer risk	13
Article 12	Default of the Buyer	13
Article 13	Hidden defects and misleading description	14
Article 14	Liability of the Auctioneer	15
Article 15	General provisions	16
Article 16	Online Auction	17
Article 17	Right of revocation of the Consumer	18
	Appendix I: Model form for revocation	20



## General Terms and Conditions- Auctioneers

These general terms and conditions are applicable to the services of Auctioneers through membership of the Dutch Federation of Certified Appraisers, Brokers and Auctioneers in Movable Assets<sup>1</sup> (Federatie van Taxateurs Makelaars en Veilinghouders in Roerende Zaken – Federatie TMV). These conditions were drawn up on 15 October 2020.

### Article 1 Definitions

In these conditions the following terms are defined as stated below:

**General Terms and Conditions:** these General Terms and Conditions, which are applicable to the public Auctions of movable property organised by Auctioneers, including sales of movable property under execution, and the Online Auctions organised by them, not being public Auctions or distance selling;

**Online Auction Conditions:** these General Terms and Conditions, which are also applicable to Online Auctions, not being public Auctions, with the exception of the conditions in respect of the Commission Bid and conditions 7.1, 7.3, 7.5 and 7.7;

**Bidder:** the person who places a Bid in an ascending price auction at the Auction, or the person who places a Commission Bid prior to the Auction, or the person who places a bid via the internet;

**Bid:** verbal (by telephone or otherwise) or written bid, or a bid placed in another way as expressly offered by the Auctioneer, such as via the internet or by email;

**Commission Bid:** a Bid that is placed by the Bidder to the Auctioneer digitally, in writing or by email up to a maximum of 30 minutes prior to the Auction, whereby the Bidder states his<sup>1</sup> name, address and telephone number and includes the maximum amount for which the Bidder wishes to buy the Item;

**Consumer:** a Bidder who does not act in the exercise of a profession or business;

**Hammer Price:** the amount stated by the Auction Supervisor for which the Auctioneer allocates an Item to the Buyer, or the highest Bid in the case of an Online Auction;

**Right of Revocation:** the right of the Consumer to revoke the Purchase within a reconsideration period of 14 (fourteen) days of the day of delivery or issue of the Item;

**Consignment:** one of more Items submitted by a Seller for Auction;

**Seller's Commission:** margin that the Seller will pay per Item, including the VAT payable on this amount;

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<sup>1</sup> For the sake of readability, in these conditions the masculine form ('he', 'him' etc.) is always used. Where 'he' is used, 'she' can of course also be understood.



**Seller's Agreement:** the agreement that is entered into with the Seller on the Consignment of an Item to be auctioned, the Insured value, the Estimate and where applicable the Reserve Price and other possible agreements, for example the allocation of an Item for a particular Auction;

**Lot:** the Item to be auctioned, designated as an Item in these General Terms and Conditions;

**Sale:** the sale agreement that comes about because the Auction Supervisor accepts a Bidder as a Buyer by means of a Hammer Strike, or the sale agreement that comes about in an Online Auction by the placement of the highest Bid and its acceptance by the Auctioneer;

**Purchase Price:** the Hammer Price with the addition of Buyer's Commission and, if applicable, Resale Right Payment;

**Buyer:** the Bidder whose Bid during an Auction is accepted by means of a Hammer Strike and, in the case of an Online Auction, the Bidder whose highest Bid is accepted by the Auctioneer;

**Buyer's Commission:** Costs that the Buyer will pay, including the VAT payable on this amount. Also known as the 'Buyer's Premium';

**Costs:** the costs that the Seller and/or the Buyer will pay to the Auctioneer for services rendered, including the VAT payable on this amount, including (though not exclusively) costs for administration, insurance, research, testing, valuation, transport, restoration, photos, shipment, storage and Seller's Commission and Buyer's Commission;

**Member:** a natural person who is admitted as a member of the Federation as a Valuer, Broker and/or Auctioneer by the central management of the Federation;

**Reserve Price:** where applicable, the minimum Hammer Price agreed by the Seller and the Auctioneer;

**Margin Scheme:** a Margin Scheme under the provisions of Section 5 of the Turnover Tax Act 1968;

**After-Sale:** the offer of the Item or Items for sale on the website of the Auctioneer after the conclusion of the Auction;

**Notary:** a Notary who exercises the official supervision of the Auction on the instructions of the Auctioneer within the meaning of article 1 of the Act of 15 December 1971, Bulletin of Acts and Decrees 748 (Official Supervision of Public Auctions Act);

**Withdrawal:** the non-sale of an Item by the Auctioneer, even when a Bid has been placed, for example because the Reserve Price has not been reached;

**Estimate:** an indication of the possible Hammer Price of an Item given by the Auctioneer to the Seller and the Bidder, from which the Seller, the Bidder and the Buyer cannot derive any rights;

**Auction:** a public sale of moveable Items organised by the Auctioneer within the meaning of article 1 of the Act of 15 December 1971, Bulletin of Acts and Decrees 748 (Official Supervision of Public Auctions Act);

**Online Auction:** a computerised Auction by bidding on the Auctioneer's website organised by the Auctioneer that cannot be regarded as a public Auction and whereby no Notary or Auction Supervisor is present. In these General Terms and Conditions 'Auction' must be read as 'Online Auction', unless indicated otherwise in these General Terms and Conditions;



**Auctioneer:** a Member who is registered as an Auctioneer in Moveable Items in the Register of the Federation and to whom the title 'RV' is assigned, or the organisation of this Member that applies these General Terms and Conditions;

**Auction Supervisor:** the person who, on the instructions of the Auctioneer, is responsible for the actual management of the Auction;

**Federation:** the **Dutch Federation of Certified Appraisers, Brokers and Auctioneers in Movable Assets**, established in Amsterdam;

**Sale Price:** the Hammer Price minus the Seller's Commission;

**Seller:** the person who, as the sole owner or legal representative of the sole owner, instructs the Auctioneer to sell a moveable item at the Auction;

**Insured Value:** the amount, exclusively to be determined by the Auctioneer, for which the Auctioneer will insure the submitted Item. This amount can be lower or higher than the Estimate;

**Resale Right Payment:** a percentage of the Hammer Price with the addition of the Buyer's Premium, excluding VAT, payable under the provisions of the Copyright Act on the sale of originals of artworks – works of graphic or visual art, such as illustrations, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramic works, glassworks and photographs – that is charged to the Buyer;

**Item/Items:** an item or a quantity of items to be auctioned, which can be auctioned in combination and which in practice are also designated by the Auctioneer as a 'Lot'.

## **Article 2 Applicability**

- 2.1. These conditions are applicable to all legal acts by and legal relationships between the Auctioneer, the Seller, the Bidder and the Buyer that have a connection with an Auction, an Online Auction or After-Sale, and to private sales by the Auctioneer, including those concerning the bidding, purchase, sale, valuation, appraisal, viewing, valuations, cataloguing, safekeeping, storage and other services.
- 2.2. Divergent clauses or any General Terms and Conditions of the Seller, the Bidder and the Buyer only apply if they are expressly accepted by the Auctioneer in writing, and then exclusively for the legal relationship for which they are accepted.
- 2.3. The applicability of the General Terms and Conditions will be made known to the visitors to the auction, Sellers, Bidders and Buyers by publication on the website of the Auctioneer and/or elsewhere, such as the printed or online catalogue of the Auction, or a notification and/or laying open to public inspection prior to the Auction. Anyone taking part in an Auction thereby indicates full acceptance of the applicability of these General Terms and Conditions.



- 2.4. The Auctioneer can amend the General Terms and Conditions from time to time without prior notification. The version that applies to the Auction is the one that can be found on the Auctioneer's website and is available for inspection at the Auctioneer prior to the Auction.
- 2.5. If certain conditions of the Auctioneer are declared to be applicable to an Auction, such as an Online Auction or a special Auction, then when those conditions diverge from these General Terms and Conditions they will prevail above these General Terms and Conditions. In that case the Auctioneer will always indicate, prior to the Auction, where those conditions diverge from these General Terms and Conditions to the disadvantage of the Seller, Bidder or Buyer.

### **Article 3 Organisation of the Auction**

- 3.1. The Auctioneer will let it be known on which days and at which hours he will hold an Auction.
- 3.2. The Auction will take place at the location of the Auctioneer, or at another place to be determined by the Auctioneer, or on the website of the Auctioneer.
- 3.3. The Auctioneer will issue a notification, in a manner to be determined by him, of the Items to be auctioned.
- 3.4. The Auctioneer will decide upon the manner of auctioning.
- 3.5. The Auctioneer can exclude any person from Bidding on an Item, or block the bidding account. In addition, the Auctioneer can request an advance payment, bank guarantee or other sureties as a condition for participation in the Auction.
- 3.6. The Auctioneer can impose a bid limit on any person, due to which the Bidder can bid at an Auction up to an amount to be determined by the Auctioneer.

### **Article 4 Consignment**

- 4.1. The instruction to Auction comes about through the receipt by the Auctioneer of the Consignment and the signature of the Seller's Agreement by the Seller. After the receipt thereof the Auctioneer represents the Seller towards third parties. The Auctioneer can investigate and value the Consignment, and sell it at the Auction under the auction conditions to be determined by the Auctioneer.



- 4.2. The Auctioneer will not receive a Consignment from the Seller before a Seller's Agreement has been entered into with the Seller. The Seller will thereby arrange for the sound packaging of the Consignment. The Seller may not be younger than 16 years old.
- 4.3. The Seller declares that no advance deduction of VAT on the Consignment has taken place.
- 4.4. The following, among other things, will be stated in the Seller's Agreement:
  - a. an overall description of the Consignment;
  - b. the Estimate;
  - c. the Insured Value;
  - d. the agreed Seller's Commission and Costs;
  - e. any defects;
  - f. the Reserve Price, where applicable;
  - g. any other agreements, such as the allocation of the Item for a special or Online Auction.
- 4.5. The Auctioneer can refuse a Consignment or a part thereof, without stating reasons. The Auctioneer can also return a Consignment to the Seller after the receipt thereof, and not auction it, provided that this is accompanied with a statement of reasons. The Auctioneer will inform the Seller of this within 4 (four) weeks of his decision, but no later than 6 (six) months after the Seller's Agreement is entered into. In that case the Seller is not liable to pay any costs, and the Auctioneer is not obliged to reimburse any damage in connection with the Item not being auctioned.
- 4.6. The Seller can take back the Consignment up to the commencement of the Auction against payment of 30%, or less if the Auctioneer finds this reasonable, of the agreed Reserve Price or, if no Reserve Price has been agreed, of the expected Estimate for which the Auctioneer has valued the Item, with the addition of any costs that have been incurred, and amounting to at least €250 excluding VAT.
- 4.7. If the Seller does not accept the valuation referred to in article 4.6, he can arrange for a re-evaluation to be performed at his own expense by three Registered Brokers or Registered Broker-Valuers, or valuers or brokers generally accredited in the specialism in question, of whom one is nominated by the Auctioneer, one by the Seller and the third by the two valuers nominated by the Auctioneer and the Seller. If the value of the Consignment differs after re-evaluation, the differing value is binding upon the Auctioneer and the Seller.
- 4.8. The Auctioneer can combine multiple Items from one Seller and auction them as a single whole.



- 4.9. The Item will be auctioned in its existing condition. Substantial changes in the condition that become apparent after the publication of the catalogue and/or the showing on the viewing days and/or on the internet, including serious damage or breakage, or withdrawal of the description of an Item in the catalogue and/or on the internet, will be disclosed prior to the Auction of the Item. No rights can then any longer be derived from the old description.
- 4.10. The Auctioneer can sell an Item in an Auction below the Reserve Price, as long as the difference between the allocated amount and the agreed Reserve Price will be for the account of the Auctioneer.
- 4.11. The Auctioneer can photograph, illustrate or in another manner display and depict all Consignments offered for Auction, or arrange for this to be done, in any way whatsoever, both before, during and after the Auction. The costs of this can be charged to the Seller. The Auctioneer retains the copyright on these images.
- 4.12. The Auctioneer can store the Consignment at third parties and charge the costs of this to the Seller.
- 4.13. All packaging materials in connection with the Consignment can be disposed of or destroyed by the Auctioneer, unless agreed otherwise by the Auctioneer with the Seller.

## **Article 5 Obligations and guarantees of the Seller**

- 5.1. The Seller will provide proof of identity, a written authorisation or other supporting documents on the Auctioneer's first request, and on first request provide all information that the Auctioneer considers relevant in order to comply with legal obligations.
- 5.2. The Seller guarantees that he, as the owner or in another manner, can offer the Items for Auction unencumbered and without any limitation, and indemnifies the Auctioneer against any claim by third parties on the grounds of the infringement of any rights on the Consignment, including intellectual property rights.
- 5.3. The Seller will provide the Auctioneer with all information in connection with the provenance of the Items, supported with evidence, and state all characteristics and defects that are known to him, the Seller, or defects that he suspects to be present in the Consignment on their delivery. The Seller is liable for damage that is the consequence of the provision of incorrect or misleading information and/or of other circumstances attributable to the Seller, and indemnifies the Auctioneer against all claims of the Seller or third parties, if applicable, in connection with the Consignment, in the broadest sense of the term, and from all claims in pursuance of article 13.





- 5.4. The Seller guarantees that the sale of the Items at the Auction is not impeded by national or international legal provisions or other national and international regulations.
- 5.5. The Seller of an Item of which it is known that, if it does not fulfil the requirements that may be placed upon it in the given circumstances, it presents a particular hazard to persons or objects, remains liable for this hazard in the event that it arises, until the risk of the Item is transferred to the Buyer.
- 5.6. The Seller is liable to pay the Auctioneer a previously agreed Seller's Commission, with the addition of any Costs. In the event of Withdrawal as a consequence of the setting of the Reserve Price, the Seller is liable to pay a Seller's Commission on the Reserve Price.
- 5.7. If a Consignment is not brought to Auction during a period of 6 (six) months other than as a consequence of an allocation for a special Auction, the Consignment will be returned entirely at the Seller's expense and risk, or collected by the Seller following a request to this end by the Seller.
- 5.8. The Seller will collect the Item or Items following a request to this end by the Auctioneer within 5 (five) working days of the day on which the Auctioneer has sent the Seller a written notification of a Sale not having come about.
- 5.9. The Seller is in default if he has not collected the Consignment within the period referred to in article 5.8.
- 5.10. The Auctioneer can charge Costs to the Seller who has not collected the Consignment within the period referred to in article 5.8. Moreover, in that case the Auctioneer can auction the Consignment again, whereby a Reserve Price of 50% of the originally agreed Reserve Price will be adhered to if a Reserve Price has been agreed, or, if no Reserve Price has been agreed, sell the Consignment at the Auction in return for any bid.
- 5.11. The Seller will pay the invoice of the Auctioneer immediately.
- 5.12. The rights and obligations arising from these General Terms and Conditions cannot be transferred by the Seller to third parties.

## **Article 6 Obligations of the Auctioneer**

- 6.1. The Auctioneer will observe the care in connection with the Consignment that befits a good Auctioneer.
- 6.2. The Auctioneer acts solely in the interest of the Seller, and will sell an Item for the highest possible amount in an ascending price auction. The Auctioneer does not advise the Bidder/the Buyer. If the Auctioneer gives a description of the condition or the characteristics of an Item, he will do this to the best of his ability, discretion and conscience, and neither the Bidder, the Buyer or the Seller can derive any rights from this. If the Auctioneer uses a depiction of the Item this will be as authentic as possible, without the Bidder, the Buyer or the Seller being able to derive any rights from this. Manifest oversights or manifest errors in the description of Items are not binding upon the Auctioneer. Furthermore, the Auctioneer cannot be held responsible for any colour differences in the depictions or as a consequence of the settings of a screen or source of light.
- 6.3. Descriptions of the Items and all written or verbal information will be issued by the Auctioneer and his employees to the best of their knowledge. The Auctioneer is not obliged to give a full description of an Item, including its condition and characteristics. The Auctioneer is entitled to withdraw or amend a description made earlier, including a photo, at any time.
- 6.4. The Auctioneer can consult experts, but accepts no responsibility in this regard. The Auctioneer accepts no liability in connection with advice issued by the Auctioneer concerning the Items.
- 6.5. If the Auctioneer receives instructions to completely clear out a residence or storage space, he can exclude items from clearance, and also destroy or dispose of, or if appropriate otherwise monetise items that in his opinion are not suitable for the Auction.
- 6.6. On the announcement of an Auction the Auctioneer will state:
  - a. the applicability of these General Terms and Conditions;
  - b. the description of the Items to be auctioned;
  - c. the sequence of the Items to be auctioned.
- 6.7. The Auctioneer will issue an invoice to the Buyer, stating the Purchase Price and any Costs, including the payable turnover tax. This will also include the Resale Right Payment, where applicable, and the payment period.

- 6.8. When the total amount payable by the Buyer is received by the Auctioneer, the Auctioneer is obliged to pay the Sale Price to the Seller, with the deduction of any Costs, with the observance of the period for the invocation by the Buyer of the right of rescindment or annulment as referred to in article 13, or of revocation as referred to in article 17, without prejudice to any claim for set-off by the Auctioneer. If the Costs, where applicable, are higher than the amount to be paid by the Auctioneer to the Seller, the Auctioneer will issue an invoice for this to the Seller.

### **Article 7 Course of events at the Auction**

- 7.1. The Auction Supervisor represents the Auctioneer during the Auction.
- 7.2. The bidding takes place in Euros only and in ascending price.
- 7.3. The Auctioneer and the Auction Supervisor reserve the following rights at all times:
- a. to refuse a Bid without stating reasons;
  - b. to refuse persons or legal entities as Bidders or Buyers without stating reasons;
  - c. to exclude a Bid prior to the Auction from inclusion in the Auction;
  - d. to alter the sequence of Items to be auctioned;
  - e. to add or to exclude an Item;
  - f. to disallow or withdraw a Purchase;
  - g. to combine or split up Items. By this is meant that Items must first be offered separately, and thereafter in combination, after which the Purchase is concluded for the highest total amount;
  - h. to re-auction an Item concerning which a dispute has arisen during or shortly after the Auction, and to rescind any Purchase;
  - i. to correct an error made in a Bid and/or acceptance/Hammer Strike, or to rescind a Purchase without a Bidder being able to make use of an error and in that case being able to rely upon the Purchase that has come about;
  - j. to demand entire or partial payment immediately after acceptance, while in the event of refusal or inability to pay the Auctioneer and the Auction Supervisor are entitled to rescind the Purchase and subsequently re-auction the Item in question and no longer to accept the Bid of the negligent Bidder;
  - k. if the Buyer refuses to make his full name and address known to the Auctioneer and to show his proof of identity on first request, to rescind the Purchase and re-auction the Item;
  - l. to not issue any Item during the Auction;
  - m. to issue a Bid on behalf of Buyers or Sellers.



- 7.4. A Commission Bid takes precedence above a Bid that is placed during the Auction, provided that it is placed up to a maximum of 30 (thirty) minutes before the start of the Auction. The earliest Commission Bid takes precedence above Commission Bids for the same amount that are placed later.
- 7.5. The Auction Supervisor allocates the Item to the highest Bidder. If the Commission Bid is higher than or equal to the highest Bid at the Auction, then the Auction Supervisor allocates the Item to the Bidder of the Commission Bid.
- 7.6. In the event of Withdrawal during the Auction the Auctioneer is free to offer the Item or Items within 5 (five) days of the Auction – the so-called After-Sale – for an amount to be determined by the Auctioneer on the website of the Auctioneer, taking into account the Reserve Price, or to sell the Item or Items privately within 5 (five) days of the Auction, taking due regard of the agreements made with the Seller.  
These General Terms and Conditions are applicable to the After-Sale or the re-auctioning. If the Items remain unsold, for whatever reason, the Auctioneer can charge reasonable Costs.
- 7.7. The judgement of the Notary pronounced at the Auction is decisive.
- 7.8. The Auctioneer, those who are employed by the Auctioneer and are in office during the Auction, the Auction Supervisor and the Notary cannot place a Bid during the Auction.

## **Article 8 Obligations of the Bidder/Buyer**

- 8.1. By placing a Bid or Commission Bid at or prior to the Auction the Bidder is considered to have accepted the applicability of these General Terms and Conditions.
- 8.2. If the Bidder places a Commission Bid, he does so at his own expense and risk. In doing so the Bidder will place an unambiguous and clear Bid. The Bidder cannot hold the Auctioneer liable if the Auctioneer does not allow the Commission Bid to be accepted at the Auction.
- 8.3. If the Bidder wishes to place a Bid by telephone, this must be agreed with the Auctioneer in writing no later than 24 (twenty-four) hours before the Auction. Divergence from this period is only possible with the express written permission of the Auctioneer.
- 8.4. A Bid placed during the Auction cannot be withdrawn. A Commission Bid can be withdrawn by the Bidder in writing or by email up to a maximum of 30 (thirty) minutes before the Auction, whereby the Bidder states his name, address and telephone number, as well as the Auction, Item and amount for which the Commission Bid has been placed.



- 8.5. The Bidder may not be less than 16 years old and/or legally incompetent. Every Bidder is considered to bid, and to conclude a Purchase, at his own expense and risk.
- 8.6. The Bidder will not place a Bid, or arrange for a Bid to be placed, on his own Item.
- 8.7. It is not permitted to seek contact with the Seller outside of the Auction, or to conclude the Purchase outside of the Auction and the Auctioneer.
- 8.8. At an Online Auction the Bidder can only place a Bid after he has fully filled in a notification form and if he is accepted as a Bidder by the Auction Supervisor. The Bidder then receives an online account and logs in with the user name and password that he has received and/or chosen.
- 8.9. The Bidder may not transfer or give his online account to a third party, or offer third parties access to it, and may not log in with a user name and/or password of a third party. If a third party, also when this is a minor and/or is legally incompetent, places a Bid via the online account of the Bidder, then the Bidder is liable for all consequences of this.
- 8.10. The Auctioneer can block the bidding account of the Buyer or the Bidder without stating reasons. The Auctioneer can also exclude the Buyer and/or the Bidder from future Auctions at any time.
- 8.11. The Bidder will not perform any actions that burden the infrastructure of the Auctioneer in unreasonable ways or cause damage to the infrastructure, to the Online Auctions or to the good name of the Auctioneer.
- 8.12. The Bidder will closely and expertly inspect the condition, the characteristics and the description of an Item, or arrange for this to be done, and form his own opinion of this, including, but not exclusively, of the maker, the history, the condition, the quality, the originality or authenticity, the style, the suitability for the intended use, the value, the estimated sale price, whether a Resale Right Payment is payable, whether an Item has been restored, renovated or repaired, and of the extent to which the Item matches the descriptions. Where this is reasonably necessary or desirable, the Bidder will call upon the independent advice of experts, while the Bidder cannot rely upon photographs, illustrations or other images. If particular defects or inadequacies are stated, this is intended to be an indication that is not exhaustive and from which the Bidder cannot derive any rights.
- 8.13. The Buyer will be considered to have made a purchase for himself, and is liable for payment without being able to avail himself of an agent.



- 8.14. The Bidder/Buyer will provide proof of identity, a written authorisation or other supporting documents on the Auctioneer's first request, and on the Auctioneer's first request provide all information that the Auctioneer considers relevant in order to comply with legal obligations.
- 8.15. The Buyer will pay the invoice of the Auctioneer immediately, but no later than within 5 (five) working days.
- 8.16. The Auctioneer can charge Costs to a Buyer who does not collect an Item bought at the Auction within the periods stated in article 10.
- 8.17. The Buyer cannot offset his debt against a genuine or professed claim against the Auctioneer.
- 8.18. The rights and obligations arising from the Purchase and from these General Terms and Conditions cannot be transferred by the Buyer to a third party.

### **Article 9 Establishment of the Purchase/transfer of ownership**

- 9.1. The Purchase comes about through the Auction Supervisor accepting the Bidder as a Buyer by means of a Hammer Strike or, in the case of an Online Auction, by the placement of the highest bid and the acceptance thereof by the Auctioneer.
- 9.2. All Items are sold in the condition they are in at the moment of the Purchase coming about.
- 9.3. The ownership of the Item is not transferred until after the receipt of full payment of the invoice pertaining to the Purchase, and in the event of untimely payment after the Costs stated in article 12.4 have been paid.

### **Article 10 Delivery/receipt of the Item**

- 10.1. The Buyer will receive the Item or collect it (or arrange for it to be collected) within the period to be specified by the Auctioneer. Subject to the right of the Auctioneer to specify a shorter or longer period, a period of 5 (five) working days after the Purchase applies as the deadline for collection. If the Buyer does not comply with this then he is in default without notice of default being required. The Auctioneer is then entitled to place the Item in storage at the Buyer's expense and risk, whereby the transport costs and the associated risk are also borne by the Buyer.



- 10.2. Notwithstanding the provisions of article 10.1, the Costs of collection will be borne by the Buyer.
- 10.3. The Auctioneer can suspend his obligation to deliver an Item until the Buyer or the Seller has paid the amount payable by him to the Auctioneer in full.
- 10.4. All additional obligations associated with the Purchase, such as but not restricted to transport, import duties, permits, taxes etc. are at the Buyer's expense, unless the Buyer and the Seller have made other agreements in this respect. The Auctioneer is never responsible for these obligations.

### **Article 11 Transfer risk**

- 11.1. The risk of damage to and/or destruction of the Item to be auctioned remains with the Seller until the Purchase comes about. The risk of damage and/or destruction is subsequently immediately transferred to the Buyer.
- 11.2. If the Buyer invokes the right of rescindment or annulment of the Purchase in pursuance of the provisions of article 13, or has revoked the Purchase in pursuance of article 17, the risk of the auctioned Item immediately returns to the Seller, notwithstanding the obligation of the Buyer to immediately transfer the Item in question to the Auctioneer in the condition in which he has received it.

### **Article 12 Default of the Buyer**

- 12.1. The Buyer is in default without notice of default being required if the period stipulated for the payment expires without payment having been made.
- 12.2. The Buyer will reimburse the Auctioneer for the damage that arises through delay in the payment of his debt, with the addition of any Costs and the statutory interest.
- 12.3. The Buyer and the Seller acknowledge the right of the Auctioneer, at his own discretion, to demand compliance of the Buyer who exceeds the payment period, or to proceed to rescind the Purchase, or to first demand compliance of the Buyer and subsequently, if this demand is unsuccessful, to nevertheless proceed to rescind the Purchase.



- 12.4. All costs arising from or connected with the enforcement of his rights arising from a Purchase by the Buyer at the Auction, including all costs arising from or connected with the judicial and/or extrajudicial collection of any untimely or incompletely paid amount will be borne by the Buyer without any notice of default being required. The amounts recorded in the accounts of the Auctioneer for the abovementioned Costs will constitute full evidence in respect of the abovementioned Costs, in the absence of evidence to the contrary supplied by the Buyer. In the event of untimely payment the Buyer is liable to pay interest equivalent to the statutory interest with the addition of 3% or, at the Auctioneer's discretion, of 1% per month, to be calculated from the day on which the payment period has expired.
- 12.5. In the absence of payment by the Buyer within the specified period for payment, the Seller or the Auctioneer, without prejudice to their claims for reimbursement of Costs, damages and interest, are entitled to rescind the Purchase without legal intervention or notice of default being required, and to arrange for the Item to be re-auctioned. The re-auction takes place at the expense of the Buyer remaining in default, and under such provisions as determined by the Seller and/or the Auctioneer. The difference in the event of lower proceeds of the re-auctioned Item, and all Costs, damages and interest, and all Costs of the first Auction, must be paid by the Buyer remaining in default, failing which he is in default. The Buyer has no claim to the additional proceeds, and the Buyer cannot demand any refund of Costs already paid.
- 12.6. If the Seller or the Auctioneer make use of their abovementioned entitlement to rescind the Purchase due to non-compliance with obligations, and does not proceed to hold a re-auction, then instead of the reimbursement of Costs, damages and interest as a penalty for non-compliance he can demand twenty-five percent (25%) of all that is payable by the Buyer. The Buyer cannot reclaim payments made by him, unless any partial payment of the Purchase Price is for the purpose of the reduction of payable compensation or interest, and any excess must be refunded to the Buyer who is in default. If the Item is not re-auctioned, then the Auctioneer can rescind the Seller's Agreement without being liable to pay any compensation for this.

### **Article 13 Hidden defects and misleading description**

- 13.1. If the Buyer demonstrates to the Auctioneer's satisfaction within 6 (six) weeks that the Seller or the Auctioneer knew that the Item bought at the Auction had a defect, or the description supplied by the Auctioneer was misleading to such an extent that if this defect or the misleading description had been known to the Buyer at the Auction he would have refrained from the Purchase in exchange for the Bid placed by him, then the Buyer can rescind the Purchase by means of a written declaration made to the Auctioneer, or annul it on grounds of error or misrepresentation. This does not apply if the defects only concern the condition of the Item, such as for example wear and tear and restorations.





- 13.2. The Buyer irrevocably authorises the Auctioneer, through the applicability of the circumstances stated in article 13.1 in the exclusive judgement of the Auctioneer, to rescind the purchase with the repayment of the Purchase Price and the Costs.
- 13.3. If the Buyer cannot return the Item bought by him at the Auction in the condition in which it was supplied to him by the Auctioneer, the right of rescindment or annulment referred to in article 13.1 no longer applies.
- 13.4. If when drawing up the misleading description the Auctioneer had relied on communications from the Seller, or the omission of communications, in contravention of article 5.3, then the Seller is obliged to fully indemnify the Auctioneer against all claims of the Buyer, or of third parties where applicable, as referred to in this article.
- 13.5. The Buyer has no right to rescind the Purchase if the description is revoked prior to or during the Auction and prior to the placement of a Bid and the rectified description is communicated to the public verbally, in writing or via the website.

#### **Article 14 Liability of the Auctioneer**

- 14.1. The Auctioneer is not liable for excluding a Bid that is placed verbally, by telephone, in writing or electronically during the Auction, or a Commission Bid that is placed in writing or electronically. The Auctioneer is also not liable for technical or other malfunctions, including those of electricity, post, telephony or internet connections.
- 14.2. Notwithstanding the provisions of article 14.1, the Auctioneer is not liable if malfunctions occur in an Online Auction that are located at the Auctioneer or at third parties. The Bidder accepts that he cannot hold the Auctioneer liable for these. The Bidder therefore accepts, among other things, that he cannot register himself because of these, cannot bid or cannot do so in good time, or that his Bid is not accepted or confirmed.
- 14.3. The Auctioneer is not liable towards the Seller or Bidder in the exercise of the right of refusal of a Bid or Bidder.
- 14.4. The Auctioneer is not liable towards the Seller and/or Bidder and/or Buyer due to visible or invisible defects, due to the description of an Item, the condition of an Item, the characteristics, the qualities or designations, or materials such as wood types, fabrics, alloys, earthenware, porcelain, precious metals and diamonds, due to delays or changes in atmospheric conditions, unless in case of wilful misconduct or gross negligence, without prejudice to the right of the Buyer as referred to in article 13.1.



- 14.5. The Auctioneer is not liable towards the Seller and/or Bidder and/or Buyer for not entering an Item in the Auction, or the exercise of his other rights in pursuance of article 7.
- 14.6. The Auctioneer is not liable towards the Seller and/or Bidder and/or Buyer for loss, damage, or theft whether or not involving forcible entry, of whatever nature and through whatever cause, of an Item to be auctioned or of an Item bought at the Auction, unless in case of wilful misconduct or gross negligence of the Auctioneer and unless covered by the insurance of the Auctioneer.
- 14.7. The Auctioneer is not liable for trading loss, consequential damage, financial loss and/or indirect damage.
- 14.8. The Auctioneer is not liable as the result of incorrect or incomplete information issued to the Auctioneer by the Seller and/or the Bidder and/or the Buyer.
- 14.9. Entering the buildings or grounds used by the Auctioneer is at one's own risk. The Auctioneer can refuse any person access to these buildings and grounds without stating reasons.
- 14.10. The Auctioneer is not liable for any accident or any form of injury to a person in or nearby the buildings or grounds where there is the opportunity to consign, store or view, where the Auction takes place or where the purchased Item is collected, unless in case of wilful misconduct or gross negligence of the Auctioneer and unless covered by the insurance of the Auctioneer.

### **Article 15 General provisions**

- 15.1. The invalidity, invalidation or ineffectiveness of one of the provisions of these General Terms and Conditions does not affect the validity of the other provisions. In the event that one or more provisions are invalid, invalidated or ineffective, replacement provisions will be agreed with the Seller, the Bidder or the Buyer that are valid and that most closely approach the content and purport of the provision or provisions that have been shown to be invalid, invalidated or ineffective.
- 15.2. In the case of any discrepancies between the original Dutch version and this English translation, the Dutch version will prevail.
- 15.3. All obligations between the Auctioneer and the Seller and/or the Bidder and/or the Buyer are exclusively governed by the laws of the Netherlands.



- 15.4. An independent institution has been established for complaints that have a connection with, or can have a connection with, an action or omission by the Auctioneer in contravention of the Code of Conduct and Professional Rules of the Federation of Valuers, Brokers and Auctioneers: the *Stichting Kenniscollege Roerende Zaken (Stichting KRZ)*. Complaints must be submitted in the manner as stated on the website of the *Stichting KRZ*. See [www.stichtingkrz.nl](http://www.stichtingkrz.nl) (information in Dutch).
- 15.5. If no use is made of the complaints procedure, or a complaint is not resolved in this way, then the following applies. All disputes concerning, arising from or connected with the legal relationship to which these General Terms and Conditions apply or with these General Terms and Conditions will be exclusively submitted to the competent court in the business location of the Auctioneer, unless determined otherwise under the law.
- 15.6. The applicable General Terms and Conditions will always be available for inspection by the public at the Auction, and can be consulted via the website of the Auctioneer or in the catalogue.

## **Article 16 Online Auction**

- 16.1. These General Terms and Conditions are applicable to Online Auctions, with the exception of the conditions in respect of the Commission Bid and conditions 7.1, 7.3, 7.5 and 7.7. The following articles 17 and 18 and the form for revocation of the Purchase are specifically applicable to Online Auctions.
- 16.2. On the offer of an Item the Auctioneer will state a starting bid, all Costs, the Resale Right Payment in connection with the purchase and delivery of the Item, if applicable, and the payment method.
- 16.3. The starting bid is the amount to be determined by the Auctioneer, which is also applied as the Reserve Price.
- 16.4. The Bidder can place a Bid by means of the use of the 'Place Bid' option until the time of the closure of the Online Auction. By placing a Bid the Bidder accepts that he enters into a payment obligation. The Bidder receives an email in confirmation of his Bid.
- 16.5. The placed Bid can be a direct Bid or a maximum Bid. In the case of a maximum Bid bidding will be automatically continued until the maximum amount is reached.



- 16.6. By the placement of a Bid a binding purchase agreement comes about, on condition that the Bid is the highest Bid, it is placed in a timely manner and it is confirmed by the Auctioneer.
- 16.7. The Bidder who has placed the highest Bid at the time of the closure of the Online Auction will receive an email in confirmation and is obliged to pay for and collect the Item.
- 16.8. After the Purchase having come about the Auctioneer will send the Buyer an email containing an invoice. The Buyer must pay the invoice of the Auctioneer immediately, but no later than within five working days.
- 16.9. The Buyer undertakes to collect the Item within five working days of the closure of the Online Auction. The Auctioneer will however only hand over the Item following full payment of the invoice.
- 16.10. If the Purchase comes about electronically, the Auctioneer will take appropriate technical and organisational measures for securing the electronic transfer of data, and will ensure a secure web environment. If the Consumer can pay electronically, the Auctioneer will observe appropriate security measures.

### **Article 17 Right of revocation of the Consumer**

- 17.1. If the Consumer has placed a Bid and has concluded the Purchase he can cancel the Purchase, and with this the sale agreement, within a reconsideration period of 14 (fourteen) days of the delivery or release of the Item, or:
  - a. if the Consumer has purchased multiple Items at the same Online Auction: the day on which the Consumer, or a third party designated by him, has received or collected the last Item;
  - b. if the delivery of the Item consists of various components: the day on which the Consumer, or a third party designated by him, has received the last component.
- 17.2. During the reconsideration period the Consumer will handle the Item and the packaging with care. He will only unpack or use the Item to the extent that is necessary to establish the nature, the characteristics and the working of the Item. The basic principle hereby is that the Consumer may only use and inspect the Item in the way he would be allowed to in a shop.
- 17.3. If the Consumer makes use of his right of revocation, he will report this to the Auctioneer within the reconsideration period by means of the model form for revocation shown below or in another unambiguous manner.



Federatie van  
Taxateurs Makelaars Veilinghouders  
in Roerende Zaken

Dutch Federation of Certified Appraisers, Brokers and Auctioneers in Movable Assets (*Federatie van Taxateurs Makelaars en Veilinghouders in Roerende Zaken – Federatie TMV*), 15 October 2020. Copyright expressly reserved. Adoption and application of these conditions is only permitted to the members of the *Federatie TMV*.



## **Appendix I: Model form for revocation**

(Only fill in and return this form when you wish to revoke the agreement.)

**To:**

[Name of Auctioneer]

[Address of Auctioneer]

[Postcode and Town/City of Auctioneer]

Tel. +31 [telephone number of Auctioneer] (local tariff)

Email: [email address of Auctioneer]

- I/We\* hereby inform you that I/we\* revoke my/our\* agreement concerning the purchase of the following Items: [designation of Item]\* bought at the Online Auction of [date].
  
- [Name of Consumer]
  
- [Address of Consumer]
  
- [Signature of Consumer] (Only when this form is submitted on paper.)

\* Delete where not applicable or fill in where applicable.