

# **General Terms and Conditions of art4public Kunsthandels-GmbH**

**as amended on 29.11.2008**

## **Responsibility for Movement of Goods and Object for Sale**

Responsibility for movement of goods, as well as the type, authenticity and price level of the works of art offered for sale by art4public Kunsthandels-GmbH under [www.art4public.com](http://www.art4public.com) is exclusively incumbent on the depositor, i.e. the gallery owner or artist being partner of art4public Kunsthandels-GmbH.

If the quoted price is €0.00, please contact the gallery per e-mail to get the real price. In this case the price quoted by the gallery owner per e-mail will be valid. On no account the price will be the amount of €0.00 quoted in the shop system.

## **Part 1: Common Provisions for all Online Activities**

### **Sect. 1 Preamble**

(1) art4public Kunsthandels-GmbH (hereinafter referred to as "art4public.com"), Brunnleitenweg 15, A-5061 Elsbethen, offers its users an electronic trading platform (the "Platform"), where art dealers, galleries, auctioneers and museums may present their services and offers (selling of goods and the presentation of items for sale including an opportunity to bid) via the website of art4public Kunsthandels-GmbH ([www.art4public.com](http://www.art4public.com)). Any natural person of unlimited legal capacity having attained the age of eighteen, as well as any legal person is allowed to utilise the offers and services of the Platform.

### **Sect. 2 Scope of the General Terms and Conditions**

(1) art4public Kunsthandels-GmbH offers its online activities subject to the General Terms and Conditions (hereinafter briefly referred to as "GTC") set forth hereunder.

(2) The GTC in hand are intended to regulate the contractual relationship between art4public Kunsthandels-GmbH and the user as seller and exhibitor on the one hand, and art4public Kunsthandels-GmbH and the user as buyer on the other hand. They do not regulate the contractual relationship between the users among each other as seller and buyer.

(3) Contracts concluded on the Platform between the user as seller and the user as buyer shall be exclusively governed by the GTC of the users. art4public Kunsthandels-GmbH is not a party to the purchase contract, which is concluded exclusively between the user as seller on the one hand and the user as buyer on the other hand. Moreover, the GTC in hand do not govern warranty and liability between the user as seller and the user as buyer.

(4) art4public Kunsthandels-GmbH reserves the right to change its GTC any time. The users will be informed of any such change via e-mail. The amended GTC are deemed to be accepted by the user, if the latter does not raise an objection within two weeks after the possible receipt of the notification of change. art4public Kunsthandels-GmbH will expressly inform all users in the course of their activities on the website of [www.art4public.com](http://www.art4public.com) that the GTC have been changed. The bids made at the time of the change shall be based on the GTC in their initial form.

(5) The current version of the GTC is available for perusal under [www.art4public.com/AGBS](http://www.art4public.com/AGBS).

### **Sect. 3 Users**

(1) The electronic trading platform as range of services offered (sect. 1, para (1)) by art4public Kunsthandels-GmbH, providing an opportunity for users to present their offers and services, requires the conclusion of a contract between art4public Kunsthandels-GmbH and the user. Analogously, prior to the purchase of a commodity a contract must be concluded between art4public Kunsthandels-GmbH and the user as potential buyer. Trading goods via the website of art4public Kunsthandels-GmbH ([www.art4public.com](http://www.art4public.com)) is subject to admission of the users by art4public Kunsthandels-GmbH.

(2) Admission, in turn, requires registration on the part of the user. For registration the registration form must be filled in completely and sent to art4public Kunsthandels-GmbH. Doing so, the interested party assures that the data and information requested by art4public.com have been given completely and truthfully. art4public Kunsthandels-GmbH shall be entitled to request the interested party to present its actual authority to represent the respective company.

(3) In the course of registration the user may get a user name / password. The user undertakes to use it properly and to make sure that the user name / password are protected against unauthorised third party access.

(4) In the event that the user suspects any unauthorised use of his password then he shall notify art4public Kunsthandels-GmbH immediately.

(5) art4public Kunsthandels-GmbH shall have the right to exclude a potential user from admission. This may be the case, in particular, if art4public Kunsthandels-GmbH is informed of any legal misuse committed by a potential user.

### **Sect. 4 Scope of Right of Use**

(1) Each user shall be entitled to utilise the services regulated under sect. 1 as far as technically possible. However, these rights are granted to the user only within the scope of intended use.

(2) art4public Kunsthandels-GmbH will not grant any copyright or other related right in the design of the whole services provided by art4public Kunsthandels-GmbH, particularly in any present and future website of art4public.com, any possible art4public.com software, the documentation as well as any related composition.

(3) All copyrights and related rights in products and works of the user deposited on the Platform shall remain entirely with the respective holder of the right.

(4) art4public Kunsthandels-GmbH reserves the right to modify its range of services offered any time. Moreover, art4public Kunsthandels-GmbH may change the user interfaces related with its Platform any time.

(5) In the event that art4public Kunsthandels-GmbH places software at the user's disposal, the user is granted a temporary right of use for this software, which is limited to the duration of the mutual business relations. The user shall not be allowed to transfer the software and its accompanying material to any third party. Further relevant details are stipulated in separate GTC of the software.

### **Sect. 5 Buyer and/or Bidder as User**

(1) Participation as buyer and/or bidder is possible only for natural persons of unlimited legal capacity having attained the age of eighteen, as well as for legal persons.

(2) Participation in one of the Platforms made available by art4public Kunsthandels-GmbH is subject to the admission of a potential buyer and/or bidder by art4public Kunsthandels-GmbH. General stipulations thereto are provided for in sect. 3 hereof.

(3) Admission is free of charge. There is no entitlement to admission for potential buyers. Moreover, art4public Kunsthandels-GmbH reserves the right to withdraw admission any time, without prior notice and without giving reasons, in particular, however, on grounds of misrepresentations made on registration, the submission of inadmissible bids or the abuse of the internet auction platform of art4public Kunsthandels-GmbH. This right of rejection is also granted to any user as seller and/or auctioneer.

(4) Any potential buyer shall be entitled to withdraw his registration in writing any time. In this case all pertinent data stored with art4public.com shall be deleted within one month after art4public Kunsthandels-GmbH has received such withdrawal, and/or after any existing legal relationship has been performed and settled.

(5) The safekeeping of the personal password is incumbent on the potential buyer. He shall be obliged to inform art4public Kunsthandels-GmbH immediately about any loss of the password so that art4public Kunsthandels-GmbH may arrange for blocking the password. art4public Kunsthandels-GmbH shall not be liable for any misuse of the password, and/or in cases where the potential buyer has failed to comply with his obligation to inform.

(6) To ensure the consignment of a purchased or auctioned commodity the data of potential buyers or bidders indicated on registration may be disclosed to the user as seller by art4public Kunsthandels-GmbH.

## **Sect. 6 Data Privacy**

(1) The personal identification data of the user will be stored by art4public Kunsthandels-GmbH, but will not be disclosed. They are used only for the operation of the Platform [www.art4public.com](http://www.art4public.com) and can be disclosed to the user as auctioneer or seller to this end in the actual case.

(2) The following will be disclosed by art4public Kunsthandels-GmbH: a) towards the buyer: the contact data of the seller chosen by him; b) against the seller: the contact data of the buyer.

(3) After termination of the business relation or after withdrawal of the admission the user shall be entitled to cancellation of the stored personal identification data.

## **Sect. 7 Warranty and Liability**

(1) art4public Kunsthandels-GmbH cannot guarantee that persons designated as offerer, buyer or seller in the declaration of intent delivered by or received by art4public Kunsthandels-GmbH are actually existing. The user making or accepting a bid acts at his own risk, as far as the existence of the contractual partner is concerned. The risk that a password is used by persons who have not been authorised to do so by the user shall also be borne by the user. Any liability of art4public Kunsthandels-GmbH shall be excluded according to the rules of the intermediary's liability without intermediary's authority.

(2) art4public Kunsthandels-GmbH cannot guarantee that any user as seller or auctioneer has described his offer correctly and completely, in particular as regards the main properties and features as well as any defects substantially reducing the value of the commodity offered.

(3) art4public Kunsthandels-GmbH will not guarantee the continuous and unbroken availability, quality and usability of the web pages of [www.art4public.com](http://www.art4public.com).

(4) art4public Kunsthandels-GmbH will not assume any liability for:

- a. losses incurred by any user or third party because of the auctions of the partners,
- b. losses incurred by any user or third party because of the behaviour of other users,
- c. losses incurred by any user or third party because of the behaviour of external persons (so called "hackers").

(5) To the extent that art4public Kunsthandels-GmbH places software at the user's disposal, liability shall be governed by the GTC of the software agreement.

(6) Liability for initial inability to perform, default and impossibility of performance shall be limited to the amount of the average loss typical of the relevant kind of contract. art4public Kunsthandels-GmbH shall not be liable for indirect damage, in particular for loss of profit.

(7) art4public Kunsthandels-GmbH shall be liable without limitation only in case of intent or gross negligence committed by its legal representatives and executives. In case of fault of other vicarious agents art4public Kunsthandels-GmbH shall be liable only to the extent as provided for initial inability to perform pursuant to sect. 7 para 6 hereof.

(8) In the event of a breach of material contractual duties required to accomplish the intent of the contract, art4public Kunsthandels-GmbH shall also be liable in case of slight negligence. In this case, too, liability shall be limited to the extent as provided for initial inability to perform pursuant to sect. 7 para 7 hereof.

(9) Imperative liability as provided for in the Product Liability Act shall remain unaffected (sect. 14 ProdHG – Product Liability Act).

#### **Sect. 8 Termination**

(1) Notwithstanding the provision of para (2) below both art4public Kunsthandels-GmbH and the user as seller may terminate the contract of use created by registration any time and without giving reasons. Termination must be made in writing.

(2) Termination shall be excluded for any user and in relation to any user who is bound by a required declaration of intent relating to a contract.

#### **Part 2: Possible Offers and Services of Users in Detail**

art4public Kunsthandels-GmbH and the partners as users (see sect. 1 (1) – hereinafter referred to as Partners of art4public.com) may, via the Platform [www.art4public.com](http://www.art4public.com), transact online offers to which the following provisions shall apply unless contradicted by the GTC of the Partners. Online offers may also be transacted by art4public Kunsthandels-GmbH itself, in which case art4public Kunsthandels-GmbH shall be regarded as a Partner.

#### **Sect. 9 Organisation of Online Offers**

Internet sales are prepared, organised and transacted by the Partners.

#### **Sect. 10 Performance of the Contract**

Any buyer and the Partner of art4public Kunsthandels-GmbH agree about the fact that the preparation, organisation and transaction of internet offers (such as presenting the objects on the internet, providing the internet platform and implementing monetary transactions) are performed exclusively by the Partners. Therefore, any claims of the buyer can be raised only against the Partner, unless otherwise

provided for in the contract or by imperative provisions of the law. The Partner may always transfer his contractual rights and obligations to any third party.

#### **Sect. 11 Performance of Online Sales**

##### **(1) Buying at fixed price**

The fixed price (purchase price) is determined by the relevant Partners. All objects are offered in the “as-is” condition at the time of their being deposited on the art4public.com Platform. Buying orders of the user as customer are binding and irrevocable. Purchase contracts are effected subject to the confirmation of the user as seller and the availability of the object. If a user as customer wishes to make buying orders on behalf of a third party, this must be notified in advance to art4public Kunsthandels-GmbH by e-mail or another way of communication (facsimile, letter) indicating the name and address of the person represented. The order can be placed only after arrival of the requested data at art4public Kunsthandels-GmbH. Otherwise the purchase contract will be effected with the ordering party.

##### **(2) Bids in the “bidding shop“**

As an alternative to buying at a fixed price it is possible for the user as customer to make his own bid for any object offered. These bids are forwarded to the user as seller for processing. The user as seller may either accept or refuse such bids. Moreover, he may submit to the user as buyer an alternative proposed price for acceptance or refusal. The purchase contract is effected subject to the confirmation of the user as seller and the availability of the object. Bids are binding and irrevocable.

The potential buyer is bound by his bid until it is either accepted or refused by the user as seller. A bid cannot be withdrawn or reduced. To ensure the proper transaction of the internet sales art4public.com and the Partners shall be entitled to reject bids and bidders without giving any reasons. There is no entitlement to acceptance of a bid.

If a bidder wishes to make bids on behalf of a third party, this must be notified in advance to art4public Kunsthandels-GmbH by e-mail or another way of communication (facsimile, letter) indicating the name and address of the person represented. The bid can be made only after arrival of the requested data at art4public Kunsthandels-GmbH. Otherwise the purchase contract will be effected with the bidder in case of award.

#### **Sect. 12 Default, Withdrawal, Storage, Cancellation**

##### **(1) Reminder**

The buyer shall be deemed to be in default, if he fails to pay the amount due within 10 days after the dispatch date of the reminder sent by art4public Kunsthandels-GmbH or the Partner.

##### **(2) Default interest**

If a buyer is in arrears with payments, default interest amounting to 1% per month or part thereof can be demanded, without prejudice to further claims. In the event of default all outstanding amounts shall become due immediately.

##### **(3) Damages**

Moreover, art4public Kunsthandels-GmbH or the Partner may demand, in the event of default, either performance of the purchase contract or, after granting a reasonable period of grace, damages for non-performance.

##### **(4) Consignment of online purchases**

After conclusion of the online purchase contract art4public Kunsthandels-GmbH, on behalf of the Partner, or the Partner himself will contact the buyer for the desired mode of dispatch of his purchase. The risk of damage or loss of the commodity in transit shall be borne by the buyer. The buyer shall be free to request a special mode of dispatch. The forwarding expenses shall be borne by the buyer. art4public Kunsthandels-GmbH or the Partner may refuse the desired mode of dispatch for the purchased object for good reason and grant the buyer a time limit to accept a proposed mode of

dispatch. If the buyer does not agree with the proposed mode of dispatch for his acquisition in spite of a period of grace granted by art4public.com or the Partner, art4public Kunsthandels-GmbH or the Partner shall be entitled to store the commodity of the internet auction at a forwarding company at the buyer's risk and expense, including any expense for insurance.

(5) Buyer's liability in case of rescission

If the buyer has received the commodity and if the buyer thereafter reasonably claims rescission of the contract, the buyer shall be liable for accidental loss of the commodity and accidental perishing of the condition of the commodity until delivery to art4public.com or the Partner.

(6) Right of withdrawal

Any buyer ordering articles at the art4public online shop shall be entitled to withdraw from his purchase contract within a period of 14 days after the ordering date and/or terminate the existing contractual relationship.

### **Sect. 13 Liability**

(1) Information provided on web pages

As regards information provided on web pages, the following shall apply:

- a) All information provided on web pages regarding creatorship and signature are based on the published or otherwise generally accessible scientific knowledge ascertained by the Partner in all conscience and with the required care. If any such information turns out to be incorrect before elapse of the limitation period pursuant to sect. 6 para (4) below, then the Partner undertakes to repurchase the commodity. On the buyer's request the Partner shall repay the purchase price against return of the commodity in unchanged condition. There shall be no further liability of the Partners. Details provided on web pages are no guaranteed qualities for the purpose of sect. 459 para 2 of the Civil Code.
- b) No liability is assumed for further information contained on web pages which is always provided in all conscience. The same applies to images depicted on web pages. The latter are intended to guide prospective customers during preliminary inspection. They are not meant to define neither the condition nor the properties of the object coming up for auction.
- c) art4public Kunsthandels-GmbH and the Partner reserve the right to correct information provided on web pages regarding the internet offer. Such correction will be effected by correcting the data on the web pages. The scope of the Partner's liability for such correction corresponds with that for the initial information.

(2) Technical aspects

- a) It is generally accepted that according to the state of the art it is not possible to develop and operate computer programs (software) and data processing equipment (hardware) absolutely free from defects, and to exclude all imponderableness in relation to the internet as a medium. Therefore, art4public.com and the Partner will not accept any liability for damage suffered by potential buyers or third parties as a consequence of participating in such internet offers as effected by the Partners. The Partner will not be liable, in particular, for damage incurred by the fact that buying quotations made by potential buyers do not arrive or not arrive in time at art4public Kunsthandels-GmbH and/or the Partner to be considered there, as a consequence of technical deficiencies, nor for the trouble-free operation of the server.
- b) art4public Kunsthandels-GmbH will not be liable either for damage of the kind as designated in sect. 6 para (2) a), if the damage has been caused by slight or contributory negligence on the part of art4public Kunsthandels-GmbH or its legal representatives or vicarious agents.
- c) The above limitation of liability shall apply accordingly to the legal representatives and vicarious agents of art4public Kunsthandels-GmbH.

(3) Defects of title and of quality

All objects admitted to the internet offer are second-hand. Any defects regarding preservation are mentioned in the information provided on the web pages only, if they affect the overall impression of a work of art. The Partner shall be liable for defects of title in an internet offer pursuant to sect. 15 para

(1) a). Any claims for damages exceeding this scope shall be excluded. For all other defects of quality of the internet offer neither the Partner nor art4public Kunsthandels-GmbH will assume any liability, notwithstanding the liability of the Partners as provided for under sect. 15 para (1) a).

(4) Statute of limitation

All rights granted herein are subject to a limitation period of 1 year after conclusion of the internet purchase contract.

**Sect. 14 Choice of Law**

(1) Both the use of services of art4public Kunsthandels-GmbH and these GTC are subject to the EU Directive on distance selling by internet. The application of the UN Sales Convention on Contracts for the International Sale of Goods as amended on April 11, 1998, shall be excluded.

(2) The provisions of sect. 16 (1) shall not affect imperative provisions of the law of the state in which the user has his habitual abode, in the event and to the extent that the user has entered into a contract within the scope of online offers, which contract cannot be attributed to the user's professional or commercial activities, and if the user has performed the legally significant acts required for the conclusion of the contract in the state of his habitual abode.

**Part 3: Applicable Law**

Sect. 1 The EU Directive on distance selling by internet shall apply. The UN Sales Convention shall be excluded. The place of venue shall be Salzburg.

Sect. 2 In the event that certain provisions of these GTC should be or become legally ineffective either in part or in whole, the validity of the other provisions of these GTC shall remain unaffected. The ineffective provisions shall be replaced by statutory provisions. The same applies to any unintended loopholes in the GTC.