

**GENERAL TERMS AND CONDITIONS OF ‘KUNSTHANDEL ROB KATTENBURG B.V.’,  
ALSO TRADING UNDER THE NAME ‘GALLERY ROB KATTENBURG’**

**1. GENERAL**

- 1.1. These general terms and conditions (‘General Conditions’) govern all contracts between Kunsthandel Rob Kattenburg B.V. (‘Kattenburg’) and its clients (the ‘Client’) and all offers made by Kattenburg.
- 1.2. Any term that departs from these General Conditions is only binding if it is accepted by Kattenburg in writing.
- 1.3. The applicability of any general terms and conditions of the Client, a seller or a third party, is rejected by Kattenburg.

**2. OFFERS AND CONTRACT FORMATION**

- 2.1. All offers are subject to contract, unless expressly stipulated otherwise.
- 2.2. There is a binding contract as soon as Kattenburg has explicitly accepted an offer of the Client to buy or sell an artwork, or the Client has sent instructions that are accepted by Kattenburg.
- 2.3. Kattenburg is always entitled to require payment in advance of all or part of the contract price and/or costs for the performance of the contract, and is entitled to suspend performance of the contract up to such time as the advance payment is made.
- 2.4. Kattenburg is entitled to engage a third party to perform all or part of the work, subject to compliance by such third party with these General Conditions.

**3. PURCHASE OF ARTWORKS BY KATTENBURG**

- 3.1. Kattenburg at all times reserves the right to dissolve a purchase contract and/or to annul a purchase contract, partially or in full, in the event the artwork does not fully meet the reasonable expectations of Kattenburg and to hold the seller of the artwork fully liable for losses suffered by Kattenburg.
- 3.2. The seller guarantees that the information it supplies to Kattenburg concerning the artwork and storage conditions is full and accurate.

**4. SALE OF ARTWORKS BY KATTENBURG**

- 4.1. All artworks are sold as is described by Kattenburg in the contract and in the condition they are in at the time of sale. The Client accepts the qualities of the artwork as is, and as where known or reasonably should have been known at the time of the sale, taking into account that they are “second hand” goods of a certain age and have certain condition problems. All photographs, advertising and specifications provided by Kattenburg are issued for the sole purpose of giving an appropriate idea of the artwork but do not purport to be an exact or complete reproduction.
- 4.2. The nature of the artworks for sale by Kattenburg - amongst others: (maritime) old master paintings and drawings, etchings, engravings and globes, mostly from the 17th, 18th and 19th century - is such that they will rarely be in a perfect condition, as a new painting or drawing could be. Due to the (natural) aging process and the nature of the artworks, it is likely that the artworks show signs of wear and tear, damage, other imperfections, professional restorations and/or repair. Any statement, whether oral or in writing (including condition reports), as to the physical nature or condition of an artwork is given with appropriate care and to the best of knowledge and ability, in line with the commonly accepted state of the art at that time, but reasonably cannot amount to a full description of condition or a guarantee or warranty by Kattenburg, for the reasons given in paragraph 1 of this article. Kattenburg recommends that the Client seeks advice on all these matters from its own professional advisors before a sale is concluded. In addition, Kattenburg is not responsible for any subsequent deterioration of an artwork, however occasioned, after the sale.
- 4.3. Any statement of Kattenburg about any artwork, whether orally or in writing, concerning for example the authorship of an artwork, origin, date, age, genuineness, source, provenance, condition and previous descriptions of an artwork in literature, is prepared to the best of Kattenburg’s knowledge and ability, in line with the commonly accepted state of the art at that time, and is if possible based on the generally accepted opinion of scholars or experts and/or the leading authority on the respective artist on the date of the sale. Kattenburg has based its knowledge on these outside experts and cannot itself be held liable. These statements are statements of opinion only and shall never imply any sort of guarantee or warranty by Kattenburg.

The nature of the artworks for sale by Kattenburg is such that they are not always signed and dated or precisely datable. Therefore the mentioning of the (probable) producer of the artwork and/or a (possible) date on which the artwork was created are no guarantees whatsoever, but attributions only and possible dates of the creation of the artwork.

- 4.4. It lies within the nature of the artwork that the knowledge about and qualities of the artwork may change due to new insights of experts. Kattenburg recommends that the Client seeks independent advice on these matters from its own professional advisors. In any case, the artwork sold by Kattenburg meets and fulfils the contract when:
  - a. the written description of the artwork corresponded to the generally accepted opinion of scholars or experts at the date of the sale; and/or
  - b. it appears that knowledge about the artwork at the date of sale is incorrect, and the correct identification of an artwork can be demonstrated only by means of either scientific process not yet generally accepted for use until after the date of the sale or a process which at the date of the sale was unreasonably expensive or likely to have caused damage to the artwork.

**5. ARTWORKS CONSIGNED TO KATTENBURG**

- 5.1. In the event an artwork is given to Kattenburg in consignment, the Client agrees that Kattenburg will act as an agent for the Client and will – on a best endeavours basis (“inspanningsverplichting”) – try to sell the artwork to a third party on behalf of the Client. Kattenburg acts in the name of the Client, unless otherwise agreed in writing. Any notice by Kattenburg concerning the result may not be interpreted as a warranty.
- 5.2. The Client warrants that it has full legal title to the artwork, and that the information it supplies to Kattenburg concerning the artwork and storage conditions is full and accurate.
- 5.3. The Client gives Kattenburg the unconditional power to sell of the artwork to a third party and to transfer legal title of the artwork to a third-party buyer. Kattenburg and the Client can agree on the guidelines for a sale to a third party (for example a minimum selling price), but these guidelines do not affect the unconditional power of Kattenburg to sell and transfer the artwork to a third-party buyer.
- 5.4. Kattenburg is only liable to remit the selling price to the Client after Kattenburg has received the selling price from the third-party buyer of the artwork in full. Kattenburg may deduct from this payment to the Client all outstanding fees and costs.
- 5.5. Kattenburg excludes all liability for claims of third parties, including but not limited to claims of third-party buyers. The Client indemnifies Kattenburg against any third-party claim resulting from the consignment agreement.
- 5.6. The Client can terminate the consignment agreement by written notice to Kattenburg. Kattenburg may terminate the consignment agreement at all times.
- 5.7. If the consignment agreement terminates before the services of Kattenburg have been completed, the Client must reimburse Kattenburg for the costs incurred and the work carried out by Kattenburg up to the point of termination. The Client is also liable to compensate Kattenburg for any loss, including loss of profits, and to indemnify Kattenburg against any third-party claim resulting from termination of the contract.

**6. ADVICE, ART HISTORICAL RESEARCH AND PUBLICATIONS**

- 6.1. To any service, advice, statement, reference or publication of Kattenburg, whether orally or in writing, whether or not supported by documentation and/or certification, including but not limited to art historical research, the assistance in the purchase/sale of artworks and advice regarding the restoration or valuation of artworks, articles 4.2, 4.3 and (the first sentence of) 4.4, and 5.2, 5.6 and 5.7 of these General Conditions apply.
- 6.2. Kattenburg performs this work to the best of its knowledge and abilities, and on a best endeavours basis (“inspanningsverplichting”). Any notice by Kattenburg concerning the result may not be interpreted as a warranty whatsoever.

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6.3. Third parties cannot derive any rights from any advice, statement, reference or publication of Kattenburg. Article 5.5 of these General Conditions applies.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1. All intellectual property rights concerning designs, plans, models, documentation and photographs created by Kattenburg or on the instructions of Kattenburg, belong at all times to Kattenburg. The Client is not permitted to copy and publish these without the written consent of Kattenburg. In the event of any copying or publication in breach of this paragraph, the Client is immediately liable to pay Kattenburg a penalty of € 5.000,= per breach, with a maximum of € 25.000,=, without prejudice to the right of Kattenburg to claim compensation for the full amount of its loss.
- 7.2. Kattenburg is entitled to publish or copy designs, plans, models, documentation, and photographs created by or on behalf of Kattenburg for the purposes of promoting its commercial activities and for inclusion in publications of an educational or scientific nature.

## **8. PRICES**

- 8.1. Unless stated otherwise, the prices quoted by Kattenburg are net of (Dutch) VAT, and net of any additional costs for insurance, transportation, installation, and packaging.
- 8.2. If parties have not agreed otherwise, fees for all services and advice by Kattenburg, including but not limited to services as described in articles 5 and 6 of these Conditions, will be calculated pro rata the number of hours worked multiplied with the hourly fee to be established by Kattenburg.
- 8.3. An offer as referred to article 2 of these General Conditions qualifies as a rough and first estimation only and does not constitute to (an offer for) an agreed fixed fee for work as performed by Kattenburg. The same applies to (a request for) an advance payment.

## **9. DELIVERY, TRANSPORT AND STORAGE**

- 9.1. Quoted delivery periods by Kattenburg are approximate only and may under no circumstances be treated as a deadline.
- 9.2. If the Client has not taken possession of artwork within 10 working days after receiving notice of Kattenburg that the artwork can be collected, Kattenburg is entitled to charge a storage fee in line with the rates charged in the sector by professional art handling companies.
- 9.3. Transportation, storage, packing and unpacking of the artworks that are the subject of a contract or offer are at all times at the expense and risk of the Client, irrespective of the information contained on the shipping documents.
- 9.4. The Client (if applicable) warrants that it has arranged for legal export and import of the artwork. Import and export duties are for the account of the Client. It is the responsibility of the Client to obtain all necessary (export and import) licenses, and that all applicable regulations and requirements are met. Kattenburg accepts no responsibility or liability in this respect. Kattenburg may at all times request the Client to supply the original export and import documentation.

## **10. COMPLAINTS AND LIABILITY**

- 10.1. Any complaints or claims regarding performance of the legal relationship between Kattenburg and the Client must be sent to, and received in writing by Kattenburg in any event within 4 weeks after performance of the legal relationship. Complaints or claims received by Kattenburg after this period will not be considered by Kattenburg, to the extent permitted by law.
- 10.2. Kattenburg is not liable for loss caused to an artwork with which it has been entrusted pursuant to an offer or contract, whether during their transportation, performance of the work, or the storage an artwork, and the Client must ensure proper insurance of the artworks, if it so requires.
- 10.3. The liability of Kattenburg in the event of any attributable breach in its performance of a contract is limited to an amount not exceeding the purchase price or fee quoted in the relevant contract, excluding costs.
- 10.4. Kattenburg is not liable for loss resulting from force majeure or the act or omission of any third party engaged by Kattenburg or of any

member of its personnel, unless such act or omission is covered by insurance. In such a case the liability of Kattenburg is limited to the amount paid out under the relevant insurance cover.

10.5. Force majeure enables Kattenburg to choose either to terminate the contract, or to suspend performance of the contract until such time as the situation of force majeure has ended.

## **11. PAYMENT, TRANSFER OF TITLE AND RIGHT OF RETENTION**

- 11.1. The Client must pay any amount due to the bank account of Kattenburg. If there is agreement that payment is not required to be made on delivery, and no other payment term has been agreed, payment must be made within 14 days of the date of the invoice. The right of set off of the Client is excluded, to the extent permitted by law. Submitted complaints do not suspend the Client's obligation to pay the amounts due.
- 11.2. If payment is not made on delivery, within 14 days of the invoice date, or such other payment term stipulated by Kattenburg, the Client is automatically in breach without the need to first serve notice of default.
- 11.3. In the event of a breach by the Client, Kattenburg has the right to exercise a number of legal rights and remedies. These include, but are not limited to, the following:
- charge an interest at an annual rate of 10%;
  - charge collection costs as established by the staffel buitengerechtelijke incassokosten (BIK);
  - if Kattenburg engages a third-party debt collector, charge a payment towards those costs equivalent to 15% of the principal sum;
  - to hold the Client liable for the total amount due, together with interest, legal fees and all costs of Kattenburg, for example but not limited to costs of Kattenburg for storage and insurance of the artwork.
- 11.4. In case of a sale by Kattenburg, the Client will not acquire legal title to the artwork until payment of the full amount is received by Kattenburg in good cleared funds.
- 11.5. Kattenburg is entitled to suspend its own obligations and retain possession of any artwork of the Client ('retentierecht'), until the Client has paid all costs and fees to which Kattenburg is entitled under the relevant contract, or other contracts, and complied with all other obligations to Kattenburg.
- 11.6. In the event of the Client's breach, Kattenburg is also entitled to terminate the contract, in which case the Client must compensate Kattenburg for any loss incurred by Kattenburg as a result of the termination, including loss of profits.
- 11.7. Kattenburg has the right, but not the obligation, to rescind a sale, where a claim is made by a third party, including but not limited to, someone claiming ownership of the artwork. Upon notice of Kattenburg's election to rescind the sale, the Client will promptly return the artwork to Kattenburg and Kattenburg will then refund the selling price paid by the Client. The refund of the selling price paid will constitute the Client's sole remedy and recourse against Kattenburg with respect to such claims.

## **12. APPLICABLE LAW AND JURISDICTION**

- 12.1. The relation between the Client and/or other third parties and Kattenburg shall be exclusively governed by Dutch law, with exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 12.2. All disputes regarding contracts concluded or services provided by or on behalf of Kattenburg will be settled exclusively by the Court of Amsterdam in the Netherlands, without prejudice to the right of appeal or appeal in cassation.
- 12.3. A Client who is a natural person acting for purposes which are outside his trade, business, craft or profession can, within one month after paragraph 2 of this article is invoked, submit the dispute instead to the legally competent court.