

Conditions of Business for Sellers (USA)

The Conditions of Business for Sellers govern all aspects of the consignment, report, holding and sale of Property by Kerry Taylor Auctions USA together with Kerry Taylor Auctions USA Authenticity Guarantee and the Conditions of Business for Buyers, as printed in sale catalogues and available from Kerry Taylor Auctions USA upon request. Kerry Taylor Auctions USA acts as agent for Sellers.

Conditions of Business for Buyers and/or Sellers may be amended by additional terms printed in the sale catalogue and/or by notices posted up in the saleroom or announced by the auctioneer.

DEFINITIONS

“Seller” is the owner of the Property, their agent, executors or the person in possession of the Property (as appropriate).

“KT” means Kerry Taylor Auctions USA INC, EIN number: 93-4073365, Studio 227, 888 Newark Avenue, Jersey City, New Jersey, 07306

“Seller’s Commission” is the commission Kerry Taylor Auctions USA charges Sellers of Property.

“Expenses” are Kerry Taylor Auctions USA’s expenses, fees and charges relating to the Property, including legal expenses, insurance charges, illustration fees, administration fees, customs duties, shipping and packing costs, tests, searches and enquiries.

“Buyer’s Premium” is the commission Kerry Taylor Auctions USA charges Buyers of Property.

“Hammer Price” is the highest bid for the Property accepted by the auctioneer.

“Reserve Price” is the minimum Hammer Price at which the Property may be sold, as agreed between the Seller and Kerry Taylor Auctions USA. From time to time, Kerry Taylor Auctions USA may agree with the Seller to offer a collection of Property for a Global Reserve Price and/or agree an auctioneer’s discretion to reduce the Reserve Price by 10% or to offer Property without a Reserve Price.

“Net Sale Proceeds” are the proceeds of sale actually received by Kerry Taylor Auctions USA, less Seller’s Commission and Expenses.

1. SELLER’S WARRANTIES

(a) The Seller warrants to KT and the Buyer that:-

- (i) the Seller is the owner of the Property or is properly authorized to sell it;
- (ii) the Seller shall transfer possession and good title in the Property to the Buyer, free from any third party claims;
- (iii) the Seller has provided all relevant information about the ownership, condition, authenticity, attribution, provenance and import/export history of the Property;
- (iv) there are no copyright or other restrictions on KT’s rights to produce and publish images of the Property.

(b) The Seller will indemnify KT, its directors, employees, officers and Buyers of the Property against all losses and damages resulting from a breach of any of these warranties or other Conditions of Business. KT may cancel, rescind or postpone sales of Property where it reasonably believes that there has been or may be a breach of these warranties or any other Conditions of Business by the Seller.

2. SALE PREPARATION

(a) KT shall have sole discretion as to how Property is described, illustrated and marketed, and the date, venue and conduct of the sale.

(b) All oral or written estimates, appraisals and reports are statements of opinion only, may not be relied upon as a prediction of the sale price and may be revised from time to time by KT.

(c) KT may, without obligation, consult with third party

experts and carry out such other research for the Property as it deems necessary. KT may transfer possession of the Property to such third parties and shall not be responsible for the acts and omissions of such third parties.

(d) KT shall have the absolute right to produce and publish images of any Property consigned for sale and will retain copyright in any such images it produces.

(e) KT will charge a Buyer’s Premium on the sale of the Property at KT’s standard rates. KT reserves the right to pay out of its commissions a fee to any third party introducing Sellers or Property to it.

(f) Sellers are prohibited from bidding on their own Property. If a Seller offers the Hammer Price for their Property, KT may charge the Seller the Seller’s Commission, Buyer’s Premium and Expenses relating to that Property.

(g) If a seller requests an increase in the agreed reserve prior to the auction, against the suggestion of KT, and the lot is unsold due to the increased reserve, KT will charge the Seller the Seller’s Commission and Buyer’s Premium on the mid-estimate of the unsold item.

3. WITHDRAWAL OF PROPERTY

(a) If the Seller withdraws any Property from sale after their written agreement to sell it, KT may charge the Seller 100% of the Seller’s Commission and Buyer’s Premium KT would have received had the Property sold at its mid estimate, plus all Expenses (the “Withdrawal Fee”).

(b) KT may withdraw any Property from sale without liability for any of the following reasons:- if (i) it reasonably believes that the authenticity or attribution is questionable; (ii) it reasonably believes that the Seller’s Warranties or other Conditions of Business have been breached; (iii) there is a competing ownership claim or lien over the Property; (iv) the Property does not have all licences and permits required by law, including those required under the Convention on the International Trade in Endangered Species (CITES); (v) the condition of the Property has deteriorated since consignment; (vi) the auction has been postponed for any reason.

(c) If the Property is withdrawn for any of reasons 3(b)(ii), or (iii) the Seller shall pay the Withdrawal Fee, as per Condition 3(a). If withdrawn for any other reason, the Property shall be returned to the Seller at the Seller’s expense.

4. EXCLUSION OF LIABILITY

(a) KT shall not be liable for any errors or omissions in any written or oral information provided to Sellers or for acts or omissions relating to the conduct of the auction or any other matter relating to the sale of Property, whether negligent or otherwise, subject always to Condition 4(c).

(b) Without prejudice to Condition 4(a), any claim against KT shall be limited to the Net Sale Proceeds for the relevant Property. KT shall not in any circumstances be liable for any indirect or consequential losses.

(c) KT’s liability to the Seller in respect of death or personal injury caused by KT’s negligent acts or omissions shall not be excluded or limited.

5. LOSS OR DAMAGE TO PROPERTY

(a) Unless otherwise agreed in writing, KT will assume the risk of loss or damage to Property received from the Seller until:-

- (i) risk passes to the Buyer; or
- (ii) if unsold, 60 days after the sale or when released to the Seller (whichever is earlier); or
- (iii) 6 months after receipt of the Property by KT, if not consigned for sale.

(b) KT shall charge a premium of 1% plus tax of:-

- (i) the Hammer Price of the Property, if sold;
- (ii) the unsold Hammer price, if unsold; or
- (iii) the mid estimate, if not offered for sale (or KT’s reasonable estimate of auction value where there

are no pre-sale estimates).

- (c) If damage or loss occurs whilst the Property is at the risk of KT, the maximum amount of KT's liability shall be as set out in Condition 5 (b) (i)-(iii), as applicable, less Seller's Commission and Expenses.
- (d) KT will not be liable for any loss or damage caused by:- (i) normal wear and tear, gradual deterioration or inherent vice or defect; (ii) errors in processing; (iii) war or radioactive contamination.

6. POST AUCTION SALES

If any Property fails to sell at auction, KT shall be entitled for a period of 35 days after the auction to sell the Property privately for no less than the Reserve Price (unless otherwise agreed with the Seller) and on the terms of these Conditions of Business.

7. PAYMENT OF NET SALE PROCEEDS

(a) Subject in all cases to prior receipt of cleared funds by KT and subject to rescission of the sale under Condition 9, 35 days after the sale date or 5 working days after receipt of cleared funds from the Buyer (whichever is later), KT shall send the Seller the Net Sale Proceeds in dollars, less any other amounts owed by the Seller to KT.

(b) KT shall not be obliged to check the ability of Buyers to pay for Property and shall have absolute discretion whether to use any of the rights and remedies against defaulting Buyers contained in the Conditions of Business for Buyers.

8. UNSOLD/ UNCOLLECTED PROPERTY

(a) KT will advise Sellers whether or not their Property has sold. Unsold Property may either:-

- (i) be reconsigned for sale; or
- (ii) collected by the Seller, upon payment of expenses owed

(b) If the Seller does not consign or collect the Property within 60 days of the auction as per Condition 8(a) (i) or (ii) above, KT shall be released from any duty of bailment and may in its sole discretion be entitled to:-

- (i) transfer the Property to independent storage at the Seller's expense; or
- (ii) re-offer the Property at auction for no less than 50% of the original Reserve Price agreed with the Seller (where applicable), and subject to the Seller's Commission on the re-sale plus all relevant Expenses.

(c) If the Seller deposits the Property with KT for more than 1 year and neither collects or consigns it for sale, KT shall be entitled to sell such Property at a KT sale or elsewhere, with estimates and reserves at KT's discretion, after giving the Seller 60 days written notice sent to the Seller's last known address.

9. RESCISSION OF SALES

KT may rescind the sale where it reasonably believes that the Property is Counterfeit, as defined by KT's Guarantee of Authenticity, in which case KT shall send the Seller a notice of such rescission. The Seller agrees to return to KT the Net Sale Proceeds received from the sale of such Property together with any additional Expenses incurred by KT. KT will return the Property to the Seller upon receipt of the Net Sale Proceeds and Expenses, unless prevented from doing so for reasons beyond KT's control.

10. DATA PROTECTION

(a) KT will use information supplied by Sellers or otherwise obtained lawfully by KT for the provision of auction related services, client administration, marketing and as otherwise required by law.

(b) By agreeing to these Conditions of Business, the Seller agrees to the processing of their personal information and to the disclosure of such information to third parties world-wide for the purposes outlined in Condition 10(a).

11. MISCELLANEOUS

(a) If any part of these Conditions of Business be held unenforceable, the remaining parts shall remain in full force and effect.

(b) These Conditions of Business shall be interpreted in accordance with United States Law under the exclusive jurisdiction of the United States Courts, in favor of KT.