



BIDDING TERMS AND CONDITIONS 2016

TERMS OF SALE

When bidding on any lot offered by Kampala Art Auction, the bidder indicates acceptance of the following Terms of Sale. Any participation in the auction binds you to agreement of these terms whether or not you read or understand the said terms.

Bidder registration is required for all persons wishing to bid for Kampala Art Auction. Any person registering to bid by phone, absentee, or in person will complete a Bidder Registration Form. Online bidders fill in and submit all required details.

1. Our obligations

- 1.1 Based on any information you give to us about the Lot on registration, we take delivery of and store the Lot.
- 1.2 Expose the Lot in the pre-sale viewing and any other viewings Kampala Art Auction may think fit and enter the Lot in the sale.
- 1.3 Produce a Condition Report in respect of the Lot when requested to do so by a potential Buyer if we think it is appropriate for us to do so.
- 1.4 Conduct the Sale.
- 1.5 Accept payment from the Buyer of the Purchase Price and hold the Sale Proceeds.
- 1.6 When considering a Lot for sale we will suggest, in conjunction with the Artist, an Estimate. An Estimate is only an expression of opinion of the range within which we think the Hammer Price for the Lot at the sale is likely to be. It is not an estimate of the value. It does not take into account any VAT or Buyers Premium payable. Lots can in fact sell for Hammer Prices below and above the Estimate, though not lower than the Reserve.

2. Your obligations to us

You warrant:

- 2.1 That you are the owner of the Lot or, if not the owner of the Lot, you are duly authorized by the owner of the Lot to sell it and have proof of this authorization from the owner.
- 2.2 You have notified you of all information of which we are aware of or reasonably ought to be aware relating to the present or past ownerships of the Lot.
- 2.3 Unless you notify you in writing to the contrary at the time the Lot is delivered to us, or collected by Kampala Art Auction, there are no restrictions or encumbrances (whether copyright or otherwise), affecting the Lot or your rights to photograph or illustrate the Lot, or reproduce (in any manner and in any media) photographs of illustrations or any text of any information or description of, or relating to the Lot provided by you or on your behalf.

3 RIGHTS & RESPONSIBILITIES

The auctioneer will determine the highest bidder. The auctioneer alone has the right to re-open the bidding of an item if deemed necessary due to a dispute. If there is a tie bid between the floor and Internet or absentee bid, the floor bid takes precedence. Kampala Art Auction and its representatives reserve the right to remove those attendees who impede preview and/or the auction. Title to all merchandise shall pass to the highest bidder at

the fall of the auctioneer's hammer. The buyer will then assume all risk and full responsibility of the lot purchased once ownership has changed.

- 3.1 **ABSENTEE BIDDING**—Kampala Art Auction will accept absentee bids if pre-authorized by mail or through www.kampalaartauction.com online. Absentee bidders must mark on the registration bid form and clearly mark the lot number, title and maximum bid amount. Absentee bidding forms may be accessed online at www.kampalaartauction.com. If there are two (2) identical bids placed on the same item, priority will be given to the first bid received. All bids must be left in increments as explained on our bid form. If a bid is "out of increment," the auctioneer has the right to round the bid up to the next correct increment. Bidders may preview, register and place bids online through our website, www.kampalaartauction.com. If you wish to pay by another method please contact us within 48 hours after the sale. Artist(s) agree to allow the Auctioneer to accept and execute absentee bids in a competitive manner for potential buyers and under the Kampala Art Auction absentee bidding terms and conditions. During the live sale, the auctioneer will execute your absentee bid competitively up to the maximum amount you have indicated.
- 3.2 **ONLINE BIDDING**—Online bidding through www.kampalaartauction.com will be accepted. If there is a tie bid between the internet bidding venues and the floor, the floor bid takes precedence. Due to our fast paced auctions and bids coming from floor bidders, phone bidders, internet bidders and absentee bids, the auctioneer has the final word on all item(s) sold. You (the bidder) assume the risk of winning an item online and not having the item actually sell to you. This is due to the final call of the auctioneer and the operator not being able to re-open that lot. Please allow 24-48 hours post auction to receive your official invoice from Kampala Art Auction.
- 3.3 **TELEPHONE BIDDING**—Requests for phone lines must be received at least three (3) days prior to the auction date. Kampala Art Auction cannot guarantee phone lines but will make every attempt to accommodate those who wish to participate through that method. Phone lines are provided on a first come first served basis. Please visit www.kampalaartauction.com or call Peter on +256 772 515 669 to request a call from our representatives during the live auction.
- 3.4 **BIDDING BY MINORS**—Bids will not be accepted from those persons under the age of eighteen (18) without written consent of said persons' parent(s) or legal guardian(s). Written consent must acknowledge the terms and conditions of sale. This written consent constitutes an agreement to be bound thereby on behalf of the bidder.

3.5 **BID INCREMENTS**

Bid increments listed are a general guideline and not a fast rule. Actual increments are at the auctioneer's discretion. Below is a summary of bid increments based on Lot prices.

- UGX 100,000—500,000, bid increment will be UGX 20,000
- UGX 1 million—5 million, bid increment will be UGX 50,000/100,000
- UGX 5 million and above, bid increment will be 100,000UGX

4 **CATALOGUE AND MARKETING**

- 4.1 We will publish an entry about the Lot in the Catalogue for the sale. This may be by insert after publication of the Catalogue if we do not receive your information in time. The Entry may also be at our discretion published on our Website but we are under no obligation to do so.
- 4.2 The Entry will contain an Estimate and an expression of our opinion in relation to the Lot in addition to the Description of the Lot. We may at our discretion include photograph(s) and illustration(s) of the Lot in the Entry but we are not under any obligation to do so, unless otherwise expressly agreed with you. The Entry is published by us as your agent on your behalf.
- 4.3 A copy of the Entry or of the Catalogue itself will be made available to you prior to the Sale and you must notify us immediately in writing or by email to info@kampalaartauction.com if there is

anything in either the Entry and/or the catalogue in relation to the Lot which you (or any principal on whose behalf you act) are aware is, or may be, inaccurate or incorrect or, in the case of the Description of the Lot, incomplete in any material respect. We may at our discretion produce on your behalf other marketing or promotional material in relation to the Lot but are not under any obligation to do so.

- 4.4 The copyright in the text and the photographs and illustrations of the Lot contained in the Entry or the Catalogue or on our website or in any marketing or promotional material belongs to Kampala Art Auction Ltd. You will not reproduce or permit anyone else to reproduce such text, photographs or illustrations without our prior written permission.

5 RESERVES

Please note that all Lots carry a reserve, the reserve is usually somewhere below our lower estimates. In the case of a reserved item, the Artist has authorized the auctioneer to bid on their behalf until the reserve price is reached.

- 5.1 All items are offered subject to a reserve. The reserve is the confidential minimum price acceptable to the Artist. During a live auction the auctioneer may open any lot by bidding on behalf of the Artist and may bid up to the amount of the reserve, by placing successive or consecutive bids for a lot or bids in response to other bidders. Online sales may do the same by employing the use of a starting bid which will commence bidding at or below the reserve price agreed to by the Artist.
- 5.2 All Estimates will be denoted in catalogue in Ugandan Shillings with an indicative equivalent in US Dollars. Details of Estimates are outlined in the Artists Receipt and Contract and Appendix One, Deed of Sale.
- 5.3 Where a Reserve has been placed on the Lot, the Auctioneer may, at his sole discretion, place bids (up to an amount not equaling or exceeding the Reserve) on your behalf.
- 5.4 You authorize us (and the Auctioneer) to refuse a bid(s) from any Bidder, including from the highest Bidder, and whether or not there is a Reserve if such refusal is reasonable for the protection of you and/or our interests in the circumstances.

6 PAYMENTS:

The preferred mode of payment for purchased lots shall be by cash or cheque. Please carry along your cheque books. Successful online/telephone bidders will be required to wire the funds for a purchased lot to a designated account that will be communicated by Kampala Art Auction on request. Cheques should be made payable to Kampala Art Auction Limited. We accept wire transfer, cashier's cheque or personal cheque. All Lots must be paid in full within fourteen (14) working days.

- 6.1 CASH—A receipt will be issued on payment.
- 6.2 CHEQUE—There will be a UGX 90,000 service charge for returned cheques. Make checks payable to: Kampala Art Auction Limited. Kampala Art Auction reserves the right to hold items paid for by personal or company cheque until said cheque clears (7 days). Kampala Art Auction has the right to hold all cheques over UGX 5,000,000.
- 6.3 WIRE TRANSFERS—For online bidders, account details will be provided to you via email once you win a lot. There will be a UGX 90,000 charge added to all wire transfers less than UGX 5,000,000. Please add this amount to your invoice total before sending a wire transfer.
- 6.4 The buyer will pay VAT of 17% of the hammer price.

7 PACKING AND DELIVERY:

Unless otherwise agreed with you, the Buyer will be responsible for delivery of the Lot or its transport expense into your custody at the place and time mutually agreed. Shipping for all items outside Uganda will be paid for by the Buyer and as courtesy be executed by Kampala Art Auction to the address you provided in the

registration form. If and when the lot delivery address differs from that on the bid form, the bidder should notify Kampala Art Auction.

8 SALE PROCEEDS

- 8.1 Title to the Lot will only pass to the Buyer on receipt by us in cleared funds of the full Purchase Price. Once he/she has paid the Purchase Price and all other sums due to us, we will release the Lot to the Buyer.
- 8.2 We will distribute the Sale Proceeds, held on trust for you, 21 days after the Sale, or, if we receive the Purchase Price later than that date, within 7 working days after the date of receipt of the Purchase Price in cleared funds by us. Payment will be made by cheque drawn in your favor, in the currency in which the Sale is conducted (UGX), and collected by yourself at an agreed time/date. If you wish us to send the money to your account by telegraphic transfer you agree to us deducting any fees charged by our bank for such transfer from the amount transferred. Any telegraphic transfer must be made to an account held in the same name as the name on the Contract Form.
- 8.3 If the Buyer fails or refuses to pay the Purchase Price for the Lot to us in accordance with his/her obligations to do so, we will notify you of this as soon as practicable. Kampala Art Auction is not liable to the Artist for unpaid sums by the Buyer.

9 FRAUD

In the event of any fraud by you or on your behalf which has induced the Buyer to purchase the Lot, we will be entitled at our discretion and irrespective of whether we are personally liable to the Buyer, to act in any reasonable manner which appears to us to be best calculated to compensate the Buyer which may include but is not limited to repurchasing the Lot from the Buyer.

10 INDEMNITIES FROM YOU

You agree to indemnify us against all claims, proceedings, liabilities, costs and losses arising from any actual breach of any undertaking or obligation by you to us, your fraud and our exercising any of our rights or powers under paragraph 8.

11 GOVERNING LAW

This agreement shall be governed by Ugandan law and the parties agree to submit to the non-exclusive jurisdiction of the Ugandan Courts.

APPENDIX 1—CONTRACT FOR SALE

CONTRACT WITH BIDDERS

By Placing a Bid at or before the auction, the bidder agrees to be bound by the terms herein.

Preconditions

1. Kampala Art Auction acts as agent for the Artist and, therefore, the contract of sale is made between the Artist and the Buyer executed by Kampala Art Auction.
2. Buyers are responsible for satisfying themselves concerning the condition of the Lots and the matters referred to in the catalogue entry. This can be done by, for example, a personal inspection and examination of the Lots in which they are interested, a consultation with the artist or any other authority on the subject (if known to the buyer) and/or a review of past-sales amounts for similar items, where available. To facilitate this process, Kampala Art Auction will provide free viewings of the consigned Lots prior to the auction and condition reports of individual works on request.
3. Neither Kampala Art Auction nor the Artist provides any guarantee in relation to the Lots, which are sold in "as is" condition to the buyer. This pertains to, but is not limited to the condition of the work, the authorship and authenticity of the work and any descriptive or historical detail about the work that

is disclosed verbally or printed in the catalogue or elsewhere. In good faith to the buyer, signed declarations by the Artist warrant the following:

- (a) The Artist is the owner of the item, or is properly authorized by the owner to sell the item.
 - (b) The Artist can and shall, in accordance with the conditions set upon him by Kampala Art Auction, transfer possession to the buyer with good and marketable title to the item, free from any third party rights, claims or potential claims (including without limitation, by governments or governmental agencies).
 - (c) The Artist has provided Kampala Art Auction in writing with all information concerning the item's provenance and has notified Kampala Art Auction in writing of any concerns expressed by third parties concerning its ownership, condition, authenticity, attribution and export or import history.
 - (d) The Artist has paid or will pay all taxes and duties potentially due to her on the sale proceeds of the item.
4. (a) All statements by Kampala Art Auction made orally or printed in the catalogue entries, the condition reports or elsewhere are statements of opinion and not to be relied on as statements of fact. Such statements do not constitute a representation, warranty or assumption of liability by us of any kind.
- (b) References to damage and restoration are for guidance only and absence to such references does not imply that an item is free from defects or restoration, nor does a reference to particular defects imply the absence of any others
- (c) The Artist does not make or give and does not agree to make or give any contractual promise, undertaking, obligation, guarantee, warranty, or representation of fact, or undertake any duty of care, in relation to any description of the Lot or any Estimate in relation to it, nor of the accuracy or completeness of any Description of Estimate which may have been made by or on behalf of the Artist including Kampala Art Auction.

Governing Law

This agreement shall be governed by Ugandan law and the parties agree to submit to the non exclusive jurisdiction of the Ugandan courts.

APPENDIX 2

Definitions and Glossary

Where these Definitions and glossary and incorporated, the following words and phrases used have (unless the context requires) the meanings given to them below. The Glossary is to assist you to understand words and phrases which have a specific legal meaning with which you may not be familiar.

List of Definitions

"Auctioneer" the representative of Kampala Art Auction conducting the Sale

"Bidder" a person who has completed bidding form

"Bidding Form" our Registration and Bidding Form, our Absentee Bidding Form or our Telephone Bidding Form

"Business" includes any trade, Business and Profession.

"Buyer" the person to whom a lot is knocked down by the Auctioneer. The Buyer is also referred to in the Contract of Sale and the Buyers Agreement by the words "you" and "your".

"Buyer's Agreement" the contract entered into by Kampala Art Auction with the Buyer

"Catalogue" the Catalogue relating to the relevant Sale, including any representation of the Catalogue published on our Website.

"Commission" the Commission payable by the Artist to Kampala Art Auction calculated at the rates stated in the Contract Form.

“Condition Report” a report on the physical Condition of a Lot provided to a Bidder or potential Bidder by Kampala Art Auction on behalf of the Artist.

“Condition of Sale” the Notice to Bidders, Contract for Sale, Buyer’s Agreement and Definitions and Glossary.

“Consignment Fee” a fee payable to Kampala Art Auction by the Artist calculated at the rates set out in the Conditions of Business.

“Contract Form” the Contract Form, or vehicle Entry Form, as applicable, signed by or on behalf of the Artist listing the Lots to be offered for sale by Kampala Art Auction.