

# General Terms of Auction and Sale as Applied by the Waitz & Richter GmbH, Am Kellerberg 1, 04349 Leipzig

## § 1 General

- (1) By his taking part in the auction every participant acknowledges these General Terms as cited below.
- (2) The following provisions also apply to the sale by private contract.

## § 2 Procedure

- (1) The bid of the highest bidder shall be accepted unless no higher bid shall be made after the third call
- (2) The auctioneer shall have the right to alter the order of items given in the catalogue as well as to partition, to combine or to withdraw any items.
- (3) A bid may only be rejected after having stated good cause for doing so.
- (4) The auctioneer shall be entitled to determine the amount of any reserved price, if required, at his own discretion, as well as to determine the extent of the respective bidding steps for the entire auction or for individual objects.
- (5) The auctioneer shall have the right to withdraw the knocking-down and to call once more for bids for the respective objects if a higher bid which has been offered in time has been failed to notice by mistake or if the highest bidder does not want his bid to be accepted as founded or if otherwise there exist any doubts with respect to the knocking-down.

## § 3 Payment

- (1) The surcharge payable by the highest bidder shall amount to 18 percent of the highest bid. The value-added tax at the statutory rate shall be levied on the amount of the bid as well as on the surcharge.
- (2) The total amount according to the preceding sub-clause 1 has to be paid immediately. The payment of the complete purchase price has to be effected in cash or by an irrevocably bank-confirmed collection-only cheque upon adjudication during the day of the auction. Cheques shall be accepted by way of provisional performance.
- (3) With respect to such Buyers residing in countries within the European Union, sales without levying the value-added tax shall not be effected unless an officially certified VAT identification number has been presented. These Buyers shall provide an adequate security deposit which will be reimbursed after presenting a transfer declaration.
- (4) Buyers residing in those countries which do not belong to the EU Member States shall provide an adequate security deposit. After presenting the original export certificates which have to be officially approved, this security deposit will be reimbursed. For processing export declarations € 100 plus VAT shall be invoiced each proceeding.
- (5) The Buyer shall not be entitled to set off against pecuniary claims of the Waitz & Richter GmbH unless his claims have been approved as final and absolute or beyond dispute. The Buyer shall only be entitled to claim any rights to withhold performance as well as any rights of retention if these rights are based on the same contractual relationship.

## § 4 Performance of Contract

- (1) The transfer of ownership of the purchased goods shall be effected to the acquirer only after having completely paid the purchase price. Unless otherwise agreed by way of exception according to sub-clause 3 cited below, the purchased goods shall only be handed over and ownership shall only be transferred to the Buyer after the purchase price, the surcharge and the legal VAT have been completely paid. In the case of payment by cheque, handing over and transfer of ownership shall be effected upon receipt of credit note of the invoice amount on the account of the Waitz & Richter GmbH.
- (2) The Buyer shall be obliged to take delivery of all purchased goods within the specified time allowed. The pick-up time-limits may be seen from the posting board at the place of the utilization auction, from the auction catalogue and the invoice, resp.
- (3) If the acquirer has already taken possession of the purchased goods or if he is obtaining possession of them – irrespective of the reason of this entry into possession – before he has completely paid the amount, the agreed reservation of ownership remains likewise unchanged.
- (4) By concluding the contract of purchase, danger and risk referring to the purchased goods including the purchased accessories shall pass to the Buyer.
- (5) Dismounting and transport of the goods which have been bought at the auction shall be accomplished at the Buyer's risk and cost. If in the course of dismounting and transporting damage to any third party's goods should be caused by the Buyer, this Buyer shall agree to indemnify the Waitz & Richter GmbH against any demands and claims as might be raised by any third party.
- (6) All those goods involving an increased risk of causing damage to a third party's goods when they are dismounted and/or transported, the Waitz & Richter GmbH reserves all rights to impose a security deposit on these goods. The concerned items as well as the amount of the security deposit shall be announced during the auction.

## § 5 Warranty

- (1) All goods which are offered in the scope of the auction or sold by bargaining are second-hand goods. These goods are sold as they are. The Buyer obligates himself to inspect the goods before concluding the purchase contract.
- (2) The sale shall be accomplished without any warranty.
- (3) The exclusion of warranty according to sub-clause 2 as cited above shall not apply as far as the Buyer is a natural person and the conclusion of the contract of purchase is not earmarked neither for the purpose of his industrial activity nor for that of his self-employed professional activity. In this case, the warranty period shall last 12 months to be computed from the date of delivery of the goods to the Buyer unless the Buyer has been wilfully and knowingly deceived with respect to a fault or defect or the fault or defect has been wilfully and knowingly concealed. Then the warranty periods shall follow the statutory provisions. The same shall apply to the subject matter of any guarantee the Waitz & Richter GmbH has given with respect to a certain grade of the goods. The warranty period relating to deficiencies in remedying defects or faults also terminates with the expiration of the above-mentioned warranty period.
- (4) As far as the obligations of the Waitz & Richter GmbH to remedy defects or faults have not been excluded by contract, the Waitz & Richter GmbH is allowed to remedy the defect or fault at its discretion by correcting this defect or fault free of charges or by replacing the defective part. In the case of replacement, the defective part shall be returned to the Waitz & Richter GmbH. If the defect or fault cannot be remedied or if the correction or replacement are to be regarded as failed, the Buyer is allowed at his discretion to demand a reduction of the purchase price or to rescind from the contract. A failure of correction can only be assumed if the correction or replacement has proven as impossible, if they are delayed by the Waitz & Richter GmbH in an unacceptable manner, if there are well-founded doubts with respect to the chances of success or if the correction must be regarded as unreasonable.
- (5) Representations in the catalogues and advertising announcements made by the Waitz & Richter GmbH, the manufacturer or his agents are always without obligation and do not represent warranties in the sense of the § 443 of the German Civil Code BGB or of the quality agreements according to § 434 sub-clause 1 phrase 1 of the BGB.

## § 6 Liability

- (1) The Waitz & Richter GmbH shall only be liable for damage caused by wilful misconduct and gross negligence. This discharge from liabilities shall not apply to damage resulting from the impairment of life, body or health and/or as far as the Waitz & Richter GmbH has violated substantial contractual obligations (cardinal obligations), in particular such obligations the violation of which will be a risk for fulfilling the aims of the contract.
- (2) The liability for damages to companies, legal entities under public law and separate assets under public law as will be accepted by the Waitz & Richter GmbH shall further be limited as follows:
  - a) In the case of damages to property and to assets, the Waitz & Richter GmbH shall be liable only up to the amount of the purchase price plus extra charge.
  - b) The Waitz & Richter GmbH shall not be liable for consequential damages, in particular not for loss of profit.The above-mentioned limitation of liability does apply only in the case when the damage will have been caused by ordinary negligence committed by an executive director or by a managerial employee of the Waitz & Richter GmbH or will be based on ordinary or gross negligence committed by their simple agents. For such vicarious agents who are not simultaneously simple agents, the Waitz & Richter GmbH shall be liable only in such cases in which the Waitz & Richter GmbH can be imputed with gross negligence or wilful misconduct when selecting or controlling them. These limitations of liability shall not apply when impairment of life, body or health has occurred and/or as far as the Waitz & Richter GmbH violates substantial contractual obligations (cardinal obligations), in particular such obligations the violation of which will be a risk for fulfilling the aims of the contract.

## § 7 Other Provisions

- (1) All personal information which is required for fulfilling the terms of the contract shall be processed by the Waitz & Richter GmbH with due observance of the statutory provisions. The Buyer shall agree that this information may be stored and processed for the purposes of performing the terms of the contract.
- (2) With respect to entrepreneurs, legal entities under public law and to separate assets under public law, the place of performance for transferring the bought objects shall be the location of the respective objects. The place of performance for payments shall be the domicile of the Waitz & Richter GmbH. The courts of Borna or the higher court shall have exclusive jurisdiction with respect to all disputes arising from this contract or in conjunction with this contract as against to entrepreneurs, legal entities under public law and to separate assets under public law.
- (3) Amendments or supplements to these General Terms including this provision shall be in writing for becoming valid.
- (4) If the Buyer's business terms differ from the present General Terms, they shall remain ineffective even if not opposed definitely by the Waitz & Richter GmbH.
- (5) All matters of law shall be governed and construed under and in accordance with the laws of the Federal Republic of Germany except the United Nations Convention on Contracts for the international Sale of Goods (CISG).
- (6) If any provision of these General Terms shall be or shall become entirely or partly invalid or if these General Terms shall have a gap, the matter referred to shall not affect the validity of all other provisions of these General Terms. This invalid provision shall be replaced – by means of the interpretation for the continuation of validity – by that provision which the parties hereto would have agreed to in consideration of the economic purposes they had aimed at with the ineffective provision, if they had had knowledge of the invalidity of the respective provision. Any gap shall be closed in the way of the supplementary interpretation of contracts by such a provision that as closely as possible reflects - without being ineffective - the economic purpose that the parties hereto had pursued when concluding the contract.