

# TERMS AND CONDITIONS OF SALE

## THE WHITE ROSE B.V.

Please read these Terms and Conditions of Sale (“terms”) and only proceed with your purchase if you wish to be bound by them. Please contact The White Rose B.V. (“us” or “we”) if you wish to discuss any of the terms.

### 1. PURPOSE AND EFFECT

- a. The terms constitute the entire agreement and understanding (“the agreement”) in relation to the sale and purchase of the work (or works) of art identified on the invoice (“the Work”) for the price stated on the invoice (being the agreed price for the sale of the Work to you) (“Price”). To the fullest extent permitted by law no other terms express or implied shall apply. We confirm that to the best of our knowledge we either own the Work or are authorised to sell it on behalf of the owner.
- b. If you wish to rely on any variation of these terms, you must ensure that this has been agreed by us in writing.
- c. All sales of Works by us are subject to these terms. Without limiting the ways in which these terms apply, acceptance of these terms shall be demonstrated:  
(1) by your signature or that of your agent on the invoice; (2) by full or partial payment of the Price; (3) by any other words or conduct demonstrating your or your agent’s acceptance (for example by you or your agent accepting our offer to sell the Work to you which offer will always be subject to these terms); or (4) by your signature or that of your agent on the delivery note.
- d. No agreement may be cancelled by you. You shall on demand indemnify and keep us indemnified in full against all loss, costs (including legal fees and court costs) and expenses incurred by us as a result of the agreement being breached in any way in full or in part by you. We may, but are not obliged to, mitigate our losses, liabilities, costs and expenses.

### 2. STATEMENTS ABOUT THE WORK

- a. All statements by us as to the authenticity, attribution, description, date, age, provenance, title or condition of the Work constitute our judgement and opinion only and are not warranted by us. We do not accept any liability as a result of any changes in expert opinion which may take place

subsequent to the sale. We do not accept any liability as a result of any information on the Work unknown to us at the time of the sale and becoming known subsequent to the sale.

- b. While we will on request explain the condition of the Work at the time of the sale and provide any information in our possession about condition for which you may reasonably ask, we will not be responsible for any subsequent deterioration of the Work, however occasioned, after the sale. We accept no responsibility with regard to the hanging of sold Works; any work undertaken in this regard is at your risk.
- c. All photographs, advertising and specifications provided by us are issued or published for the sole purpose of giving an appropriate idea of the Work but do not purport to be an exact or complete reproduction.
- d. You are responsible for satisfying yourself as to any statements made by us as to the matters set out in clauses 2.a, 2.b, and 2.c above.

### **3. PAYMENT OF PURCHASE PRICE**

- a. You must pay us the invoice Price for the Work, together with delivery costs, any VAT and any amounts payable to us under clause 7, by bank transfer or such other methods as we agree, within 30 days of the date of the invoice (unless specified otherwise on the invoice or statement). Payment is deemed received when we have cleared funds. Without prejudice to any other right or remedy we may have we are entitled to charge interest on late payments (before as well as after judgment) at the rate of 2% per annum.
- b. You are not entitled to withhold payment of any amount payable to us by reason of any dispute or claim by you whether by way of set off, counterclaim or other deduction. In the event of non-payment or other breach, we shall be entitled to obtain and enforce judgment without determination of any claims by you.
- c. We reserve the right to require you to present such documents as we may require to confirm your identity. Where payment of the price is made by someone other than you ("third party payer"), we may require documents to confirm their identity and their relationship with you. We may decline such payments in our sole discretion.

- d. Under the terms of the anti-money laundering regulation effective from 10 January 2020 we are required to conduct customer due diligence (CDD) on all sales of works of art over €10,000 before the transaction is carried out. While therefore we may agree such a sale in principle, we will not be able to conclude (i.e. receive funds, give up possession or transfer title) it until we have received all the necessary CDD information from you and have been able to verify it as required by the regulation.

#### **4. COMMISSION PAYABLE BY US TO THIRD PARTIES**

- a. We may pay a commission to any party who has assisted us with the sale of the work to you or who has introduced you to us.

#### **5. DELIVERY OF THE WORK AND PASSING OF RISK**

The Work will be delivered following receipt of the full Price by us in cleared funds.

- a. We will deliver the Work to the address both parties have agreed in writing unless it is agreed in writing that you should collect it from us. You are responsible for all costs of delivery or collection unless we agree otherwise in writing.
- b. You will be responsible for the Work, for the risk of damage to it or loss of it and also for insuring it, from the time and date agreed for its delivery and you agree that thereafter you will not hold us responsible for insuring the Work or for any loss or damage to the Work. Any loss or damage prior to delivery shall be covered by the terms of our insurance then in effect and we shall have no liability for loss of profit, business, revenue or incidental, consequential, or exemplary damages.
- c. If you fail to accept delivery of the Work at the agreed time we may charge you for the reasonable costs of storage, insurance and re-delivery and risk in the Work shall immediately pass to you and you irrevocably authorise us to deposit the Work with you if delivery has not occurred within six months.
- d. Dates quoted for delivery are approximate and we shall not be liable for delay. Time of delivery shall not be of the essence nor capable of being made of the essence. You will provide us with all necessary information and documentation to facilitate delivery.

## 6. PASSING OF OWNERSHIP

- a. Full legal title to the Work will not pass to you until we have received in full in cleared funds all sums due in respect of the Work and any other amount owed by you to us and we are satisfied as to your identity and that of any third party payer.
- b. If you have possession of the Work before full payment has been made, you undertake as our fiduciary agent and bailee to:
  - i. keep possession of it, not sell it, export it or hand it over to any other person or dispose of any interest in it and in the case of a Work consisting of more than one item, keep those items together;
  - ii. keep all identifying marks showing that we own the Work clearly displayed and store the Work on your premises and at no cost to us, separately from other property with adequate security measures;
  - iii. at our request, and after we have given you reasonable notice, allow us or a third party acting on our behalf to have access to the Work in order to inspect it;
  - iv. preserve the Work in the same state as it was on delivery and in particular, not restore, repair, clean or reframe it without our written consent and take all reasonable steps to prevent any damage to or deterioration of the Work; and
  - v. keep the Work comprehensively insured for not less than the invoice Price, have our interest noted on the policy as an additional named insured and provide a copy of such notification to us.

## 7. EXPORT AND LOCAL TAXES

- a. If the Work is to be exported from the Netherland, whether to other countries within the EU or outside the EU, we will normally make appropriate arrangements for export and shipment and may make a reasonable additional charge for doing so. Unless agreed otherwise in writing, the agreement is not conditional upon the granting of any requisite export licence or permission which both parties will use their best endeavours to obtain.

- b. Each party will to the extent such obligation is applicable to that party in connection with the sale and/or export of the Work :
  - i. comply with all requirements of any relevant tax authorities (that is, any authority imposing, administrating or collecting any tax, duty or levy, any export licensing authorities and any other relevant official bodies; and
  - ii. obtain all the relevant documents showing proof of export without delay.
- c. You will reimburse to us any sum claimed if any relevant tax authority or other official body makes any claim against us for VAT, sales tax, use tax or any other expense or penalties resulting from your failure to comply with any relevant requirements for export and import.
- d. When upon its sale to you the Work is intended for export, you will be charged for VAT on the Work should it not be exported.
- e. You will be responsible for paying any taxes including but not limited to import tax, duty, merchandise, sales or use tax that have to be paid in the country of destination whether on shipment or on import or at any other time.

## 8. BREACH BY YOU

- a. If you fail to pay the Price in full (or if we agree with you payment by set instalments and you fail to pay any one or more instalment) in accordance with clause 3.1 above, or if prior to you paying the Price in full you fail to comply with the obligations set out in clauses 6 and 7 above, or otherwise do or fail to do anything which may in any way imperil our ownership of the Work or the Work itself, we are entitled (without prejudice to our other rights and remedies at law) to either:
  - i. terminate the contract for sale, repossess the Work and claim damages for any loss we have suffered; and/or charge you interest on the amount unpaid at the rate of 2% per annum from the date when payment was due until payment is made in full; and/or retain any sums paid; and/or to further seek to mitigate the loss by selling the Work on such terms as we may reasonably consider appropriate and to claim the balance from you; or

- ii. at our election, treat the sale as cancelled, and repossess the Work, in which case (and only in which case) and as your sole and exclusive right and remedy we shall following the safe return of the Work, refund to you any part of the Price you have paid, after deduction of any sums due to us including but not limited to costs of recovery and restoration of the Work.
- b. We shall also have the right to repossess the Work and cancel the sale if before you make full payment of the purchase price to us, (1) proceedings occur in the The Netherlands or elsewhere involving your solvency (or if you are more than one person, jointly and/or severally) or (2) we reasonably apprehend that insolvency is about to occur in relation to you or otherwise have genuine doubt with respect to your capacity to pay the Price in full, then we or our agent may, at our option, immediately repossess the Work and/or terminate the sale with or without notice whereupon, without prejudice to any other rights and remedies available to us, you will return the Work to our nominated address (at your sole risk and cost), or, at our option, we or our agent may enter the premises where the Work is kept to regain possession. Nothing herein shall limit other rights available to us pursuant to applicable law.
- c. Where we notify you of the exercise of our right to repossession, at our option you will within seven days of such notice, return the Work to our premises at your cost and risk or tell us where the Work is kept and allow us to enter the premises where the Work is (separately) kept and take the Work away at your cost (it being understood that where the Work consists of more than one item, our rights of repossession extend to all such items).

## 9. **LIMITATION OF OUR LIABILITY**

Any claim against us must be brought within a period of three years from the date of the invoice for the Work or, if we have been guilty of any fraud or deliberately concealed a relevant fact in relation to the Work within three years after you have discovered this, or could have discovered it if you were reasonably diligent. We shall not accept any claim after these periods. We shall not be liable for loss of profits, business, revenue (whether direct or indirect) or indirect or consequential loss or damage, if any, which you may suffer in connection with buying the Work howsoever arising including negligence. Any liability to you for breach of our obligations whether in contract, tort (including negligence) or otherwise, shall be limited to the price paid for the Work provided that nothing in this clause 9 limits or excludes our liability for: (a) death or personal injury caused by our negligence or any of our agents; and/or (b) fraud or fraudulent misrepresentation; and/or (c) our wilful default.

## 10. **RESCISSION**

We will have the right, but not the obligation, to rescind a sale without notice to you, where an adverse

claim is made by a third party, including but not limited to, someone claiming ownership of the Work. Upon notice of our election to rescind the sale, you will promptly return the Work to us and we will then refund the Price paid. The refund of the Price paid will constitute your sole remedy and recourse against us with respect to such claims.

#### **11. COPYRIGHT**

The copyright subsisting in all images and other materials produced for the sale of the Work is owned by us and such images and materials may only be used with our permission. We will have the right to use such images in our own discretion after the sale of the Work. For the avoidance of doubt, this sale does not transfer or assign or licence any copyright or other intellectual property rights to you. During the period in which the Work is protected by copyright, the copyright remains with the artist (or any person to whom that right has been assigned). You are purchasing the Work, but not the right to produce copies of the Work (including photographs thereof) for publication or do any other act restricted by copyright. If such rights are sought, you should contact the copyright owner.

#### **12. NOTICES**

Any notice to be given to us or that we must give to you in connection with the sale of the Work must be in writing and sent by post, or delivered by hand, to our address on our invoice or to your last known address as notified to us by you as the case may be and shall be deemed delivered on delivery if by hand or on the third day after posting if posted.

#### **13. LAW AND JURISDICTION.**

All agreements, and transactions of WR are exclusively governed by Netherlands law. All disputes, including those that are only considered to be such by one of the parties, arising from or related to the legal relationship that is governed by these terms and conditions, or the relevant provision itself and its interpretation or implementation, both of a factual and of a legal nature, shall be decided by the District Court of The Hague, without prejudice to the right of appeal and cassation and the right to demand preliminary relief.

#### **14. GENERAL TERMS**

- a. Both parties agree that in entering into the agreement neither party relies on, nor has any remedy in respect of, any statement, representation or warranty (“Representation”), negligently or innocently made to any person (whether party to this agreement or not) including without limitation any Representation made prior to or at the same time as the agreement is entered into,

other than as expressly set out in the agreement as a warranty. The only remedy for breach of any warranty shall be for breach of contract under the agreement. Nothing in the agreement shall operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

- b. The benefit of the agreement and the rights thereunder shall not be assignable by you and any attempt to assign your obligations shall be null and void. None of our obligations under this Agreement are transferable to subsequent purchasers or other future possessors of the Work. We may sub-contract or assign our obligations.

January 2022