

## **TERMS AND CONDITIONS OF SALE**

The property offered and sold through New Material Culture, Inc.'s (hereinafter MC) public auctions (hereinafter the Property) shall be offered and sold pursuant to the terms and conditions set forth below (hereinafter the Agreement). This Agreement constitutes the complete statement of the terms and conditions pursuant to which all Property is offered for sale. By bidding at the auction, whether in person, by agent, in writing, by telephone, internet bid or any other means, the buyer of the Property (hereinafter the Buyer) agrees to be bound by this Agreement.

**PROPERTY SOLD AS IS.** Except as expressly stated below in the LIMITED RIGHT OF RESCISSION, all Property is sold as is, where is, with all faults. Neither MC nor any consignor makes any guarantees, warranties or representations, expressed or implied with respect to the Property or the correctness of the catalogue or any other description of the Property. In no event shall MC or the consignor be responsible for the correctness, nor be deemed to have made any representation or warranty, of description, genuineness, authorship, attribution, provenance, period, culture, source, origin or condition of the Property. No statement made at the sale, or in the bill of sale, or invoice or elsewhere shall be deemed such a guarantee, warranty or representation.

**LIMITED RIGHT OF RESCISSION.** With regard ONLY to descriptions of fine art in which a specific artist is named as the artist, all information contained in the catalogue concerning the authenticity of said Property is guaranteed for a period of 30 days from the date of the sale. If, within that 30 day period, Buyer has complied with all Terms and Conditions of Sale regarding timely payment and collection of said Property and would like to dispute the authenticity of said Property, Buyer can submit, at his own expense, two written professional opinions regarding authenticity by recognized authenticators, jointly approved by both MC and Buyer. In the event said Property is judged inauthentic by both expert authenticators, said Property may be returned if it is in the same condition as at time of sale and the Buyer's full purchase price will be refunded. Refunds shall not include cost of transportation, insurance or other expenses that Buyer may have incurred. This limited right of rescission is available only to the original auction Buyer and does not extend or transfer to any subsequent owner, heir, agent transferee or any other third party.

**WITHDRAWAL OF PROPERTY.** MC reserves the right to withdraw any Property at any time for any reason and to default any sale in the event of an error or dispute.

**COPYRIGHT AND REPRODUCTION RIGHTS.** MC and its consignors make no warranty or representation, express or implied, that the Buyer will acquire any copyright or reproduction rights to any Property sold. MC expressly reserves the right to reproduce any image of the Property sold in the catalogue. The copyright in all images, illustrations and written material produced by or for MC relating to Property, including the contents of the catalogue, is, and shall remain at all times, the property of MC and shall not be used by the Buyer, nor by anyone else, without MCs prior written consent.

**EXAMINATION OF PROPERTY.** All Property is available for examination prior to bidding. The Buyers bidding signifies that the Buyer has examined the Property as fully as desired or has chosen not to examine the Property. MC recommends that prospective bidders examine all items in which they have an interest prior to bidding.

## **BIDDING**

**RESERVES.** Some of the Property in the sale is offered subject to a reserve. The reserve is a confidential minimum price agreed upon by the consignor and MC below which the lot will not be sold. In most cases, the reserve will be set below the estimated range, but in no case will it exceed the low estimates listed. Bidding will begin at a price appropriate in the auctioneers discretion. The auctioneer always reserves the right to withdraw Property for any reason he deems appropriate.

**ORDER OF BIDS.** Unless otherwise announced by the auctioneer, all bids are per lot as numbered in the catalogue. MC reserves the right to determine any and all matters regarding the order, precedence or appropriate increment of bids or the constitution of lots.

**ABSENTEE AND PHONE BIDDING.** Absentee and phone bidding are permitted by prospective bidders who cannot be present at the auction. Please complete the Absentee Bid and/or Phone Reservation form. Absentee bids are executed competitively and confidentially. All reservations for phone bidding are held in the strictest confidence and must be received by 5 pm EST the day before the auction. No additional phone bids will be accepted at such time including additions when speaking with a staff person on the phone. Written absentee bids may be submitted on the Absentee Bid Form up to 30 lots before the item comes up for auction. Leaving an absentee or phone bid on a lot indicates your willingness to open the bidding at one half the printed estimate, and gives the auctioneer the authority to open the bidding at that level, or to open the bidding on a lot with a printed reserve at the reserve price. In the case of identical absentee bids, the bid received first will prevail. Bids left on liveauctioneers.com are not executed until the item is offered in the live auction and the order in which they are received is not a factor.

**CUT BIDS.** We do not accept cut bids, (bids less than the last interval) from the floor or from absentee bidders including phone and internet bidders. Thus, it is possible that a lot could go to another bidder for less than an absentee bid. For example, if the bids are progressing in \$10 dollar increments and an absentee falls at a \$5 increment we will not take the bid since it is less than the \$10 increment.

**Following are general guidelines for bidding increments:**

**\$0-\$100 by \$10 increments**

**\$100-\$500 by \$25 increments**

**\$500-\$1,000 by \$50 increments**

**\$1,000-\$3,000 by \$100 increments**

**\$3,000-\$5,000 by \$250 increments**

**\$5,000-\$10,000 by \$500 increments**

**\$10,000-\$30,000 by \$1,000 increments**

**\$30,000-\$50,000 by \$2,500 increments**

**\$50,000-\$100,000 by \$5,000 increments**

**\$100,000-\$200,000 by \$10,000 increments**

**Above \$200,000 auctioneers discretion**

**HIGHEST BIDDER.** The highest bidder as determined by the auctioneer shall be the Buyer. In the case of a disputed bid, the auctioneer shall have sole discretion in determining the Buyer and may also, at his or her election, withdraw the Property or reoffer the Property for sale. The auctioneer shall have sole discretion to refuse any bid, or refuse to acknowledge any bidder. At such time as the auctioneer has declared Property sold to a given Buyer, said Buyer thereupon assumes full risk and responsibility for the Property, agrees to sign any requested confirmation of purchase, and agrees to pay the full price, plus Buyers Premium, therefore or such part, upon such terms as MC may require.

**PAYMENT.** Payment is due within 7 business days. Payment must be made by cash, approved check, or wire transfer. We also accept Visa, MasterCard, Discover and Paypal for invoices totaling under \$5,000. Credit card transactions will not be accepted for international clients. MC reserves the right to require bank checks for purchases over \$5,000. Personal checks will be acceptable only if credit has been established with MC or if a bank authorization has been received guaranteeing a personal check. MC reserves the right to hold Property purchased by personal check until the check has cleared the bank. Buyer agrees to pay MC a handling charge of \$25.00 for any check dishonored by the drawee. MC reserves the right to not issue a Buyers number or to withhold merchandise if appropriate credit has not been established. Credit arrangements must be made by the Friday prior to the day of auction so bank statements can be verified. Any bidder that plans on spending in excess of \$100,000 should make arrangements with the MC accounting department at least five (5) days in advance of the sale, as a deposit may be required to participate. All Property purchased must be paid for no later than 5 pm EST on the seventh business day following the sale. MC may impose, and the Buyer agrees to pay, a monthly interest charge of 1.5% of the purchase price of any Property not paid by the Buyer within thirty (30) days of the date of sale. MC reserves the right to rescind any sale of Property in the event payment is not received within seven (7) business days of the sale.

**BUYERS PREMIUM.** A 25% buyer's premium will be added to the hammer price on each lot sold on a house paddle, including telephone and absentee bidding; 28% will be added to lots purchased online.

**REMOVAL OF PROPERTY.** All items must be picked up, or shipping arrangements made, within two weeks of the day of sale. Items not collected or shipped by the 15th day following the sale will incur storage fees at a rate of \$5.00 per lot per day regardless of the size or value of the lot. Items not collected by the 30th day following the sale may be sold by MC or sent by MC to a public warehouse at the sole risk of, and charge to, the Buyer and MC may prohibit the Buyer from participating, directly or indirectly, as a bidder or purchaser in any future sale. No Property may be removed from MCs premises until the Buyer has paid in full the purchase price including Buyers premium. MC shall have no liability for any damage to Property left on its premises after the auction. A defaulting Buyer will be deemed to have granted and assigned to MC a continuing security interest of first priority in any Property or money of, or owing to such Buyer in MCs possession, and MC may retain and apply such Property or money as collateral security for the obligations due to MC. MC shall have all of the rights accorded a secured party under the Pennsylvania Uniform Commercial Code.

**PACKING AND SHIPPING.** Buyer agrees that packing and shipping are done at the Buyers risk and that Buyer will pay in advance all packing expenses, materials, carrier fees and insurance charges. Shipping is the sole responsibility of the Buyer. MC will have no liability for any loss or damage to shipped items. Upon request, MC will provide a list of shippers who deliver to destinations within the United States and overseas.

**TAXES.** All purchases are subject to Pennsylvania sales tax unless the Buyer possesses a Pennsylvania sales tax exemption number. Exemption numbers from other states are accepted in Pennsylvania if presented with a business card or letterhead. Dealers, museums, and other qualifying parties can apply for a Pennsylvania exemption number prior to the auction. Buyer is responsible for any and all tariffs, taxes and assessments that might be made on the Property. International Buyers are responsible for tariffs, taxes, or assessments of shipped items to the Buyers country.

**IMPORT/EXPORT RESTRICTIONS.** Some property that is sold at auction can be subject to laws governing export from the United States, such as items that include material from some endangered species. Import restrictions from foreign countries are subject to these same governing laws. Granting of licensing for import or export of Property from local authorities is the sole responsibility of the Buyer. Denial or delay of licensing will not constitute cancellation or delay in payment for the total purchase price of said Property.

**BUYERS BREACH.** If the Buyer breaches any of its obligations under this Agreement, including its obligation to pay in full the purchase price of all Property for which it is the highest successful bidder, MC may exercise all of its rights and remedies under the law including, without limitation, (a) canceling the sale and applying any payments made by the Buyer to the damages caused by the Buyers breach, and/or (b) offering at public auction, without reserve, any lot or item for which the Buyer has failed to pay in full the purchase price, holding the Buyer liable for any deficiency plus all costs of sale.

**GOVERNING LAW.** These conditions of sale shall be governed by the laws of the Commonwealth of Pennsylvania (excluding the laws applicable to conflicts or choice of law). The Buyer agrees that any suit for the enforcement of this Agreement may be brought, and any action against MC in connection with the transactions contemplated by this Agreement shall be brought, in the courts of the Commonwealth of Pennsylvania or any federal court sitting therein. The Buyer consents to the nonexclusive jurisdiction of such courts and waives objections that it may now or hereafter have to the venue of any such suit.

**AMENDMENTS TO TERMS AND CONDITIONS.** No claimed modification or amendment of this Agreement on the part of any party shall be deemed extant, enforceable or provable unless it is in writing that has been signed by the parties to this Agreement. No course of dealing and no delay or omission on the part of MC in exercising any right under this Agreement shall operate as a waiver of such right or any other right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of MC on any future occasion.