



FINE ART AUCTIONS

MacDOUGALL'S

## MacDougall's Terms & Conditions of Sale – 2020

1. All contractual rights and obligations made between vendors, bidders and MacDougall Arts Ltd in respect of an auction conducted by MacDougall Arts Ltd (an "auction") are subject to these Terms and Conditions of Sale.
2. In these Terms and Conditions of Sale, MacDougall Arts Ltd. – who act as agents for the vendor unless specified otherwise in the catalogue for the auction in question – are called "MacDougall's", or "us"; and the representative of MacDougall Arts Ltd. conducting the auction is called "The Auctioneer".

### Hammer price

3. All bids for a lot at an auction shall be considered an offer for that lot, which the Auctioneer can accept or reject in accordance with clauses 9 and 12 of these Terms and Conditions. The hammer price means the highest bid accepted by the Auctioneer for the lot. The purchase price payable by the buyer shall be the aggregate of the hammer price plus the buyer's premium (together with any VAT chargeable on the hammer price and buyer's premium). The buyer's premium is at a rate of 25% on up to and including £300,000; 20% on any amount more than £300,000 and including £3,000,000; and at a rate of 13.9% on any remaining amount above £3,000,000 of the hammer price. All prices are quoted in UK Pounds Sterling.

### VAT

4. Lots are normally sold under the UK Auctioneers Margin Scheme. Input tax deduction has not been and will not be claimed in respect of such lots. The charge for the buyer's premium will include VAT on the charges described above, which will not be shown separately and may not be reclaimed as input tax.
  - 4.1 For lots marked with "†" normal VAT rules apply, and the standard rate of 20% VAT will be charged on both hammer price and premium.
5. Items marked with an asterisk (\*) have been imported from outside the EU. 5% will be added to the hammer price to cover Import VAT. EU VAT registered buyers should note that neither this 5% nor the VAT on the buyer's premium can be refunded or claimed against VAT.
6. Buyers from outside the EU who intend to ship their purchases outside the EU within three months should tell MacDougall Arts at time of payment. For them, the VAT charge included in the premium and the 5% Import charge on asterisked lots will be treated as a deposit, refundable on presentation of documentary proof of export outside the EU within three months.

### Droit de suite (Artist's resale right)

- 7.1 Some works will be subject to Droit de Suite (Artist's Resale Right) and will be indicated with a "§" mark in the catalogue or otherwise notified. This is a royalty payable to a qualifying artist (citizens of EU and EEA countries) each time a work is re-sold during the artist's lifetime and to their descendants for 70 years after the artist's death.
- 7.2 Buyers will be charged an amount equal to this resale royalty where it applies. These resale royalties are not subject to VAT and do not apply when the hammer price is less than 1,000 euros. Invoices are normally issued in Pounds Sterling, with the resale royalty calculated on the basis of the European Central Bank reference rate on the date of the sale.

### 7.3 Droit de Suite Scale

Charge	Portion of the Hammer Price (in Euros)
4%	Up to 50,000
3%	50,001-200,000
1%	200,001-350,000
½%	350,001-500,000
¼%	Over 500,000
	To a maximum of 12,500 euros

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### **Guaranteed Property**

8. A minimum price has been guaranteed to the seller for lots marked with the symbol “o”. This guarantee may be provided by MacDougall’s, by a third party or jointly by MacDougall’s and a third party. Third parties providing all or part of a guarantee benefit financially if a guaranteed lot is sold successfully and may incur a loss if the sale is not successful.

### **Bidding**

9. Bidding at an auction is regulated at the sole discretion of the Auctioneer, who reserves the right to reject any bid.

10. In the case of lots upon which the vendor has placed a reserve, the Auctioneer shall have the right to bid on behalf of the vendor, but no higher than the reserve. MacDougall Arts Ltd., its Directors, its staff, or its consultants may own or have a beneficial interest in a lot being sold. All lots are offered subject to a Reserve Price agreed in writing with the vendor; it shall be no higher than the low estimate of the hammer price. MacDougall’s have absolute discretion to refuse admission to the auction.

11. If instructed, MacDougall’s will execute bids for prospective buyers. This service is free. Lots will always be purchased as cheaply as is allowed by such other bids and reserves as are on the Auctioneer’s books. In the event of identical bids, the earliest will take precedence. There must always be a maximum limit indicated, i.e. the amount to which the buyer would bid if attending the auction in person. «Buy» or unlimited bids will not be accepted. Commission bids placed by telephone are accepted at the client’s risk. All written telephone and commission bidding requests should be completed by twenty-four hours before the sale. MacDougall Arts Ltd. does not accept any liability if for any reason you do not receive a phone call during the sale and is not responsible for inadvertently failing to execute bids or for errors relating to execution of bids, including computer-related errors. MacDougall’s executes absentee bids as a convenience for clients and will try to purchase these lots for the lowest possible price, considering the reserve and other bids. If identical absentee bids are left, MacDougall’s will give precedence to the first one received.

12. Notwithstanding clause 14, the buyer and the vendor shall enter into the contract for the buyer to buy and the vendor to sell the lot in question upon the fall of the Auctioneer’s hammer.

13. Lots purchased online may attract an additional charge for this service in the sum between 3% and 5% of the hammer price plus VAT, if any, at the rate imposed.

### **Identification and Payment**

14. The buyers shall forthwith supply his name and address, their bank details, source of funds, and other suitable references considered necessary by MacDougall’s, acting reasonably. Bidders act as principal unless they have prior written consent from MacDougall’s to bid as agent for another party. Bidders are personally liable for their bid and are jointly and severally liable with their principal if bidding as agent.

15. Legal title to a lot shall not pass to the buyer until MacDougall’s receive the full purchase price for the lot in cleared funds.

16. Unless MacDougall’s agree with the buyer otherwise:

(a) the lot must be paid for in full within twenty-one days of sale; and

(b) the buyer must remove the lot in question, at their expense, within 30 calendar days following sale.

17. MacDougall’s are not obliged to release a lot to a buyer until title to that lot has passed, but any earlier release will not affect the passing of title.

18. To the extent an export licence is required in order to remove a lot from the United Kingdom, the buyer alone is responsible for obtaining and paying for such a licence.



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19. If a buyer fails to pay for or remove a lot in accordance with clauses 13 to 17 above, MacDougall's shall be entitled at their absolute discretion to exercise one or more of the following rights, unless agreed otherwise with the buyer.

- (a) To rescind the contract in respect of that lot.
- (b) To store the lot or cause it to be stored at their own premises or warehouses elsewhere at the sole expense and risk of the buyer, and to release the lot only after payment in full of the purchase price, accrued storage and haulage charges and all other costs incurred by MacDougall's in connection with the lot.
- (c) To charge interest and storage charges. Interest is charged at 10% per annum, and storage charges at 50 pounds per lot per week. However, these charges will be waived if payment is received by the 21-day contractual deadline and the purchases are collected within four months.
- (d) With seven days' notice to the buyer to resell the lot or cause it to be resold by public or private sale. Any deficiency in the purchase price attending such resale (after giving credit for any payment and after deducting full costs incurred in connection with the lot) to be made good by the defaulting buyer, any surplus (after retention by MacDougall's of the premium) to be paid to the vendor.
- (e) Commence legal proceedings on behalf of the vendor to recover the purchase price and other expenses for that lot.
- (f) Release the name and address of the buyer to the vendor to enable the vendor to commence the legal proceedings against the buyer.
- (g) MacDougall's shall in all circumstances be entitled to exercise a lien against any property belonging to the buyer or where the buyer has acted as an agent any property belonging to the buyer's principal which is in the possession of or in the control of MacDougall's in respect of any debt howsoever arising owed by the buyer (or the buyer's principal) to MacDougall's notwithstanding that the value of the property exceeds the amount owed to MacDougall's.
- (h) MacDougall's may set off any sums owed by a buyer or its principal against any money owed by MacDougall's to the buyer or its principal notwithstanding that MacDougall's may have in their possession or under their control property belonging to the buyer or its principal.
- (i) MacDougall's are entitled at their absolute discretion to apportion any monies received by or on behalf of the buyer against any sums owed by the buyer or its principal by or on behalf of the buyer against any sums owed by the buyer or its principal to MacDougall's.
- (j) Where lots are not removed in accordance with clause 17 above, whether or not payment has been made, MacDougall's shall be permitted to remove the lot to a third party warehouse at the buyer's expense, and only release the items after payment in full has been made of removal, storage, handling, and any other costs reasonably incurred, together with payment of all other amounts due to us.
- (k) To debit the bank account of the buyer, based on the debit or credit card details provided by the buyer to MacDougall's prior to the auction in question, in part or full payment of the outstanding purchase price and any other outstanding fees.

### **Catalogue Descriptions**

20. MacDougall's reserve the right to withdraw, consolidate, divide or alter any lot or combine any two or more lots.
21. All statements in the catalogues, advertisements or brochures of forthcoming sales are statements of opinion only. Illustrations in the catalogues, advertisements or brochures of forthcoming sales may not necessarily reveal imperfections in any lot. The exact physical description of any lot and the extent of any defect, restoration or repair to any lot should be ascertained by intending buyers through inspection. Each buyer by making a bid for a lot acknowledges that he has satisfied himself fully before bidding by inspection or otherwise as to all the sale conditions the physical condition of and description of the lot including but not restricted to whether the lot is damaged or has been repaired or restored.
22. MacDougall's reserve the full and absolute right to illustrate and photograph any lot placed in its hands for sale, and to use these photographs and illustrations at any time at its absolute discretion (whether or not in connection

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with the auction).

#### **Guarantee**

23. Notwithstanding any other terms of these conditions, if within one year after the sale the buyer of any lot gives notice in writing to the Auctioneer that in his view the lot is a counterfeit (i.e. an imitation created to deceive as to authorship, origin, date, or age); and within fourteen days after such notification the buyer returns the lot to the Auctioneer in the same condition as at the time of sale and free of third party claims; and by producing evidence, with the burden of proof to be upon the buyer, satisfies MacDougall Arts Ltd. that the lot is a counterfeit, not reflected by the description in the catalogue; then the sale of the lot will be rescinded and the purchase price of the same refunded. No lot shall be considered a counterfeit by reason only of any damage and/or restoration and/or modification work of any kind including repainting or over-painting. This limited right of refund lies with the original buyer only and is not transferable to third parties.

23.1 In addition to the guarantee in paragraph 23, a Consumer (being a person acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession) who successfully purchases a lot in an auction which is not a "public auction" (as defined in Regulation 5 of the 2013 Regulations) has the right to cancel the contract for the purchase of that lot within fourteen days of receiving the lot, and receive a full refund. The cancellation form is available on request. The Consumer must bear the cost of returning the goods, and return them in good condition.

#### **Data Protection**

24. By agreeing to these Terms and Conditions, vendors, bidders, and buyers agree to the storage and processing of their personal information by the Auctioneer. The data may be stored in countries which do not offer equivalent protection of personal information to that offered in the EU. The Auction may be subject to video and audio recording by the Auctioneer. The Data Controller is MacDougall Arts Ltd.

#### **Governing Law**

25. These Terms and Conditions of Sale and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation (including any question regarding their existence, validity, termination or breach thereof) shall be governed by and construed in accordance with the laws of England.

#### **Jurisdiction**

26. Subject to clause 27 below, each party to these Terms and Conditions of Sale irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions of Sale or their subject matter or formation (including any question regarding their existence, validity, termination or breach thereof).

27. Notwithstanding what is said in clause 26:

27.1 At the sole option of MacDougall, any controversy or claim arising out of or in connection with these Terms and Conditions of Sale, or their subject matter or formation (including any question regarding their existence, validity, termination or breach thereof), shall be settled by arbitration administered by the London Court of International Arbitration ("LCIA") under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

27.2 The number of arbitrators shall be one.

27.3 The seat, or legal place, shall be London, United Kingdom.

27.4 The language to be used in the arbitral proceeding shall be English.

27.5 If a court action has been initiated by a party other than MacDougall by reference to clause 26 of these Terms and Conditions of Sale at the time that MacDougall chooses to submit the matter to arbitration, then it is agreed that such court action is to be discontinued, unless the arbitrator finds that MacDougall has waived such right by



substantially participating in the court action without having raised its right under this clause.

**Translations of these Terms and Conditions of Sale**

28 Where a translation of these Terms and Conditions of Sale has been provided, it is agreed that the English language version shall prevail if there is a conflict.

**Severability**

29 If any provision or part-provision of these Terms and Conditions of Sale is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms and Conditions of Sale.

**Payment methods:**

For payments by wire transfer, please direct payment in UK pounds sterling (with all charges to be paid by sender, and include a reference to the lot number and auction date) to:

MacDougall Arts Client Trust Account No. 73662942, Sort Code 40-07-13; SWIFT/BIC: HBUKGB4110D, IBAN: GB30HBUK40071373662942; Address: HSBC Bank plc, The Peak, 333 Vauxhall Bridge, London SW1V 1EJ.

**Other payment methods:**

Payments by Debit or Credit card are accepted up to £10,000 pounds and are free of processing charge. Personal UK cheque payments will have to clear before delivery of purchases. Banker's drafts and cash within certain limits may be accepted by prior arrangement.