

GENERAL TERMS & CONDITIONS OF SALE ERIK BIJZET SCULPTURE AND WORKS OF ART B.V.

General provisions

Article 1 – General

1. The General Terms and Conditions of Sale contained herein (“**General Conditions**”), shall apply to 1) all offers, quotations, notes and Purchase Confirmations issued by Erik Bijzet Sculpture and Works of Art B.V. or any affiliate thereof (“**Seller**”), 2) all Agreements (as hereinafter defined) concluded between Seller and any (prospective) buyer (“**Buyer**”) and 3) all Agreements between Buyer and third-parties where Seller has acted as intermediate.
2. “**Products**” shall mean all sculptures and works of art offered for sale by Seller. “**Services**” shall mean any services performed by Seller, including but not limited to valuations and intermediate services.
“**Purchase Confirmation**” shall mean the written confirmation by Seller to sell or supply to Buyer the Products and/or Services described therein.
3. An agreement (“**Agreement**”) means any agreement relating to Products or Services concluded between Seller and Buyer (referred to as the **Client** when it concerns Services only), and which shall be entered into if and when the Seller has confirmed the Agreement in writing by means of an Purchase Confirmation.
4. Seller may withdraw its offers and quotations without notice at any time before an Agreement between Seller and the Buyer comes into existence.
5. Upon entering into an Agreement with Seller, Buyer is deemed to have accepted the General Conditions as an integral part of the Agreement. Unless Seller expressly agrees otherwise in writing, the General Conditions prevail over any conflicting or additional terms or conditions stipulated or referred to by Buyer.
6. These General Conditions apply without limitation to all persons and legal entities affiliated to Seller and all third parties involved in carrying out an Agreement by Seller and who are or may be liable in relation thereto (including, but not limited to consignors). These General Conditions constitute for these persons, legal entities and third parties an irrevocable third-party clause within the meaning of Section 6:253 of the Dutch Civil Code, without financial consideration, and may be invoked by these persons, legal entities and third parties.
7. Seller is entitled to amend the General Conditions from time to time.

Article 2 – Prices

1. At any time before the conclusion of an Agreement, all of Seller’s offered, quoted, published or notified prices are non-binding and are subject to alteration at any time without prior notice and in particular may be altered to reflect any increase in cost to Seller caused by the imposition or levying by any governmental or other authority of any country of any import or other duty, tax or charge.
2. Unless expressly described otherwise in the Agreement, all prices are quoted exclusive of taxes and costs of packaging, carriage and insurance.
3. All sales shall be invoiced inclusive of all applicable duties, taxes, levies and other charges as well as the costs of carrying out customs formalities payable upon export.

Article 3 – Terms of Payment

1. Payments shall take place in accordance with the terms specified in the Purchase Confirmation. All payments shall be made in the currency stated on the invoice and/or the Purchase Confirmation, within the agreed time period, without any deduction or set-off for any reason whatsoever, unless specified otherwise in the invoice. Buyer shall not be entitled to suspend its payment obligations.
2. Without prejudice to any other contractual or statutory rights of Seller, Seller may charge interest on any overdue payments at the rate of 15% per annum from the due date until the actual date of payment. Buyer shall also be liable for all judicial and extra judicial collection costs.
3. If Buyer fails to make payment within the agreed time period, Buyer shall be in default by operation of law without any notice of default being required. The date reported on Seller’s bank statements shall be deemed to constitute the effective date of payment.

Article 4 – Liability

1. In case liability of Seller is established, such liability is limited to the loss or damage which was foreseeable at the time the Agreement was concluded up to a maximum amount equivalent to (i) the amount which will be or has been rewarded by the insurance company under the applicable liability insurance, or (ii) if no insurance reward is paid out, the price agreed with Seller. Under no circumstances Seller shall be liable to Buyer for any other kind of special, incidental, direct or indirect, consequential or punitive damages or loss, cost or expense, including without limitation, damage based upon loss of goodwill, loss of business, loss of sales or profits, work stoppage, production failure, impairment of other goods or otherwise and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation or otherwise.
2. Nothing in these General Conditions will limit Seller’s liability for acting wilfully or grossly negligent.

Article 5 – Force Majeure

Seller will not be responsible for any delay or failure to fulfil any term or condition of any Purchase Confirmation, Agreement or other obligation to the extent such delay or failure is caused by or results from any other event which is beyond the control of Seller, including but not limited to: (i) pandemics, (ii) strikes or labour disturbances or (iii) transportation issues.

Article 6 – Governing Law / Disputes

1. Any agreements and documents to which these General Conditions apply shall be exclusively governed by the laws of the Netherlands.
2. Any disputes arising from any agreements or documents to which these General Conditions apply shall be exclusively submitted to the competent courts of Amsterdam.

3. Applicability of the United Nations Convention on the International Sale of Goods (CISG, 1980) is explicitly excluded.

Article 7 - Miscellaneous

1. Buyer shall not assign any rights under the Agreement in whole or in part to any third party without the prior written consent of Seller.
2. Buyer or, as the case may be, Client gives its irrevocable and unconditional consent to Seller to publish sold Product on its website (or elsewhere). Seller is entitled to publish articles or books pertaining to research done by Seller on Products or objects which are (or have been) the subject of Services provided by Seller.

Provisions relating to Products only

Article 8 – Mutual understanding on Products

1. Seller's knowledge in relation to each Product is (fully or partially) dependent on information provided to it by the supplier of the Product in question, and Seller is not able to and does not carry out an exhaustive due diligence investigation on each Product. By entering into an Agreement Buyer acknowledges the aforementioned and accepts that, other than as provided for in article 11, Seller gives no other warranties, express or implied, with respect to any Products.
2. Each Product offered for sale is available for inspection by a potential buyer. Buyer is responsible for carrying out its own inspections and investigations on the Products. Seller enters into Agreements assuming that Buyer (and/or any experts on its behalf) have inspected the Product. By entering into an Agreement concerning the Product in question, Buyer acknowledges that it is satisfied with the Product's condition.
3. Buyer acknowledges that Products offered for sale are of an age and type which means they are not in perfect condition. Condition reports may be made available to assist when inspecting objects. Descriptions and condition report may on occasions make reference to particular imperfections of an object, but buyers should note that objects may have other faults not expressly referred to. Illustrations are for identification purposes only and will not convey full information as to the actual condition of the Products.
- d. Information provided by Seller in respect of a Product, including information in the offer, the Purchase Confirmation, the note or other report, commentary or valuation, is not a representation of fact, but rather is a statement of opinion genuinely held by Seller.

Article 9 – Consignment

1. Seller may offer a Product through consignment, meaning that the Product in question is not owned by Seller, but is marketed and sold by Seller on behalf of a third-party owner ("**Consignor**"), which has granted the exclusive right and title to Seller for this purpose, as well as the right to transfer the right of ownership on behalf of Consignor. The offer, note and/or Purchase Confirmation shall state whether a Product is sold by Seller (being the owner of the Product) or offered by Seller through consignment.
2. In the event that Seller offers a Product through consignment, Seller will only act as intermediate between Buyer and the Consignor, meaning that no sales agreement will be concluded between Seller and Buyer. These General Conditions shall apply without limitation on the intermediate services rendered by Seller.
3. In the event of consignment, article 11 does not apply.

Article 10 – Delivery, Title and Risk

1. Delivery of the Products takes place either by (i) physically handing over the Product(s) by Seller to Buyer or (ii) by means of transport of the Product(s) by carrier. The form of delivery shall be stated in the Purchase Confirmation. Upon transfer by carrier, delivery may take place in accordance with the applicable Incoterm specified in the Purchase Confirmation.
2. Seller will make every endeavour to deliver Products and/or services within the delivery time stated in the Purchase Confirmation, but Seller shall not be liable for failure to do so for any reason. Seller is entitled to make partial deliveries.
3. Buyer shall inspect the Products and/or services immediately upon delivery thereof by Seller.
4. In the event that the sales price of the Products is not settled in full prior to delivery, the title of ownership of the Products supplied by Seller shall not pass to Buyer until final settlement in full of the sales price and all other sums due to Seller.
5. Risk of loss of, and damage to, the Products shall immediately pass to Buyer upon delivery.

Article 11 – Authenticity

1. If Seller sells a Product which subsequently is proven to be a counterfeit (as defined hereinafter) Seller will, subject to the terms below, return to Buyer the sales price paid under the Agreement. Please note that this article article11 does not apply in the event the Product is offered by Seller through consignment.
2. For the purpose of the clause, counterfeit shall mean an object that in Seller's reasonable opinion is a modern imitation made after 1870 created to deceive as to authorship, origin, date, age, period, culture, or source, and where the correct description of such matters is not reflected by the description provided by Seller at the moment of entering into the Agreement. No object 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 and the reconstruction of parts of the object). In addition, no object shall be considered a counterfeit if either the description was in accordance with the generally accepted opinion(s) of scholar(s) or expert(s) at the date of the Agreement and/or if the description indicated that there was a conflict of such opinions, or the only method of establishing at the date of the sale that the object was a counterfeit would have been by means of processes not generally available or accepted, unreasonably expensive or impractical to use or likely to have caused damage to the object or likely (in Seller's opinion) to have caused loss of value of the object, or there has been no material loss in value of the object had it been in accordance with its description.
3. The obligation to return the sales price to Buyer expires six (6) months after the date of the Agreement and is solely for the benefit of the Buyer and may not be transferred to any third party. Buyer shall notify Seller without delay, but under any circumstance within 14 calendar days of receiving any information that causes Buyer to question the authenticity of the Product, sufficiently specifying and evidencing the grounds which qualify the Product to be an counterfeit in Buyer's opinion. Buyer shall make the Product available for Seller's inspection at the location designated by Seller for that purpose.
4. Seller may require Buyer to obtain at Buyer's cost the reports of two independent and recognised experts in the field,

mutually acceptable to Seller and Buyer. If both reports unambiguously confirm the Product is proven to be a counterfeit, Seller shall reimburse Buyer 50% of the costs involved with the reports.

Article 12 – Right of withdrawal

1. Provided that an Agreement is (i) concluded by electronic means not being an auction and (ii) Buyer has entered into the Agreement being a consumer in the meaning of Directive (EU) 2019/770, Buyer is entitled to withdraw from the Agreement within 14 days of the date of Delivery of the Product.
2. During the reflection period mentioned in subsection 1, Buyer shall treat the Product and its packaging with care. Buyer shall only unpack or use the product as necessary to determine the nature, characteristics and operation of the Product. Buyer may handle and inspect the Product as they would be allowed to do in a gallery. If Buyer goes further than described in this subsection 12.2, Buyer is liable for the depreciation of the Product's value.
4. If Buyer exercises his right of withdrawal, he or she shall notify Seller accordingly in written within the period of reflection. Unless Seller has offered to collect the Product itself, Buyer shall return the Product as soon as possible, but under any circumstance within 14 days from the notification of exercise of the right of withdrawal. The burden of proof for the timely exercise of the right of withdrawal is upon Buyer.
5. Buyer shall return the Product in the original state and packaging and in accordance with the instructions given by Seller. Buyer shall bear the costs involved of returning the Product.
6. Seller shall reimburse the sales price within 14 days of the return of the Product, provided that Buyer has met his obligations towards Seller.

Provisions relating to Services only

Article 13 – Valuations

1. Valuations by Seller are based on the opinion of Seller, which is dependent on the time spent on and the conditions of its research, on the value that the objects potentially realise at auction (Auction Estimate; AE) or on the open market (Fair Market Value; FMV) as indicated Seller.
2. Unless stated otherwise, all valuations by Seller are based on initial visual evaluations of the objects without these having been cleaned, restored, scientifically tested or analysed, deconstructed and/ or without exhaustive research into the provenance of the object. The valuation is dependent on the information provided by the Client and assumes that all objects are free of third party intrusions, restrictions, and claims and that the object can be sold on the international market without restrictions including but not exclusively those pertaining to export.
3. Valuations are based on opinions and opinions regarding value may differ. Certain circumstances that determine the value of an individual object or group of objects may not be known or predictable at the time of the valuation. The value may also fluctuate due to external circumstances such as but not exclusively changes in the conditions of the market or changes in the relevant knowledge or relevant experts. In addition, the identification, attribution, and the value of object may be subject to changes after further inspection or further research. Seller's valuations only concern the inherent characteristics of the object and not outside influences that may affect the value such as but not exclusively provenance, the position of the object in a larger collection, or the presence of related objects on the market at the same time.
4. The Client acknowledges that Seller does not give guarantees about origins, provenance, attributions, condition, date, age, or authenticity of an object.
5. A potential offer for purchase or consignment on the object by Seller may differ from the value that has been or will be provided in the valuation. Seller does not guarantee that an object will realise the stated value in the case of a public sale or private treaty.
6. The value of an object as provided in the valuation is based on opinions and not on facts. The given value of an object may therefore lack clear comparisons. Seller therefore cannot guarantee that the authorities, another competent institution, a court or tribunal will accept the valuation.
7. All valuations are solely intended for the Client to whom the valuation is addressed and are only suitable for the specific goal of the valuations as mentioned in the valuations. The valuation may not be used by another person, for a different application, or passed on to third parties, or reproduced or published in any form possible without the prior written consent of Seller.
8. All intellectual property rights arising from, or being the result from the valuations, remain vested within Seller.

Article 14 – Client's representations

1. The Client represents and warrants to Seller on a continuous basis that at all relevant times (including at the time of consignment or sale) that (i) the Client either is the owner of the object or is authorised by the owner to have the valuation performed by Seller and (ii) that the object is free from any third party rights, claims or potential claims (including, without limitation, by governments and governmental agencies).
2. The Client represents and warrants that it has provided Seller in writing with all information concerning the object's provenance, condition and restoration and has informed Seller about any concerns the Client may have or that have been expressed by third parties concerning its ownership, condition, authenticity, attribution and export or import history.
3. The Client represents and warrants that the object was lawfully imported into the country it is in and was lawfully and permanently exported as required by the laws of any country it was located at any time, required declarations upon the export and import have been properly and truthfully made, and any duties on the export or import of the item have been paid.
4. Upon any breach of the Client's representations or warranties, Seller is entitled to (i) rescind the Agreement with immediate effect, without being obliged to pay any compensation, and/or (ii) to receive full indemnification from the Client of any loss or damages (including reasonable attorney fees) suffered by Seller as result from such a breach.