

## CONDITIONS OF SALE:

All buyers must register to bid prior to the sale and are requested to provide photographic proof of ID and if requested, a bank reference.

For those leaving Absentee bids, please provide details of lots on which you wish to place bids at least 48 hours prior to the sale.

There will be a buyers' premium of 15% + VAT (14% of 15%) on top of the hammer price.

The auction will be conducted in Kenyan Shillings. The dollar estimates listed in brackets are used for reference only. This rate is indicative only and the exchange rate will be subject to prevailing market rates at the time of sale.

Purchase of secondary market Kenyan lots marked ARR will be subject to payment of Artist Resale Royalty Right under the Kenyan Copyright (Amendment) Act 2019. The amount payable is calculated as five percent (5%) of the net sale price. The net sale price is the Hammer price less VAT on Circle Art Agency's Commission. The Buyer agrees to pay us an amount equal to the Resale Royalty, and we undertake to take reasonable efforts to pay such an amount to the Artist or the Artist's Collecting Agent. The Artist's Resale Right applies to lots sold for KES 20,000 and above and does not apply to lots sold for charitable purposes.

## NOTICE TO BIDDERS 2020

By Placing a Bid at or before the auction, the bidder agrees to be bound by the terms herein.

### Preconditions

1. Circle Art Agency Ltd acts as agent for the Seller and, therefore, the contract of sale is made between the Seller and the Buyer.
2. Buyers are responsible for satisfying themselves concerning the condition of the property and the matters referred to in the catalogue entry. This can be done by, for example, a personal inspection and examination of the artwork in which they are interested, a consultation with the artist or any other authority on the subject (if known to the buyer) and/or a review of past-sales amounts for similar items, where available. To facilitate in this process, Circle Art Agency Ltd provides free viewings of the consigned lots prior to the auction and condition reports of individual works on request.
3. Neither Circle Art Agency Ltd nor the seller

provides any guarantee in relation to the property, which is sold in "as is" condition to the buyer. This pertains to, but is not limited to, the condition of the work, the authorship and authenticity of the work and any descriptive or historical detail about the work that is disclosed verbally or printed in the catalogue or elsewhere. In good faith to the buyer, signed declarations by the seller warrant the following: (a) the seller is the owner of the item, or is properly authorized by the owner to sell the item. (b) The seller can and shall, in accordance with the conditions set upon him by Circle Art Agency Ltd, transfer possession to the buyer with good and marketable title to the item, free from any third party rights, claims or potential claims (including without limitation, by governments or governmental agencies). (c) The seller has provided Circle Art Agency Ltd in writing with all information concerning the item's provenance and has notified Circle Art Agency Ltd in writing of any concerns expressed by third parties concerning its ownership, condition, authenticity, attribution and export or import history. (d) The seller has paid or will pay all taxes and duties potentially due to her on the sale proceeds of the item.

4. All statements by Circle Art Agency Ltd made orally or printed in the catalogue entries, the condition reports or elsewhere are statements of opinion and not to be relied on as statements of fact. Such statements do not constitute a representation, warranty or assumption of liability by us of any kind. (b) References to damage and restoration are for guidance only and absence to such references does not imply that an item is free from defects or restoration, nor does a reference to particular defects imply the absence of any others.

5. The Seller does not make or give and does not agree to make or give any contractual promise, undertaking, obligation, guarantee, warranty, or representation of fact, or undertake any duty of care, in relation to any description of the Lot or any Estimate in relation to it, nor of the accuracy or completeness of any Description of Estimate which may have been made by or on behalf of the Seller including by Circle Art Agency Ltd. No such Description or Estimate is incorporated into this Contract for Sale.

#### Before the Sale

6. A prospective buyer must complete and sign a bidder registration form, provide identification. Circle Art Agency Ltd may require the production of bank or other financial references. Following this process they will be allocated a numbered bidding paddle. (b) A prospective, registered Buyer can authorize a third-party to act as agent in the bidding process if the Buyer is unable to attend the auction. This arrangement, if such is to occur, must be conveyed in writing to Circle Art Agency Ltd and approved by the same. (c) Circle Art Agency Ltd has the right, at its complete discretion, to refuse admission to the premises or participation in any auction and to reject any bid.

#### At the Sale

7. When making a Bid, a Bidder is accepting personal liability to pay the Purchase Price, including the Buyer's Premium and all applicable taxes. The Buyers' Premium, (common practice in all international auction houses), is in this case 15% of the hammer price + VAT on this 15%. This equals 17.4% of the hammer price. This does not apply if the Bidder is acting as agent on behalf of an identified third party acceptable to Circle Art Agency Ltd and this has been explicitly agreed in writing or by email to Circle Art Agency Ltd before the commencement of the sale. In respect of this situation Circle Art Agency Ltd will only consider the principal liable for payment. Conditions in paragraph 4 apply to both the agent bidder and the principal for the Bid to be valid.

8. Absentee Bids are welcome and Circle Art Agency Ltd will carry out written Bids for the convenience of clients who are not present at the auction in person, through the Auctioneer or by way of representation through an agent. We reserve the right to not accept an absentee bid if it does not comply with any of the following conditions: (a) the Bidder is registered or submits the bid with a completed Bidder registration form; (b) the bid is made in the currency of the country where the auction is held and (c) the bid is received a minimum of 48 hours prior to the auction. Please refer to the Registration and Bidding form on our website for clarifications. Bidders will receive a receipt of acknowledgement from Circle Art Agency Ltd, within 2 days after it is submitted and will further

receive a confirmation that the bid is accepted by email, the purpose of which is to fairly execute the following circumstance: If we receive written bids on a particular lot for identical amounts, and at the auction these are the highest bids on the lot, it will be sold to the person whose written bid was received and accepted first.

9. Reserve sale prices, indicated by the owner, are included for all lots. The Reserve is the confidential minimum price for the lot. If bidding for a particular lot ends below the reserve, the lot will not be sold. The Reserve will not exceed the low estimate printed in the catalogue. The auctioneer may open the bidding on any lot below the reserve and may continue to bid on behalf of the seller up to, and strictly limited to, the amount of the reserve, either by placing consecutive bids or by placing bids in response to other Bidders.

10. The auctioneer has the right at his absolute and sole discretion to refuse any bid, to advance the bidding in such a manner as he may decide, to withdraw or divide any lot, to combine any two or more lots and, in the case of error or dispute, and whether during or after the sale, to determine the successful bidder, to continue the bidding, to cancel the sale or to reoffer and resell the item in dispute. If any dispute arises after the sale, our sale record is conclusive.

11. Subject to the auctioneer's discretion, the highest bidder accepted by the auctioneer will be the Buyer. The auctioneer will indicate that the highest bid has been accepted with a strike of his hammer (hereafter referred to as the 'hammer price'). This same strike of the hammer symbolically and legally establishes the contract for sale between the seller and buyer. Risk and responsibility for the lot (including frames or glass where relevant) passes to the buyer at the expiration of seven calendar days from the date of the sale or on collection by the Buyer if earlier.

#### After the Sale

12. In addition to the hammer price, the Buyer agrees to pay Circle Art Agency Ltd the Buyer's premium (this becomes the 'purchase price'), together with any applicable value added tax (VAT). The buyer's premium is 15% of the hammer price. The VAT, subject to Kenyan law is 14% of the buyer's premium.

13. Immediately following the sale, the Buyer must confirm his or her name and permanent address and, if applicable, the details of the bank from which payment will be made. The Buyer must pay the full amount due (comprising the hammer price, buyer's premium and VAT) immediately after the sale. The Buyer will not acquire title to the lot until all amounts due to Circle Art Agency Ltd from the Buyer have been received in good cleared funds even in circumstances where the lot has been released to the buyer.

14. Payment must be made to Circle Art Agency Ltd. within a period of seven (7) days after the sale. This includes the time required to process cheques or to receive wire transfers. Failure to meet this schedule may incur the buyer additional charges or actions, made at the discretion of Circle Art Agency Ltd. Possible charges or actions against late-or non-payment are elaborated upon in paragraph 16 below.

15. Circle Art Agency Ltd shall be entitled to retain items sold until all amounts due have been received in full in good cleared funds or until the buyer has satisfied such other terms as we, in our sole discretion, shall require. Subject to this, the buyer shall have paid for and collected purchased lots within seven (7) calendar days from the date of sale, unless otherwise agreed upon.

16. Risk in the Lot passes to you when it is knocked down to you on the fall of the Auctioneer's hammer in respect of the Lot. The Seller will not be responsible thereafter for the Lot prior to you collecting it from Circle Art Agency Ltd. You will indemnify the Seller and keep the Seller fully indemnified from and against all claims, proceedings, costs, expenses and losses arising in respect of any injury, loss and damage caused to the Lot after the fall of the Auctioneer's hammer until you obtain full title. Title to the lot remains and is retained by the seller until the Purchase price and all the sums payable (such as but not limited to handling, packaging, shipping and delivery of the lot) by you to Circle Art Agency Ltd in relation to the lot have been paid in full to, and received in cleared funds by Circle Art Agency.

17. Although Circle Art Agency Ltd shall use reasonable efforts to take care when handling, packing and shipping a purchased lot, we are not responsible for the acts or omissions of third

parties whom we might retain for these purposes. Similarly, where we may suggest other handlers, packers or carriers if so requested, we do not accept responsibility or liability for their acts or omissions.

18. Unless otherwise agreed by Circle Art Agency Ltd in writing, the fact the buyer wishes to apply for an export license does not affect his or her obligation to make payment within seven days nor our right to charge interest or storage charges on late payment. Circle Art Agency Ltd is unable to undertake the procedure on behalf of the buyer but can refer them to a suitable agent.

19. If the buyer fails to make payment in full in good cleared funds within the time required by paragraph (12) above, we shall be entitled in our absolute discretion to exercise one or more of the following rights or remedies (in addition to asserting any other rights or remedies available to us by law): (a) to charge interest at such rate we shall reasonably decide; (b) to hold the defaulting buyer liable for the total amount due and to commence legal proceeding for its recovery together with interest, legal fees and cost to the fullest extent permitted under applicable law; (c) to cancel the sale; (d) to resell the property publicly or privately on such terms as we shall think fit; (e) to pay the seller an amount up to the net proceeds payable in respect of the amount bid by the defaulting buyer; (f) to set off against any amounts which we may owe the buyer in any other transactions, the outstanding amount remaining unpaid by the buyer; (g) to reject at any future auction any bids made by or on behalf of the buyer or to obtain a deposit from the buyer before accepting any bids; (h) to exercise all the rights and remedies of a person holding security over any property in our possession owned by the buyer, whether by way of pledge, security interest or in any other way, to the fullest extent permitted by the law of the place where such property is located. The Buyer will be deemed to have granted such security to us and we may retain such property as collateral security for such Buyer's obligations to us; (i) to take such other action as we deem necessary or appropriate.

20. If Circle Art Agency Ltd resells the property under paragraph (d) above, the defaulting buyer shall be liable for payment of any deficiency between the total amount originally due to us and

the price obtained upon resale as well as for all costs, expenses, damages, legal fees and commissions and premiums of whatever kind associated with both sales or otherwise arising from the default. If Circle Art Agency Ltd pays any amount to the Seller under paragraph (e) above, the buyer acknowledges that Circle Art Agency Ltd shall have all of the rights of the Seller, however arising, to pursue the Buyer for such amount. Where purchases are not collected within seven calendar days from the date of sale, whether or not payment has been made, Circle Art Agency Ltd shall be permitted to remove the property to, an insured and managed third party warehouse at the Buyer's expense. Circle Art Agency Ltd is only liable to release the items after payment in full has been made of all the additional costs incurred, whether for removal, storage, handling, insurance and/or any other activity that warrants charges. This includes payment of all other amounts due to Circle Art Agency Ltd, in respect of the purchase price and any applicable taxes.

#### Limited Warranty

21. Circle Art Agency Ltd agrees to refund the purchase price in the circumstances of the Limited Warranty set out in paragraph 20 below. Apart from any of those circumstances, neither the seller nor Circle Art Agency Ltd including any of its officers, employees or agents, are responsible for the correctness of any statement of any kind concerning any lot, whether written or oral. This includes any errors or omissions in description or for any faults or defects in any lot.

22. Subject to the terms and conditions of this paragraph Circle Art Agency Ltd warrants for a period of two years from the date of the sale that any property described in headings as Direct from Artist, in this catalogue (as such description may be amended by any saleroom notice or announcement) which is stated without qualification to be the work of a named artist, is authentic and not a forgery. Circle Art Agency Ltd is neither responsible for omission or errors of such information below the heading. The warranty is subject to the following: (a) It does not apply where the catalogue description or saleroom notice corresponded to the generally accepted opinion of scholars or experts at the date of the sale or fairly indicated that there was

a conflict of opinions. (b) The benefits of the warranty are not assignable and shall apply only to the original Buyer of the lot as shown on the invoice originally issued by Circle Art Agency Ltd. (c) The Buyer's sole and exclusive remedy against Circle Art Agency Ltd and the seller is the cancellation of the sale and the refund of the original purchase price paid for the lot. Neither Circle Art Agency Ltd nor the seller will be liable for any special, incidental or consequential damages, including, without limitation, loss of profits nor of interest. (d) The Buyer must give written notice of claim to us within two years from the date of the auction. The Buyer is required to obtain the written opinions of two recognized experts in the field, mutually acceptable to Circle Art Agency Ltd and the Buyer, before Circle Art Agency Ltd decides whether or not to cancel the sale under the warranty. (e) The buyer must return the lot to Circle Art Agency Ltd in the same condition as at the time of the sale.

#### Other Conditions

23. (a) The copyright in all images, illustrations and written material produced by or for Circle Art Agency Ltd relating to a lot is and shall remain at all times the property of Circle Art Agency Ltd and shall not be used by anyone without our prior written consent. (b) Circle Art Agency Ltd and the Seller make no representation or warranty that the Buyer of a property will acquire any copyright or other reproduction rights in it.

24. If any part of these Conditions of Sale is found by any court to be invalid, illegal or unenforceable, that part shall be discounted and the rest of the conditions shall continue to be valid to the fullest extent permitted by law

#### Governing Law

25. This agreement shall be governed by Kenyan law and the parties agree to submit to the non exclusive jurisdiction of the Kenyan courts.