



**Children's Museum of the Arts**  
where children create!

**ABSENTEE BID FORM**

Children's Museum of the Arts' Annual Art Auction  
Monday, October 20<sup>th</sup>, 2008 at Phillips de Pury & Company

Absentee bids may be placed in two ways:

1. Mail or deliver the completed form to CMA, Attn: Lori Feren (182 Lafayette Street, New York, NY 10013)
2. Fax the completed form to CMA, Attn: Lori Feren at 212-274-1776

All Absentee bids are due by Sunday, October 19<sup>th</sup>, 2008 at 11:59 p.m.

**How Absentee bidding works:**

A CMA representative will place a bid on your behalf, but will not be responsible for error or failure to execute bids. Please place the highest bid you are willing to pay. In the event of identical bids, the bid received from the attendee at the auction will take precedence.

Please fill out all of the following information. **Bids will not be accepted without complete credit card information.**

I wish to place the following bid for the Children's Museum of the Arts' Annual Art Auction to be held on **Monday, October 20<sup>th</sup>, 2008** at Phillips de Pury & Company. This bid is to be executed by a representative of CMA up to but not exceeding the amount specified below. Each bid is per lot, as indicated, and all bids will be executed and are accepted subject to the conditions of sale printed in the following pages.

***Please print clearly***

LOT INFORMATION

1. Artist Name _____	2. Artist Name _____
Title _____	Title _____
Amount of Bid \$ _____	Amount of Bid \$ _____

PAYMENT INFORMATION

Name (as appears on card) \_\_\_\_\_

Billing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (day) \_\_\_\_\_ Alternate Telephone \_\_\_\_\_

E-mail \_\_\_\_\_

Credit Card Type    American Express    Visa    MasterCard    Discover

Credit Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_ SID # \_\_\_\_\_

Signature \_\_\_\_\_

Shipping address (if different from above)\*\* \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

\*\*Buyer agrees to pay for cost of delivery/shipping

If you have any questions, please contact Lori Feren, Special Events Manager at 646-723-4361 or [lferen@cmany.org](mailto:lferen@cmany.org)



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## STANDARD TERMS & CONDITIONS

### 1. APPLICABLE TERMS AND CONDITIONS

Each lot in this Catalogue will be offered for sale subject to the terms and conditions set forth below, as changed or supplemented by provisions (i) written in other places in this Catalogue, (ii) written in supplements to this Catalogue or other written material prepared by us, and/or (iii) as stated by the auctioneer or posted in writing at the time of auction, prior to a bid being accepted for the lot. In offering property for sale, we are acting solely as agent for the consignor, unless otherwise indicated in this Catalogue or at the time of auction. By bidding at the auction, whether in person, through an agent, by written bid, by telephone bid, or by other means, the buyer and all bidders agree to be bound by these terms and conditions, as changed or supplemented as provided in this paragraph.

### 2. DEFINITIONS

The use of "we," "us," "our" or "CMA" in this Catalogue refers to Children's Museum of the Arts a non-profit corporation, and the use of "buyer" refers to the person or entity buying property at the auction or at a private sale. "Standard Terms and Conditions" refers to these terms and conditions, as changed or supplemented in the ways mentioned in Paragraph 1 above. The "consignor" refers to the seller(s) and any party(ies), acting as agent for the seller(s) in consigning the Property to us for sale. A "lot" refers to the lot in which Property is grouped by us. "Property" refers to each item of property listed for sale at auction or by private sale. The "reserve" refers to the minimum price at which the Property is to be sold.

### 3. WARRANTY INFORMATION; BUYER'S REMEDIES

**Limited Warranty; Sole Remedy:** The authorship of fine art is warranted only as set forth in the Authorship Warranty appearing in this Catalogue. The meaning of "fine art" and "authorship" is also set forth in the Authorship Warranty. Buyer's sole rights and remedy for any nonconformity shall be as expressly set forth in the Authorship Warranty and as provided in this Paragraph 3, whether the claim arises in contract, warranty, tort, negligence, strict liability or otherwise.

**Disclaimer of Warranties:** Except for rights that the buyer receives under the Authorship Warranty,

(i) all Property is sold "AS-IS, WHERE-IS AND WITH ALL FAULTS," and neither we nor the consignor make any guarantees, warranties or representations, express or implied, with respect to the Property, except as to warranty of title. All implied warranties of MERCHANTABILITY and FITNESS FOR PURPOSE ARE SPECIFICALLY DISCLAIMED by us and the consignor;

(ii) specifically, neither we nor the consignor make any representation or warranty of any kind, express or implied, with respect to any of the following characteristics of the Property: age, authenticity, genuineness, attribution, provenance, origin, physical condition, importance, size, quality, quantity, rarity, value, exhibitions, historical references or significance, medium, material, period, culture, source or origin;

(iii) all information in the Catalogue or elsewhere, concerning the characteristics mentioned in (ii) above, is offered to bidders as a statement of opinion only. It is not intended to contain statements of fact for which we or the consignor may be held liable. This disclaimer of liability on our part applies whether the information is included in the Catalogue, advertisements, announcements, or communicated through our representatives, bills of sale or elsewhere, and whether written or oral; and

(iv) neither we, nor the consignor, shall be responsible for the correctness or accuracy of descriptions or other information in this Catalogue or elsewhere. The bidder assumes the full responsibility to inspect and evaluate the Property to its, his or her complete satisfaction prior to any purchase. The bidder must make an independent judgment about (a) the Property, (b) its value, and (c) descriptions or other information about the Property. We may, without in any way diminishing our disclaimers of liability contained in this Paragraph 3 and elsewhere, mention in the description of the lot significant damage, although this does not include all faults, imperfections and restorations. In addition, all measurements stated in the Catalogue are approximate.

**No Warranty of Reproduction:** Neither we nor the consignor make any warranty or representation, express or implied, concerning any rights of copyright or reproduction in, to or of the Property.

**Price Estimates:** The estimates provided in the Catalogue are merely our opinion of the price that a willing buyer would pay for the Property at auction. The actual price that might be realized at auction or upon resale of the Property may be substantially different from these estimates. We shall not be liable in any way for such a difference.

**Remedies for Breach of any Warranty:** If there is any breach of a warranty, buyer's sole remedy shall be to rescind the sale and receive a refund of the purchase price. This means that neither we, nor the consignor, shall have any liability for other damages, such as but not limited to, direct, indirect, special, incidental or consequential damages. No refund will be made until the Property is returned at buyer's expense to the premises of CMA from whom the Property was purchased, in the same condition as at the time of sale. We act only as agent for the consignor and make no independent warranty of any kind. Nothing in this Paragraph 3 is intended to exclude any warranty of title required to be given under the Regulations of the New York City Department of Consumer Affairs.

### 4. THE AUCTION

**Bidding by Paddle:** All persons attending the auction must obtain a bidder's paddle prior to bidding. The bidder must qualify to bid and may be asked to provide a financial reference. The Auctioneer may refuse to recognize any person without a bidder's paddle. If you are not able to attend the auction you may submit an Absentee Bid.

**Absentee Bids:** As a convenience to buyers who cannot attend a sale in person, we may, if so instructed, execute written absentee bids on a buyer's behalf, without additional cost. Absentee bidders are required to submit bids on the "Absentee Bid Form," a copy of which is inserted into the Catalogue or otherwise available online at [www.cmany.org](http://www.cmany.org) or from us. The buyer must clearly indicate the maximum amount buyer intends to bid. "Buy" bids will not be accepted. Absentee bids, whether written, executed by telephone, or otherwise, is an accommodation for the buyer, and we will not be liable for errors, omissions or failure to execute bids. Lots are bought for absentee bidders at the lowest possible price permitted against other bidders and the reserve.

**Employee Bidding:** Employees of PHILLIPS de PURY & COMPANY, and CHILDREN'S MUSEUM OF THE ARTS including an auctioneer, may bid at the auction through absentee bids so long as they do not know the reserve and otherwise comply with PHILLIPS de PURY & COMPANY's employee bidding procedures.

**Bidding Intervals:** For your convenience, bidding generally commences at an increment below the low estimate and may proceed at the following intervals: \$1,000-3,000 by \$100; \$3,000-\$5,000 by \$250; \$5,000- \$30,000 by \$1,000; \$30,000 onward, at Auctioneer's discretion.

**Auctioneer Announcements:** All terms, conditions, notices, descriptions, statements and other matters in the Catalogue and elsewhere concerning any lot may be changed or added to by the Auctioneer, prior to any bid being accepted for the lot.

**RESERVES:** ALL LOTS ARE OFFERED SUBJECT TO A RESERVE. WE (OR THE AUCTIONEER) MAY IMPLEMENT THE RESERVE BY BIDDING ON BEHALF OF THE CONSIGNOR AT THE AUCTION. THIS MEANS THAT WE (OR THE AUCTIONEER) MAY OPEN THE BIDDING ON ANY LOT BY PLACING A BID ON BEHALF OF THE CONSIGNOR. WE OR THE AUCTIONEER MAY FURTHER BID ON BEHALF OF THE CONSIGNOR BY PLACING SUCCESSIVE OR CONSECUTIVE BIDS FOR A LOT, OR BY PLACING BIDS IN RESPONSE TO OTHER BIDDERS UP TO THE AMOUNT OF THE RESERVE. THE RESERVE, WHICH IS CONFIDENTIAL, IS DETERMINED BY AGREEMENT WITH THE CONSIGNOR AND MAY EQUAL, BUT WILL NOT EXCEED, THE LOW ESTIMATE OF THE LOT. IF WE HAVE AN INTEREST IN A LOT OTHER THAN OUR COMMISSION, WE MAY BID UP TO THE RESERVE TO PROTECT SUCH INTEREST.

**Sale to the Highest Bidder:** A lot shall be sold to the highest bidder determined by the Auctioneer, subject to the terms and conditions of sale. Title to the lot shall pass upon the fall of the Auctioneer's hammer. The buyer shall be obligated to pay the purchase price, as set forth in the terms and conditions. Upon title passing to buyer, buyer assumes all risk of loss and damage to the Property and all responsibility with respect to the Property, such as but not limited to the obligations, costs and expenses for handling, shipping, insurance, taxes and export of the Property.

**Discretion:** The Auctioneer has the right to: (i) reject any bid, (ii) refuse to acknowledge any bidder, (iii) challenge bids, (iv) withdraw a lot from sale or pass the lot, (v) reject any advance in the bidding if the Auctioneer deems it insufficient, and (vi) otherwise regulate the bidding and its increments. In the event of a dispute between bidders, the Auctioneer has the absolute right to determine the successful bidder or to re-offer the lot in dispute. If any dispute arises after the sale, CMA sales records shall be deemed conclusive. We also reserve the right to divide any lot and to combine any two or more lots. The discretion of the Auctioneer as described in this Paragraph 4 may be fully exercised in the absolute discretion of either PHILLIPS de PURY & COMPANY, CMA or the Auctioneer, without liability of any kind on the part of PHILLIPS de PURY & COMPANY, CMA or the Auctioneer.

## 5. PURCHASE AND PAYMENT

The purchase price to buyer for the lot shall be (i) the amount of the successful bid price, plus (ii) a charge of \$50 (fifty dollars) to deliver in Manhattan or (iii) the cost of shipping out of state. The delivery fee shall be waived if buyer takes home the lot following the event. All sales are final and are considered a legal contract between the buyer and CMA.

**Payment:** Buyers are required to pay for successful purchases immediately following the auction unless other arrangements are agreed to in writing in advance of the auction.

All payments must be made in United States dollars with cash, Visa, MasterCard, American Express, Discover Card or check. Buyers paying for a work over \$1,500 with check must also provide a credit card.

## 6. REMOVAL OF PROPERTY; LATE CHARGES; WORK OF OTHERS

**Collection of Purchased Property.** Details are located under the section titled Special Terms and Conditions. No purchase may be claimed or removed until it has been fully paid for, unless otherwise agreed to by CMA in writing.

**Storage and Late Payment Charges.** After 35 days, an administrative fee of \$45 and a storage fee of \$5 per day per lot will be charged. We reserve the right to charge a late payment fee of 1 1/2% per month on the purchase price if payment is not received on time as provided in these Standard Terms and Conditions. We also reserve the right to place Property in public storage, in which case buyer shall be charged the amount of such storage and appropriate insurance, and other reasonable costs associated with storage of the Property.

**Accommodation Services:** Any packing, handling, insurance, shipping or other services, which we agree to provide or arrange for, are recommended or furnished only as a courtesy to the buyer. All costs and risks associated with such services shall be fully assumed by the buyer. The costs of such services shall be paid in advance or promptly reimbursed to us, at our discretion. If assisted by PHILLIPS de PURY & COMPANY or CMA in finding a fine art shipper for your Property, please note that PHILLIPS de PURY & COMPANY or CMA shall not under any circumstances be liable for acts or omissions by shippers' packers, handlers or others, even if their acts or omissions result in the loss of or damage to Property.

## 7. BUYER'S BREACH

**Remedies Upon Buyer's Breach:** If buyer fails to comply with any of its obligations, buyer will be in default. In that case, the buyer will be liable for the full purchase price, including fees and charges. In addition, at our option we may (i) cancel the sale of the lot(s) on which buyer is in default and on all other lots sold to buyer, and keep all payments made by buyer as liquidated damages, (ii) resell the lot(s) at private or public sale, without reserve, and (iii) exercise any other rights given by law. In any event, we shall be entitled to recover from the defaulting buyer any amounts that remain due us on the purchase price, together with all fees and charges. We shall also be entitled to recover all damages, including costs of collection incurred in connection with buyer's default. These costs of collection include, but are not limited to, handling charges, normal sales commissions and expenses (on both the sale for which buyer defaulted and on any resale), and reasonable attorneys' fees and expenses.

#### 8. PRIVATE SALES

These Standard Terms and Conditions shall also apply to any private sale by us of Property.

#### 9. Limitation of Liability

We are acting as agent only in connection with sale of Property. We disclaim any responsibility for a breach or default by the consignor, except as specifically stated above. In no event will our liability for any breach, act or omission (including, but not limited to, any breach of the Authorship Warranty or any breach of a warranty of title) exceed the purchase price actually paid by buyer. BUYER AGREES THAT WE SHALL HAVE NO LIABILITY UNDER ANY CIRCUMSTANCES FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, whether in contract, warranty, tort, strict liability, negligence or otherwise, arising out of, resulting from, or relating in any way to (i) the Property or its purchase, sale, delivery or non-delivery, or (ii) the acts or omissions of us or our agents, representatives, affiliates, officers, directors or employees.

#### 10 GOVERNING LAW; SUBMISSION TO JURISDICTION

The laws of the State of New York (excluding its conflicts of law rules) shall be used to interpret the meaning of these Standard Terms and Conditions and the Authorship Warranty. By bidding at an auction or otherwise purchasing Property, whether personally or by an agent, and whether physically present at an auction or bidding by way of written, telephone, electronic or other bid means, BUYER CONSENTS TO THE JURISDICTION OF (I) THE STATE COURTS OF THE STATE OF NEW YORK LOCATED IN NEW YORK, NEW YORK, AND (II) THE FEDERAL COURTS FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK. BUYER ALSO AGREES THAT ANY LAWSUIT BUYER MAY BRING AGAINST US WILL BE BROUGHT ONLY (I) IN THE STATE COURTS OF THE STATE OF NEW YORK LOCATED IN NEW YORK, NEW YORK, OR (II) IN A FEDERAL COURT FOR THE SOUTHERN OR EASTERN DISTRICTS OF NEW YORK.

#### 11. WAIVER

Any provision of the Standard Terms and Conditions and of the Authorship Warranty may be waived by us, provided that such waiver is in a writing signed by one of our duly authorized officers. A waiver on one occasion shall not be a waiver on any other occasion, nor shall any waiver of one provision affect our ability to insist on strict performance by buyer of all other provisions.

If you have any questions, please contact:

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