GENERAL TERMS AND CONDITIONS OF THE RKD FOUNDATION – NETHERLANDS INSTITUTE FOR ART HISTORY (STICHTING RKD – NEDERLANDS INSTITUUT VOOR KUNSTGESCHIEDENIS) FOR THE PURPOSE OF COMMISSIONED ART HISTORICAL RESEARCH

The RKD Foundation – the Netherlands Institute for Art History – has its registered office in (2595 BE) The Hague, The Netherlands, at Prins Willem Alexanderhof 5, and is registered with the Chamber of Commerce for The Hague under number 41158853.

1. DEFINED TERMS AND APPLICABILITY

1.1 In these general Terms and Conditions the following definitions apply:

- Terms and Conditions: these general terms and conditions pertaining to commissioned art historical research and other, related services;
- RKD: The RKD Foundation – Netherlands Institute for Art History;
- Commissioning Party: any natural or legal person or partnership that is party to or involved in a (legal) act as referred to in article 1.2 of these Terms and Conditions, or who is the addressee of the (legal) act referred to in that article, or from whom a request referred to therein originates.
- Work: painting, drawing, print or letter of Commissioning Party with reference to which Commissioning Party has a research question;
- Research: research conducted by the RKD, instigated by Commissioning Party’s research question on the basis of the collections and databases of the RKD;
- Website: www.rkd.nl

1.2 The Terms and Conditions are applicable to all services (including research to be undertaken by the RKD) from the RKD to Commissioning Party, to all agreements between the RKD and Commissioning Party, as well as to any request by Commissioning Party for the rendering of services, regardless if an agreement is/has been realised between the RKD and Commissioning Party.

1.3 The RKD shall see to it that these Terms and Conditions are made available to Commissioning Party prior to or during the conclusion of the agreement in electronic (digital) or other form. Commissioning Party is itself responsible – if so desired – for enabling the Terms and Conditions and the Agreement to be saved onto and printed by a durable medium through appropriate facilities available on the Website as well as for the (permanent) accessibility of the saved copy.
1.4 Without prejudice to any existing legal obligations the RKD may be under with reference to keeping the agreement and/or the Terms and Conditions on file, the RKD is not obliged to enable Commissioning Party to have continuous access to any filed agreement and/or Term and Conditions.

1.5 General terms or other conditions maintained by Commissioning Party are not applicable. Additional provisions or those that deviate can only be invoked by Commissioning Party if and to the extent that these have been accepted by the RKD in writing. These additional or deviating provisions shall be without prejudice to the applicability of the other provisions of the Terms and Conditions, and only apply to the agreement for which this has been specifically and expressly agreed upon in writing.

2. CONCLUSION OF THE AGREEMENT

2.1 Communications by the RKD on the Website with reference to the availability of services are to be considered as an invitation to make an offer. The agreement comes into effect by the RKD’s confirmation of Commissioning Party’s application on the understanding that any agreement comes into being under the suspensive condition that all data necessary for the Research, as referred to in articles 4.2 and – if applicable – 4.3 of these Terms and Conditions, have been submitted to the RKD and that all information meets the requirements the RKD has imposed.

3. OBJECT AND EXECUTION OF THE AGREEMENT

3.1 While rendering its services (including the Research to be undertaken by the RKD) the RKD shall observe due care in delivering its performance, the ensuing obligations of which are to be regarded as being fulfilled on a best-effort basis by the RKD. For that reason, the outcome of the Research is merely the RKD’s opinion. The RKD therefore does not guarantee the results of the Research, which subsequently means that the results of the Research cannot be regarded as a warranty, but merely as an opinion, as previously indicated.

3.2 The Research by the RKD shall initially consist of an evaluation of the application as referred to in article 2.1 of these Terms and Conditions and the information as referred to in article 4.2 and – if applicable – article 4.3 of these Terms and Conditions. The RKD shall make the effort to communicate the outcome of their Research in writing to Commissioning Party no later than three weeks after receiving the aforementioned information.

3.3 If the RKD, after reviewing the application as referred to in article 2.1 and the data as referred to in article 4.2 and – if applicable – article 4.3 of these Terms and Conditions, sees a need to conduct further Research into the Work, the RKD – in derogation of article 3.2 of these Terms and Conditions – shall not communicate the outcome of the Research, but request Commissioning Party in writing to send the Work to the RKD. The RKD shall furthermore communicate to Commissioning Party in writing when it shall study the Work further and what Commissioning Party can expect from the RKD. The RKD shall make all reasonable efforts to report to Commissioning Party in writing and no later than 3 (three) months after receiving aforementioned data. The RKD shall also commit to communicating the outcome of the Research to Commissioning Party in writing no later than 4 (four) months after receiving the Work. If upon the RKD’s
receiving and viewing of the Work it should appear that Research is required that is extremely specific and/or time consuming – both of which are at the RKD’s discretion –, then the RKD will consult with Commissioning Party on planning the Research.

3.4 The outcome of the Research by the RKD shall not be subject of any further correspondence with Commissioning Party, unless Commissioning Party has passed on new information and data – this to the discretion of the RKD – to the RKD.

3.5 The time periods referred to in articles 3.2 and 3.3 of these Terms and Conditions are only approximate and shall under no circumstances constitute a deadline or final delivery date. Exceeding these – for whatever reason – does not entitle Commissioning Party to suspend the performance of any of its obligations towards the RKD, nor does it entitle Commissioning Party to claim any compensation.

3.6 All commissions are exclusively accepted and executed by the RKD with the exclusion of articles 7:404 and 7:407 section 2 of the Dutch Civil Code (‘Burgerlijk Wetboek’).

3.7 The RKD may at any time engage third parties during the implementation of the agreement.

4. OBLIGATIONS FROM COMMISSIONING PARTY AND INDEMNITY

4.1 Commissioning Party guarantees the accuracy, completeness and reliability of the information and data provided to the RKD by or on behalf of Commissioning Party. Commissioning Party shall furthermore guarantee that it is the owner of the Work or that it has received the Work on consignment from the owner.

4.2 Upon application Commissioning Party shall provide the following information:
   1. In the case of a painting: oil on canvas/panel/carton/paper/unknown
   2. In the case of a work on paper: drawing/watercolour/lithograph/etching/unknown
   3. Size: ****(height) x **** (width) cm.
   4. Signed: yes/no
   5. If so: location on the art work + transcription
   6. Dated: yes/no
   7. If so: location on the art work + transcription
   8. If known, information on the origins of the work: how and when did it come into possession of the current owner and who were the previous owners.
   9. If known, references to literature in which the Work is referred to.

4.3 Commissioning Party is to provide the RKD with a minimum of 1 professional full-colour photograph of the front of the Work, as well as a minimum of 1 professional full-colour photograph of the back of the Work, with a minimal resolution of 300 dpi or 1200 x 1700 pixels and a storage capacity of up to 30 MB, and, if present, detailed photographs of any dating or signatures.
4.4 Commissioned Party is to submit the information and photographs referred to in articles 4.2 and 4.3 of these Terms and Conditions by way of the digital application form available on the website, or, in the case of a service contract, via the email address info@rkd.nl.

4.5 If Commissioning Party fails to supply or properly supply – which is at the RKD’s discretion – the information and data as referred to in article 4.2 and – if applicable – 4.3 of these Terms and Conditions, then the RKD shall notify Commissioning party of this as soon as possible.

4.6 If the work is sent to the RKD to be examined, Commissioning Party is obliged – if it has not done so already – to take out a (goods in transit) insurance on the Work against, among other things, damage, fire, loss and theft. At the RKD’s request, Commissioning Party must submit a copy of the policy schedule to the RKD.

4.7 Commissioning Party indemnifies the RKD against all claims by third parties pertaining to the agreement existing between the RKD and Commissioning Party and/or its execution.

5. Remuneration

5.1 Current rates for research time are stated on the RKD’s website. The starting rate for conducting art historical research is one hour at €132,00 (including VAT). If more research time is required, there is an additional half-hourly fee of €66 (including VAT).

5.2 Any extra research costs shall be timely communicated to Commissioning Party by the RKD and shall be determined in consultation with Commissioning Party.

5.3 Any expenses as well as any extra research costs are to be compensated by payment or transfer into a bank account designated by the RKD, within 14 (fourteen) days of the invoice date.

6. DURATION AND TERMINATION OF THE AGREEMENT

6.1 The agreement between the RKD and Commissioning Party is entered into for an indefinite period, unless it shall follow from the content, nature or purpose of the agreement that it has been entered into for a definite time period or ends when the work agreed upon has been completed.

6.2 The RKD and Commissioned Party are entitled to terminate the agreement at all times, with immediate effect and prior to expiry of its term.

6.3 After termination of the agreement, all claims of the RKD against Commissioning Party, on whatever account, will be immediately and without the need for prior notification or default notice - payable in full without prejudice to the articles 3.4, 4.7, 7, 8 and 11 of this Agreement.
7. LIABILITY

7.1 The RKD is not liable for damages arising from the fact that Commissioning Party has provided the RKS with inaccurate, incomplete or unreliable information or data. Nor is the RKD liable for damages that can be attributed to an act or omission other than the one referred to in the previous sentence, by Commissioned Party or by a third party engaged by Commissioned Party or on its instigation.

7.2 The RKD is not liable for damages that are the consequence of (i) a shortcoming with regard to Commissioning party, whether attributable or not, or for damages that are the result of (ii) any wrongful act towards Commissioning Party, unless the act in question was caused by deliberate intent or conscious recklessness on the part of the Management of the RKD or executives who form part of the management.

7.3 Under no circumstances is the RKD liable for trading loss, consequential loss, and/or indirect damage of Commissioned Party.

7.4 Without prejudice to the above provisions, the RKD’s liability is in all circumstances limited to the sum that is covered by the RKD’s liability insurance and that in the matter concerned is actually paid.

7.5 The provisions of this article also apply to any third party which has been involved with the agreement or its implementation by the RKD.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All intellectual property rights with regard to work performed by the RKD remain the property of the RKD or – if applicable – of the third party from whom the RKD obtained the right to make available (part of) these services to Commissioning Party and shall be exclusively vested in the RKD or – if applicable – the aforementioned third party. These include copyrights, trademarks, patent rights, design rights, trade name rights, database rights and related rights, as well as rights pertaining to know-how and comparable performances (‘eenlijnsprestaties’). The RKD therefore reserves all intellectual property rights relating to the – fully or partially developed – outcome of the Research by the RKD, including reports, analyses, working methods and such, in connection with the Agreement executed by the RKD for the benefit of Commissioning party.

8.2 Commissioning Party grants the RKD the right to have at its disposal the visual material provided under article 4.3 and the results of the services rendered at Commissioning Party’s request, including research conducted by the RKD. In this context, the Commissioning Party shall remain anonymous at all times, unless otherwise has been agreed to by Commissioning Party.

8.3 Article 8.2 includes the RKD’s right to:
1. wholly or partially replicate or have replicated and to publish or to have published visual- and research material, on paper or digitally, by enabling online availability to third parties via the Internet or any other network, including availability as part of a databank;
2. (have) edit(ed) and while being edited to (have) replicate(d) and (have) publish(ed), in so
far as publication requires this;

3. wholly or partially, save or have saved visual- and research material and/or an edited version thereof in an automated datafile and as such enable availability (or have availability enabled) to third parties;

4. deliver analogue and digital copies of the material to third parties for the purpose of personal use and for non-commercial educational- and research purposes.

8.4 Commissioning Party indemnifies the RKD against any and all third party claims pursuant to the RKD exercising its right as referred to in article 8.2.

8.5 For the implementation of the right referred to in in article 8.2, the RKD shall not be required to pay any costs.

8.6 The RKD is free to pass on the outcome of its research to a new owner if the latter appears not to have been informed of the RKD’s previously stated opinion.

8.7 In the event of a public discussion on the work in question initiated by Commissioning Party, the RKD may come forward to publicly express its opinion.

9. REPORTING COMPLAINTS

9.1 If Commissioning Party is not satisfied or has questions concerning the way in which the RKD executes or has executed the agreement, the Commissioning Party can report its complaint or ask its question, which should be stated in full and be clearly defined, within a reasonable period of time to: Stichting RKD – Nederlands Instituut voor Kunstgeschiedenis, t.a.v. Algemeen directeur, Postbus 90418 Den Haag. (RKD Foundation – Netherlands Institute for Art History, Attn. General Director, PO Box 90418, The Hague)

9.2 The RKD is committed to handling complaints or questions within a 4 (four)-week period from the day these are received. If a complaint or question requires a foreseeably longer processing time, then the RKD shall, within the aforementioned time period, send Commissioning Party a notification that the complaint or question has been received. This notification shall also mention an approximate timeframe within which Commissioning Party may expect a more detailed response.

10. MISCELLANEOUS

10.1 If one of the provisions of these Terms and Conditions becomes invalid, annulled or non-binding, this will not prejudice the validity of other provisions. In the event that one or more provisions are or become invalid, annulled or non-binding, then alternative provisions shall be agreed upon between the RKD and Commissioning Party that are valid and that approach the purpose and purport of the invalid, annulled or non-binding provision(s) as closely as possible.

10.2 The rights and obligations in these Terms and Conditions with respect to Commissioning Party are not transferable, unless this has been specifically determined in these Terms and Conditions or has been expressly agreed upon with the RKD in writing.
10.3 Modifications in or additions to any provisions in these Terms and Conditions are valid only if these have been agreed upon by the RKD and Commissioning Party in writing.

10.4 The headings and chapters in these Terms and Conditions are intended merely for the reader’s convenience and cannot affect content and meaning of the provisions in these Terms and Conditions.

10.5 Any communication between the RKD and Commissioning Party can take place electronically, unless the Terms and Conditions and/or the agreement and/or the law explicitly demand otherwise. Communication in writing is therefore understood to mean electronic communication as well.

11. CHOICE OF LAW AND FORUM

11.1 These Terms and Conditions as well as all resulting contracts or connected non-contractual obligations are governed by Dutch law, with the exception of Dutch private international law conflict rules.

11.2 Insofar as any national or international mandatory legislative provision does not prescribe otherwise, all disputes pertaining to or resulting from or connected with these Terms and Conditions or contractual and non-contractual obligations arising from or connected with them, shall be submitted for exclusive settlement to the competent court in The Hague.