

## GENERAL TERMS AND CONDITIONS FOR REVIEW BY THE APPRAISAL COMMITTEE OF STIFTUNG ARP E.V.

### 1. SCOPE

1.1 Stiftung Hans Arp und Sophie Taeuber-Arp e.V. (**Stiftung Arp e.V.**) holds all rights of use in the oeuvre of Hans Arp and Sophie Taeuber-Arp.

1.2. To further the oeuvre and art historic research of Hans Arp and Sophie Taeuber-Arp, Stiftung Arp e.V. has established the Appraisal Committee of Stiftung Arp e.V.

1.3. In accordance with its rules of procedure as published from time to time in their current form on the Stiftung Arp's website (**Rules of Procedure**), the Appraisal Committee of Stiftung Arp e.V. organizes reviews in regularly held physical inspections (approx. two to four times per year as announced on the website of the Appraisal Committee of Stiftung Arp e.V.) conducted by the Committee Members on the authenticity of works (no matter in what category), which a Submitter submits for this purpose, and issues a corresponding opinion. The scope of review does not entail to determine the market value of the Submitted Work nor whether or not the purported owner has clear legal title to the Submitted Work.

1.2 Stiftung Arp e.V. maintains a publicly available database of works by Hans Arp and Sophie Taeuber-Arp and in it lists the works that have been submitted for review and found authentic by the Appraisal Committee of Stiftung Arp e.V.

1.3 These terms and conditions of review apply to each request for review, which the Submitter makes to the Appraisal Committee of Stiftung Arp e.V.

### 2. REQUESTS

2.1 Requests are made in writing by submitting the filled out request form as made available on the website of the Appraisal Committee of Stiftung Arp e.V.

2.2 Each request is deemed as an offer of the Submitter to the Appraisal Committee of Stiftung Arp e.V. to organize the review and obtain the Committee Members'

opinion on a work in accordance with these terms and conditions and express the result of the review and opinion concerning the authenticity or attribution of the work to Hans Arp and/or Sophie Taeuber-Arp in a document, and in case of the acceptance of the offer by the Appraisal Committee of Stiftung Arp e.V., a contract between the Stiftung Arp e.V. and the Submitter is formed.

2.3 The acceptance of a request, including the acceptance of the terms and conditions, is deemed to have occurred in each of the following cases: (i) the Submitter receives a countersigned, unchanged copy of the submitted request form, or (ii) the Submitter receives a notice from the Appraisal Committee of Stiftung Arp e.V. that it has commenced reviewing the submitted work or that it intends to perform a review.

2.4 Any changes of the terms of a request require the prior written consent by the Submitter.

2.5 Each request, together with a completed form including all information about the submitted work, must have been received by the Appraisal Committee of Stiftung Arp e.V. at least 30 days prior to the relevant physical inspection by the Committee Members at the location specified by the Appraisal Committee of Stiftung Arp e.V. If the submission form is incomplete, the work will not be reviewed.

2.6 It is mandatory that the request be accompanied by photos of the submitted work. The photos must have professional quality and meet with following specifications:

(a) Für sculptures:

- At least three photos: front, back and profile, high-resolution digital on a CD (tif-format) or downloadlink via Dropbox; bronzes must be photographed against a light background
- Photos of the signature, of the number, the cast stamp, and any other inscription (for these, JPEG format

with 300 dpi resolution is sufficient).

(b) For paintings, prints and drawings:

- One high resolution total photo of front and back side on a CD (in .tif format)
- One detail photo of the signature (if the oeuvre is signed)
- One detail photo each of any inscriptions or etiquettes on the backside of the canvas or the frame (here, a JPEG-format with 300 dpi resolution is sufficient).

2.7 The photos submitted together with the request will become ownership of the Appraisal Committee of Stiftung Arp e.V. and will not be returned to the Submitter, irrespective of the result of the review. The right of use of the photos for the data base and on the website of Stiftung Arp e.V. together with comments as are deemed appropriate by Stiftung Arp e.V. is hereby expressly granted.

2.8 The request shall include information as to what ownership information shall be made about a work in case of inclusion in the data base. If the Submitter does not give any specific information, the data base will only include „private collection“.

### 3. COSTS OF REVIEW

3.1 To cover the costs of the review of a work, a lump sum of EUR 1.000.00 is incurred.

3.2 The lump sum will become due with the submission of the request and must be paid into the account of the Appraisal Committee of Stiftung Arp e.V. in full prior to the physical inspection. If no review is undertaken, the Appraisal Committee of Stiftung Arp e.V. will reimburse the lump sum in full, unless the request was canceled by the Submitter less than one week prior to the physical inspection date or the review did not occur for other reasons attributable to the Submitter.

- 3.3 The lump sum becomes due irrespective of the result of the review.
- 3.4 In special circumstances, the lump sum is increased to cover extra costs for additional research, e.g., x-rays, scientific analyses, etc. Whether special circumstances exist is decided by the Committee Members in their sole discretion. The Appraisal Committee of Stiftung Arp e.V. will send the Submitter a cost estimate for approval before initiating such special research measures. Should the Submitter not approve, the Submitted Work will be returned to the Submitter without an opinion.
- 4. SUBMISSION**
- 4.1 If the Appraisal Committee of Stiftung Arp e.V. has expressed acceptance of the request pursuant to section 2.3, the Submitter has to submit the relevant work after pre-notification and confirmation of the review date and place suggested by the Appraisal Committee of Stiftung Arp e.V. when accepting the request, enclosing a copy of the mandate.
- 4.2 The submission of the work to the place of the physical inspection by the Committee Members is at the cost and risk of the Submitter.
- 4.3 The Appraisal Committee of Stiftung Arp e.V. can refuse acceptance of a work if delivery occurs in a manner that suggests that it is not appropriate for a work of art.
- 4.4 If submission occurs from a country other than Germany, the Submitter bears the sole responsibility for compliance with all applicable tax, customs and other import or export regulations, be it that submission into Germany occurs only temporarily for purposes of the review or for a subsequently envisaged sale. The Submitter will ensure that the forwarding agent on first demand of the Appraisal Committee of Stiftung Arp e.V. presents an undertaking guaranteeing payment of any possible customs duties.
- 4.5 With the submission, the Submitter confirms that
- (a) He is the sole owner of the oeuvres listed on the request, or
- (b) He is authorized for this request to act on behalf of the owner of the work(s) listed on the request; a relevant proof of authority (power of attorney) must be enclosed.
- 4.6 Works on paper must be submitted unframed.
- 4.7 The Submitter has to retrieve the submitted work at his cost at the agreed date. The Submitter confirms that at the time of submission the freight forwarder already has been irrevocably retained for the return of the submitted work upon first demand by the Appraisal Committee of Stiftung Arp e.V. The Appraisal Committee of Stiftung Arp e.V. can demand storage fee from the date of the agreed retrieval, if no retrieval has occurred after more than one month after the agreed date.
- 5. MISCELLANEOUS**
- 5.1 The Submitter has to insure the work at his cost for the transportation and the review and provide evidence of the insurance, in time prior to the submission, to the Appraisal Committee of Stiftung Arp e.V., with the Appraisal Committee of Stiftung Arp e.V. being specified as additionally insured and waiving all rights of recourse against the Appraisal Committee of Stiftung Arp e.V.
- 6. REVIEW, OPINION**
- 6.1 The result of the review will generally be notified to the Submitter within 10 business days after conclusion of the physical inspection and voting of the Committee Members, unless further research is deemed necessary in the Committee Members' sole discretion.
- 6.2 Should further research be deemed necessary, further opinions will be communicated within two months after the date of the physical inspection; the Appraisal Committee of Stiftung Arp e.V. reserves the right to request further materials to justify a finding of non-authentic.
- 6.3 By submission, the Submitter confirms to have understood that an oral or written opinion may not be in line with his expectations and that the result can be that the work is not authentic. The Submitter is aware that in other jurisdictions (for example in France) there are provisions relating to forgeries of works of art that allow the rightholders to claim and enforce certain measures.
- 6.4 Should the submitted work be a copy in the sense of section 98 German Copyright Act (UrhG), the Stiftung Arp e.V. reserves the right to retain and to destroy the piece within the scope prescribed by statute or to mark the work as a forgery.
- 6.5 The Appraisal Committee of Stiftung Arp e.V. and the Submitter will, after the review, discuss and agree whether or not to mark the submitted works by applying an appropriate and agreed marking technology to identify the Submitted Work.
- 7. LIABILITY, INDEMNITY**
- 7.1 The review of the Submitted Work is conducted on the basis of the information on the oeuvre of Hans Arp and Sophie Taeuber-Arp as currently existing and available.
- 7.2 Irrespective of the result of the review the Submitter waives all rights and claims, which he might have in connection with the review by the Appraisal Committee of Stiftung Arp e.V. against the Appraisal Committee of Stiftung Arp e.V., the Committee Members or the Stiftung Arp e.V. or from the publication of the data base.
- 7.3 Should the Submitted Work be returned to the Submitter with the opinion that the work cannot be attributed to Hans Arp and/or Sophie Taeuber-Arp, the Submitter will indemnify the Appraisal Committee of Stiftung Arp e.V. and/or the Committee Members and/or the Stiftung Arp e.V. from all claims, including third party claims potentially arising from the opinion, regardless on what basis. Also, the Submitter will indemnify them from all and any other claims or risks, whether based on civil law, cultural property law or other legal grounds. The Submitter guarantees that all imports and exports of the work prior to or in the context of the authentication were in compliance with applicable import and export laws.
- 7.4 The Stiftung Arp e.V. shall be liable in line with applicable statutory requirements for all cases of intent or gross negligence of the Stiftung Arp e.V. officers (*gesetzliche Vertreter*), executive

employees (*leitende Angestellte*) or vicarious agents (*einfache Erfüllungsgehilfen*), culpable injury to life, body or health, or negligent breach of an essential contractual obligation (obligation without whose satisfaction the proper performance of the contract is impossible and on whose satisfaction the contractual partner regularly relies and is entitled to rely) (*wesentliche Vertragspflichten*).

- 7.5 For damages that have been caused by a gross negligent breach of a contractual duty by vicarious agents who are not officers or executive employees of the Arp Stiftung e.V., the Stiftung Arp e.V. liability shall be limited to the damage typically foreseeable at the time of the conclusion of the contract.
- 7.6 The liability for simple negligent breach of an essential contractual obligation shall be limited to the damage typically foreseeable at the time of the conclusion of the contract. For the simple negligent breach of a non-essential contractual duty the Appraisal Committee of Stiftung Arp e.V. shall not be liable.
- 7.7 Any further liability of the Appraisal Committee of Stiftung Arp e.V. or the Committee Members or the Stiftung Arp e.V. shall be excluded.
- 7.8 The aforementioned limitations of liability shall apply to all claims for damages, whether contractual or in tort, of the Submitter against the Appraisal Committee of Stiftung Arp e.V. or any of its members or the Stiftung Arp e.V., irrespective on what legal basis.

## 8. APPLICABLE LAW, FORUM

- 8.1 The contract and these terms as well as all legal relationships between the Submitter and the Stiftung Arp e.V. shall be subject to the laws of the Federal Republic of Germany excluding any provisions referring to the laws of other jurisdictions or international treaties.
- 8.2 Forum for all disputes in connection with this agreement shall be the seat of the Stiftung Arp e.V.