

Strauss & Co

Fine Art Auctioneers | Consultants

Conditions of Business

Strauss and Company Proprietary Limited (Registration No. 1972/000019/07) ('Strauss & Co') carries on business as fine art, decorative arts and jewellery auctioneers and consultants. As auctioneers, Strauss & Co would usually act as agent of the seller of a lot or (in instances where Strauss & Co owns or has a financial interest in any lot) as principal. The contractual relationship of Strauss & Co with prospective buyers and sellers is governed by (i) the conditions set out below, (ii) any additional or special terms and conditions that Strauss & Co may impose (whether in the form of notices displayed at the premises at which any auction is conducted or announced by the auctioneer prior to or during any auction and whether in respect of any specific lot or in general), and (iii) such other terms and conditions as may be set out in any relevant catalogue (collectively the general conditions of business). Strauss & Co confirm that these general conditions comply with section 45 of the Consumer Protection Act 2008, and with the Regulations promulgated thereunder pertaining to auctions.

1 DEFINITIONS

In these general conditions of business, headnotes are for convenience only and shall not be used in their interpretation, and unless the context clearly indicates a contrary intention, any expression which denotes any gender shall include the other genders, any expression which denotes the singular shall include the plural (and vice versa), any expression which denotes a natural person shall include a juristic person (and vice versa) and the following terms shall have the following meanings —

- 1.1 **'auction'** means any private treaty or auction sale at which a lot is offered for sale by Strauss & Co;
- 1.2 **'auctioneer'** means the representative of Strauss & Co conducting an auction;
- 1.3 **'bidder'** means any person making, attempting or considering to make a bid or offer to buy a lot at an auction, including the buyer of that lot;
- 1.4 **'buyer'** means the bidder who makes the bid or offer for any lot that is finally accepted by the auctioneer (after determination by the auctioneer of any dispute that may exist in respect thereof) at a sale of that lot, and (where the buyer is an agent acting for a principal), the buyer and the buyer's principal jointly and severally;
- 1.5 **'business day'** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.6 **'buyer's premium'** premium means the premium payable by the buyer of a lot to Strauss & Co on the sale of that lot, calculated on the hammer price of that lot at the relevant current rates;
- 1.7 **'catalogue'** means any advertisement, brochure, estimate, price-list and other publication (in whatever medium, electronically or otherwise) published by Strauss & Co in respect of any auction;
- 1.8 **'current rates'** means Strauss & Co's current rates of commission, premiums and other amounts payable to Strauss & Co for the time being, together with VAT thereon (if any), all as published by Strauss & Co (whether in a catalogue or otherwise) or as agreed between a prospective buyer or seller (as the case may be) and Strauss & Co;
- 1.9 **'forgery'** means an imitation made with the intention of deceiving as to authorship, origin, date, age, period, culture or source, which is not shown to be such in the description in the catalogue and which at the date of the sale had a value materially less than it would have had if it had been in accordance with that description and includes any misrepresentation, whether deliberate or otherwise, made with the intention of deceiving as to authorship, origin, date, age, period, culture or source;

- 1.10 **'hammer price'** means the bid or offer made by the buyer for any lot that is finally accepted by the auctioneer (after determination by the auctioneer of any dispute that may exist in respect thereof) at a sale of that lot, together with VAT thereon (if any);
- 1.11 **'lot'** means any item or items to be offered for sale as a unit and identified as such by Strauss & Co at an auction. Each lot is, unless it is indicated to the contrary, regarded to be the subject of a separate transaction;
- 1.12 **'parties'** means the buyer, seller and Strauss & Co;
- 1.13 **'prime rate'** means the publicly quoted base rate of interest (percent, per annum compounded monthly in arrear and calculated on a 365 day year, irrespective of whether or not the year is a leap year) from time to time published by The Standard Bank of South Africa Limited, or its successor-in-title, as being its prime overdraft rate, as certified by any manager of such bank, whose appointment, authority and designation need not be proved;
- 1.14 **'private treaty'** means the sale of any lot other than by auction sale at a price privately agreed on by the buyer and seller;
- 1.15 **'purchase price'** means the hammer price of any lot at a sale thereof, plus the applicable buyer's premium (plus VAT) for that lot, plus all recoverable expenses for which the buyer is liable in respect of that lot;
- 1.16 **'recoverable expenses'** includes all fees, taxes (including VAT), charges and expenses incurred by Strauss & Co in relation to any lot that Strauss & Co is entitled to recover from a buyer or seller;
- 1.17 **'reserve'** means the confidential minimum hammer price (if any) at which a lot may be sold at an auction as agreed between the seller of that lot and Strauss & Co in writing;
- 1.18 **'sale'** means the sale of any lot at an auction, whether done by private treaty or auction sale, and 'sell' and 'sold' shall have corresponding meanings;
- 1.19 **'sale proceeds'** means the amount due by Strauss & Co to the seller of a lot in respect of the sale of that lot, made up of the hammer price of the lot, less the applicable seller's commission (plus VAT) for that lot, less all recoverable expenses for which the seller is liable in respect of that lot and any other amounts due to Strauss & Co by the seller in whatever capacity and howsoever arising;
- 1.20 **'seller'** means the person named as the seller of any lot, being the person that offers the lot for sale;
- 1.21 **'seller's commission'** means the commission payable by the seller to Strauss & Co on the sale of a lot that is calculated on the hammer price of that lot at the relevant current rate; and
- 1.22 **'VAT'** means value added tax levied in terms of the Value Added Tax Act, 1991 including any similar tax which may be imposed in place thereof from time to time.

2 CONDITIONS MAINLY CONCERNING BUYERS

2.1 The buyer

- 2.1.1 Any dispute of whatever nature about any bid or about the identity of the buyer (including without limitation any dispute about the validity of any bid, or whether a bid has been made, or any dispute between two or more bidders or between the auctioneer and one or more bidders) shall be determined at the auctioneer's absolute discretion.
- 2.1.2 Every bidder shall be deemed to act as principal unless, prior to the commencement of any auction, Strauss & Co is provided with a written acknowledgement from a third party in respect of

whom a particular bidder is acting as agent, which acknowledgement must (i) identify the third party principal, (ii) be accompanied by all relevant information and documentation referred to below in respect of that third party principal as if that third party principal were to register as a bidder, (iii) confirm that that particular bidder is acting on behalf of that third party principal, (iv) be signed by that third party principal, and (v) otherwise be in form and substance acceptable to Strauss & Co.

- 2.1.3 All bidders wishing to make bids or offers in respect of any lot must complete a bidder registration form prior to that lot being offered for sale, which registration form will include an acknowledgement by the bidder that he is acquainted with and bound by these general conditions of business. Bidders shall be personally liable for their bids and offers made during any auction and shall be jointly and severally liable with their principals if acting as agent.
- 2.1.4 The following information must accompany the bidder registration form:
 - (i) for individuals: Photo identification (driver's licence, national identity card, or passport) and, if not shown on the ID document, proof of current address (for example, a current utility bill or bank statement);
 - (ii) for corporate clients: Certificate of Incorporation, Memorandum of Incorporation or equivalent document(s) showing the name and registered address together with documentary proof of directors and beneficial owners; and
 - (iii) for trusts, partnerships, offshore companies and other business structures, please contact us in advance to discuss our requirements.

Prospective local bidders who have not previously registered with Strauss & Co are required to register at least twenty four hours before the auction commences, and pay a R5 000 holding deposit. New prospective international bidders are required to pay a R15 000 holding deposit.

- 2.1.5 Bidders are advised to attend any auction at which a lot is to be sold by auction sale, but Strauss & Co will endeavour to execute absentee written bids and/or telephone bids, provided they are, in Strauss & Co's absolute discretion, received in sufficient time and in legible form. When bids are placed by telephone before an auction they are accepted at the sender's risk and must, if so requested by Strauss & Co, be confirmed in writing to Strauss & Co before commencement of the auction. Persons wishing to bid by telephone during the course of an auction must make proper arrangements with Strauss & Co in connection with such telephonic bids at least twenty four hours before the commencement of the auction. As telephone bids cannot be entirely free from risk of communication breakdown, Strauss & Co will not be responsible for losses arising from missed bids. Telephone bidding may be recorded and all bidders consent to such recording.

- 2.1.6 If Strauss & Co agrees, as a convenience to a client, to execute a bid as a buyer, Strauss & Co will not be responsible for failing to execute the bid, or executing such bid strictly in accordance with the client's instructions (including but not limited to computer-related errors). In doing so, Strauss & Co will endeavour to purchase the relevant lot for the lowest possible price, taking into account the reserve and other bids. If identical bids are left,

Strauss & Co will give precedence to the first bid received.

2.2 Examination of lots

- 2.2.1 It is the responsibility of all prospective buyers to examine and satisfy themselves as to the condition of each lot prior to the auction, and that the lot matches any oral or written description provided by the seller and/or Strauss & Co. All illustrations of a lot in any catalogue are intended merely as guidance for bidders and do not provide definitive information as to colours, patterns, condition or damage to any lot. Strauss & Co does not guarantee the working order of clocks and watches and cannot be held responsible for any losses which may be incurred. Strauss & Co cannot be held liable for any synthetic stones.
- 2.2.2 Strauss & Co shall not be liable for any error, misstatement or omission in the description of a lot (whether in any catalogue or otherwise), unless Strauss & Co, its employees or agents, are engaged in intentional misleading or deceptive conduct.
- 2.2.3 In bidding for any lot, all bidders confirm that they have not been induced to make any bid or offer by any representation of the seller or Strauss & Co.

2.3 Exclusions and limitations of liability to buyers

- 2.3.1 If a lot sold to a buyer proves to be a forgery (which will only be the case if an expert appointed by Strauss & Co for such purpose confirms same in writing), the buyer may (as his sole remedy hereunder or at law) return the lot to Strauss & Co within three hundred and sixty five days of the date of the sale of that lot in the same condition in which it was as at the date of sale, together with a written statement by the buyer detailing the defects to the lot, the date of the sale and the number of the lot. Should Strauss & Co be satisfied in its absolute discretion that the lot is a forgery and that the buyer is capable of transferring good and marketable title to the lot to a third party purchaser thereof, free from any encumbrances and other third party claims, the sale of that lot shall be set aside and the hammer price of that lot shall be refunded to the buyer, provided that the buyer shall have no rights against Strauss & Co (whether under these general conditions of business, at law or otherwise) if:
 - 2.3.1.1 the only method of establishing that the lot was a forgery was by means of a scientific process not generally accepted for use until after publication of the catalogue in which that lot was identified for purposes of the auction at which it was sold, or by means of a process which was impracticable and/or unreasonably expensive and/or could have caused damage to the lot;
 - 2.3.1.2 the description of the lot in the catalogue in which that lot was identified for purposes of the auction at which it was sold was in accordance with the then generally accepted opinion of scholars and experts or fairly indicated that there was conflict of such opinion;
 - 2.3.1.3 a buyer's claim (whether in contract, delict or otherwise) shall always be limited to an amount equal to the hammer price of the lot;
 - 2.3.1.4 the benefits of this condition shall not be transferable by the buyer of any lot to a third party and shall always rest exclusively with the buyer.
- 2.3.2 Neither Strauss & Co nor the seller:
 - 2.3.2.1 shall be liable for any omissions, errors or misrepresentations in any information (whether written or otherwise and whether provided in

a catalogue or otherwise) provided to bidders, or for any acts omissions in connection with the conduct of any auction or for any matter relating to the sale of any lot, including when caused by the negligence of the seller, Strauss & Co, their respective employees and/ or agents;

- 2.3.2.2 gives any guarantee or warranty to bidders other than those expressly set out in these general conditions of business (if any) and any implied conditions, guarantees and warranties are excluded.
- 2.3.3 Without prejudice to any other provision of these general conditions of business, any claim against Strauss & Co and/or the seller of a lot by a bidder shall be limited to the hammer price of the relevant lot. Neither Strauss & Co nor the seller shall be liable for any indirect or consequential losses.
- 2.3.4 A purchased lot shall be at the buyer's risk in all respects from the fall of the auctioneer's gavel, whether or not payment has been made, and neither Strauss & Co nor the seller shall thereafter be liable for, and the buyer indemnifies Strauss & Co against, any loss or damage of any kind, including when caused by the negligence of Strauss & Co and/or its employees or agents.
- 2.3.5 All buyers are advised to arrange for their own insurance cover for purchased lots effective from the day after the date of sale for purposes of protecting their interests as Strauss & Co cannot warrant that the seller has insured its interests in the lot or that Strauss & Co's insurance cover will extend to all risks.
- 2.3.6 Strauss & Co does not accept any responsibility for lots damaged by insect infestation, changes in atmospheric conditions or other conditions outside its control, and shall not be liable for damage to glass or picture frames.

2.4 Import, export and copyright restrictions

Save as expressly set out in 3.3, Strauss & Co and the seller make no representation or warranties as to whether any lot is subject to export, import or copyright restrictions. It is the buyer's sole responsibility to obtain all approvals, licences, consents, permits and clearances that may be or become required by law for the sale and delivery of any lot to the buyer. The denial of any permit or licence shall not justify cancellation or rescission of the sale contract or delay in payment.

- 2.4.1 Property incorporating materials from endangered and other protected species:
Property made of or incorporating (irrespective of percentage) materials from endangered and other protected species of wildlife are marked with the symbol * in the lot description. All are identified in the lot description with language indicating (as such). Prospective purchasers are advised that several countries prohibit altogether the importation of property containing certain materials, and that other countries require a permit (e.g. a CITES permit) from the relevant regulatory agencies in the countries of exportation as well as importation. Buyers should always check whether an export licence is required before exporting. It is the buyer's sole responsibility to obtain any relevant export or import licence. Strauss & Co cannot ensure that a licence will be obtained and are not responsible for any costs incurred in either securing or denial of any permits required for export or import licence. The inability of a client to export or import property containing endangered and other protected wildlife material is not a basis for cancellation or rescission of the sale. Lots containing potentially regulated wildlife material are marked as a convenience to our clients but Strauss & Co does not accept liability for errors or for failing to mark lots containing protected or regulated species.

2.5 Conduct of the auction

- 2.5.1 The auctioneer has the absolute discretion to withdraw or reoffer lots for sale, to accept and refuse bids and/or to reopen the bidding on any lots should he believe there may be a dispute of whatever nature (including without limitation a dispute about the validity of any bid, or whether a bid has been made, and whether between two or more bidders or between the auctioneer and any one or more bidders) or error of whatever nature,

and may further take such other action as he in his absolute discretion deems necessary or appropriate. The auctioneer shall commence and advance the bidding or offers for any lot in such increments as he considers appropriate.

- 2.5.2 The auctioneer shall be entitled to place consecutive bids on any lot on the seller's behalf up to the reserve, where applicable.
- 2.5.3 The contract between the buyer and the seller of any lot shall be deemed to be concluded on the striking of the auctioneer's gavel at the hammer price finally accepted by the auctioneer (which also usually includes the auctioneer noting the paddle number of the buyer) and after determination of any dispute that may exist. Where a lot remains unsold (usually where the auctioneer's gavel is struck with a hammer price and without noting a paddle number) there is no such contract that is concluded. Strauss & Co is not a party to the contract of sale and shall not be liable for any breach of that contract by either the seller or the buyer.
- 2.5.4 The auctioneer, has the absolute discretion to accept or refuse bids from bidders that differ from the increments he was adhering to.

2.6 No cancellation or Returns

No statutory "cooling off" period shall apply in respect of the sale of any lot. A buyer shall accordingly not be entitled to rescind any sale or request a refund of any payment pertaining thereto after his bid has been finally accepted by the auctioneer, save in the circumstances expressly provided for in these general conditions of business.

2.7 Payment and collection

- 2.7.1 A buyer's premium, calculated at the applicable current rate of the hammer price, shall be payable by the buyer to Strauss & Co in respect of the sale of each lot. (For live auctions this buyer's premium (excluding VAT) is 12% for lots selling over R20 000, and 15% for lots selling at or below R20 000.) The buyer acknowledges that Strauss & Co, when acting as agent for the seller of any lot, may also receive a seller's commission and/or other fees for or in respect of that lot.
- 2.7.2 The buyer shall pay Strauss & Co the purchase price immediately after a lot is sold and shall provide Strauss & Co with details of his name and address and, if so requested, proof of identity and any other information that Strauss & Co may require.
- 2.7.3 Unless otherwise agreed in advance, the buyer shall make full payment of all amounts due by the buyer to Strauss & Co (including the purchase price of each lot bought by that buyer) on the date of sale (or on such other date as Strauss & Co and the buyer may agree upon in writing), electronic funds transfer, or such other payment method as Strauss & Co may be willing to accept. All credit card purchases are to be settled in full on the date of sale.
- 2.7.4 Ownership in a lot shall not pass to the buyer thereof until Strauss & Co has received settlement of the purchase price of that lot in full and in clear funds. Strauss & Co shall not be obliged to release a lot to the buyer prior to receipt in full payment thereof. However, should Strauss & Co agree to release a lot to the buyer prior to payment of the purchase price in full, ownership of such lot shall not pass to the buyer, nor shall the buyer's obligations to pay the purchase price be impacted, until such receipt by Strauss & Co of the full purchase price in cleared funds.
- 2.7.5 The refusal of any approval, licence, consent, permit or clearance as required by law shall not affect the buyer's obligation to pay for the lot.
- 2.7.6 Any payments made by a buyer to Strauss & Co may be applied by Strauss & Co towards any sums owing by the buyer to Strauss & Co on any account whatsoever and without regard to any directions of the buyer or his agent. The buyer shall be and remain responsible for any removal, storage, or other charges for any lot and must at his own expense ensure that the lot purchased is removed immediately after the auction but not until payment of the total amount due to Strauss & Co. All risk of loss or damage to the purchased lot shall be borne by the buyer from the moment when the buyer's bid is accepted by Strauss & Co

in the manner referred to above. Neither Strauss & Co nor its servants or agents shall accordingly be responsible for any loss or damage of any kind, whether caused by negligence or otherwise, from the date of the sale of the lot, whilst the lot is in their possession or control.

- 2.7.7 All packaging and handling of lots is at the buyer's risk and expense, will have to be attended to by the buyer, and Strauss & Co shall not be liable for any acts or omissions of any packers or shippers.
- 2.7.8 If the sale of any lot is rescinded, set aside or cancelled by an action of the buyer, and Strauss & Co has accounted to the seller for the sale proceeds, the seller shall immediately refund the full sale proceeds to Strauss & Co, who will in turn refund the purchase price to the buyer.

2.8 Remedies for non payment or failure to collect

Without prejudice to any rights that the seller may have, if any lot is not paid for in full or removed in accordance with the conditions of 2.7 above, or if there is any other breach of these general conditions of business by the buyer, Strauss & Co as agent of the seller shall, at its absolute discretion and without limiting any other rights or remedies that may be available to it or the seller hereunder or at law, be entitled to exercise one or more of the following remedies:

- 2.8.1 to remove, store (with a storage facility chosen at the sole discretion of Strauss & Co and at the cost and expense of the buyer) and insure the lot at its premises or elsewhere and at the buyer's sole risk and expense;
- 2.8.2 to rescind the sale of that or any other lots sold to the buyer at the same or any other auction;
- 2.8.3 to set off any amounts owed to the buyer by Strauss & Co against any amounts owed to Strauss & Co by the buyer for the lot;
- 2.8.4 to reject future bids and offers on any lot from the buyer;
- 2.8.5 to proceed against the buyer for damages;
- 2.8.6 to resell the lot or cause it to be resold by public auction or private treaty, with estimates and reserves at Strauss & Co's sole discretion, in which event the buyer shall be liable for any shortfall between the original purchase price and the amount received on the resale of the lot, including all expenses incurred by Strauss & Co and the seller in such resale;
- 2.8.7 to exercise a lien over any of the buyer's property in Strauss & Co's possession, applying their sale proceeds to any amounts owed by the buyer to Strauss & Co;
- 2.8.8 to retain that or any other lots sold to the buyer at the same time or at any other auction and to release such lots only after payment of the total amount due;
- 2.8.9 to disclose the buyer's details to the seller to enable the seller to commence legal proceedings;
- 2.8.10 to commence legal proceedings;
- 2.8.11 to charge interest at a rate not exceeding the prime rate plus 3% per month on the total amount due to the extent that it remains unpaid after the date of the auction;
- 2.8.12 if the lot is paid for in full but remains uncollected after twenty eight days of the auction, following fourteen days written notice to the buyer, to resell the lot by auction or private treaty, with estimates and reserves at Strauss & Co's sole discretion, or to store the lot, as contemplated in 2.8.1, pending resale. The sale proceeds of such lot if so resold, less all recoverable expenses, will be forfeited unless collected by the buyer within three months of the original auction.

3 CONDITIONS MAINLY CONCERNING SELLERS

3.1 Strauss & Co's powers

- 3.1.1 The seller irrevocably instructs Strauss & Co to offer for sale at an auction all objects submitted for sale by the seller and received and accepted by Strauss & Co and to sell the same to the relevant buyer of the lot of which those objects form part, provided that the bid or offer accepted from that buyer is equal to or higher than the reserve (if any) on that lot (subject always to 3.1.3), all on the basis set out in these general conditions of business. The seller further irrevocably permits Strauss & Co to bid for any lot of which any of those objects form part as agent for one or more intending buyers.

- 3.1.2 Strauss & Co are authorised to retain any objects not sold on auction for a period of seven days after the auction for the possible sale of such objects by Strauss & Co by way of private treaty or otherwise pursuant to 3.1.3.
- 3.1.3 If any object submitted for sale by the seller and received and accepted by Strauss & Co in accordance with 3.1.1 was unsold on auction, and if Strauss & Co receives a bid or offer from a buyer, then Strauss & Co may proceed to sell same (taking into account the deduction of the applicable seller's commission and recoverable expenses for which the seller is liable), whether by private treaty or otherwise, after contacting the seller and obtaining confirmation from the seller to do so.
- 3.1.4 Strauss & Co and the auctioneer each has the right, at his absolute discretion, to offer an object referred to above for sale under a lot, to refuse any bid or offer, to divide any lot, to combine two or more lots, to withdraw any lot from an auction, to determine the description of lots (whether in any catalogue or otherwise), to store accepted objects at the auction premises or any other location as he may deem fit and whether or not to seek the opinion of experts. Strauss & Co shall not be under any obligation to disclose the name of the buyer to the seller, save for the circumstances contemplated elsewhere in these general conditions of business.

3.2 Estimated selling range and descriptions

- 3.2.1 Any estimated selling range provided by Strauss & Co to the seller is a mere statement of opinion and should not be relied upon as a true reflection of the hammer price which a lot may achieve at a sale. Strauss & Co reserves the right to revise the estimated selling range at any time.
- 3.2.2 The seller acknowledges that Strauss & Co is entitled to rely on the accuracy of the description of a lot as provided by or on behalf of the seller.
- 3.2.3 Strauss & Co shall not be liable for any error, misstatement or omission in the description of a lot (whether in any catalogue or otherwise), unless Strauss & Co, its employees or agents, engaged in intentional misleading or deceptive conduct.
- 3.2.4 Where a seller insists on estimate or reserve that is higher than those provided by Strauss & Co specialists and not in line, in the opinion of Strauss & Co (in its absolute discretion), with market-related values, Strauss & Co reserves the right to charge a "bought-in" or "unsold fee", in addition to the recovery of all expenses (including, but not limited to, photography, insurance and catalogue costs) incurred by Strauss & Co in respect of such lot.

3.3 Warranties of the seller

- 3.3.1 The seller warrants to Strauss & Co and to the buyer that:
- 3.3.1.1 he is the true owner of all objects submitted for sale and/or is properly authorised by the true owner to do so, and that he is able to transfer good and marketable title to all such objects, free from any encumbrances and other third party claims, to the buyer of the lot of which those objects form part;
- 3.3.1.2 he has complied with all requirements, legal or otherwise, in relation to any export or import of the lot, if applicable, and has notified Strauss & Co in writing of any failure by third parties to comply with such requirements in the past;
- 3.3.1.3 the lot and any written provenance given by the seller are authentic;
- 3.3.1.4 the lot is fit for its purpose and safe if used for the purpose for which it was designed and is free from any defect not obvious on external inspection;
- 3.3.1.5 to the extent that the seller required any approval, licence, consent, permit or clearance by law to be in possession of any lot or for the sale of any lot, he is in possession of a valid approval, licence, consent, permit and clearance.
- 3.3.2 Notwithstanding any other provision of these general conditions of business, none of the seller, Strauss & Co, its servants or agents is responsible for errors of description or for the authenticity of any lot, and no warranty whatever is given by Strauss & Co, its servants or agents, or any seller to any buyer in respect of any lot (save insofar as the seller is concerned as set out in 3.3.1), and all express or implied conditions or warranties are hereby excluded.

- 3.3.3 The seller of any object forming part of a lot not held by Strauss & Co at the auction premises warrants and undertakes to Strauss & Co and the buyer that the relevant object will be available and in a deliverable state on demand to the buyer.
- 3.3.4 The seller agrees to indemnify and keep indemnified Strauss & Co and the buyer against any loss or damage suffered by either in consequence of any breach of any warranty in these general conditions of business.
- 3.3.5 The seller agrees that Strauss & Co may, at its absolute discretion refuse to sell any object submitted for sale, irrespective of any previous acceptance to sell. The seller further accepts that Strauss & Co is under no obligation to provide reasons in relation to the refusal thereof.
- 3.4 Commission and expenses**
- 3.4.1 Seller's commission, calculated at the applicable current rate of the hammer price, shall be payable by the seller to Strauss & Co in respect of the sale of each lot comprising one or more objects submitted by the seller for sale. The seller acknowledges that Strauss & Co may also receive a buyer's premium and other fees for or in respect of that lot. Without derogating from the seller's obligation to pay the seller's commission and any recoverable expenses for which the seller is liable, the seller irrevocably authorises Strauss & Co to deduct from the hammer price of any lot the seller's commission and all such recoverable expenses for which the seller is liable.
- 3.4.2 Strauss & Co may deduct and retain the seller's commission and the recoverable expenses for which the seller is liable from the amount paid by the buyer for the lot as soon as the purchase price, or part of it, is received and prior to the sale proceeds being paid to the seller.
- 3.5 Reserve**
- 3.5.1 All lots will be sold without reserve or minimum price unless a reserve has been placed on a lot, in which event such lot will be offered for sale subject to the reserve. A reserve shall only be placed on a lot if agreed in writing between the seller and Strauss & Co prior to the auction. A reserve, once placed on a lot, may not be changed by the seller without the prior written consent of Strauss & Co. Should Strauss & Co consent to an increase of the reserve on a lot, Strauss & Co reserves the right to charge the seller an additional offer fee as the object may not be sold on auction as a result of the increased reserve.
- 3.5.2 Where a reserve has been placed on a lot, only the auctioneer may bid on behalf of the seller.
- 3.5.3 Where a reserve has been placed on a lot and the auctioneer is of the opinion that the seller or any person acting as agent of the seller may have bid on the lot, the auctioneer may knock down the lot to the seller without observing the reserve and the seller shall pay to Strauss & Co the buyer's premium and all expenses for which the buyer is liable in addition to the seller's commission and all expenses for which the seller is liable.
- 3.5.4 Where a reserve has been placed on a lot, Strauss & Co may, at its option, still sell a lot at a hammer price below the reserve, provided that the sale proceeds to which the seller is entitled will be the same as they would have had the sale been at the reserve. Without limiting the generality of the foregoing, where Strauss & Co does sell a lot below reserve, Strauss & Co reserves the right to adjust its seller's commission charge/rate accordingly to ensure that the seller is paid the correct proceeds it would have had the sale been at the reserve.
- 3.5.5 Should no reserve have been placed on a lot, Strauss & Co shall not be liable if the purchase price of the lot is less than the estimated selling range.
- 3.6 Insurance**
- 3.6.1 Unless Strauss & Co and the seller have otherwise agreed in writing, Strauss & Co will insure all objects, with the exception of motor vehicles, consigned to it or put under its control for sale and may, at its discretion, insure property placed under its control for any other purpose for as long as such objects or property remain at Strauss & Co's premises or in any other storage depot chosen by them.
- 3.6.2 The sum for which Strauss & Co so insures any object shall not be construed as a warranty or representation by Strauss & Co as to the value thereof.
- 3.6.3 If any payment is made to Strauss & Co under the said insurance, in the event of loss or damage to any object, Strauss & Co shall pay such amount to the seller after deduction of the seller's commission and expenses incurred by them.
- 3.6.4 In the event the seller instructs Strauss & Co not to insure a lot or property submitted for sale, it shall at all times remain at the risk of the seller. In such an event, the seller undertakes to:
- 3.6.4.1 indemnify Strauss & Co against all claims made or proceedings brought against them in respect of damage or loss to the lot of whatsoever nature and howsoever arising and in all circumstances, even when negligence is alleged or proved;
- 3.6.4.2 reimburse Strauss & Co on demand for all costs, payments or expenses made or incurred in connection herewith. All payment made by Strauss & Co in connection with such loss, damage, payments, costs or expenses shall be binding on the seller as conclusive evidence thereof that Strauss & Co was liable to make such payment;
- 3.6.4.3 notify any insurer of the existence of the indemnity contained herein.
- 3.7 Payments for the proceeds of sale**
- 3.7.1 Strauss & Co shall only be liable to remit the sale proceeds of a lot to the seller thereof on the later of thirty days after the date of the sale of that lot or seven days after the date on which the full purchase price for that lot has been received by Strauss & Co in cleared funds.
- 3.7.2 If the buyer of a lot fails to pay the total amount due to Strauss & Co within forty eight days after the date of sale of that lot, Strauss & Co shall give notice of this to the seller of that lot and shall request the seller's written instructions as to the appropriate course of action to be followed. Should Strauss & Co deem it so appropriate, Strauss & Co will assist the seller to recover the total amount due from the buyer. Should no written instructions be forthcoming from the seller within seven days after request, the seller hereby authorises Strauss & Co, at Strauss & Co's absolute discretion but at the seller's expense:
- 3.7.2.1 to agree terms for payment of the total outstanding amount;
- 3.7.2.2 to remove, store and insure the lot sold;
- 3.7.2.3 to settle any claim by or against the buyer on such terms as Strauss & Co in their absolute discretion deem fit;
- 3.7.2.4 to take such steps as Strauss & Co in their absolute discretion consider necessary to collect monies due to the seller from the buyer;
- 3.7.2.5 if necessary, to rescind the sale and refund any monies to the buyer.
- 3.7.3 Should Strauss & Co pay an amount equal to the sale proceeds to the seller before having received full payment of the purchase price from the buyer, ownership of the lot shall pass to Strauss & Co.
- 3.7.4 If the sale of any lot is rescinded, set aside or cancelled by an action of the buyer, and Strauss & Co has accounted to the seller for the sale proceeds, the seller shall immediately refund the full sale proceeds to Strauss & Co, who will in turn refund the purchase price to the buyer and make the lot available to the seller for collection. Any annulment, rescission, cancellation or nullification of the sale shall not affect the seller's obligation to pay the commission to Strauss & Co and/or to reimburse any expenses incurred by Strauss & Co.
- 3.8 Withdrawal fees**
- 3.8.1 A seller may only withdraw a lot from being offered for sale by written notification to Strauss & Co which is received by Strauss & Co at least twenty four hours prior to the commencement of the auction at which the lot is to be offered for sale.
- 3.8.2 Upon receipt of proper notification of withdrawal as envisaged above, Strauss & Co reserves the right to charge the full seller's commission and buyers premium to the seller as a withdrawal fee, both calculated on the latest middle estimate of the selling price of the property withdrawn, together with VAT and all expenses incurred in relation to the property. The withdrawal fee (together with VAT and all such expenses) must be received into Strauss & Co's designated bank account in full in cleared funds before the lot will be withdrawn.
- 3.8.3 If a lot is withdrawn, the seller shall arrange for the collection and removal of the lot at the seller's expense within three days after date of the withdrawal, provided the seller has paid the recoverable expenses and applicable withdrawal fee to Strauss & Co.
- 3.9 Photography and illustration**
- Strauss & Co shall have the full and absolute right to illustrate, photograph or otherwise reproduce images of any lot submitted by the seller for sale, whether or not in conjunction with the sale, and to use such photographs and illustrations at any time and in their sole and absolute discretion. The copyright of all photographs taken and illustrations made of any lot by Strauss & Co shall be the sole and absolute property of Strauss & Co and Strauss & Co undertakes to abide by all copyright applicable to any and all lots submitted for sale.
- 3.10 Unsold lots**
- 3.10.1 Strauss & Co are authorised to retain any objects not sold on auction for a period of seven days after the auction and may proceed to sell any such unsold lot during this period, be it by way of private treaty or otherwise subject to the provisions of clause 3.1.
- 3.10.2 Where any lot remains unsold, Strauss & Co shall notify the seller accordingly and the seller shall collect the lot at the seller's expense within seven days after despatch by Strauss & Co of a notice to the effect that the lot has not been sold.
- 3.10.3 In these circumstances, the seller must make arrangements either to re-offer the lot for sale or to collect and pay all recoverable expenses and other amounts for which the seller is liable.
- 3.10.4 Should the seller fail to collect the lot within seven days of notification, the seller shall in addition be responsible for all removal, storage and insurance expenses.
- 3.10.5 Should the seller fail to collect the lot within six months of date of the notification referred to above, Strauss & Co shall be authorised to sell the lot by private treaty or public auction, on such terms and conditions as they think fit, without reserve and to deduct from the hammer price all sums owing to Strauss & Co, including (without limitation) storage, removal, insurance expenses, the expenses of both auctions, reduced commission in respect of the auction as well as commission on the sale and all other reasonable expenses, prior to remitting the balance to the seller or, in the event he cannot be located, placing it into a bank account in the name of Strauss & Co for and on behalf of the seller.
- 3.10.6 Strauss & Co reserves the right to charge commission in accordance with the current rates on the bought in price and expenses in respect of any unsold lots.
- 4 GENERAL PROVISIONS**
- 4.1 Strauss & Co use information supplied by bidders or sellers, or otherwise lawfully obtained, for the provision of auction related services, client's administration, the bidders' record, marketing and otherwise as required by law
- 4.2 The bidder and seller agree to the processing of their personal information and to the disclosure of such information to third parties worldwide for the purposes outlined in 4.1 above.
- 4.3 Any representation or statement by Strauss & Co in any catalogue as to authorship, genuineness, origin, date, providence, age, condition or estimated selling price is a statement of opinion. Every person interested should rely on his own judgement as to such matters and neither Strauss & Co nor its agents or servants are responsible for the correctness of such opinions, subject to 2.3.1.
- 4.4 Strauss & Co will have the right, at its sole and absolute discretion, to refuse entry to its premises or attendance at its auction by any person.
- 4.5 These general conditions of business, every auction and all matters concerned therewith will be governed by and construed in accordance with the laws of South Africa and the buyer submits to the non-exclusive jurisdiction of the South African courts.
- 4.6 If any of these conditions of business are held to be unenforceable, the remaining parts shall remain in force and effect.
- 4.7 The non-exercise of or delay in exercising any right or power of a party does not operate as a waiver of that right or power, nor does any single exercise of a right or power preclude any other or further exercise of it or the exercise of any other right or power. A right or power may only be waived in writing, signed by the party to be bound by the waiver.
- 4.8 These general conditions of business constitute the entire agreement of the parties on the subject matter.
- 4.9 Neither party shall be liable for any loss or damage, or be deemed to be in breach of these conditions, if its failure to perform or failure to cure any of its respective obligations hereunder results from any event or circumstance beyond its reasonable control. The party interfered with shall, give the other party prompt written notice of any force majeure event. If notice is provided, the time for performance or cure shall be extended for a period equivalent to the duration of the force majeure event or circumstance described in such notice, except that any cause shall not excuse payment of any sums owed to Strauss & Co prior to, during or after such force majeure event.
- 4.10 Any and all communications between the parties, whether legal or merely for notification purposes, correspondence or for any other reason will only satisfy any legal requirement if it is reduced to writing.
- 4.11 Any notice by Strauss & Co to a seller, consignee, respective bidder or buyer may be sent by Strauss & Co to the latest address as provided to Strauss & Co by the seller consignee, respective bidder or buyer.
- 4.12 Any notice to be addressed in terms of 4.10 may be given by airmail or hand-mail or sent by prepaid post, and if so given will be deemed to have been received by the addressee seven days after posting, or by facsimile, and if so given will be deemed to have been duly received by the addressee within twenty four hours from transmission. Any indemnity under these conditions will extend to all proceedings, actions, costs, expenses, claims and demand whatever incurred or suffered by the person entitled to the benefits of the indemnity. Strauss & Co declares itself to be a trustee for its relevant agents and servants of the benefit of every indemnity under these conditions to the extent that such indemnity is expressed to be for the benefit of its agents and servants.
- 4.13 An auction will commence at the published time and will not be delayed to enable any specific person or more persons in general to take part in the auction.