

**TERMS AND CONDITIONS OF STRAUSS & CO (OPERATING AS STRAUSS  
ONLINE)**

**THE TERMS HEREUNDER COMPLIES WITH THE PROVISIONS OF THE  
CONSUMER PROTECTION ACT, 2008 (“ACT”) AND THE REGULATIONS  
PROMULGATED THEREUNDER, SUBJECT TO THE EXEMPTION FROM THE  
APPLICABILITY OF CERTAIN PROVISIONS.**

**1. INTRODUCTION**

These Terms govern the use of this Website and conduct of Online Auctions thereon. These Terms are binding on all persons who access the Website without qualification or exception. By entering the Website the User agrees to be bound by and shall be deemed to have accepted these Terms, which the User acknowledges to have read and understood. If the User does not agree to any of the Terms, the User should not enter, view or make use of the Website.

**2. DEFINITIONS**

2.1 The headings to the clauses of these Terms are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify these Terms nor any clause hereof.

2.2 Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.2.1 **%Bidder+** shall mean any User placing a bid on the Website to buy any Lot in terms of an Online Auction;

2.2.2 **%Business Day+** shall mean any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

2.2.3 **%Buyer+** shall mean the Bidder who has placed the highest bid at the Fall of the Hammer in respect of a Lot and whose bid is higher than the Reserve in respect of that Lot and whose bid is finally accepted by Strauss & Co (after determination of any dispute that may exist in respect thereof) and where that Bidder is an agent acting for a principal, that Bidder and his principal jointly and severally;

- 2.2.4 **Buyer's Premium**+ shall mean the premium payable by the Buyer on any Lot to Strauss & Co on the Sale of that Lot, calculated on the Hammer Price of that Lot in accordance with the relevant Current Rates;
- 2.2.5 **Condition Report**+ shall mean a report compiled by Strauss & Co pertaining to the condition of a specific Lot;
- 2.2.6 **Current Rates**+ shall mean 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 an Online Catalogue or otherwise);
- 2.2.7 **Fall of the Hammer**+ shall mean the time at which an offer for the Sale of a Lot:
- 2.2.7.1 terminates in the case of a Lot remaining unsold, which shall be a time pre-determined by Strauss & Co and published on the Website ("**Cut-Off Time**"); or
- 2.2.7.2 has been accepted, which time shall be at the Cut-Off Time; or
- 2.2.7.3 has been accepted, where, within a period of 120 (hundred and twenty) seconds before the Cut-Off Time, more than one bid for a Lot has been submitted, and, as a result, the Cut-Off Time has been extended for a further period of 120 (hundred and twenty) seconds ("**Extended Cut-Off Time**"), which time shall be the time at which no more than one further bid for the Lot is made within the Extended Cut-Off Time; provided that the Extended Cut-Off time shall be extended indefinitely in the same manner, every time more than one bid for a Lot has been submitted within 120 (hundred and twenty) seconds before the expiry of the Extended Cut-Off Time;
- 2.2.8 **Forgery**+ shall mean 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 Online 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 made with the intention of deceiving as to authorship, origin, date, age period culture, source;

- 2.2.9 **Hammer Price+** shall mean the bid or offer made by a Bidder in respect of any Lot that is finally accepted by Strauss & Co (after determination of any dispute that may exist in respect thereof);
- 2.2.10 **Intellectual Property+** shall mean all intellectual property subsisting in, pertaining to or used on the Website including, without limitation, patents, inventions, copyright, Trade Marks, goodwill and/or trade secrets;
- 2.2.11 **Lot+** shall mean any item or collection of items forming part of a lot contained in an Online Catalogue which are offered for Sale by Strauss & Co in terms of an Online Auction;
- 2.2.12 **Online Auction+** shall mean any online auction Sale in terms of which Lots are offered for Sale by Strauss & Co on the Website, which auction shall commence upon publication of the relevant Online Catalogue or any other time as published by Strauss & Co on the Website, whichever is the later, and conclude at the Fall of the Hammer of the last Lot on the relevant Online Catalogue;
- 2.2.13 **Online Catalogue+** shall mean any advertisement, brochure, estimate, price-list or other publication, published by Strauss & Co on the Website, advertising for Sale the Lots by way of Online Auction;
- 2.2.14 **Parties+** shall mean the User and Strauss & Co and **Party+** shall, as the context requires, be a reference to any one of them;
- 2.2.15 **Personal Information+** shall mean information which identifies a User to third parties;

- 2.2.16 **Prime Rate** shall mean 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;
- 2.2.17 **Privacy Policy** shall mean the privacy policy of Strauss & Co which can be accessed by clicking on this link: <http://www.straussartonline.co.za/privacy.pdf>;
- 2.2.18 **Purchase Price** shall mean the Hammer Price of any Lot, 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;
- 2.2.19 **Recoverable Expenses** shall mean 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 in terms of the provisions of this Agreement;
- 2.2.20 **Reserve** shall mean the confidential minimum Hammer Price (if any) at which a Lot may be Sold in terms of an Online Auction as agreed in writing between the Seller of that Lot and Strauss & Co;
- 2.2.21 **Sale** shall mean the sale of any Lot in terms of an Online Auction and **Sell** and **Sold** shall have corresponding meanings;
- 2.2.22 **Sale Proceeds** shall mean 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;

- 2.2.23 **%Seller+** shall mean the person named as the Seller of any Lot, being the person that offers the Lot for Sale;
- 2.2.24 **%Seller's Commission+** shall mean 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;
- 2.2.25 **%Specialised Packaging+** shall mean provided by specialist fine and decorative art packers which, for the sake of clarity, shall not be provided by Strauss & Co;
- 2.2.26 **%Strauss & Co+** shall mean Strauss and Company Proprietary Limited (Registration No. 1972/000019/07), a private company with limited liability incorporated in accordance with the laws of the Republic of South Africa;
- 2.2.27 **%Terms+** shall mean the terms and conditions set out on this Website;
- 2.2.28 **%User+** shall mean the user of the Website and shall include, without limitation, a Bidder and/or a Buyer;
- 2.2.29 **%MAT+** shall mean value added tax imposed in terms of the Value Added Tax Act, 1991, including any similar tax which may be imposed in place thereof from time to time; and
- 2.2.30 **%Website+** shall mean the website located at [www.straussartonline.co.za](http://www.straussartonline.co.za) and includes any part or element thereof.
- 2.3 Unless inconsistent with the context or save where the contrary is expressly indicated an expression which denotes:
- 2.3.1 any one gender includes the other genders;
- 2.3.2 a natural person includes an artificial person and vice versa; and
- 2.3.3 the singular includes the plural and vice versa.

- 2.4 Where any term is defined within the context of any particular clause in these Terms, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of these Terms, notwithstanding that that term has not been defined in this clause 2.
- 2.5 The use of the word "*inter alia*" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example or examples.
- 2.6 The expiration or termination of these Terms shall not affect such of the provisions of these Terms as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

### 3. **DISCLOSURE OF INFORMATION**

Strauss & Co discloses the following information to the User:

- 3.1 Full name and legal status: Strauss and Company (Pty) Ltd is a private company with limited liability incorporated in accordance with the laws of the Republic of South Africa;
- 3.2 Physical address: 89 Central Street, Houghton, Gauteng, 2198, South Africa;
- 3.3 Postal address: P O Box 851, Houghton, Gauteng, 2041, South Africa;
- 3.4 Telephone number: 011 728 8246;
- 3.5 Website address: [www.straussartonline.co.za](http://www.straussartonline.co.za);

- 3.6 E-mail address: [info@straussart.co.za](mailto:info@straussart.co.za);
- 3.7 Physical address where Strauss & Co will receive legal service of documents: Physical address as per clause 3.2 above;
- 3.8 Registration number: 1972/000019/07;
- 3.9 Place of registration: Republic of South Africa;
- 3.10 Registration date: 1972;
- 3.11 Names of office bearers: Mrs Elisabeth Le Roux Bradley (Identity number: 3812280010088); Dr Conrad Barend Strauss (Identity number: 3601175003088); Ms Poala Genovese (Identity number: 6302210751081); Mrs Vanessa Phillips (Identity number: 5607170769183); Mrs Carmen Welz (Identity number: 4403300033083); Mrs Caro Wiese (Identity number: 5003280147082); Mr Frank Kilbourn (Identity number: 6109075150089)
- 3.12 Main description of products Sold in terms of Online Auctions: Fine and Decorative Arts, Collectors Items and Antiques.

#### 4. THE BUYER

- 4.1 Any dispute of whatsoever 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 Strauss & Co and one or more Bidders) shall be determined at Strauss & Co in its sole and absolute discretion.
- 4.2 Every Bidder shall be deemed to act as principal.
- 4.3 Bidders shall be personally liable for their bids and offers made in terms of any Online Auction and shall be jointly and severally liable with their principals if acting as agent.

#### 5. ONLINE CATALOGUES

- 5.1 All illustrations of a Lot in any Online Catalogue are intended merely as guidance for Bidders and do not provide definitive information as to colours, patterns or damage to any Lot. Strauss & Co only warrants that

the descriptions of the products themselves may be construed as a fair representation of the nature of such product.

- 5.2 Strauss & Co shall not be liable for any error, misstatement or omission in the description of a Lot (whether in any Online Catalogue or otherwise) in respect of, *inter alia*, the authorship, attribution, genuineness, origin, date, age, condition or estimated selling price, unless Strauss & Co engaged in intentional misleading or deceptive conduct or the information provided is clearly inaccurate. In bidding for any Lot, all Bidders confirm that they have not been induced to place any bid or offer by any representation of the Seller or Strauss & Co.

## 6. **CONDITION REPORTS**

- 6.1 Upon request, a User may be furnished with a Condition Report.
- 6.2 Strauss & Co shall not be liable for any error, misstatement or omission made in respect of, *inter alia*, the authorship, attribution, genuineness, origin, date, age, condition or estimated selling price of a Lot contained in such a Condition Report, unless Strauss & Co engaged in intentional misleading or deceptive conduct or the information provided is clearly inaccurate.

## 7. **EXCLUSIONS AND LIMITATIONS OF LIABILITY OF BUYERS**

- 7.1 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 365 (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 incapable 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 Purchase Price of that Lot shall be refunded to the



Buyer, provided that the Buyer shall have no rights against Strauss & Co (whether under these Terms, at law or otherwise) if:

- 7.1.1 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 Online Catalogue in which that Lot was identified for purposes of the Online 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;
- 7.1.2 the description of the Lot in the Online Catalogue in which that Lot was identified for purposes of the Online 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;
- 7.1.3 a Buyer's claim (whether in contract, delict or otherwise) shall always be limited to an amount equal to the Purchase Price of the Lot;
- 7.1.4 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.
- 7.2 Neither Strauss & Co nor the Seller:
  - 7.2.1 shall be liable for any omissions, errors or misrepresentations in any information (whether written or otherwise and whether provided in an Online Catalogue or otherwise) provided to Bidders, or for any acts or omissions in connection with the conduct of any Online Auction or for any matter relating to the Sale of any Lot, including when caused by the negligence of the Seller or Strauss & Co;
  - 7.2.2 gives any guarantee or warranty to Bidders other than those expressly set out in these Terms (if any) and any implied conditions, guarantees and warranties are excluded.

- 7.2.3 without prejudice to any other provision of these Terms, any claim against Strauss & Co and/or the Seller of a Lot by a Bidder shall be limited to the Purchase Price of the relevant Lot. Neither Strauss & Co nor the Seller shall be liable for any indirect or consequential losses.
- 7.3 A purchased Lot shall be at the Buyer's risk of loss and damage in all respects from the Fall of the Hammer in respect of that Lot, 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, unless caused by the gross negligence or wilful default of Strauss & Co and/or its employees or agents prior to the collection of the Lot by the Buyer.
- 7.4 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.
- 7.5 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.

## 8. **IMPORT, EXPORT AND COPYRIGHT RESTRICTIONS**

Save as expressly set out in any other provision of these Terms, 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.

## 9. **CONDUCT OF ONLINE AUCTIONS**

- 9.1 A Bidder may not engage in bid manipulation or unfairly induce any other person to place bids and/or manipulate the bid price.

- 9.2 Due to the nature of an Online Auction and the fact that an offer for the Sale of a Lot is open for a long period of time, which provides a User with ample time to consider whether to place a bid, the provisions of the Act regarding the retraction of a bid prior to the Fall of the Hammer, shall not be applicable to any Online Auction. Therefore, once a bid in respect of the Sale of a Lot has been placed by a Bidder, such a bid shall be regarded as final and the Bidder shall not be able to retract his bid.
- 9.3 Strauss & Co has the absolute discretion to withdraw or re-offer Lots for Sale, to accept and refuse bids and/ or to re-open the bidding on any Lots should they believe there may be a dispute of whatever nature or error of whatever nature, and may further take such other action as they in their absolute discretion deem necessary or appropriate.
- 9.4 Strauss & Co and the Seller of a Lot, or someone on their behalf respectively, shall be entitled to place bids on that Lot up to the Reserve, where applicable, subject to notice being given prior to the Online Auction in respect of that Lot that the Online Auction will be subject to such rights.
- 9.5 The contract between the Buyer and the Seller of any Lot shall be deemed to be concluded upon acceptance by Strauss & Co of the bid or offer at the Hammer Price (after determination of any dispute that may exist). 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.
- 9.6 Only persons who are legally entitled to do so are permitted to place a bid on the Website.
- 9.7 By placing a bid, the Bidder represents and warrants that:
- 9.7.1 he is legally capable of entering into binding contracts or is duly assisted by his parent or guardian; and
- 9.7.2 he agrees to be bound by these Terms.

By doing so, the Bidder accepts that Strauss & Co will rely on their representation that they have unfettered legal capacity to contract.

- 9.8 The Sale of a Lot shall be confirmed by a confirmatory e-mail sent to the Buyer in which the details of the transaction, including the Purchase Price, are stipulated.
- 9.9 When logging on to the Website using their personal information, a User will be able to easily access a full record of all transactions conducted on the Website. The record of each transaction shall be available for an indefinite period.

## 10. PAYMENT, COLLECTION AND DELIVERY

- 10.1 Payments shall be made by
- 10.1.1 credit card or via Electronic Fund Transfer (~~EFT~~+) into the bank account of Strauss & Co via the payment facilities on the Website; or
- 10.1.2 credit card or EFT at the relevant premises of Strauss & Co upon collection of the lot by the Buyer or his nominated courier from such premises; or
- 10.1.3 by direct deposit into the bank account of Strauss & Co.
- 10.2 Strauss & Co does not accept any credit cards other than MasterCard and Visa.
- 10.3 Notwithstanding any other clause contained in these Terms, payment in terms of clause 10.1 shall be regarded as received by Strauss & Co, in the event that:
- 10.3.1 where payment is being made by credit card transaction, such payment has been cleared by the relevant bank and credited to Strauss & Co's bank account; and
- 10.3.2 where payment is being made by EFT, such payment has been credited to Strauss & Co's bank account.
- 10.4 The delivery of any Lot to a Buyer shall take place by way of *constitutum possessorium* at the Fall of the Hammer in respect of that Lot and from

this point Strauss & Co shall cease to possess such Lot and commence to hold it on behalf of the Buyer, who shall from that point be the possessor of that Lot.

- 10.5 It shall be the sole responsibility of the Buyer to collect any Lots purchased by him from the relevant premises of Strauss & Co, which Lots shall only be made available to the Buyer or his nominated courier after payment of the Purchase Price by the Buyer in terms of clause 10.1.
- 10.6 Strauss & Co may from time to time in its sole and absolute discretion recommend, without incurring any obligations, one or more courier companies to the Buyer which can assist him with the collection of any Lots purchased by him. The Buyer shall be liable for the costs associated with collecting any Lots purchased by him from the relevant premises of Strauss & Co. Collection by a Buyer or his nominated courier of a Lot from the premises of Strauss & Co situated in Johannesburg and Cape Town, respectively, shall take place by appointment only.
- 10.7 The Buyer shall be liable for the costs associated with the packaging and preparation of each Lot purchased by them, which costs shall be included in the Purchase Price of that Lot as a Recoverable Expense, in the case of the Buyer requesting Specialised Packaging.
- 10.8 Strauss & Co shall not be liable for any acts or omissions of any packers or shippers.
- 10.9 A Buyer's Premium, calculated at the applicable current rate of the Hammer Price (plus VAT), shall be payable by the Buyer to Strauss & Co in respect of the Sale of each Lot. 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.
- 10.10 Ownership in a Lot shall not pass to the Buyer until Strauss & Co has received settlement of the full Purchase Price of that Lot in cleared funds. Strauss & Co shall not release a Lot to the Buyer for collection prior to full payment thereof.

- 10.11 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.
- 10.12 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.

## 11. CANCELLATION AND RETURNS

As Strauss & Co will not implement direct marketing in any manner or form in order to solicit transactions and as all transactions conducted on the Website will be restricted to auctions, no statutory cooling off period shall apply to any transactions conducted on the Website. A Buyer will not be entitled to rescind any transaction and request a refund of any payment in terms thereof after his bid has been finally accepted by Strauss & Co, save in circumstances contemplated elsewhere in these Terms.

## 12. REMEDIES FOR NON PAYMENT AND BREACH

Without prejudice to any rights that the Seller may have, if, for whatsoever reason, any Lot is not paid for in full or payment of any amount is not cleared or if there is any other breach of these Terms 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:

- 12.1 to store and insure the Lot at its premises or elsewhere should the Lot not be collected within 28 (twenty eight) days after the Fall of the Hammer and at the Buyer's sole risk and expense;
- 12.2 to rescind the Sale of that or any other Lots Sold to the Buyer in terms of the same or any other Online Auction;
- 12.3 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;
- 12.4 to reject future bids and offers on any Lot from the Buyer;

- 12.5 to proceed against the Buyer for damages;
- 12.6 to resell the Lot or cause it to be resold by normal public auction, private treaty, Online Auction or otherwise, 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;
- 12.7 to exercise a lien over and Sell any of the Buyer's property in Strauss & Co's possession and applying the Sale Proceeds of such property to any amounts owed by the Buyer to Strauss & Co;
- 12.8 to retain that or any other Lots Sold to the Buyer at the same time or at any other auction, whether online or elsewhere, and to release such Lots only after payment of the total amount due;
- 12.9 to disclose the Buyer's details to the Seller to enable the Seller to commence legal proceedings;
- 12.10 to commence legal proceedings;
- 12.11 to charge interest on a monthly basis at a rate not exceeding the Prime Rate on the total amount due to the extent that it remains unpaid after 7 (seven) days from the Fall of the Hammer;
- 12.12 if the Lot is paid for in full but remains uncollected after 3 (months) months of the Fall of the Hammer, following 14 (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, within the sole discretion of Strauss & Co, to place the purchased Lot in storage at a storage facility of their choice, at and subject to the terms and conditions of storage of such a storage facility, whereafter such a Lot may be collected by the Buyer from the storage facility, upon payment of the storage facility's account for storage of the Lot. Should Strauss & Co elect to sell the Lot, the Sale proceeds of such Lot, less all Recoverable Expenses, will be forfeited unless collected by the Buyer within 6 (six) months of the original auction.

### 13. 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.

### 14. LIABILITIES

- 14.1 The User makes use of this Website at his own risk.
- 14.2 The Website and all information, content, materials and services included or otherwise made available to the User therein are provided on an "as is" and an "as available" basis. Strauss & Co makes no warranties or representations of any kind, express or implied, as to the operation of this Website or the available information, content, materials or services included on or otherwise made available to the User.
- 14.3 The liability of Strauss & Co for losses suffered as a result of any breach of these Terms shall be strictly limited to the Purchase Price of the product or products purchased by any Buyer.
- 14.4 Notwithstanding anything to the contrary contained in these Terms, Strauss & Co shall have no liability for any loss, damage, cost, claim or penalty of whatsoever nature including, but not limited to, indirect and consequential loss or damage and loss of profits, however arising out of or in connection with these Terms or the Website, whether caused by latent or patent defects in the Website, the use of the Website and/or information contained on the Website or otherwise.
- 14.5 The User hereby indemnifies Strauss & Co and holds it harmless against any and all liability, loss, damage, penalty, cost or claim of any nature whatsoever suffered by him or any third party in relation to any act or omission by the User or, where applicable, the User's shareholders, members, directors, officers, employees, representatives, agents or



assigns or any third party in relation to the Website and the use thereof by the User, and/or arising from the provisions of these Terms.

- 14.6 The User assumes all responsibility and risk for the use of the Website and Strauss & Co disclaims all liability for any loss, injury, damage, cost, penalty or claim resulting from the use of the Website, whether direct or indirect, and whether or not Strauss & Co has been advised of or has knowledge of the possibility of such loss, injury, damage, cost, penalty or claim.
- 14.7 Strauss & Co will not be held liable for any delay, failure, breach or non-compliance with its obligations under these Terms if such delay, failure, breach or non-compliance is beyond the reasonable control of Strauss & Co.
- 14.8 These Terms do not intend to, nor shall they be interpreted to, limit the liability of Strauss & Co in any way which would be illegal for Strauss & Co to exclude or attempt to exclude or where such exclusion is prohibited by the Act or the Electronic Communications and Transactions Act No. 25 of 2002, or any other law in force from time to time in the Republic of South Africa.

## 15. **WEBSITE USE**

- 15.1 The content of the Website is not intended for minors. Such content extends to a wide range of art and antiquities, is generally uncensored, and may include nudity or graphic or literary content that some people may consider offensive. If you allow your minor child to use your computer, it is your responsibility to determine whether any of the services, content and subject matter displayed on the Website is inappropriate for your child, and to control the child's use of the computer accordingly. If you yourself find offensive content of the type referred to above, you should not use the Website.
- 15.2 The User may not use, reproduce, adapt, distribute, publish or in any other way deal or interfere with the Website's contents without the prior written consent of Strauss & Co. The User may download and print 1

(one) copy of the Website's contents for personal, non-commercial and information purposes only.

- 15.3 Strauss & Co reserves the right to make any changes to the Website, its content and/or services offered through the Website at any time and without prior notice.
- 15.4 Content published on the Website reflects the views of the author and does not necessarily constitute the official opinion of Strauss & Co unless otherwise stated.
- 15.5 A User is responsible for his own communications on the Website and is responsible for the consequences of its posting. A User may not do any of the following things while using the Website:
- 15.5.1 post any material on the Website in terms of which he is not the owner of the Intellectual Property or other proprietary rights therein or does not have the permission of the owner of such Intellectual Property or rights to post or transmit such material to the Website;
  - 15.5.2 post material on the Website that otherwise violates any rights of any third party or violates or infringes on the privacy or publicity rights of third parties;
  - 15.5.3 post material on the Website that is illegal, unlawful, obscene, defamatory, discriminatory, disparaging of others, derogatory, inflammatory, harassing, insulting, offensive or likely to promote violence or hatred against others or that contains abusive, offensive or profane language nor may such content be associated in linking to the Website.
  - 15.5.4 post advertisements or solicitations of business;
  - 15.5.5 post or transmit any chain letters or pyramid schemes;
  - 15.5.6 impersonate another person or entity; and
  - 15.5.7 intentionally or unintentionally violate any applicable South African or international law while using the Website.

- 15.6 If notified by a User of any communication that allegedly does not conform to any provision of these Terms, Strauss & Co may investigate the allegation and determine in its sole and absolute discretion whether to remove or request the removal of the communication.
- 15.7 Strauss & Co reserves the right at all times to disclose any information as necessary or deemed desirable by Strauss & Co to satisfy any applicable South African or international law, regulation, legal process, or governmental request or to edit, refuse to post or to remove any information or materials, in whole or part, in Strauss & Co's sole and absolute discretion.
- 15.8 Any material uploaded by the User to the Website will be deemed to be non-confidential and non-proprietary and in doing so the User grants Strauss & Co a non-exclusive, royalty free, sub-licensable licence to use, copy, adapt, distribute and disclose to third parties any such material for any purpose in any form throughout the world in perpetuity.
- 15.9 The Website may contain links to other websites. Strauss & Co has no control over such websites, does not review their content and will not be liable for their content or accuracy. The User accesses such websites at the User's own risk and discretion.
- 15.10 The User may link to this Website, provided that the User will only provide a link to this Website's homepage and will not replicate any particular page, including the homepage. When linking to this Website, the User confirms and agrees that it will comply and ensure compliance with the requirements of this clause 15.
- 15.11 Although every effort will be made to have this Website available at all times, the Website may become unavailable due to maintenance or repairs, loss of connectivity or some other form of interruption. Strauss & Co does not warrant against nor will it be held liable for such downtime and is hereby indemnified from any loss, damage, claims, costs or penalties incurred as a result of such unavailability.
- 15.12 If the User chooses or is provided with identification codes, usernames, passwords or any similar form of identification information as part of the

Website's security systems, such User must keep this information secret and confidential and must not permit anyone else to use it. The User shall be responsible for all access to the Website with the User's username and password. When the User's username and password have been used in order to gain access to the Website, Strauss & Co shall be entitled to assume that such use and all related communications emanate from the User. Strauss & Co shall not be liable for any loss or damage arising from unauthorised use of the User's identification information.

- 15.13 In the event that the User becomes aware of a breach of the confidentiality of the User's username and password, the User must immediately communicate this to Strauss & Co with subsequent confirmation in writing. The compromised username and password will be deactivated as soon as reasonably possible and a new username and password will be issued to the User. Strauss & Co may, in its sole and absolute discretion and for any reason whatsoever, require the User to change his username and password at any time.
- 15.14 If the User commits any breach of these Terms or in any other way interacts with or uses the Website in an unlawful or unauthorised manner, Strauss & Co shall be entitled, in its sole and absolute discretion, to terminate the User's access to the Website immediately, without prior notice, without any liability on Strauss & Co's part and without prejudice to Strauss & Co's rights in terms of these Terms or at law. Following such termination, the User will forfeit the right to link to this Website as described in clause 15.10.
- 15.15 By accessing the Website the User represents and warrants that he owns and/or otherwise controls all of the rights to the content that he posts and/or uploads. Furthermore, the User represents and warrants that the content submitted to the Website is:
- 15.15.1 accurate;
- 15.15.2 usable; and
- 15.15.3 will not cause injury, defame any person or breach any clause of these Terms or any law.

- 15.16 Strauss & Co is hereby indemnified from and against any and all loss by any person which results from a breach of these representations or warranties.

**16. PRIVATE INFORMATION**

In using the Website the User will from time to time be prompted to provide to Strauss & Co certain personal information, including without limitation, information required for purposes of registration. Strauss & Co will process information about the User in terms of its Privacy Policy. However, Strauss & Co is committed to protecting Users' privacy and Personal Information and confirms that it will not use such information for any purpose other than as stated in its Privacy Policy nor provide such information to any third party without the User's prior consent. In turn, the User acknowledges that by using the Website, bidding and/or buying on the Website, the User:

- 16.1 consents to any processing or storage of such information and warrants that any and all data provided is up-to-date, complete and accurate;
- 16.2 undertakes to maintain and promptly update the aforementioned information to keep it up-to-date, complete and accurate; and
- 16.3 warrants that he has read the Privacy Policy, has taken time to understand the content thereof and freely and voluntarily consents thereto.

**17. DISCLAIMER**

Any commentary, advice, information, suggestions, opinions, answers or any other information posted on the Website is not intended to nor shall it be interpreted to amount to advice on which reliance should be placed and are posted merely for guidance purposes only. The User makes use of any such information at his own risk and in his own discretion and disclaims and indemnifies Strauss & Co from and against any and all liability and responsibility arising from any reliance placed on such information whether posted on the Website or by any other person visiting the Website.

## 18. PROPRIETARY RIGHTS

- 18.1 The Website is owned by Strauss & Co and the User acknowledges that Strauss & Co and/or its licensors are the proprietors of any and all Intellectual Property associated with, related to or appearing on the Website.
- 18.2 The content of the Website, including but not limited to any pictures, photos, text, presentations, names, titles, brands, drawings, models and associated software are protected by South African and international law. The owners of such content reserve all such rights therein unless provided otherwise in these Terms.
- 18.3 The User undertakes:
- 18.3.1 not to use or register any trade marks, trade names or other devices which are or incorporate marks which are the same as or confusingly similar to any of Strauss & Co's trade marks (~~Trade~~ **Marks**) or which marks are likely to be associated with the Trade Marks or where such use would take unfair advantage of or be detrimental to the distinctive character or the repute of the Trade Marks;
- 18.3.2 not at any time to do or cause to be done any act or thing in any way impairing or tending to impair any part of Strauss & Co's rights, title and interest in and to the Intellectual Property; and
- 18.3.3 not in any way to make unauthorised use of the Intellectual Property or to represent that he has any rights of any nature in the Intellectual Property or any registrations thereof.
- 18.4 Without limiting the generality of the provisions of clause 18.3, the User undertakes not to make any unauthorised use, reproductions or copies of any work or material displayed or made available on the Website and agrees to adhere to and comply with all policies, conditions of use and rules that may apply to the use of such work or material.

18.5 Strauss & Co's graphics, logos, page headers, button icons, scripts and service names are the Trade Marks or trade dress of Strauss & Co. The Trade Marks and trade dress may not be used in connection with any product or service that is not conducted by Strauss & Co or in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits Strauss & Co. All other Trade Marks not owned by Strauss & Co that appear on the Website are the property of their respective owners who may or may not be affiliated with, connected to, or sponsored by Strauss & Co. The User may not use such Trade Marks without consent from the relevant owners.

## 19. MALICIOUS SOFTWARE AND OFFENSES

19.1 The User warrants that:

19.1.1 he will not use the Website in any way that causes, or is likely to cause, the Website and access to the Website to be interrupted, damaged or impaired in any manner;

19.1.2 no form of virus, Trojans, worms, logic bombs, or other malicious coding, virus or software will be introduced onto the Website or into Strauss & Co's system which may cause any form of technological harm or any other form of harm in any manner or respect;

19.1.3 he will not attempt to gain unauthorised access to the Website, including through the theft of any third party's username and password;

19.1.4 he will not attempt to gain unauthorised access to the Website's server, databases, computers or any other device associated with the Website and will not attack the Website through a denial-of-service attack or a distributed denial-of-service attack;

19.1.5 he will not use any robot, spider, or other automatic or manual device or process for the purposes of compiling information regarding the identification, address, or other attributes of any of the Users of this Website or to recreate in original or modified form any substantial portion of the Website; and

- 19.1.6 he will not take any action that imposes an unreasonable or disproportionately large load on the servers or systems of Strauss & Co.
- 19.2 Any breach of these Terms regarding malicious software and offenses will be reported to the relevant law enforcement agencies and Strauss & Co will co-operate in all respects with those law enforcement agencies, including by way of disclosure of the identity and identification information of the User.
- 19.3 Although Strauss & Co and its representatives will use reasonable efforts to ensure that no malicious content can be received from the Website, Strauss & Co does not warrant that the Website is free of malicious content or viruses and Strauss & Co will not be held liable for any loss resulting from a distributed denial-of-service attack, or any malicious content as described in clause 19.1.2 which may infect any User's computer or device, computer equipment, data or any other propriety material where such loss is or may be attributed to the User's use of the Website or downloads received from the Website.
- 19.4 The User warrants that he will not use the Website in any manner that will break any law enforceable in South Africa or cause any annoyance, unnecessary anxiety or inconvenience to any person.

## 20. **GOVERNING LAW**

The Website is hosted, controlled and operated from the Republic of South Africa and therefore, the Website, the conduct of Online Auctions and these Terms shall be governed by South African law and the User agrees to the jurisdiction of the South African courts.

## 21. **GENERAL PROVISIONS**

- 21.1 Strauss & Co use information supplied by Bidders or Sellers, or otherwise lawfully obtained, for the provision of Online Auction related services, client's administration, marketing and otherwise as required by law.



- 21.2 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 clause 21.1 above.
- 21.3 Any representation or statement by Strauss & Co in any Online Catalogue as to, *inter alia*, 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 clause 7.1 of these Terms.
- 21.4 If any of these Terms are held to be unenforceable, the remaining parts shall remain in force and effect.
- 21.5 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.
- 21.6 If at any time there is a failure by Strauss & Co to insist on strict performance of any of the User's obligations under these Terms and related contracts, this shall not be construed to be a waiver of such rights and shall not relieve the User from compliance with such obligations. A waiver of any one default is not to be interpreted as a condonation of any other or further defaults.
- 21.7 Strauss & Co reserves the right to amend or delete any part of the Website, these Terms and/or its Privacy Policy at any time and without prior notice. The User warrants that he will review the Terms on a continual basis and remain up-to-date in respect of any changes.
- 21.8 These Terms constitute the entire agreement of the Parties on the subject matter.
- 21.9 Neither Party shall be liable for any loss or damage, or be deemed to be in breach of these Terms, 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.

- 21.10 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 whether electronic or otherwise.
- 21.11 Any notice by Strauss & Co to a Seller, consigner, respective Bidder or Buyer may be sent by Strauss & Co to the latest address as provided to Strauss & Co by the Seller, consigner, respective Bidder or Buyer.
- 21.12 Any notice to be addressed in terms of clause 21.9 above 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 one working day from transmission or by e-mail, 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.
- 21.13 Strauss & Co makes no claim that the materials contained on the Website are appropriate for any particular purpose or audience or that they may be downloaded outside South Africa. Access to the materials may not be legal by certain persons or in certain countries outside of South Africa. If the Website is accessed from outside South Africa, the User so

accessing the Website is responsible for complying with the laws of his country.