

## CONDITIONS OF BUSINESS

Strauss and Co Proprietary Limited (Registration No. 1972/000019/07) ('Strauss & Co') carries on business as fine art, decorative arts, jewellery, watches, luxury items and wine 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 between Strauss & Co, bidders, buyers and sellers is governed by (i) the conditions of business set out herein, (ii) Strauss & Co's privacy policy, (iii) where applicable, Strauss & Co's online terms (available at <https://www.straussart.co.za/>), (iv) any additional or special terms and conditions that Strauss & Co may impose (whether in the form of notices displayed on the website, 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 (v) 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 of business comply with section 45 of the Consumer Protection Act, 2008 and with the regulations promulgated thereunder pertaining to auctions.

Strauss & Co reserves the right to amend or delete any part of Strauss & Co's general conditions of business at any time and without prior notice. It is the responsibility of the bidders, buyers and sellers to review Strauss & Co's general conditions of business on a continual basis and remain up-to-date in respect of any changes.

### 1. DEFINITIONS

In these general conditions of business, clause headings are used for convenience only, and shall not be used in its 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 auction sale (effected or conducted through whatever medium) at which a lot is offered for sale by Strauss & Co and shall include, live auctions and online auctions;
- 1.2. **'auctioneer'** means the representative of Strauss & Co conducting an auction;
- 1.3. **'bid'** means a bid made by the bidder in respect of any lot which is offered for sale by way of auction;
- 1.4. **'bidder'** means any person registered by Strauss & Co in accordance with the provisions of clauses 2.1.3 and 2.1.4 of the general conditions of business and making, attempting or considering to –
  - 1.4.1. make a bid or offer to buy a lot at an auction or by way of private treaty (as the case may be);
  - 1.4.2. purchase a lot via the immediate-to-purchase platform;
- 1.5. **'buyer'** means the bidder who:
  - 1.5.1. makes a bid on any lot by auction that is;
  - 1.5.1.1. finally accepted by the auctioneer (after determination by the auctioneer of any dispute that may exist in respect thereof) in the case of a live auction; or
  - 1.5.1.2. finally accepted by the online auction portal;
  - 1.5.2. buys any lot by way of private treaty;
  - 1.5.3. buys any lot via the immediate-to-purchase platform; and/or
  - 1.5.4. is an agent acting for a principal, such bidder and its principal jointly and severally;
- 1.6. **'business day'** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.7. **'buyer's premium'** means the premium payable by the buyer of a lot to Strauss & Co calculated on the hammer price or the immediate-to-purchase price (whichever is applicable) of such lot, at the relevant current rates, together with VAT thereon (if any);
- 1.8. **'catalogue'** means any advertisement, brochure, estimate, price-list or other publication (in whatever medium, whether printed, electronic or otherwise) published by Strauss & Co on the website or made available in hard-copy at a live auction or sale by private treaty;
- 1.9. **'commission bid'** means **'commission bid'** as defined in clause 2.3.1;
- 1.10. **'condition report'** means the report prepared by Strauss & Co, or a third party appointed by Strauss & Co, stating the condition of each lot to be sold at an auction, which report can be obtained from the website or upon request from Strauss & Co;
- 1.11. **'current rates'** means Strauss & Co's current rates used to determine the buyer's premium and the seller's commission from time to time, namely:
  - 1.11.1. in circumstances where a buyer buys a lot by way of auction, private treaty or on the immediate-to-purchase platform, the buyer's premium shall be an amount equal to:
    - 1.11.1.1. 17.5% of the hammer price or the immediate-to-purchase price (whichever is applicable) in all purchases other than purchases of wine, where the hammer price or the immediate-to-purchase price is equal to or less than R100,000.00;
    - 1.11.1.2. 15% of the hammer price or the immediate-to-purchase price (whichever is applicable) in all purchases other than purchases of wine, where the hammer price or the immediate-to-purchase price is equal to or more than R100,001.00 but equal to or less than R250,000.00;
    - 1.11.1.3. 15% of the hammer price or the immediate-to-purchase price (whichever is applicable) in purchases of wine, where the hammer price or the immediate-to-purchase price is equal to or less than R250,000.00;
    - 1.11.1.4. 13.5% of the hammer price or the immediate-to-purchase price (whichever is applicable), where the hammer price or the immediate-to-purchase price is equal to or more than R250,001.00 but equal to or less than R1,000,000.00; or
    - 1.11.1.5. 12.5% of the hammer price or the immediate-to-purchase price (whichever is applicable), where the hammer price or the immediate-to-purchase price is equal to or more than R1,000,001.00;
  - 1.11.2. in circumstances where a seller sells a lot by way of auction or private treaty, the seller's commission shall, unless the seller is a trade seller in which case the seller's commission shall be calculated in accordance with clause 1.11.3, be an amount equal to:
    - 1.11.2.1. 17.5% of the hammer price in all sales other than sales of wine, where the hammer price is equal to or less than R100,000.00;
    - 1.11.2.2. 15% of the hammer price in all sales other than sales of wine, where the hammer price is equal to or more than R100,001.00 but equal to or less than R250,000.00;
    - 1.11.2.3. 15% of the hammer price in sales of wine, where the hammer price is equal to or less than R250,000.00;
    - 1.11.2.4. 13.5% of the hammer price, where the hammer price is equal to or more than R250,001.00 but equal to or less than R1,000,000.00; or
    - 1.11.2.5. 12.5% of the hammer price, where the hammer price is equal to or more than R1,000,001.00;

- 1.11.2.6. in circumstances where the seller of a lot is a trade seller, the seller's commission shall be an amount equal to 12% of the hammer price;
- 1.11.2.7. in circumstances where a seller sells a lot by way of the immediate-to-purchase platform, the seller's commission shall be an amount equal to 12.5% of the immediate-to-purchase price of any lot sold on the immediate-to-purchase platform;
- 1.12. **'dagged lots'** means a **'dagged lot'** as defined in clause 2.7.4.4;
- 1.13. **'day'** means a calendar day;
- 1.14. **'emergency bid'** means the bid which Strauss & Co is authorised to make on behalf of a bidder in the event that a technical issue occurs during a live telephone bid which prevents the completion of a live telephone bid (for example, the telephone call drops or is not audible);
- 1.15. **'estimate'** means the estimated selling price provided by Strauss & Co to the seller in respect of a lot, other than any lot consigned to Strauss & Co to be sold on the immediate-to-purchase platform, which estimate is determined by Strauss & Co (or a suitably qualified and experienced person appointed by it) in its sole and absolute discretion and based on, inter alia, the condition of the lot, provenance of the lot, market research and the price at which the lot, or items similar to it, was sold for previously. The estimate provided by Strauss & Co shall include a low, middle and high estimate;
- 1.16. **'forgery'** means an imitation made with the intention of deceiving as to, inter alia, the authenticity of any jewellery, watches, luxury items, or the authorship, origin, date, age, period, culture or source of a lot, which is not shown to be such in the description in the catalogue and which at the date of the sale has a value materially less than it would have had if it had been in accordance with that description in the catalogue and includes any misrepresentation, whether deliberate or otherwise, made with the intention of deceiving as to authorship, origin, date, age, period, culture or source;
- 1.17. **'hammer price'** means (i) the bid that is finally accepted by the auctioneer with the fall of the hammer (after determination by the auctioneer of any dispute that may exist in respect thereof) at any auction (other than an online action), (ii) the last bid that is finally accepted by the online auction portal in respect of any online auction of a lot, or (iii) the offer that is finally accepted by the seller in respect of any lot sold by way of private treaty;
- 1.18. **'handling fee(s)'** means the following fees which Strauss & Co is entitled to recover in respect of all handling and insurance costs and expenses and charges incurred by Strauss & Co from time to time in relation to any lot (in addition to all other storage fees contemplated in these general conditions of business), calculated as follows:
  - 1.18.1. in circumstances where a buyer fails to collect any lot within 28 days from the date of the auction, an amount equal to 0.5% of the hammer price, which amount shall be payable in arrears and accrue on a monthly basis;
  - 1.18.2. in circumstances where a seller requires Strauss & Co to store any lots, an amount equal to 0.5% of the hammer price;
- 1.19. **'immediate-to-purchase platform'** means the Strauss & Co online store which can be accessed through a website or through an application program (so called 'app');
- 1.20. **'immediate-to-purchase price'** means the price, as

determined by the seller in the property receipt form, of any lot sold on the immediate-to-purchase platform;

- 1.21. **'importation VAT'** means value added tax levied on any lot deemed to be imported by Strauss & Co in terms of the VAT Act;
- 1.22. **'live auction', 'live broadcast auction' or 'live virtual auction'** means an in-person auction conducted by an auctioneer in real time at a venue determined by Strauss & Co which is also broadcasted live on the online auction portal and where bidders are able to execute bids in person and/or by way of the online auction portal;
- 1.23. **'live telephone bid'** means a **'live telephone bid'** as defined clause 2.2.4;
- 1.24. **'lot'** means any item or items to be offered for sale as a unit and identified as such by Strauss & Co at an auction, private treaty or on the immediate-to-purchase platform. Each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction;
- 1.25. **'offer'** means an offer made by the bidder in respect of any lot which is offered for sale by way of private treaty, which is finally accepted by the seller;
- 1.26. **'online auction'** means an online only auction conducted via the online auction portal;
- 1.27. **'online auction portal'** means the online auction portal on the website and/or the website of a third-party approved by Strauss & Co which can be used by a bidder to execute bids in respect of any online auction or live broadcast auction;
- 1.28. **'parties'** means the bidder, buyer, seller, user and Strauss & Co;
- 1.29. **'personal information'** means any personal information as defined in the privacy policy and includes information relating to a bidder, buyer, seller or user of the website that identifies the bidder, buyer, seller or user or could reasonably be used to identify the bidder, buyer, seller or user regardless of how such information was obtained, including, without being limited to, sensitive and/or confidential data;
- 1.30. **'prime rate'** means the publicly quoted base rate of interest (percent, per annum compounded monthly in arrears 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;
- 1.31. **'privacy policy'** means the privacy policy of Strauss & Co, as amended from time to time, which is available at <https://www.straussart.co.za/>;
- 1.32. **'private treaty'** means the sale of any lot other than by auction at a price privately agreed on by the buyer and seller;
- 1.33. **'property receipt form'** means Strauss & Co's property receipt & contract form referred to in clause 3.1.2;
- 1.34. **'purchase price'** means the hammer price or the immediate-to-purchase price (whichever is applicable) of any lot, plus the applicable buyer's premium for that lot, plus all expenses for which the buyer is liable in respect of that lot as agreed to between the buyer and Strauss & Co or as provided for in these general conditions of business;
- 1.35. **'Rands' or 'R'** means the lawful currency of South Africa;
- 1.36. **'recoverable expenses'** includes all fees, taxes (including, without being limited to, VAT), charges and expenses incurred by Strauss & Co (including, without being limited to, research, photography and catalogue costs), and any bought-in fee or unsold fee (referred to in clause 3.3.4) (if any), in relation to any lot that Strauss & Co is entitled to recover from the seller as provided herein;
- 1.37. **'reserve'** means the confidential minimum hammer price at which a lot may be sold at an auction as agreed between the seller of that lot and Strauss & Co in writing, it being recorded that such reserve shall never be higher than the low estimate;
- 1.38. **'sale'** means the sale of any lot, whether done by private treaty, auction, or via the immediate-to-purchase platform, and 'sell' and 'sold' shall have corresponding meanings;

1.39. **'sale price'** means the price reflected on the immediate-to-purchase platform in respect of the lots offered for sale on the immediate-to-purchase platform, which shall be the immediate-to-purchase price, inclusive of VAT, the buyer's premium and the seller's commission;

1.40. **'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 less the applicable seller's commission for that lot, less all recoverable expenses in respect of that lot and any other amounts due to Strauss & Co by the seller in whatever capacity and howsoever arising;

1.41. **'seller'** means the person named as the seller of any lot in the property receipt form referred to in clause 3.1.2, being the person that offers the lot for sale by auction, private treaty, or via the immediate-to-purchase platform, as the case may be;

1.42. **'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 current rates, together with VAT thereon (if any), unless seller and Strauss & Co have agreed otherwise in the property receipt form referred to in clause 3.1.2;

1.43. **'starting bid'** means the lowest amount at which a person can place a bid on a lot that is offered for sale at an auction;

1.44. **'trade seller'** means a person who trades in fine art, decorative arts, jewellery, watches, luxury items and/or wine and is registered as such in terms of clause 3.2;

1.45. **'user'** means any person accessing the website;

1.46. **'VAT'** means value added tax levied in terms of the VAT Act including importation VAT (if any) or any similar tax which may be imposed in place thereof from time to time;

1.47. **'VAT Act'** means the Value Added Tax Act, 1991; and

1.48. **'website'** means the Strauss & Co website located at <https://www.straussart.co.za/> and includes any part or element thereof, including, without being limited to, the the immediate-to-purchase platform, which can also be accessed through the Strauss & Co application programme (so called 'app').

## 2. CONDITIONS MAINLY CONCERNING BUYERS

### 2.1. Registration

- 2.1.1. 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 required under all applicable South African or international laws or otherwise and all documentation referred to in clauses 2.1.3 and 2.1.4 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.
- 2.1.2. The parties record and agree that the person who registers as bidder in accordance with the provisions of clauses 2.1.3 and 2.1.4 shall be the bidder for purposes of any communication and other documents exchanged between the bidder or buyer and Strauss & Co, including, without limitation, any invoices and statements issued by Strauss & Co. It is further recorded that, notwithstanding that the bidder is acting as agent for a third party, all invoices and statements will be made out in the name of the bidder and not the third party in respect of whom the bidder is acting.
- 2.1.3. All bidders wishing to make bids in respect of any lot must complete an online, printed or telephonic bidder registration form within 24 hours (or such other period as Strauss & Co may allow in its sole and absolute discretion) prior to the commencement of any auction, 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 made during any auction and

shall be jointly and severally liable with their principals if acting as agent.

2.1.4. The following information (in respect of both the bidder as well as any third party in respect of whom the bidder is acting as agent) must accompany the bidder registration form:

- (i) for natural persons: date of birth, photo identification (driver's licence, ID document, or passport) and, if not shown on the ID document, proof of current address (for example, a utility bill or bank statement not older than 3 months);
- (i) for South African juristic persons:
  - a. certificate of incorporation, memorandum of incorporation or equivalent document(s) showing the name and registered address together with documentary proof, in the case of companies, of directors and direct and indirect shareholders and, in the case of close corporations, members; and
  - b. such resolutions by the board of directors or members (as the case may be) and to the extent required, shareholders, of –
    - i. the bidder, authorising the bid and the bidder to do all such things, take all such actions and sign all such consents, notices and/or documents, as may be required in respect of and relating to the bid; and
    - ii. any third party in respect of whom the bidder is acting as agent, authorising the bid and the bidder to act as agent of behalf of such third party in respect of the bid and to do all such things, take all such actions and sign all such consents, notices and/or documents, as may be required in respect of and relating to the bid; or
  - c. a letter on the letterhead of the bidder and any third party in respect of whom the bidder is acting as agent (to the extent applicable) which letter is signed by a duly authorised representative who warrants that he/she is duly authorised and which includes –
    - i. the name and identity number of the bidder;
    - ii. the period for which the bidder has been authorised to act;
    - iii. the bidder and third party's registered name, registration number or identity number (as case the case may be);
    - iv. for trusts, partnerships, offshore companies and other juristic persons: the bidder will be required to contact Strauss & Co by no later than 24 hours (or such other period as Strauss & Co may allow in its sole and absolute discretion) prior to the commencement of any auction to ascertain the information required by Strauss & Co,
    - v. as well as such additional information as Strauss & Co may require whether in terms of the Financial Intelligence Centre Act, 2001 or otherwise.

2.1.5. In the event that a buyer purchases any lot or item of jewellery, luxury items or watches with a hammer price or a sale price, as the case may be, equal to or more than the prescribed amount, the parties record and agree that Strauss & Co shall be entitled to provide the information referred to in paragraph 2.1.4 above, in respect of such buyer, to the financial intelligence centre established in accordance with the Financial Intelligence Centre Act, 2001.

2.1.6. Bidders may be required to pay a holding deposit to Strauss & Co, as determined by Strauss & Co in its sole and absolute discretion, at least 24 hours (or such other period as Strauss & Co may allow in its sole and absolute discretion) before the commencement of any auction.

2.1.7. If, in Strauss & Co's opinion, the documentation and information provided by a person wishing to register as bidder in terms of this clause 2.1 does not meet the requirements of this clause 2.1 or any relevant legislation, Strauss & Co may refuse to register such person as a bidder.

2.1.8. In addition to and without limiting the provisions of clause 7 below, in the case of any online registration to bid or any online registration to buy a lot on the immediate-to-purchase platform, a person wishing to register

as a bidder must register for and maintain an active personal user account ('**account**'). In order to register for an account, a person must be at least 18 years of age, or the age of legal majority in such person's jurisdiction. The bidder agrees to maintain accurate, complete and up-to-date information in the bidder's account. The bidder is responsible for all activity that occurs under the bidder's account, and, in addition to the obligations below, the bidder agrees to be responsible for ensuring that the security and secrecy of the bidder's account, username and password is maintained at all times. The bidder may not assign or otherwise transfer his/her account to any other person or entity. The bidder agrees not to share usernames or passwords with other users and to always log out of his/her account or apply a password protected screenlock or other security mechanism before leaving his/her device unattended.

## 2.2. Bidding

- 2.2.1. The bidder shall be entitled to place a bid (whether on the online auction portal or otherwise) in respect of a lot that is sold by way of a live auction prior to the commencement of a live auction. Such bid shall only be executed when the auctioneer opens the bidding in respect of a lot. The bidder shall be entitled to execute the bid (or additional bids) in respect of a lot that is sold by way of a live auction until the moment prior to the auctioneer closing the bidding in respect of such lot.
- 2.2.2. 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), in the case of a live auction, shall be determined at the auctioneer's sole and absolute discretion.
- 2.2.3. The bidder acknowledges that Strauss & Co or the auctioneer, as the case may be, shall be entitled to –
  - 2.2.3.1. refuse to accept any bids;
  - 2.2.3.2. cancel any bids already placed by a bidder;
  - 2.2.3.3. de-register any bidder; and/or
  - 2.2.3.4. reopen the bidding in respect of any lots bought by a bidder and subsequently cancelled for any reason whatsoever,
- 2.2.3.5. who uses any language or acts in any other manner that is, in Strauss & Co's sole and absolute discretion, abusive, harmful, intimidating, threatening or otherwise inappropriate during any auction.
- 2.2.4. Persons wishing to bid by telephone during the course of a live auction must make proper arrangements with Strauss & Co in connection with such bids at least 24 hours (or such other period as Strauss & Co may allow in its sole and absolute discretion) before the commencement of the auction ('**live telephone bids**'). The bidder agrees that Strauss & Co will not be responsible for losses arising from live telephone bids that are not executed and/or incorrectly recorded.
- 2.2.5. The parties acknowledge that, should identical bids be received in respect of the same lot at any auction, Strauss & Co or the auctioneer will give precedence to the first bid received.
- 2.2.6. 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 in the case of a live auction) and after determination of any dispute that may exist. Where a lot remains unsold (usually where the auctioneer's gavel is struck without a hammer price and without noting a paddle number, or where the auctioneer's gavel is struck followed by the word 'pass'), no such contract between a buyer and the seller 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.
- 2.2.7. Strauss & Co will accept:
  - 2.2.7.1. bids executed by bidders in person in the auction room (except in the case of an online auction);
  - 2.2.7.2. live telephone bids which may include emergency bids (except in the case of an online auction);

- 2.2.7.3. commission bids; and/or
- 2.2.7.4. bids placed and executed via the online auction portal as contemplated in clause 2.2.1 above.
- 2.2.8. All bids may be recorded and all bidders consent to such recording (if any).
- 2.3. Commission bids
  - 2.3.1. Strauss & Co may, from time to time, agree to execute bids on behalf of a bidder ('**commission bids**'). A bidder can instruct Strauss & Co in respect of a commission bid as follows:
    - 2.3.1.1. by telephone;
    - 2.3.1.2. by way of the website and/or online auction portal; or
    - 2.3.1.3. by way of written instruction.
  - 2.3.2. When instructing Strauss & Co on a commission bid, the bidder shall be required to state the maximum amount which the bidder is willing to bid on a particular lot ('**maximum bid**'). The maximum bid is exclusive of the buyer's premium and any other costs for which the buyer is or will become liable as provided for in these conditions of business.
  - 2.3.3. In the event that the bidder requires Strauss & Co to execute a commission bid on more than one lot at an auction, the bidder shall be required to provide Strauss & Co with a separate commission bid in respect of each such lot.
  - 2.3.4. The parties agree that all commission bids are placed at the bidder's sole risk and that Strauss & Co shall not be liable for any losses incurred by the bidder, the buyer or the seller, as the case may be, irrespective of whether such loss occurred due to any human error on the part of the auctioneer, Strauss & Co or any of its employees or agents. For example, the bidder agrees that Strauss & Co shall not be liable for any loss incurred by the bidder as a result any error in relation to the maximum bid and/or the lot in respect of which a commission bid is to be exercised.
  - 2.3.5. It is the responsibility of all prospective bidders to ensure that all commission bids are received by Strauss & Co by no later than 24 hours (or such other period as Strauss & Co may allow in its sole and absolute discretion) prior to the commencement of an auction.
  - 2.3.6. Subject to clause 2.3.7, it is recorded that the bidder shall only be entitled to increase or decrease the maximum bid:
  - 2.3.7. in the case of a live auction, up to 2 hours before a live auction is scheduled to commence; or
  - 2.3.8. in the case of an online auction, up to 2 hours before an online auction is scheduled to close.
  - 2.3.9. Notwithstanding clause 2.3.6, the bidder shall not be entitled to decrease the maximum bid after the maximum bid has been executed by Strauss & Co on behalf of the bidder.
- 2.3.10. Strauss & Co may, in its sole and absolute discretion, request a bidder who placed a commission bid via telephone, to confirm such bid in writing before the commencement of an auction, failing which Strauss & Co shall be under no obligation to execute such bid received by telephone.
- 2.3.11. In the event that Strauss & Co receives identical commission bids in respect of the same lot, which commission bids have the same maximum amount, the commission bid received first in time will take precedence over the other commission bids, however, such bids, which are referred to as '**push bids**', will still be recorded in the bidding history of a lot.
- 2.3.12. Nothing in these general conditions of business shall prevent a bidder whose bid is considered to be a push bid, from increasing the maximum amount of his/her commission bid, provided that such maximum amount is increased within the timeframe contemplated in clause 2.3.6.
- 2.4. Connectivity and technical issues
  - 2.4.1. The parties agree that broadband and other internet capacity issues, firewalls and other technical related problems are beyond the reasonable control of Strauss & Co and may result in, inter alia, some bids not being received on time or not being executed at all.
  - 2.4.2. The parties further agree that any bidder who makes

use of the online auction portal or any other platform that requires a broadband or other internet connection to place a bid or a commission bid, does so at his / her own risk and that Strauss & Co shall not be liable to the bidder for any loss which the bidder may incur as a result of any broadband and other internet capacity, firewalls and/or technical related issues. The user acknowledge that the website may be subject to malfunctions and delays inherent in the use of the internet and electronic communications. Strauss & Co HEREBY DISCLAIMS ANY LIABILITY FOR ANY DELAY IN, THE UNAVAILABILITY OR INACCESSIBILITY OF THE WEBSITE.

## 2.5. Examination of lots

- 2.5.1. It is the responsibility of all prospective bidders 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 Strauss & Co. All illustrations of a lot in any catalogue or condition report are intended merely as guidance for bidders and do not provide definitive information as to colours, patterns, condition or damage to any lot (including, without limitation, any picture frame). Strauss & Co does not guarantee the working order of electrical and/or mechanical fittings, clocks and watches and cannot be held responsible for any losses incurred by a buyer as a result of any defects in the working order of electrical and/or mechanical fittings, clocks and watches.
- 2.5.2. Strauss & Co shall not be liable for any error, misstatement or omission in the description and/or condition of a lot (whether in any catalogue, condition report or otherwise), unless Strauss & Co, its employees or agents, are engaged in intentional misleading or deceptive conduct.
- 2.5.3. In bidding for any lot, all bidders confirm that they have not been induced to make any bid or offer by any representation made by the seller or Strauss & Co.
- 2.5.4. Certain words used in the catalogues prepared by Strauss & Co to describe a lot have special meanings. The meaning of such words are set out in out in **Annexure A** below.
- 2.6. Exclusions and limitations of liability to buyers; passing of risk
  - 2.6.1. 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 the buyer's sole remedy hereunder or at law) return the lot to Strauss & Co 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 (if any), the date of the sale and the number of the lot, provided that such lot is returned by the buyer within 12 months of the date of sale. Should Strauss & Co be satisfied in its sole and absolute discretion that the lot is a forgery, that the lot is in the same condition in which it was as at the date of sale 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 purchase price of that lot shall be refunded to the buyer, provided that Strauss & Co has not yet paid the sale proceeds to the seller. In the event that a lot sold to a buyer proves to be a forgery as contemplated above, and Strauss & Co has already paid the sale proceeds to the seller, the seller shall be liable to refund the purchase price to the buyer. Without limiting the generality of the provisions of this clause 2.6, it is specifically recorded that the buyer shall have no claims against Strauss & Co, whether under these general conditions of business or otherwise.
  - 2.6.2. The rights afforded to the buyer in terms of this clause 2.6 may not be transferred or ceded to a third party and shall always rest exclusively with the buyer.
  - 2.6.3. Neither Strauss & Co nor the seller:
    - 2.6.3.1. 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 and buyers, or for any acts or 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 officers, directors, employees and/or agents;
- 2.6.3.2.** gives any guarantee or warranty to bidders or buyers other than those expressly set out in these general conditions of business (if any), and any implied conditions, guarantees and warranties are excluded.
- 2.6.4.** 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 or buyer 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.
- 2.6.5.** The risk in and to a purchased lot shall pass to the buyer in all respects from the first day after a lot was sold to the buyer, 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, its officers, directors, employees, agents and the seller against, any loss or damage of any kind, including whether caused by the negligence of Strauss & Co and/or its officers, directors, employees, agents and/or the seller. Ownership of and benefit in and to a purchased lot shall only pass to the purchase when the purchase price has been paid in full as provided for in clause 2.11.
- 2.6.6.** All buyers are required to arrange for their own insurance cover for purchased lots effective from the first day after the date of sale for purposes of protecting their interests in and to the purchased lot. Strauss & Co's insurance cover in respect of the purchased lots will expire on the first day after a lot was sold to the buyer.
- 2.6.7.** Strauss & Co does not accept any responsibility, losses or liability for or in respect of lots damaged by, inter alia, insect infestation, changes in atmospheric conditions or other conditions outside its control or for the condition of any glass or picture frames. Strauss & Co shall not be obliged to provide picture frames for any lot, unless such frame forms part of the lot and has been described as such in any catalogue. If a lot is sold with a picture frame such picture frame shall be provided to the buyer on a voetstoots basis.
- 2.7. Import, export and copyright restrictions**
- 2.7.1.** Save for the representations and warranties expressly set out herein, Strauss & Co and the seller make no representation or warranties, and accept no liability, to the bidder, the buyer or any other third party as to whether any lot is subject to export, import or copyright restrictions or pre-emptive or other rights to purchase by governmental or regulatory authorities.
- 2.7.2.** It is the buyer's sole responsibility to comply with the applicable export and/or import legislation.
- 2.7.3.** The buyer shall not be entitled to cancel any sale as a result of the buyer being unable to obtain the necessary export and/or import permits, licences or authorisations. The failure by the buyer to obtain the necessary export and/or import permits, licences or authorisations in respect of a lot purchased at an auction, by way of private treaty or via the immediate-to-purchase platform, shall not extinguish the buyer's obligation to make payment of the purchase price in respect of such lot, nor shall it terminate the buyer's ownership of such lot.
- 2.7.4.** In this regard, and without limiting the generality of the foregoing, buyers and bidders are advised that:
- 2.7.4.1.** Any lot made of or incorporating (irrespective of percentage) materials from endangered and/or other protected species of plants and/or wildlife shall be marked with the symbol \* in the lot description or identified in the lot description as such. Notwithstanding the aforesaid, Strauss & Co shall not be liable for errors in the description, or for failing to mark a lot as containing endangered and/or protected species.
- 2.7.4.2.** Certain works of art, collectors' pieces and antiques may be regarded as prohibited and/or restricted in South Africa and would require specific permits and approvals.
- 2.7.4.3.** Certain countries regulate the movement of antiquities and cultural items, which in some cases are subject to a right of pre-emption or compulsory purchase by the country from which they are to be imported.
- 2.7.4.4.** If a lot has been imported for sale in South Africa, a buyer

who is a citizen of South Africa will also be required to pay the importation VAT in respect of such lot. All lots that have been imported for sale, and in respect of which importation VAT is payable by a South African buyer, shall be marked with the symbol † in the lot description or identified in the lot description as such (**'daggedred lots'**). Notwithstanding the aforesaid, Strauss & Co shall not be liable for errors in the description, or for failing to mark a lot as being a daggedred lot, and should the lot be subject to importation VAT and Strauss & Co has made an error in the description, or failed to mark a lot as being a daggedred lot, the buyer shall remain liable for the importation VAT.

## **2.8. Items containing gold or traces of gold**

- 2.8.1.** VAT shall be levied in respect of any lot or item of jewellery, watches or luxury items sold by Strauss & Co, on behalf of the seller, if –
- 2.8.1.1.** such lot or item of jewellery, watches or luxury items contains gold or traces of gold; and
- 2.8.1.2.** both the seller and the buyer in respect of such lot or item of jewellery, watches or luxury items are registered VAT vendors.
- 2.8.2.** If both requirements contemplated in clauses 2.8.1.1 and 2.8.1.2 are met, Strauss & Co shall indicate on the invoice issued by it pursuant to clause 2.11.7, that no VAT will be levied by Strauss & Co and that it shall be the sole responsibility of the buyer to pay the VAT portion in respect of such sale to the South African Revenue Service.
- 2.8.3.** In addition to the above, Strauss & Co shall be required to provide the seller with all information reasonably required by the seller to account for the sale of any items which meet the requirements of both clauses 2.8.1.1 and 2.8.1.2 above.

## **2.9. Conduct of the auctioneer**

- 2.9.1.** The auctioneer has the sole and 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, whether a bid has been made, whether between two or more bidders or between the auctioneer and any one or more bidders) or an error of whatever nature, and may further take such other action as he in his sole and absolute discretion deems necessary or appropriate at or in respect of any auction. The auctioneer shall commence and advance the bidding or offers for any lot in such increments as he considers appropriate.
- 2.9.2.** The auctioneer shall be entitled within its sole and absolute discretion to determine the starting bid in respect of each lot offered for sale by means of a live auction.
- 2.9.3.** The auctioneer may place consecutive bids on any lot on the seller's behalf up to the reserve.
- 2.9.4.** The auctioneer has the sole and absolute discretion to accept or refuse bids from bidders that differ from the increments he was proposing.
- 2.9.5.** If an auction is affected by any connectivity, technical, software or related issues, the auctioneer shall be entitled in its sole and absolute discretion to: (i) extend the duration of any auction; (ii) withdraw or reoffer lots for sale; (iii) to accept and refuse bids; (iv) reopen the bidding on any lots; and/or (v) take any other action to protect the interests of the sellers, the bidders and/or the buyers.

**2.10. 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 or the online auction portal, as the case may be, save in the circumstances expressly provided for in these general conditions of business.

## **2.11. Payment and collection; passing of ownership and benefit**

- 2.11.1.** A buyer's premium shall be payable by the buyer to Strauss & Co in respect of the sale of each lot. The buyer acknowledges that Strauss & Co may also be entitled to a seller's commission payable by the seller and/or other fees for or in respect of that lot, including handling fees.
- 2.11.2.** Unless otherwise agreed in advance, the buyer shall

make full payment of the purchase price to Strauss & Co by no later than 2 days after the date of sale (being from the fall of the auctioneer's gavel) (or on such other date as Strauss & Co and the buyer may agree upon in writing) by credit card, direct deposit or electronic funds transfer into the bank account of Strauss & Co for same day value, free from the cost of transfer of funds and without any deduction, set-off or withholding, or such other payment method as Strauss & Co may be willing to accept. Strauss & Co does not accept any cheques or cash and does not accept any credit cards other than American Express, MasterCard and Visa.

- 2.11.3.** As provided for in clause 2.6.5 above, ownership of and benefit in and to 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 of the purchase price and handling fees (if any).
- 2.11.4.** 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.
- 2.11.5.** The buyer shall be and remain responsible for any removal, storage, or other charges for any lot and must, subject to the provisions of clause 6, at his own expense ensure that the lot purchased is removed immediately after the auction (unless otherwise agreed to between Strauss & Co and the buyer), provided that the purchase price has been paid in full.
- 2.11.6.** If the sale of any lot is legally annulled, rescinded, set aside, cancelled or nullified by the buyer, and Strauss & Co has paid the sale proceeds to the seller, 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, unless the sale of a lot is annulled, rescinded, set aside, cancelled or nullified by the buyer or Strauss & Co as a result of such lot being proven to be a forgery. Any annulment, rescission, cancellation or nullification of the sale shall not affect the seller's obligation to pay the seller's commission to Strauss & Co and/or to reimburse any recoverable expenses incurred by Strauss & Co and/or handling fees (if any).
- 2.11.7.** If applicable, Strauss & Co will issue a valid tax invoice and apply the applicable rate of VAT, irrespective of whether or not Strauss & Co acts as agent on behalf of the seller or as principal, in line with the requirements of the VAT Act.
- 2.12. Remedies for non-payment or failure to collect.** Without prejudice to any rights that the seller may have and subject to clause 6, if any lot is not paid for in full or removed in accordance with the provisions of clause 2.11, 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 sole and 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:
- 2.12.1.** to charge the buyer the handling fee (or a portion thereof) (if any) on a monthly basis in arrears calculated from the 29th day from the date of the auction;
- 2.12.2.** to remove, store (at Strauss & Co's premises or a storage facility chosen at the sole and absolute discretion of Strauss & Co and at the cost and expense of the buyer) and insure the lot at the buyer's sole risk and expense;
- 2.12.3.** to retain the buyer's full deposit (if any) and set off any amounts owed to the buyer by Strauss & Co against such deposit;
- 2.12.4.** to rescind the sale of that or any other lots sold to the buyer at the same or any other auction;
- 2.12.5.** 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;
- 2.12.6.** to reject future bids and offers on any lot from the buyer;
- 2.12.7.** to institute legal proceedings and/or any other remedies and/or enforce any other rights available to it in any applicable South African or international law against the buyer, including without being limited, a claim for damages;



- 2.12.8. to resell the lot or cause it to be resold by auction, private treaty or on the immediate-to-purchase platform, with estimates and reserves at Strauss & Co's sole and absolute 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;
- 2.12.9. to exercise a lien over any of the buyer's property in Strauss & Co's possession, applying the sale proceeds in respect of such property to any amounts owed by the buyer to Strauss & Co;
- 2.12.10. to retain that or any other lots sold to the buyer and to release such lots only after payment of the total amount due and owing by the buyer to Strauss & Co in respect of all such lots;
- 2.12.11. to disclose the buyer's details to the seller to enable the seller to institute legal proceedings against the buyer;
- 2.12.12. to charge interest at a rate not exceeding the prime rate plus 3% per month on the total amount due by the buyer to the extent that it remains unpaid after the 2nd day after the date of sale; and/or
- 2.12.13. if the purchase price for the lot is paid for in full but remains uncollected after 2 months of the auction (or such other period as may be determined by Strauss & Co in its sole and absolute discretion), Strauss & Co shall be entitled to resell the lot by auction, private treaty or on the immediate-to-purchase platform, with estimates and reserves at Strauss & Co's sole and absolute discretion and to store the lot, as contemplated in clause 2.12.1, pending resale. The sale proceeds of such lot will be forfeited in favour of Strauss & Co unless collected by the buyer within 2 months of the date of the resale, in which case all expenses incurred by Strauss & Co in respect of such resale, any other amounts due by the buyer to Strauss & Co and any handling fees (if any) shall be deducted from such sale proceeds.

### 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 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 on that lot, all on the basis set out in these general conditions of business and in particular subject to clauses 3.1.6 and 3.1.7. 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. The seller will be required, prior to Strauss & Co agreeing to act as agent for the seller and prior to Strauss & Co taking into its possession any objects to be submitted for sale, to complete Strauss & Co's online or printed property receipt form and to provide all such additional information and documentation as Strauss & Co may require whether in terms of the Financial Intelligence Centre Act, 2001 or otherwise including the information set out in clause 3.1.3. The purpose of the property receipt form is to: (i) record the quantity, description, the reserve and estimate (if any) of all the objects submitted for sale by the seller; (ii) enable Strauss & Co to satisfy itself that the seller is able to give satisfactory account of its possession of the objects submitted to Strauss & Co for sale, as well as the identity document, proof of address, contact and banking details of the seller; and (iii) specify whether a particular seller constitutes a trade seller.
- 3.1.3. The provisions of clause 2.1.4 shall apply, *mutatis mutandis*, in respect of information required from the seller as well as any third party in respect of whom the seller is acting as agent.
- 3.1.4. In the event that Strauss & Co determines, in its sole and absolute discretion, that the seller is unable to give satisfactory account of its possession of the objects submitted to Strauss & Co for sale, Strauss & Co shall be entitled to refuse to take into its possession any such objects. Without limitation to any of Strauss & Co's statutory

obligations, Strauss & Co shall furthermore be entitled to notify the South African Police Service ('SAPS') that Strauss & Co has a reasonable suspicion that the seller is in possession of stolen goods and to hand such objects over to the SAPS.

- 3.1.5. The seller acknowledges that Strauss & Co shall, in its sole and absolute discretion, be entitled to –
  - 3.1.5.1. refuse to take into its possession any object submitted by the seller for sale; or
  - 3.1.5.2. return any object submitted to it for sale to the seller, where Strauss & Co does not wish to sell such object for any reason whatsoever.
- 3.1.6. Strauss & Co is authorised to retain any lot not sold on auction for such period as agreed to between Strauss & Co and the seller in terms of clause 3.11 after an auction for the possible sale of such lot by Strauss & Co by way of auction, private treaty or on the commerce portions of the website or otherwise, pursuant to clause 3.1.7, provided that Strauss & Co shall be entitled to charge the seller for all handling fees (if any).
- 3.1.7. If any lot submitted for sale by the seller and received and accepted by Strauss & Co in accordance with clause 3.1.1 was unsold on auction, and if Strauss & Co receives an offer from a buyer, then Strauss & Co may proceed to sell same (taking into account the deduction of the applicable seller's commission, recoverable expenses and all handling fees (if any)), whether by private treaty at Strauss & Co's premises or on the commerce portions of the website or otherwise, after contacting the seller and obtaining confirmation from the seller that Strauss & Co may proceed to do so as provided for in clause 3.11. Where an object is made available for sale by private treaty, Strauss & Co will sell the object on behalf of the seller to the buyer at the purchase price determined and agreed to by the seller. The provisions of, *inter alia*, clauses 2.1, 2.6, 2.7, 2.10, 2.11 and 2.12 of these general conditions of business will apply with the necessary changes to all sales by private treaty and if wine is sold by private treaty then the provisions of, *inter alia*, clause 6 of these general conditions of business will also be of application to all sales of wine by private treaty.
- 3.1.8. Strauss & Co and the auctioneer each has the right, at its sole and absolute discretion, to offer an object submitted for sale under a lot by a seller pursuant to this clause 3.1, 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 a lot (whether in any catalogue or otherwise), to store accepted objects at the auction premises or any other location as Strauss & Co may deem fit and whether or not to seek the opinion of experts for purposes of, *inter alia*, determining the estimate, establishing provenance or examining the authenticity of a lot.
- 3.1.9. In the event that Strauss & Co finds that an object submitted for sale by a seller constitutes a forgery, Strauss & Co shall not be obliged to return such object to the seller. Without limitation to any of Strauss & Co's statutory obligations, Strauss & Co shall furthermore be entitled to notify SAPS, or any other relevant authority, that it is in possession of a forgery and shall also be entitled to hand such object over to SAPS, or any other relevant authority.
- 3.1.10. The parties agree that, notwithstanding any confidentially undertakings contained in these general conditions of business and without limitation to any of Strauss & Co's statutory obligations, Strauss & Co shall be entitled to disclose the full name and contact details of the seller in the circumstances specified in clauses 3.1.4 and/or 3.1.9 and/or if Strauss & Co has a reasonable suspicion that the seller has committed, or will be committing, an offence, to the SAPS.
- 3.1.11. Strauss & Co shall not be under any obligation to disclose the name of the buyer to the seller but shall not be restricted from doing so.

#### 3.2. Trade sellers

- 3.2.1. When consigning a lot to Strauss & Co, the seller shall be required to indicate on the property receipt form whether such seller wishes to register as a trade seller.
- 3.2.2. In the event that a person wishes to register as a trade

seller, such seller shall be required to provide Strauss & Co with the following information –

- 3.2.2.1. such seller's trade name and trade address;
- 3.2.2.2. the details of the website of such seller if the seller trades on an online platform; and
- 3.2.2.3. such seller's VAT number.
- 3.2.3. The parties record and agree that Strauss & Co may, in its sole discretion, refuse to register a seller as a trade seller.

#### 3.3. Estimates and descriptions

- 3.3.1. Any estimate provided by Strauss & Co to the seller is a mere statement of opinion based on the research done by Strauss & Co 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 estimate at any time, it being recorded that Strauss & Co will always consult the seller before revising the estimate.
- 3.3.2. 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. However, in the event that such description differs from the research done by Strauss & Co for purposes of determining the estimate, Strauss & Co shall be entitled to disregard the description provided by the seller for purposes of compiling any catalogue and/or determining the estimate.
- 3.3.3. 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.
- 3.3.4. Where a seller disagrees with the estimate and reserve provided by Strauss & Co and insists on an estimate and reserve that is higher than the estimate provided by Strauss & Co (and/or its specialists) in respect of a lot and in the opinion of Strauss & Co (and/or its specialist) (in its sole and absolute discretion) such higher estimate and reserve is not in line with market-related values of such lot, Strauss & Co shall be entitled, in the event that such lot is not sold at an auction, to charge the seller a 'bought-in fee' or 'unsold fee' equal to an amount of 2.5% of the middle estimate determined by Strauss & Co, in addition to the recovery of all recoverable expenses and all handling fees (if any) from the seller incurred by Strauss & Co in respect of such lot.

#### 3.4. Warranties of the seller

- 3.4.1. The seller warrants to Strauss & Co and to the buyer that:
  - 3.4.1.1. 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;
  - 3.4.1.2. he has complied with all the applicable requirements, legal or otherwise, in relation to the sale and 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;
  - 3.4.1.3. the lot and any written provenance given by the seller are authentic and true and correct;
  - 3.4.1.4. 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; and
  - 3.4.1.5. 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.
- 3.4.2. Notwithstanding any other provision of these general conditions of business, none of Strauss & Co, its employees or agents is responsible for any errors of description or for the authenticity of any lot, and no warranty whatever is given by Strauss & Co, its employees or agents, to any buyer in respect of any lot (save insofar as the seller is concerned as set out in these general conditions of business), and all express or implied conditions or warranties are hereby excluded.
- 3.4.3. 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 by Strauss & Co and/or the buyer.

**3.4.4.** The seller agrees to indemnify and keep indemnified Strauss & Co, its officers, directors, employees, agents and the buyer against any loss or damage suffered by either of them as a consequence of any breach of any warranty in these general conditions of business.

**3.4.5.** The seller agrees that Strauss & Co may, in its sole and 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.

### **3.5. Commission and expenses**

**3.5.1.** Seller's commission 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 payable by the buyer and other fees for or in respect of that lot. Without derogating from the seller's obligation to pay the seller's commission, any recoverable expenses and all handling fees (if any), the seller irrevocably authorises Strauss & Co to deduct from the hammer price of any lot the seller's commission, all such recoverable expenses and all handling fees (if any).

**3.5.2.** Strauss & Co may deduct and retain the seller's commission, the recoverable expenses and all handling fees (if any) 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.

### **3.6. Reserve**

**3.6.1.** All lots, except for lots sold via the immediate-to-purchase platform which will be sold at the immediate-to-purchase price, will be sold with a reserve on a lot, and each lot will be offered for sale subject to the reserve. A reserve shall be agreed to 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.

**3.6.2.** Where a reserve has been placed on a lot, the auctioneer may bid on behalf of the seller until the bids have reached the reserve. No lot may be sold for less than the reserve.

**3.6.3.** Strauss & Co may, at its election, 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 it would have been had the sale been at the reserve. Without limiting the generality of the foregoing, where Strauss & Co does sell a lot below the reserve, Strauss & Co reserves the right to adjust its seller's commission accordingly to ensure that the seller is paid the sale proceeds it would have received had the sale been at the reserve.

### **3.7. Insurance**

**3.7.1.** Unless Strauss & Co and the seller have otherwise agreed in writing, Strauss & Co will, at its cost, insure all lots consigned to it or put under its control for sale pursuant to a property receipt form 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 Strauss & Co.

**3.7.2.** 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.

**3.7.3.** If any payment is made to Strauss & Co under said insurance policy, in the event of loss or damage to any object, Strauss & Co shall pay such amount to the seller. All lots insured by Strauss & Co shall be insured for an amount equal to the middle estimate of such lot, except for any lot consigned to Strauss & Co for sale via the immediate-to-purchase platform, in which case such lot shall be insured for the immediate-to-purchase price.

### **3.8. Payments for the proceeds of sale**

**3.8.1.** Strauss & Co shall only be liable to remit the sale proceeds of a lot to the seller thereof by not later than 28 days after the date of the sale of that lot, provided that the full purchase price for that lot has been received by Strauss & Co in cleared funds and that there is no dispute regarding the lot and provided further that all foreign exchange

requirements and bank transfer processing requirements and procedures have been fulfilled.

**3.8.2.** The seller agrees that Strauss & Co shall be entitled to publish the price for which a lot was sold at any auction or via the immediate-to-purchase platform, however, such price in no way reflects the sale proceeds that is payable by Strauss & Co to the seller.

**3.8.3.** If the buyer of a lot fails to pay the total amount due to Strauss & Co within 1 month of 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 7 days after Strauss & Co has requested such instructions, the seller hereby authorises Strauss & Co to act as agent for and on behalf of the seller, at Strauss & Co's sole and absolute discretion but at the seller's cost and expense:

**3.8.3.1.** to agree terms for payment of the total outstanding amount with the buyer;

**3.8.3.2.** to remove, store and insure the lot sold;

**3.8.3.3.** to settle any claim by or against the buyer on such terms as Strauss & Co in its sole and absolute discretion deems fit;

**3.8.3.4.** to take such steps as Strauss & Co in its sole and absolute discretion considers necessary to collect monies due to the seller from the buyer; and

**3.8.3.5.** if necessary, to rescind the sale and refund any monies already received from the buyer to the buyer.

**3.8.4.** Should Strauss & Co pay an amount equal to the sale proceeds to the seller before it has received the full payment of the purchase price from the buyer, the parties agree that ownership of the lot shall pass to Strauss & Co.

**3.8.5.** If the sale of any lot is legally annulled, rescinded, set aside, cancelled or nullified by the buyer, and Strauss & Co has paid the sale proceeds to the seller, 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 seller's commission to Strauss & Co and/or to reimburse any recoverable expenses incurred by Strauss & Co and all handling fees (if any).

### **3.9. Withdrawal fees**

**3.9.1.** 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 24 hours (or such other period as Strauss & Co may allow in its sole and absolute discretion) prior to –

**3.9.1.1.** the commencement of any auction at which the lot is to be offered for sale;

**3.9.1.2.** the lot being listed for sale on the immediate-to-purchase platform.

**3.9.2.** Upon receipt of proper notification of withdrawal as envisaged in clause 3.9.1.2, Strauss & Co reserves the right to charge the full seller's commission and buyer's premium to the seller as a withdrawal fee, both calculated on –

**3.9.2.1.** the latest middle estimate of the selling price of the lot withdrawn (together with VAT thereon) in respect of lots to be sold by way of auction; and

**3.9.2.2.** the price determined by the seller pursuant to the property receipt from in respect of lots to be sold via the immediate-to-purchase platform, and all recoverable expenses and all handling fees (if any) incurred in relation to such lot. The withdrawal fee (together with VAT thereon) and all such recoverable expenses and all handling fees (if any) must be paid into Strauss & Co's designated bank account in full in cleared funds at least 24 hours (or such other period as Strauss & Co may allow in its sole and absolute discretion) prior to –

**3.9.2.3.** the commencement of any auction at which the lot is to be offered for sale; or

**3.9.2.4.** the time at which the lot is scheduled to be listed for sale via the immediate-to-purchase platform, failing which Strauss & Co is authorised to sell the lot at such auction.

**3.9.3.** If a lot is withdrawn by the seller, the seller shall arrange for the collection and removal of the lot at the seller's expense within 3 days after the date of the withdrawal, provided the seller has paid the applicable withdrawal fee (plus VAT) and recoverable expenses to Strauss & Co. If a seller fails to collect and remove a lot within the aforesaid 3 day period, Strauss & Co shall be entitled to:

**3.9.3.1.** charge the seller all relevant handling fees (or a portion thereof);

**3.9.3.2.** remove, store (at Strauss & Co's premises or a storage facility chosen at the sole and absolute discretion of Strauss & Co and at the cost and expense of the seller) and keep insured the lot at the seller's sole risk and expense;

**3.9.3.3.** sell the lot by auction, private treaty or via the immediate-to-purchase platform, as may be applicable, with estimates and reserves at Strauss & Co's sole and absolute discretion and to store the lot, as contemplated in clause 3.9.3.1, pending such sale. The sale proceeds of such lot, if sold, less the seller's commission, recoverable expenses referred to in clause 3.9.2 and all handling fees (if any), will be forfeited in favour of Strauss & Co unless collected by the seller within 2 months of the date of the sale.

**3.10. Photography and illustration.** Strauss & Co shall have the sole 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 as well as any other applicable legislation.

### **3.11. Unsold lots**

**3.11.1.** Strauss & Co shall as soon as reasonably practicable after the conclusion of an auction provide the seller with a post sale notification advising the seller that a lot has not been sold. Strauss & Co shall consult the seller where any lot remains unsold for a period of 7 days after an auction, to determine whether such lot should be re-offered for sale on another auction. Should the seller decide not to re-offer such lot, the seller shall be obliged to collect the unsold lot from Strauss & Co by no later than 7 days after the date on which it communicated its decision not to re-offer the lot, failing which Strauss & Co shall in its sole and absolute discretion be entitled to charge the seller storage fees and all other expenses incurred in respect of such lot, including, without limitation, all relevant handling fees.

**3.11.2.** Should the seller fail to collect the lot within 2 months of the date on which it communicated its decision not to re-offer the lot referred to in clause 3.11.1 above, Strauss & Co shall be authorised to sell the lot by private treaty or auction, on such terms and conditions as it deems fit, at a selling price and reserve determined by Strauss & Co in its sole and absolute discretion and to deduct from the purchase price the seller's commission, all recoverable expenses and all handling fees, prior to remitting the balance to the seller or, in the event that the seller cannot be located, placing it into a bank account in the name of Strauss & Co for and on behalf of the seller. Such balance will be forfeited by the seller if the seller fails to collect same within 2 months of the date of the sale.

## **4. GENERAL PROVISIONS**

**4.1.** It is recorded that Strauss & Co may request information from, and uses such information supplied by, buyers, bidders, sellers and/or users, or otherwise lawfully obtained, for the provision of auction related services, clients' administration, the bidders' record, marketing and otherwise as required by law.

**4.2.** Strauss & Co will process all buyer, bidder, seller and user personal information in terms of its privacy policy and will not use such personal information for any purpose other than as stated in its privacy policy and/or as is required by law, nor shall it provide such personal information to any third party without the buyer, bidder, seller or user's prior consent.

- 4.3. 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.
- 4.4. Strauss & Co may, from time to time, at its sole and absolute discretion, either alone or in collaboration, conduct sales by auction or private treaty in jurisdictions other than South Africa. In each such event, Strauss & Co will conduct a due diligence in relation to the information specific to each such sale and will inform buyers, bidders and sellers of such information by display on the website or in any catalogue published by Strauss & Co for the purpose of such sale, at its discretion.
- 4.5. These general conditions of business, sale by auction, private treaty or sale via the immediate-to-purchase platform, and all matters concerned therewith will be governed by and construed in accordance with the laws of South Africa and the parties submit to the non-exclusive jurisdiction of the South African courts. Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as amended or substituted from time to time.
- 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. No indulgence or extension of time which a party (**grantor**) may grant to the other, nor any election or failure by the grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, shall constitute a waiver of, or, whether by estoppel or otherwise, limit any of, the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 4.8. These general conditions of business constitute the entire agreement between the parties on the subject matter.
- 4.9. No party shall be liable for any loss or damage, or be deemed to be in breach of these general conditions of business, 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 such 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 beyond its reasonable control as 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.
- 4.9.1. 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.
- 4.9.2. Any notice by Strauss & Co to a seller, bidder, buyer or user may be sent by Strauss & Co to the latest physical address or email as provided to Strauss & Co by the seller, bidder, buyer or user.
- 4.9.3. Any notice to be addressed in terms of clause 4.10 may be given by airmail or hand-mail or prepaid post, and if so given will be deemed to have been received by the addressee 7 days after posting, or by email, and if so given will be deemed to have been duly received by the addressee on the business day after it has been transmitted by e-mail.
- 4.10. Any indemnity given under these general conditions of business will extend to all proceedings, actions, applications, costs, expenses, claims and demands 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 officers, directors, employees and agents of the benefit of every indemnity under these conditions to the extent that such indemnity is expressed to be for the benefit of its officers, directors, employees and agents.
- 4.11. 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.
- 4.12. Any payments made to Strauss & Co pursuant to these general conditions of business shall be made in Rands, unless otherwise agreed to by the Parties.
- 4.13. Where the price of any lot is displayed on the website or any catalogue produced by Strauss & Co in any currency other than Rands, such price shall be indicative only and is subject to any exchange rate changes when converted to Rand.
- ## 5. DISCLOSURE OF INFORMATION
- 5.1. Strauss & Co hereby discloses the following information:
- 5.1.1. **Full name and legal status:** Strauss and Co (Pty) Ltd is a private company with limited liability incorporated in accordance with the laws of the Republic of South Africa.
- 5.1.2. **Physical address:** 89 Central Street, Houghton, Gauteng, 2198, South Africa.
- 5.1.3. **Postal address:** P O Box 851, Houghton, Gauteng, 2041, South Africa.
- 5.1.4. **Telephone number:** +27 11 728 8246.
- 5.1.5. **Website address:** <https://www.straussart.co.za>.
- 5.1.6. **E-mail address:** [info@straussart.co.za](mailto:info@straussart.co.za).
- 5.2. Physical address where Strauss & Co will receive legal service of documents:
- 5.2.1. **Physical address** as per clause 5.1.2.
- 5.2.2. **Registration number:** 1972/000019/07.
- 5.2.3. **Place of registration:** Republic of South Africa.
- 5.2.4. **Registration date:** 1972.
- 5.3. **Names of office bearers:** Ms Paola Genovese; Mrs Caro Wiese; Mr Frank Kilbourn; Mrs Susan Margaret Goodman; Mr Jack Ginsberg; Ms Carmen Khetiwe Nondumiso McClain; Mrs Jo-Ann Cindy Held; and Mr Willem Jordaan du Plessis.
- 5.4. **Main description of products sold on auction and private treaty:** Fine and decorative arts, books, wines, collectors' items, antiques, jewellery, watches and luxury items.
- ## 6. CONDITIONS SPECIFIC TO THE SALE OF WINE
- In addition to the above, the following conditions are applicable in instances concerning the sale of wine.
- 6.1. **Buyer conditions.** Only persons over the age of 18 years old, or over the age of legal majority in such person's jurisdiction, may enter bids for lots of wine and no person may enter a bid on behalf of another person who is not over the age of 18 years old, or over the age of legal majority in such person's jurisdiction. By placing a bid on wine, the bidder confirms that he/she is over the age of 18 years, or over the age of legal majority in such person's jurisdiction. Any wine delivered to a buyer must be received by a person who is over the age of 18 years, or over the age of legal majority in such person's jurisdiction. If upon delivery of a lot consisting of wine no person above the age of 18 years, or above the age of legal majority in such person's jurisdiction, is available to accept delivery of the wine, the wine shall be returned to the storage facility referred to in clause 6.5.1 at the buyer's expense.
- 6.2. **Warranties**
- 6.2.1. The seller warrants, in addition to all other representations and warranties given in these general conditions of business, that he is in possession of a valid liquor licence (to the extent that he is required by law to be in possession of a liquor licence) and is entitled to sell all lots of wine offered for sale. The seller agrees to indemnify and keep Strauss & Co its officers, directors, employees, agents and the buyer indemnified against any loss or damage suffered by either of them as a result of a failure by the seller to be properly licensed (to the extent that it is required to be licensed) and entitled to sell liquor in accordance with the laws of the Republic of South Africa.
- 6.2.2. Neither the seller nor Strauss & Co gives any warranty or representation as to the origin, age, genuineness, cork condition, content or labelling of any wine, or how any wine has been cellared, if at all.
- 6.3. **Bottles sizes.** All wine bottle sizes as described in a catalogue have the following meanings:
- 6.3.1. **half bottle** – 375 millilitre bottle of wine;
- 6.3.2. **standard** – 750 millilitre bottle of wine;
- 6.3.3. **magnum** – the equivalent of 2 standard bottles of wine;
- 6.3.4. **double-magnum** – the equivalent to 4 standard bottles of wine;
- 6.3.5. **jeroboam** – the equivalent to 6 standard bottles of wine; and
- 6.3.6. **imperial** – the equivalent to 8 standard bottles of wine.
- ## 6.4. Ullage of wines
- 6.4.1. For the purpose of this clause 6.4, **'ullage'** means the amount by which the level of a wine bottle falls short of being full.
- 6.4.2. Ullage levels may vary dependent on the age of the wine and old corks may fail during or after delivery of wine. To the extent possible, the level which a wine bottle may be short of being full will be described in the catalogue in accordance with the diagram provided in **Annexure B** below.
- 6.4.3. The ullage described in a catalogue by Strauss & Co is based on an inspection conducted by Strauss & Co prior to the sale of wine and such ullage, particularly in the case of older wines, may be subject to variation prior to or after the sale of that wine. Accordingly, the ullage and condition of wine as described in a catalogue is merely provided by Strauss & Co to assist buyers in determining the price of wine and therefore, under no circumstances do Strauss & Co warrant the accuracy of this information and shall not be held liable for the condition of wines or ullage which may differ from their description in a catalogue.
- 6.4.4. Save as provided for in clause 2.6 above, Strauss & Co shall under no circumstances accept any returns or make any refunds or adjustments to prices of sold wines which may result from the natural variations of ullages or poor conditions of cases, labels, corks or wines.
- ## 6.5. Storage and collection
- 6.5.1. Strauss & Co is not responsible for the storage of any wines. All wines are stored at a facility determined by the seller in conjunction with Strauss & Co. All costs relating to the storage of wine from date of storage until the 20th business day following the date of auction or the date of sale by way of private treaty shall, unless otherwise agreed to in writing between Strauss & Co and the seller, be born by the seller.
- 6.5.2. Upon payment of the purchase price in full and clear funds, the buyer will be issued with a written confirmation of receipt of such payment from Strauss & Co, which confirmation shall include the details of the storage facility agreed to between the seller and Strauss & Co in terms of clause 6.5.1.
- 6.5.3. The issuance of the written confirmation referred to in clause 6.5.2 shall constitute delivery of the lot to the buyer for all legal purposes.
- 6.5.4. Following the issuance of the written confirmation referred to in clause 6.5.2 the buyer must timeously collect (i.e. before the expiration of the 20th business day referred to in clause 6.5.1) the lot from the facility and must make relevant arrangements in that regard, all of which shall be for the buyer's own cost (unless otherwise agreed to in writing between Strauss & Co and the buyer).
- 6.5.5. Should the buyer fail to collect the lot by the end of the 20th business day following the date of auction or the date of sale by way of private treaty, unless otherwise agreed to in writing, the seller:
- 6.5.5.1. shall be entitled to charge the buyer storage costs from that date; and
- 6.5.5.2. may, in its sole and absolute discretion, move the lot to or within an affiliate or third-party warehouse and charge the buyer any transport and/or administration and/or other costs associated therewith.
- 6.5.6. Unless the buyer agrees otherwise with the storage facility, the buyer must collect an entire lot upon collection.
- 6.5.7. Nothing in this clause 6.5 shall be construed to limit any rights that Strauss & Co may have (to the extent applicable) under the general conditions of business, including, without being limited to, clauses 2.11, 2.12 and/or 3.11 above.
- ## 6.6. Option to buy parcels
- 6.6.1. For the purposes of this clause 6.6, a **'parcel'** shall mean several lots of the same wine, being of the identical lot

size, bottle size and description.

6.6.2. When bidding for a parcel, the bidding will commence on the first lot of the parcel and the successful buyer of that lot of the parcel shall be entitled to take some or all of the remaining lots in the parcel at the same hammer price.

6.6.3. If the buyer of the first lot of a parcel does not take any further lots in the parcel, as specified in clause 6.6.2, the remaining lots of the parcel shall be sold in accordance with the same process referred to in clause 6.6.2.

6.6.4. This process shall be continued by the auctioneer until such time that there are no lots in the parcel remaining for sale, all of which shall be handled by the auctioneer in its sole and absolute discretion.

## 7. CONDITIONS SPECIFIC TO ONLINE AUCTIONS, LIVE BROADCAST AUCTIONS AND THE IMMEDIATE-TO-PURCHASE PLATFORM

### 7.1. General

7.1.1. In addition to the general conditions of business, which are applicable to all online auctions, live broadcast auctions and any sales via the immediate-to-purchase platform, unless specifically varied in terms of this clause 7, the following are the terms and conditions (the 'online terms') under which (a) a user may use the website and any co-branded websites of Strauss & Co at <https://www.straussart.co.za/>, (b) a bidder may take part in an online auction or a live broadcast auction, and/or (c) a bidder may make use of the immediate-to-purchase platform. By accessing and using the website, registering for a live broadcast auction or using the immediate-to-purchase platform, the user and/or the bidder, as the case may be, accepts and agrees to be bound, without modification, limitation or qualification, by the general conditions of business and the online terms. Strauss & Co may, in its sole and absolute discretion, modify or revise the general conditions of business and/or the online terms at any time. The user and/or the bidder, as the case may be, is bound by any such modification or revision.

7.1.2. If the user does not agree to any of the general conditions of business or the online terms, the user should not enter, view or make use of the website, take part in live broadcast auctions or enter, view or make use of the immediate-to-purchase platform.

7.1.3. Specific rules, in addition to the general conditions of business and the online terms, are provided with respect to transactions conducted on or in connection with the website, and other rules may be provided for the use of certain other items, areas or services provided on or in connection with the website, and the user agrees to be bound by such rules.

7.1.4. The user agrees that he/she shall be liable for any successful purchase or bid sent from his/her account while logged into the website and/or the online auction portal.

7.1.5. The bidder shall only be able to execute a bid on a lot that is sold by way of online auction within the timeframes determined by Strauss & Co in its sole and absolute discretion.

7.1.6. If any online auction, live broadcast auction or sale of a lot via the immediate-to-purchase platform is affected by any connectivity, technical, software or related issues, Strauss & Co shall be entitled in its sole and absolute discretion to: (i) extend the duration of any auction / sale; (ii) withdraw or reoffer lots for sale; (iii) to accept and refuse bids; (iv) to reopen the bidding on any lots; and/or (v) take any other action to protect the interests of the sellers, the bidders and/or the buyers.

### 7.2. Online Auctions

7.2.1. Only persons who are legally entitled to do so are permitted to place a bid on the website and/or the online auction portal.

7.2.2. By placing a bid, the user represents and warrants that:

7.2.2.1. the user is legally capable of entering into binding contracts or is duly assisted by his parent or guardian; and

7.2.2.2. by doing so, the user accepts that Strauss & Co will rely on the user's representation and warranty that the user has unfettered legal capacity and/or authority to contract.

7.2.3. The contract between the buyer and the seller of any lot

sold in terms of an online auction shall be deemed to be concluded upon acceptance by Strauss & Co of the bid 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. Where a lot remains unsold, no contract of sale is concluded.

7.2.4. 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 Consumer Protection Act, 2008 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 the bid.

7.2.5. Strauss & Co shall be entitled within its sole and absolute discretion to deny any user access to the website and/or the online auction portal and shall furthermore be entitled to de-register any user who has registered to use the website and/or the online auction portal should Strauss & Co suspect that such user is not a genuine bidder, buyer, seller or user of the website and/or the online auction portal, may be acting illegally, fraudulently or in bad faith or intends to misuse, disrupt or interfere with the auctions or will breach or has breached the general conditions of business and/or online terms. Strauss & Co shall not be liable for any losses or claims of whatsoever nature arising from any denial of access to the website and/or the online auction portal or user de-registration as contemplated in this clause 7.2.5.

7.2.6. Strauss & Co shall be entitled within its sole and absolute discretion to determine the starting bid in respect of each lot offered for sale by means of an online auction.

7.2.7. In the event that the buyer does not elect to make use of any of the delivery options provided for on the website and/or the online auction portal, the buyer shall be and remain responsible for any removal, storage, or other charges, including, without limitation, handling fees (if any), for any lot and must, subject to the provisions of clause 6, at his own expense ensure that the lot purchased is removed immediately after the auction (unless otherwise agreed to between Strauss & Co and the buyer), provided that the purchase price has been paid in full.

7.2.8. Should a bidder execute a higher bid in respect of any lot sold by way of an online auction within the last 5 minutes before the auction closes, all bidders who have placed a bid for such lot before such higher bid has been executed, shall be allowed to continue bidding on such lot, notwithstanding that the auction has closed, for such extended period which shall end at such time when no bid has been executed within 5 minutes of the last bid being executed during the extended period.

7.2.9. 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) shall be determined at Strauss & Co's sole and absolute discretion, and in such a manner that Strauss & Co deems fair, reasonable and appropriate.

### 7.3. Immediate-To-Purchase Platform

7.3.1. Only persons who are legally entitled to do so are permitted to purchase lots via the immediate-to-purchase platform.

7.3.2. By purchasing a lot via the immediate-to-purchase platform, the user represents and warrants that:

7.3.2.1. the user is legally capable of entering into binding contracts or is duly assisted by his parent or guardian; and

7.3.2.2. by doing so, the user accepts that Strauss & Co will rely on the user's representation and warranty that the user has unfettered legal capacity and/or authority to contract.

7.3.3. The contract between the buyer and the seller of any lot sold via the immediate-to-purchase platform shall be deemed to be concluded upon payment of the sale price. 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. Where a lot remains unsold,

no contract of sale is concluded.

7.3.4. Strauss & Co shall be entitled within its sole and absolute discretion to deny any user access to the immediate-to-purchase platform and shall furthermore be entitled to de-register any user who has registered to use the immediate-to-purchase platform should Strauss & Co suspect that such user is not a genuine bidder, buyer, seller or user of the immediate-to-purchase platform, may be acting illegally, fraudulently or in bad faith or intends to misuse or will breach or has breached the general conditions of business and/or online terms. Strauss & Co shall not be liable for any losses or claims of whatsoever nature arising from any denial of access to the immediate-to-purchase platform or user de-registration as contemplated in this clause 7.3.4.

7.3.5. The price reflected on the immediate-to-purchase platform in respect of any lot offered for sale on the immediate-to-purchase platform shall be the sale price.

7.3.6. In the event that the buyer does not elect to make use of any of the delivery options provided for on the immediate-to-purchase platform, the buyer shall be and remain responsible for any removal, storage, or other charges, including, without limitation, handling fees, for any lot and must at his own expense ensure that the lot purchased is removed immediately after the sale of the lot (unless otherwise agreed to between Strauss & Co and the buyer), provided that the sale price has been paid in full.

### 7.4. Use of the website

7.4.1. A user is responsible for the user's own communications on the website and is responsible for the consequences of its posting. While using the website, a user may not:

7.4.1.1. post any material on the website in terms of which the user 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;

7.4.1.2. 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;

7.4.1.3. 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;

7.4.1.4. post advertisements or solicitations of business;

7.4.1.5. post or transmit any chain letters or pyramid schemes;

7.4.1.6. impersonate another person or entity; and

7.4.1.7. intentionally or unintentionally violate any applicable South African or international law while using the website.

7.4.2. If notified by a user or any third party of any communication on the website or other public platform that allegedly does not conform to any provision of the general conditions of business or online 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 from its website and/or to deny the relevant user access as set out in clause 7.2.5.

7.4.3. 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, from its website and/or social media platforms in Strauss & Co's sole and absolute discretion.

7.4.4. 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.

7.4.5. The user may provide a link to the website in its communications, provided that the user will only provide a link to the website's homepage and will not replicate any particular page, including the homepage. When linking to the website, the user confirms and agrees that it will



comply and ensure compliance (mutatis mutandis) with the requirements of this clause 7.

7.4.6. Although every effort will be made to have the website available and fully operational at all times, the website may become unavailable or not fully operational due to maintenance or repairs, loss of connectivity, software malfunction or some other form of interruption. Strauss & Co does not warrant against nor will it be held liable for such unavailability and/or operational difficulties and is hereby indemnified from any loss, damage, claims, costs or penalties incurred by a user, bidder or seller as a result of such unavailability and/or operational difficulties.

#### 7.5. Registration, Passwords and Signatures

7.5.1. The user agrees to: (a) provide true, accurate, current and complete information about the user as prompted by any registration form that the user may fill out on the website (such information being the **'registration data'**) and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete. If the user provides any registration data that is untrue, inaccurate, not current or incomplete, or Strauss & Co has grounds to suspect that such registration data is untrue, inaccurate, not current or incomplete, Strauss & Co has the right to suspend or terminate the user's account and refuse any and all current or future use of the website (or any portion thereof).

7.5.2. The user may receive a password and/or account designation, or a digital signature upon completing the registration process on the website. The user is responsible for maintaining the confidentiality of any such password, digital signature and account, and is fully responsible for all activities that occur under the user's password, digital signature or account. The user agrees to (a) immediately notify Strauss & Co of any unauthorised use of the user's password, digital signature or account or any other breach of security, and (b) ensure that the user exits / logs out from its account at the end of each session. Strauss & Co cannot and will not be liable for any loss or damage arising from the user's failure to comply with this clause 7.5.2.

7.5.3. Strauss & Co does not knowingly collect personal information from children under the age of 18, or under the age of legal majority in such person's jurisdiction, through the website. If the user is under the age of 18, or under the age of legal majority in such person's jurisdiction, the user is requested not to give Strauss & Co any personal information. Strauss & Co encourages parents and legal guardians to monitor their children's internet usage and to help enforce its privacy policy by instructing their children to never provide personal information through any website without their permission. If the user has reason to believe that a child under the age of 18, or under the age of legal majority in such person's jurisdiction, has provided personal information to Strauss & Co, the user is requested to contact Strauss & Co, in which event Strauss & Co will endeavor to delete such information from its databases.

#### 7.6. Malicious Software and Offences

7.6.1. The user warrants that:

7.6.1.1. the user 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;

7.6.1.2. 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 information technology systems which may cause any form of technological harm or any other form of harm in any manner or respect;

7.6.1.3. the user will not use any robot, spider, scripts, service, software or any other automatic or manual device, tool, or process (a) for the purpose of compiling information regarding the identification, address or other attributes of any of Strauss & Co's users, bidders, sellers or buyers; or (b) to recreate in original or modified form any substantial portion of the website; or (c) to data mine or scrape any of the content on the website; or (d) otherwise access or collect any of the content, data, or information from the website using automated means;

7.6.1.4. the user will not: (a) use services, software or any manual or automatic device, tool, or process to circumvent any restriction, condition, or technological measure that controls access to the website in any way, including overriding any security feature or bypassing or circumventing any access or use controls of the website; or (b) cache or archive any content; or (c) do anything that would impose an unreasonable or disproportionately large load on the website; or (d) do anything that may disable, damage or change the appearance of the website or interfere or attempt to interfere with the proper functioning of the website or any transactions being conducted on or in connection with the website.

7.6.2. Any breach of this clause 7.6 regarding malicious software and offences 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 other personal information of the user.

7.6.3. 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 clauses 7.6.1.2, 7.6.1.3 and 7.6.1.4 which may infect any user's computer or device, computer equipment, data or any other proprietary material where such loss is or may be attributed to the user's use of the website or downloads received from the website.

7.6.4. The user warrants that the user will not use the website in any manner that will contravene any applicable law or cause any annoyance, unnecessary anxiety or inconvenience to any person.

#### 7.7. The content on the website

7.7.1. 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 the user allows its minor child to use any of its devices, it is the user's responsibility to determine whether any of the services, content and subject matter displayed on the website is inappropriate for the user's child, and to control the user's child's use of its devices and access to the website. If the user finds offensive content of the type referred to in this clause 7.7.1, the user should not use the website.

7.7.2. The contents of the website, such as text, graphics, images, audio, video, data, coding, scripts, computer programs and other material (**'material'** or **'materials'**), are protected by copyright laws and are owned or controlled by Strauss & Co or by third parties that have licensed their material to Strauss & Co. Strauss & Co authorises the user to view and download a single copy of the material solely for the user's personal, non-commercial use, or solely for purposes of facilitating a transaction with Strauss & Co. The use of any software that is made available for downloading from the website (**'software'**) is governed by the terms of the software license agreement accompanying such software (the **'license agreement'**), and is conditional on the user's agreement to be bound by the terms of the license agreement. All rights in and to the material not expressly granted to the user in the general conditions of business are reserved. Neither the availability of, nor anything contained within the website shall be construed as conferring any license under any of Strauss & Co's or any third party's intellectual property rights, other or further than as expressly provided in this clause 7.7.2, whether by implication, estoppel or otherwise.

7.7.3. Unauthorised use of the material may violate copyright, trademark, and other laws. The user may not sell, prepare derivative works based on or modify the material (including, without limitation, preparation of summaries of the material or 'thumbnails' of any images therein), or reproduce, publicly display, publicly perform, distribute, or otherwise use the material in any way for any public or commercial purpose. The use of the material

or any portion thereof on any other website, or in any publication, database, catalogue or compilation, or in a networked computer environment for any purpose other than personal browsing of the website without the express prior written permission of Strauss & Co is strictly prohibited. With respect to any copy the user makes of the material within the scope of the limited personal licence granted herein, the user must retain therein, unmodified and unobscured, any and all copyright and other proprietary notices contained in the original material. Some of the material may contain digital 'watermarks' to indicate their source and ownership. The user agrees not to attempt to remove, deactivate, reverse engineer, modify, tamper with or obscure any such watermarks. The trademarks, logos and service marks (the **'marks'**) displayed on the website are owned by Strauss & Co or third parties. The user is prohibited from using the marks without the express, prior written permission of Strauss & Co or such third party. If the user would like information about obtaining Strauss & Co's permission to use the material on the user's website, the user is required to email [info@straussart.co.za](mailto:info@straussart.co.za).

7.7.4. If a user violates any provision of the general conditions of business, that user's permission to use the material and the website automatically terminates and the user must immediately destroy any copies made by the user of the material.

7.7.5. Notices of claims of copyright infringement should be directed to Strauss & Co at the address set out in clause 5.

7.7.6. 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.

#### 7.8. Privacy

7.8.1. Strauss & Co is committed to maintaining the user's privacy. Strauss & Co does, however, gather certain personal information that the user provides to the website. For information regarding Strauss & Co's policies for using a user's personal information please read our privacy policy.

7.8.2. When a user logs onto the website using the user's 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 such period as may be prescribed under applicable law.

7.9. **Use of the Auction or Commerce Portions of the Website.** The auction or commerce portions of the website are available only to clients of Strauss & Co. This excludes in all cases minors (persons who have not reached their 18th birthday, or the age of legal majority in such person's jurisdiction).

7.10. **Export Control of Software and Technical Data.** The following applies with respect to software and other material of a technical nature that the user may obtain from the website (other requirements set forth in clause 2.7 to the general conditions of business may apply with respect to items offered for sale, purchased or sold): The United States (**US**) and other foreign countries controls the export of such products. The user agrees to comply with such restrictions and not to export or re-export the material (including software) to countries or persons prohibited under the export control laws. By downloading the material (including software), the user agrees that it is not in a country where such export is prohibited and that the user is not on the list of Specially Designated Nationals and Blocked Persons maintained by the Organisation for Economic Co-operation and Development (**OFAC**), any other OFAC sanctions lists, the Consolidated List of Financial Sanctions Targets, the Consolidated List of Persons, Groups and Entities Subject to European Union (**EU**) Financial Sanctions maintained by the EU, or any other list of targeted persons, entities, groups or bodies issued by or on behalf of the United Nations, US, EU, United Kingdom (or any other member state of the EU); (ii) that is, or is part of, a government of any country or other territory subject to a general export, import, financial or investment embargo under any anti-bribery or corruption legislation (**'sanctioned territory'**); (iii) owned or controlled by, or acting on behalf of, any of the foregoing; (iv) incorporated or located within

or operating from or doing business in a sanctioned territory; or (v) otherwise targeted under any anti-bribery and corruption legislation.

### 7.11. Liability Disclaimers

7.11.1. 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 is posted merely for guidance purposes only. The user makes use of any such information at the user's own risk and in the user's 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.

7.11.2. Neither Strauss & Co nor any of our agents or representatives make or give any representations, guarantees or warranties of any kind (whether express or implied) as to the suitability, usability, accuracy or functionality of the auctions on the website.

7.11.3. Notwithstanding anything to the contrary contained in the general conditions of business, Strauss & Co shall have no liability for any compensation, loss, damage, cost, claim or penalty of whatsoever nature, including direct, indirect, special, and consequential damages; loss of profits, commercial or economic loss; whether caused by latent or patent defects in the website, the access or use of the website and content contained on the website or otherwise, including in respect of any damage to any information technology system or device or loss of data that results from such activities; and any other loss of whatsoever nature, however arising out of or in connection with the general conditions of business.

7.11.4. The user acknowledges that the website may be subject to malfunctions and delays inherent in the use of the internet and electronic communications. Strauss & Co HEREBY DISCLAIMS ANY LIABILITY FOR ANY DELAY IN, THE UNAVAILABILITY OR INACCESSIBILITY OF THE WEBSITE. Neither Strauss & Co, nor any of its suppliers, contractors and sponsors assume any liability whatsoever for any direct or indirect loss or damage arising from electronic communications errors or failures, technical hardware and software failures, lost, unavailable or delayed network connections or failed or incomplete electronic transmissions which may limit the user's ability to participate in the auctions.

7.11.5. Strauss & Co, its officers, directors, employees and agents shall not be held liable for and is/are hereby indemnified from any direct or indirect loss or damage incurred as a result of the user's failure to provide Strauss & Co with accurate information or to keep the user registration and account information secure and/or arising from the unauthorised use of the user's log-in credentials, passwords or digital signature.

7.12. **Indemnity.** The user agrees to defend, indemnify, and hold harmless Strauss & Co, its officers, directors, employees and agents, from and against any losses, liabilities, damages, costs, and expenses, including, without limitation, reasonable legal, expert and accounting fees, incurred in connection with any claims, actions or demands alleging or resulting from the user's use of the website, the material (including software), the user's breach of the general conditions of business, or the user's violation of law or of the rights of any third party. Strauss & Co shall provide notice to the user promptly of any such claim, suit, or proceeding and, if it is one asserted by a third party, shall provide reasonable assistance, at the user's expense, in defending any such claim, suit or proceeding.

## ANNEXURE A – EXPLANATION OF CATALOGUE TERMS

The terms used in a catalogue have the meanings ascribed to them below. Any statement as to the authorship, attribution, origin, date, age, provenance and condition is a statement of opinion and should not be taken as a statement of fact. Please read Strauss & Co's general conditions of business which can be obtained from the website, with particular reference to clause 2 thereof. Bidders are advised to inspect lots themselves. Condition reports are available on request and can also be obtained from the website.

While the use of these terms and their definitions are based upon careful study and represent the opinion of specialists, neither Strauss & Co nor the seller assumes any risk, liability and/or responsibility for the authenticity of authorship of any lot in a catalogue described by these terms.

### 'Name of the artist ...'

In Strauss & Co's opinion a work by the artist.

### 'Attributed to ...'

In Strauss & Co's opinion probably a work by the artist in whole or in part.

### 'Studio of ...'

In Strauss & Co's opinion a work executed in the artist's studio but not necessarily under his supervision.

### 'Circle of ...'

In Strauss & Co's opinion a work by an as yet unidentified hand, closely associated with the named artist and showing his influence.

### 'Follower of ...'

In Strauss & Co's opinion a work executed in the artist's style but not necessarily his pupil.

### 'Manner of ...'

In Strauss & Co's opinion a work executed in the artist's style and of a later date.

### 'After ...'

In Strauss & Co's opinion a copy of known work by the artist but of any date.

### 'signed ..., dated ..., inscribed ...'

In Strauss & Co's opinion the work has been signed, dated or inscribed by the artist.

### 'Bears a signature ..., dated... and/or inscribed ...'

In Strauss & Co's opinion the signature, date and/or inscription are by a hand other than that of the artist.

Titles given by Strauss & Co are descriptive, unless otherwise stated.

## ANNEXURE B - ULLAGE DESCRIPTION KEY

