

TERMS AND CONDITIONS OF BUSINESS

1. DEFINITIONS

- 1.1. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
- 1.1.1. 'Artistic work' means:
- 1.1.1.1. any drawing, picture, painting, collage, sculpture, ceramic, print, engraving, lithograph, screen print, etching, monotype, photograph, digitally printed photograph, video, DVD, digital artwork, installation, artist's book, tapestry, artist designed carpet, performative artwork;
- 1.1.1.2. any work of craftsmanship and/or artwork which does not fall under 1.1.1.1 as set out in the Copyright Act No. 78 of 1978.
- 1.1.2. 'Aspire' means Lixotone Proprietary Limited t/a Aspire Art Auctions (Registration No. 2016/074025/07) incorporated under the laws of South Africa;
- 1.1.3. 'Auction' means any sale whereby a Lot is put up for sale by any Auction by Aspire;
- 1.1.4. 'Auctioneer' means the representative of Aspire conducting the Auction;
- 1.1.5. 'Bidder' means any person who makes an offer to buy a particular Lot (whether by Private Treaty, Auction or otherwise) and includes the Buyer of any such Lot;
- 1.1.6. 'Buyer' means any Bidder who makes a bid or offer for a Lot which has been offered for sale (whether by Private Treaty, Auction or otherwise) and which bid or offer has been accepted by Aspire;
- 1.1.7. 'Business day' means any day other than a Saturday, Sunday, or any other official public holiday in South Africa;
- 1.1.8. 'Buyer's premium' means the commission payable by the Buyer to Aspire on the sale of a Lot at a rate of:
- 1.1.8.1. 12% (twelve per cent) calculated on the amount of the Hammer price in excess of R20, 000 (twenty thousand rand), plus any VAT payable on that amount;
- 1.1.8.2. 15% (fifteen per cent) calculated on the amount of the Hammer price not exceeding R20, 000 (twenty thousand rand) plus any VAT payable on that amount;
- 1.1.9. 'Catalogue' means any brochure, price-list, condition report or any other publication (in whatever medium, including electronic), published by Aspire for the purpose of or in connection with any Auction;
- 1.1.10. 'CPA' means the Consumer Protection Act 68 of 2008 as amended from time to time;
- 1.1.11. 'Forgery' means any imitation made with the intention of misrepresenting the authorship, origin, date, age, period, culture, and/or source of any Lot;
- 1.1.12. 'Hammer price' means the bid or offer made by the Buyer for any Lot that is finally accepted by the Auctioneer at a sale of that Lot;
- 1.1.13. 'Lot' means any item or items to be offered for sale as a unit and identified as such by Aspire for sale by way of Auction or by Private Treaty. Each Lot is, unless indicated to the contrary, regarded to be the subject of a separate transaction;
- 1.1.14. 'Parties' means the Bidder, the Buyer, the Seller and Aspire;
- 1.1.15. 'Prime rate' means the publicly quoted base rate of interest (percent, per annum compounded monthly in arrear and calculated on a 365 (three hundred and sixty-five) day year, irrespective of whether or not the year is a leap year) from time to time published by Nedbank 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;
- 1.1.16. 'Privacy Policy' means the privacy policy of Aspire attached hereto marked Annexure A;
- 1.1.17. 'Private Treaty' means the sale of any Lot at a previously agreed upon price between the Buyer and the Seller (that is, not by way of Auction);
- 1.1.18. 'Purchase price' means the Hammer price plus the Buyer's premium. In case of any Lot being 'dagged', VAT shall be calculated on the sum of the full Hammer

price and the Buyer's premium. The Purchase price does not include insurance or transport costs. The relevant Lot will remain insured at Aspire's expense for a period of 24 hours after the fall of the Auctioneer's hammer. After the relevant Lot has been collected by the Buyer (or any other person on behalf of the Buyer), the responsibility for, and costs of, insurance for the Lot shall pass to the Buyer. Following the completion of the Auction, the Purchase price does not include any transport, or insurance that may be required by the Buyer;

- 1.1.19. 'Recoverable expenses' includes all fees, taxes (including VAT) and any other costs or expenses incurred by Aspire for restoration, conservation, framing, glass replacement and transport of any Lot from a Seller's premises to Aspire's premises or for any other reason whatsoever, as agreed between Aspire and the Seller;
- 1.1.20. 'Reserve' means the minimum Hammer price (if any) at which a Lot may be sold at an Auction as agreed (whether in writing or otherwise) and in confidence between the Seller of that Lot and Aspire;
- 1.1.21. 'Sale' means the sale of any Lot (whether by way of Auction, Private Treaty or otherwise) and 'sell' and 'sold' shall have a corresponding meaning;
- 1.1.22. 'Sale proceeds' means the amount due and payable to the Seller for the sale of the relevant Lot, made up of the Hammer price less the applicable Seller's commission and all Recoverable expenses;
- 1.1.23. 'Seller' means the person named as the Seller of any Lot, being the person that offers the Lot for sale;
- 1.1.24. 'Seller's commission' means the commission payable by the Seller to Aspire on the sale of a Lot which is payable at a rate of:
- 1.1.24.1. 12% (twelve per cent) calculated on the amount of the Hammer price in excess of R20, 000 (twenty thousand rand) plus any VAT payable on that amount (if any);
- 1.1.24.2. 15% (fifteen per cent) calculated on the amount of the Hammer price not exceeding R 20, 000 (twenty thousand rand) plus any VAT payable on that amount;
- 1.1.25. 'South Africa' means the Republic of South Africa;
- 1.1.26. 'Terms of Business' means the terms and conditions of business set out in this document;
- 1.1.27. 'VAT' means value added tax levied in terms of the Value Added Tax Act, 1991 as amended from time to time and includes any similar tax which may be enforced in place of VAT from time to time.

2. INTRODUCTION

- 2.1. Aspire carries on the business of fine art Auctioneers and consultants on the Lots provided by the Sellers. As fine art Auctioneers, Aspire generally acts in the capacity of agent for the Seller.
- 2.2. Set out in this document are the terms and conditions governing the contractual relationship between Aspire and prospective Bidders, Buyers and Sellers. This document must be read together with:
- 2.2.1. sale room notices published by Aspire pertaining to the condition, description and/or authenticity of a Lot; and
- 2.2.2. any announcement made by Aspire and/or the Auctioneer prior to or on the proposed day of sale of any Lot,
- provided that no changes to the terms set out in a Property Receipt Form shall be made without the prior agreement of Aspire and the Seller.

3. LEGISLATIVE FRAMEWORK

Every Auction is to be governed by section 45 of the CPA and the rules of Auction (the 'Rules') as promulgated by the Minister of Trade and Industry under the Regulations dated 23 April 2010 in Government Gazette No. 33818 on 1 April 2011 ('Regulations') and any further amendments and/or variations to these Rules and Regulations.

4. GENERAL TERMS OF BUSINESS

- 4.1. Every bid shall constitute an offer which will lay open for acceptance by the Auctioneer. Acceptance of the highest bid made shall be indicated by the knock down of the hammer or, in the case of sale by Private Treaty, the acceptance of the offer by Aspire.
- 4.2. In bidding for any Lots, all Bidders confirm that they have not been induced into making any bid or offer by any representative of the Seller and/or Aspire.
- 4.3. It is the sole responsibility of all prospective Buyers to inspect and satisfy themselves prior to the Auction or Private Treaty as to the condition of the Lot and satisfy themselves accordingly that the Lot matches any description given to them (whether in a Catalogue or otherwise).
- 4.4. All descriptions and/or illustrations set out in a Catalogue exist as guidance for the prospective Bidder and do not contain conclusive information as to the colour, pattern, precise characteristics or the damage to a particular Lot to be sold by way of Auction or Private Treaty.
- 4.5. Neither Aspire nor any of its servants, employees, agents and/or the Auctioneer shall be liable, whether directly or indirectly, for any errors, omissions, incorrect and/or inadequate descriptions or defects or lack of authenticity or lack of ownership or genuineness in any goods Auctioned and sold which are not caused by the wilful or fraudulent conduct of any such person.
- 4.6. Aspire shall not be held responsible for any incorrect, inaccurate or defective description of the goods listed for sale in the Catalogue or in any condition report, publication, letter, or electronic transmission or to the attribution, origin, date, age, condition and description of the goods sold, and shall not be responsible for any loss, damage, consequential damages and/or patrimonial loss of any kind or nature whatsoever and howsoever arising.
- 4.7. No warranty on any aspect of any Lot (save for those expressly provided for by the Seller in terms of paragraph 16), whether express, implied or tacit is given by Aspire, its servants, its agents, or its employees, or the Auctioneer or the Seller or the Buyer of any Lot shall be binding or legally enforceable.
- 4.8. Any Lot which proves to be a Forgery (which will only be the case if an expert appointed by Aspire for such purposes confirms this in writing) may be returned by the Buyer (as his sole remedy hereunder or at law) to Aspire within 7 (seven) days from the date of Auction or Private Treaty (as the case may be), in the same condition in which it was at the time of the Auction or accompanied by a statement of defects, the number of the Lot, and the date of the Auction or Private Treaty at which it was purchased. If Aspire is satisfied that the item is a Forgery and that the Buyer has and is able to transfer a good and marketable title to the Lot, free from any third-party claims, the sale will be set aside and any amount paid in respect of the Lot will be refunded, subject to the express condition that the Buyer will have no rights or claims against Aspire (whether under these Terms of Business, at law or otherwise) if:
- 4.8.1. the description in the Catalogue at the date of the sale was in accordance with the then generally accepted opinion of scholars and experts or fairly indicated that there was conflict of such opinion; or
- 4.8.2. the only method of establishing at the date of publication of the Catalogue that the Lot was a Forgery was by means of a scientific process not generally accepted for use until after publication of the Catalogue, or by a process which was unreasonably expensive or impractical.
- 4.9. Buyer's claiming (whether in contract, delict or otherwise) under paragraph 4.8 will be limited to the amount paid for a particular Lot and will not extend to any loss or damage of whatsoever nature suffered, or expense incurred by him/her;
- 4.10. The benefit of paragraph 4.8 will not be assignable and will rest solely and exclusively with the Buyer who, for the purpose of this condition, will be the only person to whom the original invoice is made out by Aspire in respect of the Lot sold.

- 4.11. Aspire reserves its right, to refuse admission to any person to its premises or any other premises at which an Auction is to be conducted.
- 4.12. Any information pertaining to Bidders and Sellers which has been lawfully obtained for the purposes of the Auction and the implementation of any resultant sale shall be kept for purposes of client administration, marketing and as otherwise required by law. The Bidder and the Seller agree to the processing of their personal information and the disclosure of such information to third parties for the aforementioned purpose. The Seller's identity will not be disclosed for purposes other than what is reasonably required for client administration or as required by law. Please see the Privacy Policy for more information on this.
- 4.13. Aspire has the sole and absolute discretion, without having to give any reasons therefore, to refuse any bid, withdraw or reoffer Lots for Auction (including after the knock down of the hammer), cancel any sale if the Auctioneer and/or Aspire believes that there may be an error or dispute of any nature whatsoever, and shall have the rights, as it deems fit, to divide any Lot, to combine any two or more Lots or to put up any Lot for Auction again.
- 4.14. For any notice required to be given in connection with these Terms of Business:
- 4.14.1. Aspire will first attempt to make contact by telephone, followed by email, should there be no response, then contact will be attempted by registered post. Any notice that effects the details of the sale of a Lot will be agreed to between Aspire and the Seller prior to the sale of said Lot. If, for any reason whatsoever, Aspire is unable to make contact with a Seller, the relevant Lot will be withdrawn from the sale;
- 4.14.2. if given by Aspire, shall be delivered by hand, sent by registered post or by email to the address provided to Aspire by the relevant addressee as being the domicilium citandi et executandi of that addressee. Notice shall be deemed to have been received by the person who is required to receive such notice:
- 4.14.2.1. on the date of delivery, if delivered by hand or email;
- 4.14.2.2. on the fourth (4th) day from the date of posting, including the date of posting if posted by prepaid registered post from within South Africa, which postage shall be deemed to have been sent on receipt of the post office proof of posting.
- 4.14.3. if given to Aspire, such written notification must be given to Aspire at its email address as published by Aspire from time to time, whether on any brochure, catalogue or its website.
- 4.15. The Seller submits to the non-exclusive jurisdiction of the South African courts. Each Auction and Private Treaty shall be governed in accordance with the laws of South Africa.
- 4.16. In the event that any provision of these Terms of Business is found by a court of competent jurisdiction to be unenforceable and of no effect, the remaining provisions of these Terms and Conditions shall not be affected by that determination and shall remain of full force and effect.
- 4.17. The Buyer and/or Seller, as the case may be, hereby pledges the goods either sold and/or bought as security to Aspire for all amounts which are owing to it.
- 4.18. Should either Party delay or not exercise their rights it shall not constitute a waiver of such rights or power. If a Party exercises their right or power, it shall not preclude such party from exercising any other right or power which they may have.
- 4.19. No variation, alteration, consensual termination, representation, condition, term or warranty, relaxation or waiver or release by Aspire, or estoppel against Aspire, or the suspension by Aspire, in respect of these Terms of Business, or any part thereof, shall be of any force or effect unless reduced to writing and signed by Aspire and the Buyer.
- 4.20. These Terms of Business constitute the entire agreement between the Parties.
- 4.21. The Buyer shall be responsible for the payment of Aspire's legal costs, calculated on the scale as between attorney and client incurred by Aspire in enforcing any of its rights or those of its principal whether such rights are exercised by way of legal proceedings or otherwise.
- 4.22. No Party shall be in breach of contract or liable for any loss of profit or special damages or damage suffered as a result of a force majeure or any other event which falls outside of the Parties' reasonable control. Notice must be given to all Parties if such an event occurs in order to enable the defaulting Party to remedy their performance. The occurrence of the aforementioned events will not excuse a Party from paying any outstanding amounts owed to any of the other Parties.
- ## 5. TERMS RELATING TO THE BUYERS
- 5.1. Any Buyer and/or Bidders must register his/her identity with Aspire before the commencement of an Auction in accordance with Chapter 1 (one) of the regulations in terms of the Financial Intelligence Centre Act, 2011, which requires the establishment and verification of identity published in Notice No. R. 1595 in Gazette No. 24176 of 20 December 2002.
- 5.2. Upon registration by the Bidder, the Bidder must acknowledge that they are aware of and agree to be bound by these Terms of Business. All Bidders shall be personally liable for their bids and offers made during any Auction and shall be jointly and severally liable with their principals if acting as agent.
- 5.3. Any person acting on behalf of a Bidder or Buyer may be required to produce evidence of his/her authority to so act satisfactory to Aspire in its discretion.
- 5.4. A Lot shall be sold to the highest bidder (regardless of the real value of the Lot). Any sale that requires a reserve shall be sold to the highest bidder either on or in excess of the Reserve.
- 5.5. No bid may be made for an amount which is lower than the fixed value set by the Auctioneer and any bid may be withdrawn prior to the hammer being struck down. It is the Auctioneer's discretion to accept or reject a bid that is lower than the standardised incremental amount set by the Auctioneer. The Auctioneer may refuse any bid which does not exceed the previous bid by at least 5% (five per cent) or any such percentage which in the opinion of the Auctioneer is required.
- 5.6. Any dispute which should arise regarding the validity of the bid, the identity of the Bidder or between more than one Bidder, shall be resolved at the sole discretion of the Auctioneer.
- 5.7. Each Bidder is deemed to be acting in their capacity as principal unless Aspire has acknowledged otherwise in writing prior to the commencement of the Auction.
- 5.8. All Bidders are encouraged to attend any Auction where a Lot is to be sold by Auction. Aspire will endeavour to execute any absentee, written bids and/or telephone bids, provided they are, in Aspire's absolute discretion, received in sufficient time and in legible form as required under these Terms of Business.
- 5.9. Any bids placed by telephone before an Auction are accepted at the sender's risk and must, if requested by Aspire, be confirmed in writing to Aspire before the commencement of the Auction. Any person who wishes to bid by telephone during the course of an Auction must make arrangements with Aspire at least 24 (twenty-four) hours before the commencement of the Auction. Aspire shall not be held liable for any communication breakdown or any losses arising thereof. The Buyer consents that any bidding may be recorded at the discretion of Aspire and consents to these Terms of Business.
- 5.10. The Buyer must make payment in full and collect the purchased Lot immediately after completion of the Auction. Following hand over of the Lot to the Buyer (or his representative), the full risk and title over that Lot shall pass to the Buyer, who shall henceforth be responsible for any loss of and/or damage to and/or decrease in value of any Lots purchased at the Auction or at a Private Treaty sale. Any Lot not collected immediately after the Auction will remain insured for 24 (twenty-four) hours after completion of the Auction. The Seller must be paid in full and the funds cleared before the Lot is handed over to the Buyer.
- 5.11. The collection of any Lot by a third party on behalf of a Buyer must be agreed with Aspire not later than the close of business on the day following the relevant Auction.
- ## 6. EXCLUSION OF LIABILITY TO BUYERS OR SELLERS
- 6.1. No Buyer or Seller shall be entitled to cede, delegate and/or assign all or any of their rights, obligations and/or interests to any third party without the prior written consent of Aspire in terms of these Terms of Business.
- 6.2. The Buyer accepts that neither Aspire nor the Seller:
- 6.2.1. shall be liable for any omissions, errors or misrepresentations in any information (whether written or otherwise) and whether provided in a Catalogue or otherwise) provided to Bidders, or for any acts omissions in connection with the conduct of any Auction or for any matter relating to the sale of any Lot, including when caused by the negligence of the Seller, Aspire, their respective employees and/or agents;
- 6.2.2. gives any guarantee or warranty to Bidders other than those expressly set out in these Terms of Business and any implied conditions, guarantees and warranties are excluded; and
- 6.2.3. without prejudice to any other provision of these general Terms of Business, any claim against Aspire and/or the seller of a Lot by a Bidder shall be limited to the Hammer price of the relevant Lot. Neither Aspire nor the Seller shall be liable for any indirect or consequential losses.
- 6.3. A purchased Lot shall be at the Buyer's risk in all respects from the knock down of the Auctioneer's hammer, whether or not payment has been made, and neither Aspire nor the Seller shall thereafter be liable for, and the Buyer indemnifies Aspire against, any loss or damage of any kind, including as a result of the negligence of Aspire and/or its employees or agents.
- 6.4. All Buyers are advised to arrange for their own insurance cover for purchased Lots effective from the day after the date of sale for the purposes of protecting their interests as Aspire cannot warrant that the Seller has insured its interests in the Lot or that Aspire's insurance cover will extend to all risks.
- 6.5. Aspire does not accept any responsibility for any Lots damaged by insect infestation, changes in atmospheric conditions or other conditions outside its control (including damage arising as a result of reasonable wear and tear). Aspire will be responsible for the replacement or repair costs for any frame and glass breakages resulting from the wilful or negligent conduct of any of Aspire's servants and agents.
- ## 7. GENERAL CONDUCT OF THE AUCTION
- 7.1. The Auctioneer remains in control of the Auction and has the absolute discretion to either withdraw or reoffer any Lots for sale, to accept and refuse bids and/or to reopen the bidding on any Lots should he/she believe there may be a dispute of whatever nature (including without limitation a dispute about the validity of any bid, or whether a bid has been made, and whether between two or more bidders or between the Auctioneer and any one or more bidders) or error of whatever nature, and may further take such other action as he/she deems necessary or appropriate. The Auctioneer shall commence and advance the bidding or offers for any Lot in such increments as he/she considers appropriate.
- 7.2. The Auction is to take place at the stipulated time and no delay shall be permitted to benefit a specific person who is not present but should be present at the Auction.
- 7.3. The Auctioneer shall be entitled to bid on behalf of the Seller up to one increment below the Reserve, where applicable.
- 7.4. A contract shall be concluded between the Buyer and

Seller once the Auctioneer knocks down the hammer and this shall be the Hammer price accepted by the Auctioneer (after the determination of any dispute that may exist). Aspire 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.

8. IMPORT, EXPORT, COPYRIGHT RESTRICTIONS, LICENSES AND QUALITY OF THE GOODS SOLD

- 8.1. Aspire and the Seller, save for those expressly set out in paragraph 16 of these Terms of Business, make no representation or warranties whether express, implied or tacit pertaining to the authenticity, quality, genuineness, condition, value, origin, ownership of any goods or whether express, implied or tacit as to whether any Lot is subject to import, export, copyright and licence restrictions. It is the sole responsibility of the Buyer to ensure that they acquire the relevant export, import licenses or copyright licenses prior to exporting or importing any Lots.
- 8.2. Aspire does not in any way undertake to ensure that the Buyer procures the necessary permits required under law, nor are they responsible for any costs incurred in obtaining a license (whether an application for such license was approved or not).
- 8.3. All Lots which incorporate any material originating from an endangered and/or protected species (including but not limited to ivory and bone) will be marked by a symbol in the description of the Lot in the Catalogue. Aspire does not accept responsibility for a failure to include these marks on the Lots. Any prospective Buyer is to ensure that they received the necessary permission from the relevant regulatory agents, specifically when importing and/or exporting the Lot. A Buyer will be required to acquire a permit from the Department of Nature Conservation prior to exporting the Lot as well as any other export license which may be required by law, including the licences required under the Convention of the International Trade in Endangered Species ("CITES"). Failure to obtain such permits shall not constitute a ground for the rescission of the sale.

9. ABSENTEE BIDS

- 9.1. Absentee bids are a service provided by Aspire upon the request of the Buyers. Aspire shall in no way be liable for any errors or omissions in such bidding process. The Purchase price of the Lots will be processed in the same manner as it would be in other bids.
- 9.2. Where two or more Buyers provide identical bids, the earliest will take precedence. When absentee bids occur by telephone they are accepted at the Buyer's risk, and must be confirmed prior to the sale by letter or e-mail to Aspire.
- 9.3. All absentee bids shall be registered with Aspire in accordance with Aspire's procedures and requirements not less than 24 (twenty-four) hours before the Auction and/or the Private Treaty sale. Aspire reserves its right to receive, accept and/or reject any absentee bids if the aforementioned time period has not been satisfied.
- 9.4. An absentee bidder must register his/her identity in the same way that any other would be required to under these Terms of Business.

10. RESCISSION OF SALE

If, within 7 (seven) days after the relevant Auction or Private Treaty sale, the Buyer makes a claim to rescind the sale due to Forgery and Aspire is satisfied that the claim is justified, Aspire reserves the right to rescind the sale and refund the Buyer any amounts paid to Aspire in respect of that sale and the Seller authorises Aspire to do so.

11. PAYMENT AND COLLECTION

- 11.1. The Buyer acknowledges that should Aspire be acting in a capacity as agent for the Seller of a particular Lot, then:

- 11.1.1. Buyer's premium shall be payable to Aspire on the sale of each Lot;
- 11.1.2. VAT may be payable on the full Hammer price and the Buyer's premium, if the Seller is a registered VAT vendor;
- 11.1.3. Aspire may also be entitled to a Seller's commission and/or any other agreed fees for that Lot.
- 11.2. Upon the knock down of the hammer and acceptance of the price by the Auctioneer, the Buyer shall, against delivery of the Lot, pay Aspire the Purchase price immediately after the Lot is sold and should Aspire require, the Buyer shall provide it with their necessary registration details, proof of identity and any further information which Aspire may require.
- 11.3. All foreign Buyers are required to make arrangement with their banks prior to the Auction date regarding Forex funds as Aspire will only accept payment in South African Rands. Any expenses incurred thereof shall be at the cost of the Buyer.
- 11.4. Unless otherwise agreed by the Parties, the Buyer shall make payment in full to Aspire for all amounts due and payable to Aspire (including the Purchase price of each Lot bought by that Buyer) on the date of sale (or on such other date as Aspire and the Buyer may agree upon in writing) in cash, electronic funds transfer ("EFT"), or such other payment method as Aspire may be willing to accept. Any cheque and/or credit card payments must be arranged with Aspire prior to commencement of the Auction. All credit card purchases are to be settled in full on the date of sale.
- 11.5. Ownership of a Lot shall not pass to the buyer thereof until Aspire has received settlement of the Purchase price of the respective Lot in full and the funds have cleared. Aspire shall not be obliged to release a Lot to the Buyer prior to receipt in full payment thereof. However, should Aspire agree to release a Lot to the Buyer prior to payment of the full Purchase price, ownership of such Lot shall not pass to the Buyer, nor shall the Buyer's obligations to pay the Purchase price be impacted, until such receipt by Aspire of the full Purchase price in cleared funds.
- 11.6. The refusal of any approval, licence, consent, permit or clearance as required by law shall not affect the Buyer's obligation to pay for the Lot.
- 11.7. Any payments made by a Buyer to Aspire may be applied by Aspire towards any amounts owing by the Buyer to Aspire on any account whatsoever and without regard to any directions of the Buyer or his agent. The Buyer shall be and remain responsible for any removal, storage, or other charges for any Lot and must at his own expense ensure that the Lot purchased is immediately removed after the Auction but not until payment of the total amount due to Aspire. All risk of loss or damage to the purchased Lot shall be borne by the Buyer from the moment when the Lot is handed over to the Buyer. Neither Aspire nor its servants or agents shall accordingly be responsible for any loss or damage of any kind, whether caused by negligence or otherwise, from date of the sale of the Lot, whilst the Lot is in their possession or control.
- 11.8. All packaging and handling of Lots is at the Buyer's risk and expense, will have to be attended to by the Buyer, and Aspire shall not be liable for any acts or omissions of any packers or shippers.
- 11.9. If the sale of any Lot is rescinded, set aside or cancelled by a lawful action of the Buyer, and Aspire has accounted to the Seller for the sale proceeds, the Seller shall immediately refund the full sale proceeds to Aspire, who will in turn refund the Purchase price to the Buyer. If there is no sale, there is no commission payable. However, if there are Recoverable expenses which have been incurred by Aspire, then the Seller will remain liable to pay these expenses to Aspire.
- 11.10. Any Lot which has been paid for in full but remains uncollected after 30 (thirty) days of the Auction, following written notice to the Buyer, the Lot then becomes the property of Aspire. Aspire may then resell this property at the best price it can obtain from a willing

and able Buyer. If Aspire resells this property it may deduct any expenses incurred in keeping this property from the proceeds of sale after having deducted its commission. Any shortfall arising from the resale shall be at the cost of the Buyer.

- 11.11. No credit shall be granted to the Buyer without prior consent from Aspire. Aspire shall exercise its discretion when granting credit to the Buyer, including the terms and conditions applicable to any such credit. Ownership of the Lot shall not pass until such time as the full Purchase price is paid along with any VAT thereon and any other necessary amounts. Should any request for credit be proposed by a potential Buyer on a specific Lot, these terms will be relayed to the Seller and only accepted if agreed by the Seller and Aspire. If credit is granted by Aspire without agreement from the Seller, that is an arrangement between the Buyer and Aspire, and the risk for this credit falls to Aspire and not the Seller.

12. OWNERSHIP

- 12.1. Until such time that the total Purchase price and hand over has taken place, ownership of the purchased goods shall vest with the principal. Payment of the Purchase price includes the payment of any Buyer's premium to which Aspire is entitled along with VAT or any other amount required by these Terms of Business.
- 12.2. The collection of the goods/Lots shall be done by the Buyer at their own cost immediately after the Auction has taken place, unless otherwise agreed upon in writing between the Buyer and Aspire.
- 12.3. Aspire shall not provide any assistance of any nature whatsoever to the Buyer in removing the goods from the premises of Aspire upon the completion of the Auction. However, should Aspire choose to assist with the removal then any Aspire employee or servant shall be deemed to be agents of the Buyer and Aspire shall not be liable for any damage incurred as a result of removing the goods from the premises.

13. BREACH BY THE BUYER

- 13.1. In the event that the Buyer breaches any provision of these Terms of Business, fails to make payment of the full Purchase price or fails to collect the goods bought as provided for in these Terms of Business, Aspire in exercising its discretion and as agent for the Seller will, without any prejudice to any other rights it may have in law, be entitled to exercise one or more of the following remedies set out below. Aspire may:
 - 13.1.1. institute proceedings against the Buyer for the non-payment of and/or any damages incurred as a result of the breach of contract;
 - 13.1.2. cancel the sale of that Lot or any other Lots sold to the defaulting Buyer at the same time or at any other Auction;
 - 13.1.3. resell the Lot or do any such thing that would cause it to be resold by Auction or Private Treaty sale;
 - 13.1.4. remove, store and insure the goods at the sole expense of the defaulting Buyer and if such goods are stored either at Aspire's premises or any other place as Aspire may require such goods to be stored at, the Buyer shall be responsible for all charges associated therewith;
 - 13.1.5. retain any Lot sold to the same Buyer at the same time, or at any other Auction and only allow the Buyer to take delivery of such goods after all amounts due, owing and payable have been paid by the Buyer to Aspire in terms of these Terms of Business, including interest, storage charges and any other charges;
 - 13.1.6. reject any bid made by or on behalf of the defaulting Buyer at any future Auction;
 - 13.1.7. exercise a right of retention over the goods sold and not to release such goods to the Buyer until such time as full payment has been made to Aspire in accordance with these Terms of Business. For such purpose and in so far as ownership of the Lots may

have passed to Aspire, the Buyer hereby pledges such goods to Aspire as security for Aspire's claim.

- 13.1.8. charge a reasonable rental fee for each day that the item is stored by Aspire from the date of Auction until the time of collection.
- 13.1.9. charge interest at a rate of the prime rate plus 3% (three per cent) per month on any outstanding amounts from the date of Auction.
- 13.2. In the event that Aspire resells any Lot at a subsequent Auction as a result of Aspire exercising their remedy referred to in paragraph 13.1.3 above, the Buyer shall be liable for any loss (if any), should the Lot be resold at an amount lower than the amount for which the Buyer purchased it. The loss shall be calculated as the difference between the resale price and the original price

14. TERMS RELATING TO THE SELLER

- 14.1. As per the Seller's irrevocable instruction, Aspire is instructed to sell at an Auction all objects submitted for sale by the Seller and accepted by Aspire and to sell the same to the relevant Buyer of the Lot of which those objects form part, provided that the bid or offer accepted from that Buyer is equal to or higher than the Reserve (if any) on that Lot (subject always to paragraph 14.4), all on the basis set out in these Terms of Business.
- 14.2. The Seller also irrevocably consents to Aspire's ability to bid for any Lot of which any of those objects form part as agent for one or more intending Buyers.
- 14.3. Aspire is authorised to retain any objects not sold on Auction for a period of 14 (fourteen) days after the Auction for the possible sale of such objects by Aspire by way of Private Treaty or otherwise pursuant to paragraph 14.4.
- 14.4. Aspire is authorised to offer for sale either by Private Treaty or otherwise, without further instruction or notification to the Seller, within 14 (fourteen) days after the Auction, all or any remaining objects submitted for sale by the Seller and received and accepted by Aspire in accordance with paragraph 14.1, which objects were not sold on Auction. The bid accepted on these items must not be less than the amount that the Seller would have received, had that Lot been sold on Auction at the Reserve (if any) on that Lot taking into account the deduction of the applicable Seller's commission and Recoverable expenses for which the Seller is liable.
- 14.5. Both Aspire and the Auctioneer each have the right, to offer an object referred to above for sale under a Lot, to refuse any bid or offer, to divide any Lot, to combine two or more Lots with the prior approval of the relevant Seller(s), to withdraw any Lot from an Auction, to determine the description of Lots (whether in any Catalogue or otherwise), to store accepted objects at the Auction premises or any other location as he/she may deem fit and whether or not to seek the opinion of experts.
- 14.6. Aspire shall not be under any obligation to disclose the name of the Buyer to the Seller, save for the circumstances contemplated elsewhere in these Terms of Business or otherwise required by law.

15. ESTIMATION OF SELLING PRICE AND DESCRIPTION OF GOODS

- 15.1. Any estimation given by Aspire is an opinion and cannot be relied on as a true reflection of what the final Hammer price will be on the date of the sale. Aspire has the right to change any estimations at any point in time in agreement with the Seller recorded on the relevant Property Receipt Form.
- 15.2. The Seller hereby agrees that Aspire may fully rely on any description of the goods or Lots provided to them by the Seller or his agent.
- 15.3. Aspire shall not be held liable for any error, misstatement or omission in the description of the goods/Lots whether in the Catalogue or otherwise unless such error, misstatement, omission is a direct result of the intentional, misleading and deceptive conduct of Aspire's employees and/or agents.

16. WARRANTIES AND INDEMNITIES PROVIDED FOR BY THE SELLER

- 16.1. The Seller hereby warrants to Aspire and the Buyer that:
 - 16.1.1. he/she is the lawful owner of the objects put up for sale or Auction and is authorised to offer such objects up for sale at an Auction;
 - 16.1.2. he/she is legally entitled to transfer title to all such objects and that they will be transferred free of any encumbrances of third party claims; and
 - 16.1.3. he/she has complied with all requirements necessary, legal or otherwise, for the import (if importing is applicable to the sale) and has notified Aspire in writing of any third parties who have failed to comply with the aforesaid requirements in the past;
 - 16.1.4. the place of origin of the Lot is accurate.
 - 16.1.5. the object forming part of the Lot is capable of being used for the purpose to which it was made and has no defects which are not apparent from any external inspections and that he/she is in possession of any valid approval, license, consent, permit or clearance required by law for the sale of any Lot.
- 16.2. The Seller hereby indemnifies and shall keep Aspire and the Buyer indemnified against any loss or damage suffered by either party as a result of any breach of any warranty in these Terms of Business.
- 16.3. The Seller hereby agrees that Aspire may decline to sell any object submitted for sale, irrespective of any previous acceptance by Aspire to sell it, for any reason deemed reasonable and appropriate in its discretion.

17. COMMISSION

- Subject to the Terms of Business set out in paragraph 17.3
- 17.1. Any applicable Seller's commission in respect of each Lot (comprising one or more objects) shall be payable to Aspire by the Seller.
 - 17.2. Any applicable Buyer's premium in respect of each Lot (comprising one or more objects) shall be payable to Aspire by the Buyer;
 - 17.3. Notwithstanding the authority provided for by the Seller to Aspire to deduct any of the Seller's commission and any Recoverable expenses (as agreed to by the Seller) for which the Seller is liable from the Hammer price, the Seller shall still be liable for the payment of the Seller's commission and any Recoverable expenses.
 - 17.4. Notwithstanding the authority provided for by the Buyer to Aspire to deduct any of the Buyer's premium and any Recoverable expenses (as agreed to by the Seller) for which the Buyer is liable from the Hammer price, the Buyer shall still be liable for the payment of the Buyer's premium and any Recoverable expenses.
 - 17.5. Aspire reserves the right to deduct and retain the Seller's commission prior to the sale proceeds being handed over to the Seller, from the amount paid by the Buyer upon receipt of the full Purchase price, or any part thereof.
 - 17.6. Aspire reserves the right to deduct and retain the Buyer's premium prior to the Purchase price being handed over to the Seller from the Purchase price paid by the Buyer.

18. RESERVES

- 18.1. All Lots are to be sold without a Reserve, unless otherwise agreed upon between Aspire and Seller in writing prior to the date of Auction. In the event that a Reserve for a Lot exists, the Lot will be offered for sale subject this Reserve. Any changes to a Reserve will require the prior consent of Aspire and the Seller.
- 18.2. Where the Auctioneer is of the opinion that the Seller or any person acting as agent of the Seller, has made a bid on the Lot and a Reserve existed on such Lot, they may knock down the Lot to the Seller. The Seller will then be required to pay all expenses which the Buyer is liable for and any expenses which the Seller is liable for along with the Seller's commission to Aspire.
- 18.3. In the event that a Reserve exists on a particular Lot, Aspire may sell such Lot at a Hammer price below the Reserve, on the condition that the Seller receives the

amount they would have been entitled to, had the sale been done at the Reserve. Aspire reserves the right to adjust the Seller's commission accordingly in order to allow the Seller to receive the amount payable had the Lot been sold at the Reserve.

- 18.4. Where a Reserve on a Lot does not exist, Aspire shall not be liable for the difference between the Purchase price and the estimated selling range.

19. INSURANCE

- 19.1. Aspire undertakes to insure all objects to be sold as part of any Lot, at its own expense, unless otherwise agreed to in writing, or otherwise, between the Seller and Aspire. Aspire may, at its discretion, insure any property which is placed under their control for any other purpose for the duration of the time that such property remains on their premises, under their control or in any storage facility elected by them.
- 19.2. In the event that Aspire is instructed to not insure any property, the Seller shall bear the cost and risk at all times. The Seller also agrees to:
 - 19.2.1. indemnify Aspire for any claims brought against Aspire and/or the Seller for any damage or loss to the Lot, however it may arise. Aspire shall be reimbursed by the Seller for any costs incurred as a result thereof; and
 - 19.2.2. notify the insurer of the existence of the indemnities set out herein.

20. PAYMENT IN RESPECT OF THE SALE PROCEEDS

The proceeds of sale shall be paid as follows:

- 20.1. Aspire shall make payment to the Seller not later than 21 (twenty-one) days after the date of the Auction provided that full payment of the Purchase price for said Lot has been received from the Buyer by Aspire.
- 20.2. If the Buyer fails to pay the full Purchase price within the allocated time set out in paragraph 11.2, Aspire shall notify the Seller in writing and request instruction on how to proceed. Aspire may at its discretion, decide to assist the Seller with the recovery of any outstanding amount from the Buyer.
- 20.3. The Seller hereby authorises Aspire to proceed:
 - 20.3.1. to agree to the terms of payment on any outstanding amount;
 - 20.3.2. to remove, store and insure the Lot which has been sold;
 - 20.3.3. to settle any claim by or against the Buyer on such terms as Aspire deems fit and do all such things necessary to collect from the Buyer any outstanding amounts due to the Seller;
 - 20.3.4. to rescind the sale and refund these amounts to the Buyer;
 - 20.3.5. where Aspire pays the Sale proceeds to the Seller prior to receipt of the full Purchase price then ownership shall pass to Aspire;
 - 20.3.6. to obtain a refund from the Seller where the sale of a Lot has been set aside, or cancelled by the Buyer in terms of paragraph 10 above and Aspire has paid the sale proceeds to the Seller. In such instance, the Seller shall be required to refund the full sale proceeds to Aspire, who will then in turn refund the Buyer. Aspire will then make the Lot available for collection to the Seller; and
 - 20.3.7. that any annulment, rescission, cancellation or nullification of the sale in terms of paragraph 10 above shall not extinguish the Seller's obligation to pay the commission to Aspire and/or to reimburse any expenses incurred by Aspire in respect of this.

21. WITHDRAWAL FEES

Written notice must be given to Aspire 24 (twenty-four) hours prior to the Auctions, where a Seller decides to withdraw a Lot from Auction. Aspire reserves the right to convert any Seller's commission or Buyer's premium payable on this Lot into withdrawal fees. The amount of this withdrawal fee

shall be determined based on the mid-estimate of the selling price of the objects comprising the Lot along with any VAT and expenses incurred thereon given by Aspire.

22. PHOTOGRAPHY AND ILLUSTRATIONS

Aspire reserves the right to photograph or otherwise reproduce the images of any Lot put on offer by the Seller for sale and to use such photographs and illustrations as they deem necessary. Aspire undertakes to ensure compliance with the relevant Copyright laws applicable in their dealings with any and all Lots put up for sale.

23. LOTS WHICH HAVE NOT BEEN SOLD

- 23.1. Subject to paragraph 14.4 above, upon the receipt of notice from Aspire of any unsold Lots, the Seller agrees to collect any such Lots no later than the 15th (fifteenth) day after receipt of such notice. The Seller must make further arrangement to either have the Lot resold or collect it and pay all agreed Recoverable expenses for which they are liable.
- 23.2. The Seller shall be liable for all costs, whether it be for storage, transport or otherwise as a result of their failure to collect the Lot.
- 23.3. If after 6 (six) months of notice being sent to the Seller, Aspire will proceed to sell the Lot by Private Treaty or public Auction on the terms and conditions that they deem fit, without Reserve and Aspire shall be able to deduct from the Hammer price all amounts owing to them including (but not limited to) any storage or transport expenses, any reduced commission from the Auction as well as any other reasonable expenses before the balance is paid over to the Seller. If Aspire is unable to locate the Seller, Aspire shall open a bank account in which Aspire will hold on behalf of the Seller the amount due to the Seller.
- 23.4. Aspire reserves the right to charge commission on the Purchase price and any expenses incurred in respect of any unsold Lots.

24. AMENDMENT OF THESE TERMS AND CONDITIONS

- 24.1. Aspire may, at any time and from time to time, in its sole discretion, amend, cancel or rescind any provision of these Terms of Business by publication of any such amended Terms of Business (whether on its website or by any other means whatsoever).
- 24.2. No amendment in terms of paragraph 24.1 above shall be binding on any Party to any Sale which has been entered into as at the date of that amendment unless agreed to by the relevant Parties in terms of paragraph 24.3.
- 24.3. No:
 - 24.3.1. amendment or consensual cancellation of these Terms of Business or any provision or term hereof;
 - 24.3.2. agreement, bill of exchange or other document issued or executed pursuant to or in terms of these Terms of Business (including, without limitation, any valuation, estimate or reserve issued in terms hereof);
 - 24.3.3. settlement of any dispute arising under these Terms of Business;
 - 24.3.4. extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of these Terms of Business or of any agreement, bill of exchange or other document issued pursuant to or in terms of these Terms of Business,

shall be binding on any Party to any Sale concluded in terms of these Terms of Business unless agreed to by the Parties to that Sale (whether that agreement is recorded in writing or otherwise).

PRIVACY POLICY

Terms defined in the Terms of Business shall bear the same meaning when used in this Privacy Policy.

1. INFORMATION ASPIRE MAY COLLECT AND PROCESS

- 1.1. Aspire may use and store the following:
 - 1.1.1. any information received, whether it be from the completion of online forms for registration purposes or otherwise, from any Bidder, Buyer or Seller (including documents filled out in person by any Bidder, Buyer or Seller);
 - 1.1.2. information required to send out marketing material;
 - 1.1.3. any data received from the making of a bid or the posting of any material to Aspire;
 - 1.1.4. any information received from correspondence between Aspire and any Bidder, Buyer or Seller, whether it be by e-mail or otherwise;
 - 1.1.5. information received for the purpose of research, including by conducting surveys;
 - 1.1.6. information received from telephone communications, in person or otherwise in carrying out any transaction and/or Auction;
 - 1.1.7. general information from the receipt of any hard copy documents in respect of the date of birth, name, address, occupation, interests, credit information (if required by Aspire) and any further personal information of any Bidder, Buyer or Seller obtained by Aspire during the course of conducting its business;
 - 1.1.8. details received from the completion of any contract of sale between Aspire, the Bidder, Buyer and/or Seller;
 - 1.1.9. details from the visits made to Aspire's website and any resources/information accessed therein;
- 1.2. the aforesaid data shall not be supplied and distributed to any third person without the consent of the relevant Bidder, Buyer or Seller unless such supply or distribution is required under law or is reasonably necessary for Aspire to ensure performance of any and all of their obligations under the Terms of Business. Therefore, Aspire shall only use the data collected for internal purposes;
- 1.3. personal information, whether private or public, shall not be sold, exchanged, transferred, or provided to any other company for any reason whatsoever without the relevant Bidder, Buyer or Seller's consent, other than for the express purpose of effecting the collection of any purchased Lot. This will not include trusted third parties, who assist Aspire in operating the website, conducting business or servicing the website. All such persons agree to keep the aforesaid personal information confidential; and
- 1.4. the release of any relevant Bidder, Buyer or Seller's personal information if any shall be done only in circumstances which Aspire deems fit and necessary to comply with the law or enforce its Terms of Business and/or to protect third parties' rights, property or safety.

2. ONLINE INFORMATION PROCESSED BY ASPIRE

- 2.1. Aspire may collect and store information relating to a Bidder, Buyer or Seller's ("User") computer, including its IP address, operating system and browser type, in order to assist Aspire with their systems administration from the use of the website and previous transactions with them:
- 2.2. Cookies (a text file stored on the website's servers) may be placed on Aspire's website to collect the information from each User pursuant to:
 - 2.2.1. incorporating each User's preference and customising the website, business accordingly;
 - 2.2.2. improving customer services;
 - 2.2.3. the acceleration of searches;
 - 2.2.4. automatically storing information relating to the most visited links;
 - 2.2.5. sending updated marketing information (where the User has consented to the receipt thereof).

A User has the option to not accept cookies by selecting such option on his/her browser. If a User does so, it may restrict the use of certain links on the website. The sole purpose of the aforesaid cookies is to collect information about Aspire's website and not gather any personal information of the User.

3. STORAGE OF PERSONAL INFORMATION

- 3.1. Aspire shall do all such things reasonably necessary to ensure that the security and privacy of all personal information received, is upheld - whether it be from a bid made, a Lot which is purchased or where personal information is stored, recalled or accessed from Aspire's servers and/or offices. This will include the implementation of measures creating an electronic firewall system, regular virus scanning mechanisms, security patches, vulnerability testing, regular backups, security checks and recovery mechanisms and any other such mechanisms that is reasonably necessary to ensure the protection of personal information.
- 3.2. Aspire shall ensure that all employees are sufficiently trained in the use of Aspire's systems to ensure that the protection of all databases containing any personal information is maintained.
- 3.3. Any information relating to, but not limited to, any personal information, account details and personal addresses of any Bidder, Buyer or Seller shall be encrypted and only accessible by limited authorised personnel and stored either on an electronic server or in a safe area on the premises of Aspire. Each individual with such authorisation shall ensure that all personal information remains confidential and is protected in the manner contemplated in this Privacy Policy.
- 3.4. After the sale of a Lot, any credit card and EFT details shall not be stored by Aspire.
- 3.5. Aspire does not send out e-mails requesting the account details of any Bidder, Buyer or Seller. Aspire shall not be liable for any loss suffered as a result of any fraudulent e-mails sent to any Bidder, Buyer or Seller by any third parties or related fraudulent practices by third parties (including the unauthorised use of Aspire's trademarks and brand names) in order to mislead any prospective Bidder, Buyer or Seller into believing that such third party is affiliated with Aspire; and
- 3.6. Aspire may send out e-mails in respect of payment for any registration fees (if applicable) and/or payment with respect to the purchase of a particular Lot placed on Auction.

4. AMENDMENTS TO THE PRIVACY POLICY

- 4.1. Aspire may, from time to time, in its sole discretion, amend, cancel or rescind any provision of this Privacy Policy by publication of any such amended version (whether on its website or by any other means whatsoever). It is the responsibility of any Bidder, Buyer or Seller to ensure that they are aware, understand and accept these changes before conducting business with Aspire.

5. THIRD PARTY WEBSITES

Any links on the website to third party websites are independent of this Privacy Policy. Any third party's Privacy Policy is separate and Aspire shall not be liable for any information contained therein.