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. 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;

1.1.2. Any work of craftsmanship and/or artwork which does not fall under 1.1.1 as set out in the Copyright Act No. 78 of 1978;

1.1.3. “Aspire” means Livetone Proprietary Limited (t/a Aspire Art Auctions (Registration No. 2016/07/0025/07) incorporated under the laws of South Africa;

1.1.4. “Auction” 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 or 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 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 percent) 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 percent) 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. “Consumer Protection Act” means the Consumer Protection Act 68 of 2008 as amended from time to time;

1.1.11. “Force Majeure” means any intended or unexpected event (whether natural or otherwise) which is beyond the control of any Person and which makes the performance of a contract impossible or impracticable;

1.1.12. “Hammer price” means the bid or offer made by the Buyer which 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 but not by any of the preceding provisions or as sold by 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) from time to time published by Nedbank Limited, or its successor-in-title, as being its prime repo rate, unless modified by any instruction 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 ‘daggered’, 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.

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 between the Bidder and the Seller, 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 is deemed to have a corresponding meaning.

1.1.22. “Sale proceed” means the amount due and payable to the Seller for the sale of the relevant Lot, made up of the Hammer price less the recoverable 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 percent) calculated on the amount of the Hammer price in excess of R20, 000 (twenty thousand rand) plus any VAT payable on that amount;

1.1.24.2. 15% (fifteen percent) calculated on the amount of the Hammer price not exceeding R20, 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 conducts business on the basis of these Terms and any amendments to the terms and conditions set out in the Catalogue as amended from time to time.

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. 33018 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 Lot, all bidders confirm that they have not produced a 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 by 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 that is 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 genuiney in any goods Auctioned and sold which are not caused by the wilful or fraudulent proceedings of Aspire and/or the Seller.

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 held 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 bid or sale for those expressly provided for by the Seller in terms of paragraph 4.6, whether expressed, implied or given by Aspire, its servants, its agents, or its employees, or the Auctioneer or the Seller of the Lot shall be binding or legally enforceable.

4.8. Any Lot which proves to be a Forgery (which with all proviso be the case if an export appointed by Aspire for such purposes confirms the same in writing) may be returned by the Buyer (as its sole remedy hereunder or at law) to Aspire within 7 (seven) days from the date of the Auction or Private Treaty at which it was purchased. If Aspire is satisfied that the Lot is a forgery, and that the Dealer/Paint is 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 date of the sale was in accordance with the then generally accepted opinion of scholars and experts or fairly indicated that there was a high degree of provenance;

4.8.2. the only method of establishing at the date of publication of the Catalogue that the Lot was a forgery, and Aspire was and is generally accepted for use until after publication of the Catalogue, or by a process which was unreasonable 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 assignible and will not exist 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 right, at its discretion, to exclude 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. Bids may be delivered to Aspire by registered post or by email to the address provided by Aspire to the relevant Seller as being the duly authorised and/or responsible executand of that address. 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 the last day of the posting period.

4.14.3. If given to Aspire, such written notices 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/or 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 Seller.

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 the Seller, or the rights of the Buyer, 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, 2001, which becomes the establishment and verification of identity, published in Notice No. R. 1995 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 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 bid). Any sale that requires a reserve as stated in the catalogue shall be sold to the highest bidder either on or in excess of the Reserve.

5.5. No bids may be made for an amount which is lower than the Reserve 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 Reserve by at least 10% (ten percent) or any such percentage which in the opinion of the Auctioneer is required.

5.6. Any dispute which shall arise regarding the validity of the bid, the identity of the Buyer 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 by 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 Lots 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 hereby be responsible for any loss 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 the 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 code, 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;

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 Buyer shall be limited to the Hamper 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 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 cause beyond Aspire’s 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 willful 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 one shall be permitted to inspect a specific lot which 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 18 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 license 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 (where 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 theLots. Any prospective Buyer is to ensure that they received the necessary permission from the relevant regulatory authorities and/or importing and 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 Buyer. 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 may be confirmed prior to the sale by letter or email 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. RESCSSION 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 has 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 that the Seller/Aspire/Aspire has agreed with the Buyer prior to the Auction;

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 arrangements with their banks prior to the Auction date regarding Forex funds as Aspire will only accept payment in South African Rand. 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 the completion of all payment obligations. 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 amounts owing to Aspire or any changes 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 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 request 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 the Auction when granting credit to the Buyer, including the terms and conditions applicable to any such credit. Ownership of the Lot shall not pass until full payment is made to Aspire. Any expenses incurred in credit 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. 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 Auctions or sales;

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. change 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. change 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 all 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 that is or 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 instruction to the Seller, so that 14 (fourteen) days after the Auction, whereupon the 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 terms 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 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 the Seller may select, and to endeavour or cause 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 held 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 in their judgement.
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 or 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 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 of importing is applicable to the said lot and has not misled 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 will 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 Buyer.
17.2. Any applicable Buyer’s premium in respect of each Lot (comprising one or more objects) shall be payable to Aspire.
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;
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, and
20.3.3. to settle any claim by or against the Buyer on such terms as Aspire, Buyer and Aspire may agree.
20.4. 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.
20.5. 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.

21. WITHDRAWAL FEES
Written notice must be given to Aspire 24 (twenty-four) hours prior to the Auction, 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 therein 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 reserves the right 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 24.4 above, upon receipt of notice from Aspire of any unsold Lots, the Seller agrees to collect any sales tax not later than the fourtieth (40th) 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 six (6) 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 notice 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 concensual 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 or by 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
Term 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 or requests for registration for purposes or otherwise, from any Bidder, Buyer or Seller (including documents filled out in person by any Bidder, Buyer or Seller); the 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 thereon;
1.1.10. the aforementioned 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;
1.1.11. 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;
1.1.14. the release of any relevant Bidder, Buyer or Seller’s personal information if any shall be done only in circumstances which Aspire deems that it is 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 to best the stored in the website’s server 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 protected, whether it be from a bid made, a Lot which is purchased or where personal information is stored, recalled or accessed from Aspire’s systems and/or devices. This will include the implementation of measures relating in 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 its 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 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 misled any prospective Bidder, Buyer or Seller into believing that such third party is affiliated with Aspire and;
3.6. Aspire reserves the right to retain 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.