

## A. DEFINITIONS

For purposes of clarity, the following definitions are applicable to these rules of auction:

<b>"bidder"</b>	means a person, natural or juristic, who has registered to purchase on an auction sale.
<b>"buyer"</b>	means a person, natural or juristic, who wishes to register to purchase on an auction sale.
<b>"goods"</b>	means any asset of value; movable or immovable.
<b>"owner"</b>	means a person, natural or juristic, who is the rightful owner of the assets, and who has the right to sell the assets.
<b>"parties"</b>	means the seller and purchaser.
<b>"property"</b>	means land, improvements, fittings and fixtures with regards to immovable assets or means all loose assets with regards to movable property..
<b>"purchaser"</b>	means the bidder who is the highest bidder on goods or lots offered on auction at the fall of the hammer.
<b>"rules of auction"</b>	means the general rules of auction, the specific rules of auction and the offer to purchase (in the event of immovable property) collectively.
<b>"seller"</b>	means a person, natural or juristic, who has the right to sell assets on auction, but is not necessarily the owner.

## B. COMPLIANCE

- i. These rules of auction comply with Section 45 of the Consumer Protection Act (CPA), No. 68 of 2008 and the Regulations contained therein applicable to auctions. An extract of section 45 of the Act appears below:

### Section 45: Auctions

- (1) In this section, "auction" includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction.
  - (2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
  - (3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.
  - (4) Notice must be given in advance that a sale by auction is subject to—
    - (a) a reserved or upset price; or
    - (b) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.
  - (5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer—
    - (a) the owner or auctioneer must not bid or employ any person to bid at the sale;
    - (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a);and
    - (c) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.
  - (6) The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of—
    - (a) the conduct of an auction;
    - (b) the records to be maintained with respect to property placed for auction; and
    - (c) the sale of any such property by auction.
- ii. These rules of auction have been signed by the auctioneer conducting the auction, and meets the requirements of regulation 21 of the CPA.
  - iii. As per sub-regulation 21 (8) (a), the rules of auction need not be read out at the auction to be valid, as long as they were made available to the general public at least 24 hours prior to the commencement of the auction, either in printed format from the auctioneers' place of business or electronically from the auctioneers' website.

## C. ACKNOWLEDGEMENT

- i. These Rules of Auction, including all announcements made by the auctioneer at the commencement and during the course of the auction, whether or not the bidder is present at the time such announcements are made, collectively referred to as the "Rules of Auction" are the complete and final record of the rules of the auction and unless any warranties, undertakings or representations are set out herein, they are excluded.
- ii. These rules of auction shall form the basis of the bidding and bargaining carried out between the auctioneer and the bidders, and shall also govern the rules of each sale so concluded.
- iii. The act of signing the bidders' record and participation by any bidder in the auction shall be taken as confirmation that the bidder accepts and is bound by these rules of auction.
- iv. The auction and all matters connected with the auction including these rules of auction are governed by and constructed in accordance with the laws of the Republic of South Africa and the bidder, including foreign bidders consent to the jurisdiction of the South African courts.
- v. For purposes of legal proceedings, the bidder shall be deemed to have selected and appointed as his domicilium citandi et executandi the address recorded by him or her on the bidders record upon registration.
- vi. The auctioneer shall be entitled to institute legal proceedings in any Magistrates Court having jurisdiction against the purchaser to recover the settlement contemplated in clauses 4.3 and 4.4 herein, and any legal costs, disbursements and charges calculated on the basis of an Attorney and own client scale.

## D. GENERAL RULES OF AUCTION

### 1. MANDATORY INFORMATION REQUIRED BY THE CONSUMER PROTECTION ACT AND REGULATIONS

- 1.1. The auction was advertised in compliance with regulations 19 and 20 of the CPA, and the advertisement was placed in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods on offer and the rules governing the auction.
- 1.2. As per section 45(2) of the CPA, when goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
- 1.3. The auction will commence at the published time and it will not be delayed to enable any specific person or more persons in general to take part in the auction.
- 1.4. As per sub-regulation 26(2) of the CPA, every prospective bidder must, prior to the commencement of an auction,

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register his or her identity in the bidders' record', providing his or her positive identification, juristic registration documents, and proof of residence in terms of the Financial Intelligence Centre Act (FICA), No. 31 of 2001 published in Notice R1595 in Gazette 24176 of 20 December 2002.

- 1.5. As per sub-regulation 26(3) of the CPA, if a person intends to bid on behalf of another, he or she must produce a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must meet the requirements of sub-regulation 26(2) of the CPA outlined in clause 1.4 herein.
- 1.6. As per sub-regulation 26(4) of the CPA, if a person described in clause 1.5 above intends to bid on behalf of a company, the letter of authority contemplated therein must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to do so.
- 1.7. As per sub-regulation 28(1) of the CPA, all prospective bidders whose names appear in the bidders' record will be issued with visible bidder numbers.
- 1.8. As per sub-regulation 26(5) of the CPA, the bidders' record will be available for public inspection in respect of the names of bidders and bidder numbers only, at any time, free of charge:  
during the auction, at the premises where the auction is being held; and  
before and after the auction, at the auctioneer's place of business, during normal business hours.
- 1.9. As per sub-regulation 28(4) of the CPA, the auctioneer will keep a vendor's roll in which all details prescribed therein will be recorded.
- 1.10. As per sub-regulation 21(2)(h) of the CPA, the auctioneer has trust accounts into which all monies are paid for the benefit of the seller, minus the agreed commission and costs.

### **2. ADMISSION AND REGISTRATION**

- 2.1. The right of admission is reserved. All persons, including buyers, enter the auction venue at their own risk. The auctioneers, the seller, their agents and employees shall not be liable for any injuries, damages or losses of any nature whatsoever arising from any person's attendance and/or participation in the auction. All persons together with their heirs, executors, administrators or assigns, hereby release the auctioneers, the seller, their agents and their employees and hold them harmless from any duty of care towards them and all claims which may otherwise have accrued to them whether or not any such claim may arise through the negligence of any person or from any of the risks, dangers or hazards occurring in the course of their association with the auctioneer and the seller.
- 2.2. Upon registration as contemplated in clause 1.4 of these rules of auction, prospective bidders may be required to pay a refundable deposit determined by the auctioneers from time to time.
- 2.3. All deposits and other monies belonging to bidders and sellers will be held by the auctioneers as per section 65(2) of the CPA, which requires suppliers to hold and account for consumers' property/assets in their possession, including any prepayment, deposit, membership fee, or other money, or any other property/assets belonging to or ordinarily under the control of a consumer.
- 2.4. The auctioneer reserves the right to revoke any bidder's number at any time during the auction in terms of sub-regulation 28(3) of the CPA, thereby refusing a person the right to remain on the auction premises in the event that such a person repeatedly behaves in such a way so as to disrupt the auction.

### **3. GENERAL AUCTION PROCEDURES**

- 3.1. The auctioneer conducts the auction as an agent, on behalf of the seller, and accepts no liability whatsoever. In the event of any disputes, the purchaser shall only have a claim against the seller, unless such disputes are as a result of the auctioneers' negligence or conduct.
- 3.2. In the event of an auction subject to a reserved or upset price, and provided notice has been given in advance in terms of section 45(4) of the CPA, the seller or the auctioneer, or any other person on behalf of the seller, or the auctioneer, as the case may be, may bid at the auction up to the reserve price but not equal to or exceeding the reserve price.
- 3.3. In the event of an absolute or auction without reserve, the auction will be conducted in accordance with the provisions of sub-regulation 20(18) and (19) of the CPA. In particular, goods will not be offered or sold at an absolute or auction without reserve unless there is a bona fide intention at the time of the advertising and at the time of the auction to sell the goods and transfer ownership of the goods, regardless of the amount of the highest and last bid, to the highest bidder, without any requirement for a minimum bid, and without allowing competing bids of any type by the seller, or any agent of the seller. In addition, the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids at an absolute or auction without reserve.
- 3.4. Notwithstanding the provisions of clause 3.3 herein, a secured party or other lien holder or any individual party who is not the seller is not prohibited from bidding at an auction without reserve, provided such bidding does not constitute, nor is tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller, or the auctioneer, or anyone aiding or assisting, or acting on behalf of the on behalf of the seller, or the auctioneer, as the case may be.
- 3.5. As per sub-regulation 20(19)(d) of the CPA, certain goods may be offered with reserve and others offered absolute or without reserve at the same auction, at the same time and at the same time, provided non-misleading advertisement make it clear, through appropriate emphasis, which goods are being offered by each method.
- 3.6. The control of the auction shall be entirely managed by the auctioneer, who has the sole right to regulate the bidding process and control the bid increments.
- 3.7. The auctioneer may only sell to bidders registered in terms of clauses 1.4 and 1.7 herein. No bid will be taken from unregistered persons without bidder numbers as per sub-regulations 24(h) and 28(2) of the CPA.
- 3.8. In terms of section 55(1) of the CPA, goods are sold "voetstoots", where is, as is, with no guarantees or warranties; express or implied. Bidders are advised to inspect the goods on offer prior to the commencement of the auction in accordance with sub-regulation 28(5) of the CPA. A bid shall be taken as proof that the bidder has acquainted himself or herself with the condition of the goods for which he or she bids.
- 3.9. Notwithstanding the provisions of clause 3.8 herein, the stipulations of sub-regulation 32(c) of the CPA shall apply with regard to motor vehicle auctions.
- 3.10. Bidders must direct their bids to the auctioneer or official bid assistants. The practice whereby bidders connive to suppress prices or intimidate other bidders is prohibited and may be treated as per clause 2.4 herein.
- 3.11. Every bid shall constitute a firm offer to purchase the goods or lots on offer for the amount bid, provided that the bidder is permitted, in terms of section 45(3) of the CPA, to retract his or her bid before the hammer falls or the auctioneer concludes bidding in any customary manner.
- 3.12. In accordance with sub-regulation 28(6) of the CPA, subject to any reserved price and the acceptance of the highest bid by the owner or the seller, the highest bidder, when the auctioneer announces the completion of the sale by the fall of the hammer, or any other customary manner, is the purchaser of the goods or lots on auction. Should any

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- dispute arise between two or more bidders regarding the identity of the highest bidder and purchaser, the decision of the auctioneer shall be final and binding.
- 3.13. In the event where reserved price is not met in terms of regulation 28(6) and the seller has to accept or decline the highest bid after the completion of the auction, the highest bidder is bound by the auction rules and shall not have the opportunity to withdraw his bid until the seller has confirmed the sale or the stipulated acceptance period has expired. Negotiations between the highest bidder and the seller may arise during such acceptance period and should any subsequent bids be received during such acceptance period, the new bidder will register in terms of the rules of auction applicable to the auction, and will have only one opportunity to submit a higher bid. The highest bidder of the first instance shall have the sole right of refusal to equal or better such subsequent bid obtained. Any goods or lots knocked provisionally to the highest bidder subject to approval by the seller in terms of this clause 3.13 is deemed not to be sold in terms of section 45(3) and sub-regulation 28(6) of the CPA until the seller has accepted the offer.
  - 3.14. Notwithstanding the provisions of clause 3.12 above, and subject to the provisions of clause 3.3 herein, the owner or the seller, reserves the ultimate right, apart from the auctioneer, to fix a minimum bid for acceptance and to decline to sell to the highest or any bidder, or even to accept any lower bid, without giving any reasons.
  - 3.15. The auctioneer, with the approval of the owner or the seller, reserves the right, at any time, to stop the auction, to reject any or all bids and to withdraw any goods or lots, or part thereof from the auction, either before or during the auction, without giving any reasons and without attracting any liability for such action.
  - 3.16. Notwithstanding the provisions of sub-regulation 24(h) of the CPA, goods or lots may be grouped or divided with the unanimous consent of all buyers.
  - 3.17. In the event of an auction sale requiring the consent of any statutory authority or any Court of Law, then the conclusion of the auction sale is subject to the granting of such consent.
  - 3.18. The re-auctioning of goods by bidders is prohibited within the premises of the auctioneer or the seller.

### **4. FINANCIAL ARRANGEMENTS**

- 4.1. Once goods or lots have been sold to the purchaser as contemplated in clause 3.12 herein, the sale of the goods or lots is irrevocable and cannot be withdrawn, and the purchaser shall be liable for the settlement of such purchases, and hereby binds himself or herself as surety and principal debtor, subject to the provisions of clauses 1.5 and 1.6 herein, failing which the auctioneer, the seller or the owner, reserves the right to demand payment to recover the amount owing, including any interest, legal costs and collection costs thereof.
- 4.2. Notwithstanding the provisions of section 19 with regard to the delivery of goods, ownership of the goods or lots purchased on auction, and the risk thereof shall pass to the buyer upon the fall of the hammer. No complaints will be entertained thereafter. However, ownership and title will only be transferred upon full settlement as contemplated in clauses 4.3 and 4.4 hereunder.
- 4.3. With regard to movable goods, settlement for goods or lots purchased as contemplated in clause 4.1 herein, including advertised fees and commission, is payable upon delivery on the day of the auction. Should the auction finish after banking hours, purchases must be settled by 12h00 the day after the auction or the first working day after the day of the auction where the day after falls on a weekend or statutory public holiday.
- 4.4. With regard to immovable property, settlement for goods or lots purchased as contemplated in clause 4.1 herein, including advertised fees and commission, is payable upon the signing of a written agreement in respect of the sale of such immovable property by the purchaser and the seller.
- 4.5. Auctions are cash transactions and not subject to any suspensive conditions such as the granting of finance to the purchaser. Therefore, bidders intending to finance their purchases must obtain irrevocable approval or guarantee from their sponsors prior to the commencement of the auction, so that they will be able to fulfil the settlement requirements contained in clauses 4.3 and 4.4 herein.
- 4.6. In line with clause 4.5 above, payment terms regarding the settlement of purchases in terms of these rules of auction are strictly cash, EFT or bank guaranteed cheques, payable in full, without deduction and free of set off for any claim the purchaser may have against the seller or the owner.
- 4.7. All payments must be made in South African ZAR currency, into the specific Trust Account nominated by the auctioneer for each auction and provided to the purchaser in the Notice to Bidders forming part of these rules of auction.
- 4.8. In order to avoid cheque fraud, purchasers must never deposit bank guaranteed cheques directly into the Trust Account. Instead, bank guaranteed cheques must be presented on site or at the auctioneer's premises for verification and authentication before acceptance.
- 4.9. In accordance with money laundering regulations and in the interest of security, the auctioneer does not accept cash at its auction sites. Cash deposits must be made at the bank and the proof thereof must be presented on site or at the auctioneer's premises. Cash payments shall attract a cash deposit fee determined by the auctioneer from time to time and provided to the purchaser in the Notice to Bidders forming part of these rules of auction.
- 4.10. Should the auction be subject to the payment of Value Added Tax (VAT); all bids will be exclusive of VAT and VAT will be added to the bid price at the rate applicable at the time the auction is conducted. The bid price plus the VAT portion, including any commission and other fees, where applicable, shall constitute the purchase price and shall be due and payable simultaneously.
- 4.11. Invoices will be made out to purchasers who are registered bidders in terms of clauses 1.4 and 1.7 herein. No changes to purchase statements will be allowed, and the splitting of invoices among buyers is prohibited. The registered bidder is responsible for the payment of the full invoice.
- 4.12. Should the purchaser default, a forfeit fee not exceeding 10% of the full purchase price or the total costs of advertising and conducting the auction, including any additional costs that may have been reasonably incurred in accordance with regulation 21(2)(l) of the CPA, whichever is the lesser. In such an event of default by the purchaser, the refundable registration deposit will be retained and used to set-off the forfeit fee contemplated in this clause 4.12, or part thereof if the fee is lesser. Should the retained refundable registration deposit be greater, the difference will be refunded to the purchaser.
- 4.13. Should the seller reject the purchaser's offer or default for whatever reason, the purchaser will not be charged any fee or commission, and where such fee or commission has already been paid by the purchaser, such fee or commission will immediately be refunded to the purchaser, including the refundable registration deposit. The parties shall have no further obligations under these rules of auction thereafter.