

# RULES OF AUCTION

in respect of sales by

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(As Auction House hereinafter referred to as the “**Auctioneer**”  
and the person conducting the auction referred to as the “**auctioneer**”)

1. The Sale by auction is subject to a reserve price, unless specifically stated to the contrary by the auctioneer.
2. The seller (owner) and/or his agent and the auctioneer may bid up to the reserve price of the owner (seller), but shall not be entitled to make a bid equal to or exceeding the reserve price.
3. This Rules Of Auction comply with Section 45 of the Act and the Regulations of the Act and Section 45 of the Consumer Protection Act, Act 68 of 2008 (“the Act”) read as follows:

## **“Auctions:**

- 45.(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 reserve 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 other 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 property by auction.*

4. The auctioneer will during the auction announce the reason for the auction unless the reason is the normal and voluntary disposal by the owner.
5. The auction will commence at the published time and will not be delayed to allow any specific person or more persons to take part in the auction.
6. All goods and livestock (hereinafter referred to as the “assets”) are sold by the Auctioneer as agent on behalf of the Seller, who hereby authorizes the Auctioneer to collect the purchase price from the Buyer and the seller do hereby cedes to the Auctioneer all the seller’s rights, title and interest in and to its claim for payment of the purchase price against the purchaser which session the Auctioneer do hereby accepts.
7. The purchase price excludes VAT and VAT must be added to the purchase price and paid by the Buyer, unless specifically stipulated otherwise by the auctioneer.

8. All assets shall, immediately after the bid has been knocked down and accepted by the Seller, be deemed to have been delivered to the Buyer. Notwithstanding delivery, the Buyer shall not be entitled to remove any purchased assets unless the total amount reflected on the Auctioneer's invoice in respect of such assets has been paid in full.
9. Notwithstanding delivery, ownership of the purchased assets will not pass to the Buyer until the full purchase price plus interest, if any, is paid.
10. Subject to any reserve placed on any of the assets by the Seller, and the provisions of clause 11 and 12 below, the Buyer at any sale shall be the highest bidder indicated by the auctioneer by the fall of the hammer or by such other means as he or she may select.
11. The auction shall take place under the exclusive control of the auctioneer. The auctioneer reserves the right, in its sole discretion, to refuse the bid of any person, to regulate the bidding and to indicate the highest bidder. If the auctioneer suspects that a bidder has not made a bona fide bid, or is unable to pay the purchase price or has not made satisfactory arrangements for payment of the purchase price, he may refuse to accept the bid of such bidder or accept it provisionally until the bidder has satisfied him that he is in position to pay the purchase price or that he has made satisfactory arrangements for payment thereof. On refusal of a bid under such circumstances the assets may immediately be re-auctioned.
12. In the event of a dispute arising amongst the bidders and or the Auctioneer, the assets in dispute shall, at the sole discretion of the auctioneer, be re-auctioned.
13. Any error by the auctioneer shall be entitled to be corrected by him or her upon discovery.
14. All profit, loss or risk in the assets will pass to the Buyer once it has been delivered to the Buyer who shall at this own risk and expense remove it from the sale venue, subject to 8 above. The Buyer shall be responsible for all costs incurred by either the Seller or the Auctioneer until actual removal of the assets.
15. Should any contractor remove any assets from the sale venue on instruction of the Auctioneer, on behalf of the Buyer, the contractor will be deemed to be the contractor of the Buyer who accepts all costs and risks connected with such removal.
16. The Seller warrants that there are no encumbrances on such assets, that the said assets are the property of the Seller, and that the Seller is competent and legally entitled to dispose of the assets. The Seller further warrants as against the Buyer that the assets are free of any patent or latent defects.
17. The Seller, who offers the assets for sale, accepts all liability regarding the information furnished as to pedigrees, ages, dates of service, state of health or gestation or any other particulars which might be incorrect. In the event of any dispute the Buyer shall only have a claim against the Seller and not against the Auctioneer.
18. The Seller warrants as against the Auctioneer that the assets are free of patent and latent defects and that any right or claim ceded to the Auctioneer in terms of these Rules Of Auction is free of any defect or right of deduction or set-off, and that the said right or claim is fully and immediately enforceable against the Buyer.
19. The Buyer shall, prior to the sale, ascertain whether there are any defects in the assets and any bid by a Buyer shall be considered as acceptance of the assets with any patent or latent defects in their condition at the time of sale.
20. The Buyer shall not be entitled to withhold payment of the purchase price to the Auctioneer as a result of any possible or pending claim that he may have against the Seller on the grounds of misrepresentation or for any other reason whatsoever.
21. The purchase price is payable by the Buyer to the Auctioneer in cash (to the discretion of the Auctioneer) or by bank-guaranteed cheque on the date of sale ("the payment date") unless other payment terms and or means are agreed between the Auctioneer and the Buyer. The Company reserves the right to refuse any method or means as payment.
22. In the event that the Auctioneer agrees to facilitate the purchase of the assets by paying an amount equal to the purchase price to the Seller before the Buyer makes payment to the Auctioneer ("the Payment Terms Agreement"), then the following shall apply:
  - 22.1 The election to make any payment to the Seller shall be in the sole and absolute discretion of the Auctioneer, which discretion may be exercised separately in regard to each transaction entered into by the Buyer.
  - 22.2 Upon payment of the amount referred to in 10.1 above the Seller's right, title and interest in and to any claims and other rights as against the Buyer in terms of or connected with the sale of the assets shall forthwith be ceded and transferred to the Company which session the Auctioneer hereby accepts.
23. In the event of any Payment Terms Agreement between the Auctioneer and the Buyer, the following shall apply;

- 23.1 No Payment Terms Agreement shall be valid unless reduced to writing and duly signed on behalf of the Auctioneer. The facilitation of any sale by the Auctioneer as referred to in this paragraph 10 shall be strictly subject to the terms and conditions of the Payment Terms Agreement.
- 23.2 In the event of any conflict between the contents of this document and the Payment Terms Agreement, the provisions of the Payment Terms Agreement shall prevail.
- 23.3 No application for credit as defined in section 8 of the National Credit Act, Act 34 of 2005, will be received or considered by the Auctioneer.
24. Anyone that intends to bid at the auction (Buyer) must register his or her identity on the bidder's record prior to the commencement of the auction and such registration must meet the requirements of the FICA (Financial Intelligence Centre Act, 2001) in respect of the establishment and verification of identity of the person and the person must sign the registration entry and the prospective Buyer must furnish the Auctioneer with a copy of his/her identity document and proof of residence.
25. Any person who purchases on behalf of a Principal (i.e. natural person) must furnish the Auctioneer with a written signed Power of Attorney, prior to the commencement of the auction, failing which he/she will be personally liable for payment of any purchases made by him/her. The person bidding on behalf of or signing any document on behalf of the purchaser pursuant to a successful bid hereby binds himself/herself personally as co-principal debtor with the Buyer for payment of the purchase price and personally guarantees all the obligations of the Buyer under this Rules Of Auction.
26. A person who attends the auction, to bid and to sign the bidder's record, on behalf of another person (i.e. on behalf of a company or legal entity) must produce a signed letter of authority that expressly authorizes him or her to bid or sign the bidder's record on behalf of that person. Where a person is bidding on behalf of another entity the letter of authority must appear on the letterhead of the entity and must be accompanied by a certified copy of the resolution, if required, authorizing him or her to bid on behalf of the entity. The person bidding on behalf of or signing any document on behalf of the Buyer pursuant to a successful bid thereby binds himself personally as co-principal debtor with the Buyer for payment of the purchase price and personally guarantees all the obligations of the Buyer under these Rules Of Auction.
27. In the event where a Buyer allows another person to purchase on his or her buyers number, the registered Buyer shall be liable for payment of such purchases. No bid by an unregistered Buyer will be accepted by the auctioneer and the Buyer will have no claim to any of the assets allegedly purchased by him.
28. Until all amounts owing by the Buyer have been paid in full, the Buyer hereby:
- 28.1 irrevocably undertakes to identify the purchased assets in such a manner that he can at any time identify and indicate the assets deemed to be the property of, and pledged to, the Auctioneer.
- 28.2 grants the Auctioneer at all reasonable time's access to the premises where the assets are stored or kept for the purposes of perfecting its pledge and exercising any other rights in terms of these Rules Of Auction.
29. The Buyer and the Seller hereby consent to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Act on Magistrate Court (Act 32 of 1944 as amended) for any action instituted by the Auctioneer against the Buyer although the Auctioneer is entitled to institute proceedings in any competent Court.
30. A certificate issued by a Manager of the Auctioneer, whose appointment and authority shall not be necessary to prove, shall be *prima facie* proof of the amount owing by the Buyer to the Seller or the Auctioneer.
31. Any indulgence granted by the Auctioneer to the Buyer or the Seller will not prejudice the rights of the Auctioneer in terms of these Rules Of Auction and such indulgence will not constitute an amendment or waiver or novation of these Rules Of Auction.
32. The entries made in the Company's auction roll shall be prima facie evidence of the transaction and shall be binding on the Seller and the Buyer.
33. The bidder's record and the vendor or vendu roll will be made available for inspection within reasonable time after the auction at the office of the Auctioneer during normal business hours free of charge.
34. The Auctioneer does have a trust account into which all money will be paid for the benefit of the Seller.
35. Any assets entered or offered for sale are subject to payment by the Seller/Buyer of the agreed commission, or in absence of agreement the usual commission by the Seller/Buyer to the Auctioneer at the rate customarily charged by the Auctioneer from time to time, whether the assets are sold at the auction or thereafter, or at any time thereafter by private treaty. Unless otherwise agreed in writing, commission shall become due and payable by the Seller/Buyer upon the fall of the hammer or upon the entering into of any private treaty involving the Seller's said assets, whichever date is the earlier, and

notwithstanding any breach on the part of the Seller/Buyer.

36. Every bid shall constitute an offer to purchase the property or goods for the amount bid, which the Seller or the auctioneer may accept or reject in their absolute discretion. The seller and auctioneer are entitled, in their absolute discretion to withdraw the property or goods from the sale prior to acceptance by the seller.
37. If no bid equals or exceeds the reserve price, if any, the property or goods may be withdrawn from the auction.
38. The Auctioneer accepts no liability for any withdrawal of assets from sale.
39. No bid may be withdrawn after the fall of the hammer until the expiry of the confirmation period (if any) that is provided for in the Conditions of Sale, during which time the offer shall be open for acceptance by the Seller or his agent and if the offer is accepted the sale shall be deemed to be a sale by auction for purposes of the Act.
40. The highest bidder in respect of immovable property, being the Purchaser, shall sign the Conditions of Sale immediately after the fall of the hammer.
41. The purchaser's offer in respect of immovable property shall only be deemed to have been accepted when the seller or his agent or whichever may be applicable, has signed the Conditions of Sale on behalf of the Seller in the space provided at the end of the Conditions of Sale.
42. In the event of the sale requiring the consent of any statutory authority or any court of law, then this auction will be subject to the granting of such consent.
43. Any agreement contrary to these Rules Of Auction shall not be binding unless it is confirmed in writing and signed by a Manager of the Auctioneer.
44. The Company reserves the right to amend these Rules Of Auction in writing.
45. By entering a bid any prospective Buyer binds himself or herself to this Rules Of Auction.