

# THE AUCTIONEERS

## CONDITIONS GOVERNING AUCTION SALES

1. The Sale by auction is subject to a reserve price, unless specifically stated to the contrary by the auctioneer.
2. If no bid equals or exceeds the reserve price, if any, the property or goods may be withdrawn from the auction. 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. These Conditions of Sale 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 control of the auction shall be entirely in the hands of the auctioneer who shall regulate the advances in the bidding. In the event of a dispute, the auctioneer shall have the right to decide who was the last bidder at any stage of the sale, and may for any reason whatsoever, and in its absolute discretion, direct that bidding shall be resumed, or that bidding shall start afresh, or may withdraw the property from sale and put it up for sale at whatever time it may, in its absolute discretion, deem fit. The auctioneer shall be entitled in its sole and absolute discretion, to cancel a sale and to resell the property sold there at in the event of the buyer defaulting in his obligations and, should it do so, the defaulting buyer shall bear and be responsible for all expenses involved in such resale together with any loss sustained, but shall not be entitled to any benefit or profit which may be derived from such resale.
5. 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 cede 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.
6. Each bid shall constitute an offer to purchase the property for sale at the amount bid and shall be irrevocable until such bid is accepted or refused. Unless otherwise directed by the auctioneer, bidding shall be closed by the fall of the hammer and acceptance of a bid shall be subject to confirmation by the seller. Final acceptance of a bid shall be communicated by the auctioneer to the buyer. Whilst all sales shall be subject to VAT, the prices bid shall be deemed to be exclusive of VAT so that the successful bidder in each case shall be liable for the price at which the item sold was knocked down to him plus the VAT thereon.
7. The auctioneer will be under no obligation whatsoever to accept the highest or any other bid and will have the right to determine the minimum bid that will be accepted and to refuse any bid lower than the minimum bid. The auctioneer shall be entitled to refuse any bid (including the highest) without giving any reason whatsoever and he may withdraw the property from the sale before or after it has been offered for sale. Any refusal or withdrawal by the auctioneer will be deemed a decision by the seller despite any contradictions.
8. 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.
9. Any error by the auctioneer shall be entitled to be corrected by him or her upon discovery.
10. The buyer shall be bound by all announcements made by the auctioneer at the commencement of and during the sale, whether or not the buyer is present at the time such announcements are made.
11. Unless otherwise stipulated by the auctioneers at the start of the sale, livestock is offered for sale on a per head basis.

12. Payment of the purchase price by the buyer shall be made immediately after the property has been sold to him unless otherwise arranged with the auctioneers prior to the sale. Should any buyer fail to make payment immediately after the sale, then such buyer shall be liable, without prejudice to the seller's rights arising out of such failure, for interest on the balance of the purchase price outstanding, calculated from the date of the sale to the date of final payment, at a rate of up to the maximum prescribed by the Usury Act.
13. The buyer shall be obliged to pay the purchase price, and all other amounts payable in terms hereof, to the auctioneer or seller and shall not be entitled to set off any amount which the seller may owe to the buyer against any payment due to him in terms of or consequent upon any sale to which these conditions apply.
14. If a sale subject to confirmation is confirmed, the auctioneer shall inform the buyer of such confirmation orally within the period stipulated for confirmation. If the bidder whose bid has been provisionally accepted is not so informed, the property shall be deemed not to have been sold. The bidder whose bid is provisionally accepted shall not be entitled to withdraw his bid during the sale period. The auctioneer shall inform him of the amount and terms and conditions of any higher offer which it receives during that period and which the seller is prepared to accept and such bidder shall have the option to purchase on those same terms and conditions and at a sum equal to the highest of such other offers so notified to him.
15. The buyer warrants that he/ she/ it has full contractual capacity and power to enter into the sale or that, to the extent that the consent of any other party is required in order to ensure such capacity or power, such third party has consented. 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 these Conditions of Sale.
16. 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 Conditions of Sale.
17. 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
18. 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.
19. 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.
20. 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 Conditions of Sale 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.
21. 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.
22. The seller and the buyer indemnify and hold the auctioneer harmless against all claims for loss and/ or damage arising from any error in description of any property submitted for sale. Furthermore, the seller warrants, if the goods to be sold on his behalf comprise livestock, that to the best of his knowledge and belief, such livestock is, and at the time of the sale shall be, free of disease. In any event, both the seller and the purchaser agree that the auctioneer shall not be responsible for any loss or damages arising from the sale of diseased livestock from contamination of healthy livestock due to the placing of such livestock in proximity to diseased livestock, whether at the auction grounds or elsewhere.
23. Subject to any express agreement that may be entered into between the buyer and the seller, the risk in and to the property sold shall pass from the seller to the buyer upon confirmation of the sale but ownership of the property shall not pass to the buyer until he has paid the whole of the purchase price and any interest and/ or legal costs payable to him in terms hereof, and the seller or auctioneer shall be entitled to reclaim and recover from the buyer any property delivered to him in respect of which payment of the whole of the purchase price, interest and aforesaid costs has not been made. Payment by cheque in lieu of cash shall be conditional upon such cheque being honoured on presentation.
24. The purchase price is payable by the buyer to the auctioneer by bank-guaranteed cheque or by internet transfer on the date of sale ("the payment date") unless other payment terms and or means are agreed between the auctioneer and the buyer. The auctioneer reserves the right to refuse any method or means as payment.

25. Every entry made by the auctioneer in its vendu roll as to the property sold and the selling price thereof, shall be binding upon the buyer and seller and shall not be disputed by either of them.
26. The auctioneer is acting as the agent for and on behalf of the seller and neither the buyer nor the seller shall have any claim against the auctioneer arising from the sale.
27. In the event that the buyer should fail to pay the purchase price timeously, the auctioneer shall be entitled but not obliged, without formal cession of action from the seller, to sue the buyer in the auctioneer's own name and on its own behalf for purchase price or any unpaid portion thereof and the buyer shall be liable to pay in addition to the purchase price and interest aforesaid, all costs incurred in tracing the buyer and all legal costs and charges on an attorney and own client scale including, inter alia, all collection commission lawfully debited to the seller or the auctioneer by its attorneys in regard to the recovery of any amount due by the buyer.
28. 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.
29. 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.
30. In the absence of any express agreement, the auctioneer shall be entitled, in respect of each sale effected by it, to receive from the seller a reasonable remuneration for its services, together with the VAT thereon, which remuneration shall be the commission ordinarily charged by auctioneers at the time of the sale in the area where the sale is held. The seller shall also pay the amount of such expenses as the auctioneer may reasonably have incurred in connection with or incidental to the transaction.
31. Any indulgence shown or extension of time given, whether in respect of the payment of money or any other matter or thing hereunder, shall not constitute a waiver of rights by the seller and shall in no way prejudice him nor in any way limit his rights hereunder nor modify nor alter them, and he shall be entitled at any time to exercise such rights as though no indulgence had been shown nor extension of time given.
32. All documents necessary to be signed and all things necessary to be done to give effect to the purport and intention of the sale shall be so signed and done with all reasonable dispatch.

According to Regulation 26(2) of the Consumer Protection Act all prospective Buyers must hand in the necessary FICA documentation with Registration.

1. PRIVATE PERSON as well as the person registering on behalf of a third party.

- 1.1 Copy of identity document.
- 1.2 Proof of physical address not older than 3 months.

2. CLOSE CORPORATION

- 2.1 Founding document;
- 2.2 Copies of identity documents for all the Members;
- 2.3 Proof of physical address for all the Members, not older than 3 months.

3. COMPANY

- 3.1 Certificate of Incorporation;
- 3.2 Copies of identity documents for all the Directors;
- 3.3 Copies of identity documents for all the shareholders;
- 3.4 Proof of physical address.

4. TRUST

- 4.1 Copy of Trust Deed;
- 4.2 Copy of Letter of Authority to act on behalf of the Trust;
- 4.3 Copies of identity documents for all the Trustees.
- 4.4 Copies of identity documents for all the Beneficiaries

In the case of any dispute in respect of the interpretation of any of the conditions mentioned herein, the interpretation as accepted per the English text shall be registered as valid.

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