

# AUCTION MARKETPLACES PROPRIETARY LIMITED

## T/A AUCTIONBIDS

### TERMS AND CONDITIONS

#### 1. INTERPRETATION AND DEFINITIONS

- 1.1. In these Rules of Auction, unless inconsistent with the context and where the context so allows:
  - 1.1.1. Words referring to a specified gender includes a reference to any other recognised gender;
  - 1.1.2. Words referring to the singular form includes the plural and *vice versa*;
  - 1.1.3. Business hours means the time period between 08h00 and 17h00 as determined in the Republic of South Africa, which period will only be applicable to a day;
  - 1.1.4. A calendar month means either January, February, March, April, May, June, July, August, September, October, November, or December;
- 1.2. The clause headings in these Rules of Auction have been inserted for convenience yet may be taken into account in the interpretation of the subsequent sub-clause to ascertain the true meaning of the words within the context, interpretation or understanding as well as, or in the alternative to, ascribe the ordinary meanings of the words used.
- 1.3. Clause headings shall not be used to confer any rights or obligations on either of the Parties.
- 1.4. In the instance that any provision contains the same word which may have two possible meanings which have not been defined, the meaning of the word which shall best suit the context in advancing the rights created, obligations imposed, or liabilities assigned in such provision shall be prevailing.
- 1.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Rules of Auction.
- 1.6. The expiry or termination of these Rules of Auction shall not affect such of the provisions of these Rules of Auction as expressly provided that they will operate after any expiration or termination, or, which of necessity must continue to affect such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.7. The *eiusdem generis* rule (rule of interpretation which limited the applicability of generally listed elements) shall not apply, and wherever the term "including" is used followed by specific examples, such examples shall be interpreted to be illustrative only.
- 1.8. The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.9. The words "will" and "must" used in the context of any obligation or restriction imposed on a Party shall have the same meaning as the word "shall" which denotes a peremptory obligation imposed on a Party.

- 1.10. These Rules of Auction shall to the extent permitted by applicable Law be binding on and enforceable by or on the administrators, trustees, executors, permitted assigns, liquidators or business rescue practitioners of the Parties as fully and effectually as if they had signed these Rules of Auction in the first instance, and reference to any Party shall be deemed to include such Party's administrator, trustee, executors, permitted assigns, liquidators or Business Rescue practitioners, as the case may be whereby it shall be deemed that these Rules of Auction bind the estate of the Parties.
- 1.11. The *contra preferentum* rule (rule of interpretation which denotes a favourable interpretation for the Party who had not drafted these Rules of Auction), relating to the interpretation of any of the terms of these Rules of Auction against any Party responsible for the drafting thereof, is expressly excluded here from and shall not apply in any aspect of these Rules of Auction.
- 1.12. Any reference to currency shall be a reference to South African Rands unless the Parties agree otherwise.
- 1.13. The following terms and/or phrases, as may appear in these rules of auction, shall bear the meaning ascribed to them as defined below:
- 1.13.1. "**Advertisement**" means an advertisement which complies with the provisions of Regulations 19 and 20 and which has been made available on the Auction Platform and/or any other advertising platform at least 24 hours prior to the commencement of the Auction;
- 1.13.2. "**Auction**" means, for purpose of these Rules:
- 1.13.2.1. The process where offers are made by various Registered Bidders to purchase Goods and/or Lots on the Auction Platform;
- 1.13.2.2. Whereby the highest and last Bid made by a Bidder as at the Close of Auction will be deemed an irrevocable and unconditional offer made for the Goods and/or Lots, which offer shall become binding on the Bidder;
- 1.13.2.3. Whereas the offer may or may not be accepted by the Auctioneer, alternatively, the offer may be Subject to Confirmation and/or a Reserve Price (as per the Advertisement) the applicability of which will be displayed on the Auction Platform;
- 1.13.2.4. And where accepted, either by the Auctioneer or Seller, shall represent a sale of the Goods;
- 1.13.3. "**Auctioneer**" of "**Auction House**" means:
- 1.13.3.1. Auction Marketplaces Proprietary Limited, a private and limited liability company with registration number 2020/066165/07 and whose physical place of business is situated at 1312 Pretorius Street, Hatfield, Pretoria who may, from time to time, conduct auctions as part of their business; and/or
- 1.13.3.2. The natural person who will conduct the Auction, alternatively, oversee the Auction Platform;
- 1.13.4. "**Auction Platform**" means the internet-based electronic and/or digital platform which will be utilised by the Auctioneer to conduct and Auction, which platform will be facilitated by the uniform resource locator which may provide access to the platform shown on page 1 hereof;

- 1.13.5. **“Bank Confirmation Form”** means the form completed by either the Seller or Registered Bidder wherein either declare their banking information to the Auctioneer and moreover, where the Auctioneer is required to make payment of any monies to the Seller or Registered Bidder;
- 1.13.6. **“Bid”** means the process where a Registered Bidder makes an unconditional and binder offer for the Goods and/or Lots as set out in clause 12;
- 1.13.7. **“Bidder”** means an Entity who participates in the Auction through the Auction Platform and who makes a Bid for the Goods and/or Lots from time to time;
- 1.13.8. **“Bidder Account”** means the unique account username assigned to the Registered Bidder, which account shall become accessible by the Registered Bidder by insertion of their password, the Bidder Account to be used when registering for and participating in an Auction;
- 1.13.9. **“Bidder Application Form”** means the online application form completed and submitted by a Registered Bidder wherein an applicant applies for a Bidder Account in order to register for and participate in Auctions;
- 1.13.10. **“Bidder Commission”** means the commission payable by the Purchaser to the Auctioneer, this having been confirmed and agreed to in the Auction registration documents;
- 1.13.11. **“Bidding Price”** means the price which a Bidder is willing to pay for the Goods and/or Lots, which price shall be evidenced by the Bid made on the Goods and/or Lots as shown on the Auction Platform;
- 1.13.12. **“Bidder Record”** means the record of Registered Bidders who seek to participate in the Auction, which record is kept by the Auctioneer;
- 1.13.13. **“Business Day”** means a day of the week which is not a Saturday, Sunday or Public Holiday envisaged in the Public Holiday Act, 36 of 1994 as well as any promulgation in terms of the said act and shall be calculated excluding the first and including the last day, unless either the first or last day falls on a Business Day, in which case the last day shall be deemed the next day which is not a Saturday, Sunday or official public holiday and where reference is made to “day”, such reference will mean a calendar day;
- 1.13.14. **“Close of Auction”** means the expiration of the Auction as determined by the Auction’s allowable time, which expiration, when reaching 00:00 as displayed on the Auction Platform, symbolises the “fall of the hammer” traditionally indicating the end of the Auction;
- 1.13.15. **“CPA”** means the Consumer Protection Act, 68 of 2008, as amended from time to time;
- 1.13.16. **“Deposit”** means the monetary amount which has been paid by a Registered Bidder as part of their application to participate in the Auction;
- 1.13.17. **“Document Fee”** means the standard fee payable by the Registered Bidder as part of the application process to participate in each Auction;
- 1.13.18. **“Entity”** means a reference to either a natural person or juristic/legal person, albeit created in terms of statute, such as a company, close corporation, or a deed of trust, such as a trust or any other or contractually created such as a joint venture, voluntary association or consortium;
- 1.13.19. **“FICA”** means the Financial Intelligence Centre Act, 38 of 2001 (as amended);

1.13.20. **"FICA Declaration"** means the declaration form completed by the Registered Bidder wherein the Registered Bidder either confirms no change to their FICA information, alternatively, confirms a change thereto and is required to submit supporting documents before participation in the Auction;

1.13.21. **"Goods"** means the movable goods, whether corporeal or incorporeal:

1.13.21.1. Which are owned by the Seller; or

1.13.21.2. Which have been included in the Auction by the Entity who is duly authorised by the owner of the Goods to sell the said Goods by Auction; and

1.13.21.3. Which have, pursuant to Regulation 19, been advertised by means of Advertisements and thereafter listed as Goods or Lots on the Auction Platform; and

1.13.21.4. For which a Registered Bidder may Bid until the Close of Auction;

1.13.22. **"Lots"** means:

1.13.22.1. Any compilation of a group of Goods which are specified as a Lot, which compilation is compiled in the sole and absolute discretion of the Auctioneer and which may thereafter from part of a collective auction to be auctioned by the Auctioneer; or

1.13.22.2. Any arrangement wherein the Auctioneer ascribed a Lot number to the Goods to be sold on Auction; and

1.13.22.3. Shall be the subject of a separate transaction concluded between the Seller and Purchaser;

1.13.23. **"No Reserve"** means, where applicable, an Auction which has been advertised as No Reserve, absolute, without reserve or any similar wording, and where:

1.13.23.1. There are no *liens* or encumbrances on the Goods, except property tax obligations, easements, or restrictions on record, in favour of any Entity other than the Seller, or unless each and every holder of each and every lien and encumbrance has in writing agreed to the unqualified acceptance of the highest bid for the Goods, without regard to the amount of the highest Bid or the identity of the highest Bidder, or that a financially responsible Entity in writing absolutely guarantees the immediate and complete discharge and satisfaction of any and all liens and encumbrances immediately after the Auction and at the Close of Auction, without regard to the amount of the highest Bid received, or the identity of the highest Bidder; and

1.13.23.2. There is the *bona fide* intention at the time of the Advertisement and at the time of the Auction to transfer ownership of the Goods, regardless of the amount of the highest and last Bid, to the highest Bidder, that intent existing without reliance on any agreement that any particular Bid or Bid level must be made or be reached, below which level the goods will not be transferred to the highest Bidder; and

1.13.23.3. The Rules contain a binding requirement that the Auction be conducted without reserve;

- 1.13.24. **“Online Transaction”** means the process where a Registered Bidder Bids on the Goods, and as such, makes an offer for such Goods using the Auction Platform, the transaction has come to an existence where the highest Bidder makes their final Bid shortly before or at the Close of Auction;
- 1.13.25. **“Purchaser”** means the Bidder who has made the highest Bid at the Close of Auction, which Bid shall be deemed to have been accepted by the Auctioneer, unless:
- 1.13.25.1. The Goods are sold Subject to Confirmation, in which case, the Auctioneer shall first seek the Seller’s confirmation of the offer; or
- 1.13.25.2. The Reserve Price has not been attained;
- 1.13.26. **“Purchase Price”** means the total consideration payable by the Bidder for the Goods and/or Lots, which shall be calculated as follows:
- 1.13.26.1. The Bidding Price;
- 1.13.26.2. PLUS, the Bidder Commission;
- 1.13.26.3. PLUS, the Document Fees;
- 1.13.26.4. PLUS, VAT;
- 1.13.26.5. LESS, the Deposit;
- 1.13.27. **“Registered Bidder”** means an Entity who, after having submitted the Bidder’s Application Form, and having submitted a registration to participate in the Auction, paid the Deposit, Document Fee and fulfilled all other requirements set by the Auctioneer, is permitted to participate in the Auction on the Auction Platform and make Bids for Goods and/or Lots;
- 1.13.28. **“Regulations”** means the regulations promulgated in respect of the CPA;
- 1.13.29. **“Reserve Price”** means an Auction where there is a minimum monetary value for which the Seller is prepared to Sell the Goods as shown by Advertisement as well as the Auction Platform;
- 1.13.30. **“Rules of Auction”** or **“Rules”** means these general terms and conditions applicable to the Auction as contained in this document, which Rules of Auction shall form a binding agreement by and between the Auctioneer, the Bidder and the Seller, which binding agreement may act as a variation to the Seller’s Mandate and/or the Bidder’s Application Form, the said Rules subject to the relevant provisions of the CPA;
- 1.13.31. **“Seller”** means:
- 1.13.31.1. The Entity, being either a natural person or juristic person;
- 1.13.31.2. Who, by completing the Seller’s Mandate, provides the Auctioneer with a mandate to sell the Goods at the Auction;

- 1.13.31.3. Who may be the owner of the Goods, or, duly authorised to sell the Goods on behalf of the owner;
- 1.13.32. **“Seller’s Commission”** means, where applicable, the commission payable by the Seller to the Auctioneer as regulated by the Seller’s Mandate;
- 1.13.33. **“Seller’s Mandate”** means the agreement concluded between the Seller and the Auctioneer in terms of which the Seller mandates the Auctioneer to sell the Goods;
- 1.13.34. **“Settlement Statement”** means the statement compiled by the Auctioneer wherein the Auctioneer accounts to the Seller in respect of the Bidding Price, VAT, Bidder Commission, Seller’s Commission as well as any other costs;
- 1.13.35. **“Subject to Confirmation”** means a term of Auction where the Seller has the right to accept or reject the Bidding Price at the Close of Auction, irrespective of the Reserve Price being attained and/or exceeded;
- 1.13.36. **“VAT”** means the value-added tax rate determined in terms of the Value-Added Tax Act, 89 of 1991 from time to time.

## 2. **INTRODUCTION**

- 2.1. The Auctioneer will hold the Auction by online and electronic means, and thus, conclude various Online Transactions using the Auction Platform.
- 2.2. The Registered Bidder shall have completed the Bidder Application Form, Auction registration forms as well as the FICA Declaration Form (where applicable) in order to participate in the Auction.
- 2.3. These Rules shall govern and regulate:
- 2.3.1. The rights and obligations of the Auctioneer, the Bidder as well as the Seller in respect of the Auction;
- 2.3.2. The Online Transactions; and
- 2.3.3. The sale of the Goods.
- 2.4. Where Goods are put up for sale by Auction in Lots, then, unless there is evidence to the contrary, each Lot shall be deemed the subject to a separate Online Transaction.

## 3. **THE CPA AND REGULATIONS**

- 3.1. These Rules have been prepared pursuant to section 45 of the CPA as well as the Regulations, and more specifically, Regulation 21.
- 3.2. The Bidder’s attention is drawn to schedule A, this being an extract of section 45 of the CPA. The Bidder, by participating in the Auction, confirms that the Auctioneer has fulfilled its obligations in respect of section 45 of the CPA.

3.3. These Rules are furthermore subject to regulation 18(5) of the Regulations. Where there is a conflict between the terms of these Rules and any provision contained in the Regulation, then the terms of the Regulations shall prevail and replace the conflicting Rule.

#### 4. **ACCEPTANCE OF RULES OF AUCTION**

4.1. The Rules of Auction have been provided to the Registered Bidder as part of their registration to participate in the Auction.

4.2. A copy of these Rules will be made available at least 24 (twenty-four) hours prior to the Auction:

4.2.1. On the Auction Platform; or

4.2.2. At the Auctioneer's registered office.

4.3. The Auctioneer shall not be obligated to announce these Rules in their specificity set out herein at the time the Auction commences – failure to do so will not constitute grounds for the Registered Bidder, Bidder or Purchaser to refuse from fulfilling any obligation provided for herein.

4.4. The mere:

4.4.1. Logging onto the Auction Platform using the Registered Bidder's Bidding Account login and password; or

4.4.2. Using of the Registered Bidder's specified Bidding Account to make Bids; or

4.4.3. Participation in the Auction –

4.4.4. Constitutes the Registered Bidder's unconditional and irrevocable acceptance of these Rules. The Registered Bidder, as such, warrants and guarantees that they have read these Rules, that they are familiar therewith and understand the said Rules.

4.5. Should the Auctioneer become aware of Advertisement errors or any other publication or amendment to these Rules, then the Auctioneer will, prior to the Auction, point out and when necessary, amend such mistakes in an Advertisement or display such changes on the Auction Platform.

#### 5. **PARTICIPATION IN AUCTION**

5.1. The Auctioneer shall exercise exclusive control over the proceedings of the Auction. The Auctioneer reserves the right of admission to the Auction.

5.2. A Registered Bidder shall be permitted to participate in the Auction as a result of the fact that they intend on Bidding on Goods and/or Lots – the Registered Bidder, as such, represents, warrants and guarantees that all Bids are made with the sole intent to purchase the Goods and/or Lots. The participation in Auctions to fulfil any other intent is strictly prohibited.

5.3. Only Registered Bidders who have fulfilled the requirements set out below shall be authorised to participate in the Auction. The Registered Bidder, in registering to participate in the Auction, shall have:

- 5.3.1. Completed the Bidder's Application form, been assigned their login and password details and their online account created and valid;
  - 5.3.2. Successfully applied to participate in the Auction;
  - 5.3.3. Paid the Deposit, as stated on the Bidders Registration Form for that specific Auction
  - 5.3.4. Remained compliant with the Auctioneer's requirements to participate in the Auction any time throughout the Auction;
  - 5.3.5. Had access to these Rules prior to the Commencement of the Auction, and as a result hereof, shall have consented to the applicability of these Rules for the Auction; and
  - 5.3.6. Ensured that they understand and are aware of the provisions of schedule A.
- 5.4. All Bids made by the Registered Bidder shall be made using the Bidding Account.
- 5.5. The Registered Bidder shall make use of their username and password to access the Auction Platform. The Registered Bidder shall ensure that their nominated device for participation in the Auction is sufficiently charged and connected to an internet source so as to allow the Registered Bidder to participate in the Auction. Failure to participate in the Auction as a result of a poor or unstable internet connection and/or a faulty device shall not constitute grounds for any liability on the part of the Auctioneer. The Registered Bidder shall ensure that the settings of their device allows the Auction Platform to collect the Registered Bidder's internet protocol address. The Registered Bidder's participation on the Auction Platform may be revoked in such instance that the Registered Bidder is in breach hereof.
- 5.6. A Registered Bidder must keep their account details confidential and shall not permit third parties to use or access their account. The Registered Bidder shall be liable for all activity and participation in the Auction through their account, including, yet not limited to, Bids entered, and Online Transactions concluded using this account. The Auctioneer shall not be responsible for the safekeeping and preservation of the Registered Bidder's account details.
- 5.7. The Registered Bidder's participation in the Auction is subject to these Rules. The Auctioneer may block, restrict, suspend and/or revoke the Registered Bidder's account, and as such, their participation in the Auction either prior to or at any time during the Auction. Where the Auctioneer takes any action envisaged herein, then the Registered Bidder shall have no claim whatsoever against the Auctioneer for any Damages howsoever arising.
- 5.8. The Auction Platform, being an electronic platform, is available to any natural persons who has attained the age of 18 (eighteen) years and older at any time of the day.

## 6. **CONDUCT OF AUCTIONS**

- 6.1. The Registered Bidder shall only be permitted to Bid on Goods and/or Lots which are available for sale – no Bids shall be accepted on Goods and/or Lots which are already sold.
- 6.2. The Auctioneer may elect to record the Auction proceedings. These recordings may contain confidential, private and privileged information and shall not be made available to the Bidder, Seller or any third party in the absence of a court order or other legal obligation.
- 6.3. Where a Registered Bidder makes a Bid on the Auction Platform using the Bidder Account envisaged in clause 5.4, then it shall be deemed that the Registered Bidder has raised their bidding paddle, thus indicating to the Auctioneer that the Bidder is making an unconditional and irrevocable offer for the Goods and/or Lots in exchange for the Bidding Price and with



the sole intent to conclude an Online Transaction and pay the Purchase Price. All such Bids are made with the knowledge that the Purchaser shall be liable for payment of the Purchase Price and not only the Bidding Price.

- 6.4. A Registered Bidder shall not be permitted to raise any type of defence that they themselves were not Bidding on the Goods and/or Lots. Reference is made to the content of clause 5.6.
- 6.5. The Registered Bidder shall not be permitted to make use of any self-created or self-coded bots to participate in the Auction. All participation on the Auction Platform shall be facilitated by direct human interaction or as allowed pursuant to clause 12.
- 6.6. All Registered Bidders make use of the Auction Platform, and furthermore participate in the Auction, at their own risk. The Auctioneer shall not be liable for any compromise to or breach of the Registered Bidder's computer, cellular phone, tablet or any other device used to participate in the Auction. The Registered Bidder shall ensure that they have sufficient firewall protection to guard against third party attacks.
- 6.7. The Registered Bidder recognises that a Seller may, where the Auction is advertised as such, be entitled to Bid against their own Goods and/or Lots, alternatively, arrange for a third-party to Bid against their own Goods and/or Lots, alternatively, instruct the Auctioneer to Bid against their own Goods and/or Lots during the Auction, subject thereto that no such Bid shall exceed the Reserve Price.
- 6.8. All Goods and/or Lots are sold "voetstoots" and the Purchaser hereby waives the protection afforded by section 55 and 56 of the CPA. The Auctioneer shall ensure that the Seller's Mandate obligates the Seller to disclose any defects, including latent and patent defects. Given the nature of this Auction, as well as the fact that the Auctioneer will not hold possession of the Goods and/or Lots, the Registered Bidder acknowledges that the Auctioneer shall not be liable for any damages, loss or injury occasioned by the Registered Bidder as a result of the Goods and/or Lots being faulty.

## 7. **CANCELLATION OF PARTICIPATION IN AUCTION**

- 7.1. Subject to clause 5.7, the Auctioneer has the right to block, restrict, suspend and/or revoke the Registered Bidder's participation in the Auction where:
- 7.1.1. The Registered Bidder fails to timeously comply with any obligation imposed either by legislation or by the Auctioneer and/or;
- 7.1.2. The Auctioneer reasonably believes or suspects that the Registered Bidder has engaged in any unlawful, dishonest or untruthful activity while participating or seeking to participate in the Auction; and/or
- 7.1.3. The Registered Bidder attempts to collude or deceive the Auctioneer or other registered bidders at any time; and/or
- 7.1.4. The Registered Bidder does not comply with these Rules; and/or
- 7.1.5. The Registered Bidder participates in the Auction for any other purpose than intending to purchase Goods and/or Lots; and/or
- 7.1.6. The Registered Bidder uses or intends to use the Auction Platform for any of the following:
- 7.1.6.1. For fraudulent purposes, or in connection with a criminal offence or other unlawful activity;

- 7.1.6.2. To send, use or re-use any material that is illegal, offensive, abusive, in decent, defamatory, obscene or menacing; or in breach of any law or third party rights or is otherwise injurious to third parties; objectionable or which consists of or contains software viruses, political campaigning, commercial solicitation, chain letters, mass mailing or spam;
- 7.1.6.3. To hack the Auctioneer's servers, Auction Platform or any other Registered Bidder's device;
- 7.1.6.4. To make payment of the Deposit and/or Purchase Price to launder money;
- 7.1.6.5. To offer, sell, Bid for or buy any items which are illegal or infringe any third-party rights (including intellectual property rights); and/or
- 7.1.6.6. To cause annoyance or inconvenience.

## 8. **DATE AND TIME OF AUCTIONS**

- 8.1. The Auction shall commence on the date and at the time as displayed in the Advertisement and/or Auction Platform and/or Auction catalogue.
- 8.2. The start of the Auction shall be indicated by the opening of Bids on the Auction Platform. The Auctioneer shall not intentionally delay the opening of an Auction.
- 8.3. An Auction may be postponed or delayed by the Auctioneer in their sole and absolute discretion. The Auctioneer shall reasonably endeavour to inform and notify Registered Bidders of any postponement of Auctions, however, failure to do so will not result in any liability incurred by the Auctioneer.
- 8.4. The Auction shall not be postponed and/or delayed:
  - 8.4.1. To specifically allow an Entity or group of Entities to participate in the Auction; or
  - 8.4.2. For a Registered Bidder that may experience any difficulties of whatever nature in accessing, using or participating in the Auction.

## 9. **AUCTION CATALOGUE**

- 9.1. The full and final Auction catalogue will be available on the Auction Platform at least 48 (forty-eight) hours prior to the commencement of the Auction.

9.2. The Registered Bidder, or any third-party interested in viewing or registering for the Auction, may access and view the final Auction catalogue.

9.3. The Auctioneer may withdraw and/or remove any Goods and/or Lots from the Auction Platform at any time prior to the sale thereof. The Auctioneer shall not be required to give the Registered Bidder notice of such removal.

10. **REGISTERED BIDDER'S INSPECTION**

10.1. It is the responsibility of the Registered Bidder to view and/or inspect all Goods and/or Lots that the Registered Bidder intends to Bid on before participating in the Auction.

10.2. Inspection of Goods may be pre-arranged upon appointment. Where the Bidder has failed and/or neglected and/or refrained from arranging a viewing, then it shall be deemed that the Bidder has opted-out of their right to view the Goods prior to the Auction and participates in the Auction cognisant of the fact that they may purchase Goods which they have elected not to inspect.

10.3. The Purchaser shall claim any damages which may arise as a result of any defects in the Goods *from the Seller* and shall not be permitted to claim any such Damages from the Auctioneer. The Purchaser, Registered Bidder and Bidder herewith indemnify and hold the Auctioneer harmless against any claim, damages, loss or liabilities the Purchaser, Registered Bidder and Bidder may incur as a result of their participation in the Auction or on the Auction Platform.

10.4. In accordance with Regulation 32, the Auctioneer shall inform the Seller that they are to attach a notice containing various particulars to any vehicle at all times when such vehicle is available for inspection by Registered Bidders, and where a Registered Bidder elects to inspect the Goods. This will only be applicable where the Goods and/or Lots are vehicles. The Auctioneer cannot control this, however, shall reasonably endeavour to ensure the Seller complies with this Rule.

10.5. Unless specifically specified, all Goods/Lots are sold with no duty to repair. The Auctioneer and/or the Seller shall not be responsible and/or required to repair any damaged Goods and/or Lots.

10.6. A Bid shall be deemed conclusive proof that the Registered Bidder has inspected the Goods and/or Lots and has satisfied itself with the condition of the Goods and/or Lots for which it Bids, alternatively, that the Bidder has elected to opt-out of their right to inspect the Goods, and makes all Bids fully aware of the exclusions of liability allowed herein.

11. **DEPOSIT**

11.1. The Registered Bidder shall be required to make payment of the Deposit as shown on the Auction registration documents.

11.2. The Deposit may be refunded to the Registered Bidder within 48 (forty-eight) hours after the Auction should the Registered Bidder not have purchased any Goods. Subject to clause 12.9, the Auctioneer shall only refund Deposits where:

11.2.1. The Registered Bidder did not purchase any Goods and/or Lots;

11.2.2. The Registered Bidder has fulfilled their obligations in respect of FICA; and

11.2.3. Upon receipt of the Bank Confirmation Form with supporting documents.

- 11.3. Where the Registered Bidder makes payment of the Deposit before their Bidder's Application Form is accepted, and the Registered Bidder fails to comply with any FICA queries raised by the Auctioneer, then the Deposit shall only become payable where the Auctioneer is satisfied that the Registered Bidder has supplied their FICA documents.
- 11.4. Deposits shall only be refunded to the Registered Bidder where the Registered Bidder has completed the Bank Confirmation Form. The Auctioneer SHALL NOT refund Deposits to any other bank account than the account from which the Deposit was paid.
- 11.5. Deposits which are not claimed after 6 (six) months from the Close of Auction shall be retained by the Auctioneer.

12. **BIDDING PROCEDURE**

- 12.1. The Auction is a timed Auction, this meaning that the Registered Bidder will only have a certain amount of time to Bid, and the Auction will close on a date and time as indicated on the Auction Platform as well as the cover page of these Rules.
- 12.2. Should the Registered Bidder submit a Bid which is lower than the Reserve Price, then the Auctioneer will inform the Registered Bidder that they may be required to increase their Bid in order to match the Reserve Price, and in doing so, continue with their participation in the Auction.
- 12.3. The Auctioneer may announce the reason for Auction, however, the marking thereof as indicated on page 1 (one) of these Rules shall constitute an announcement of the reason for Auction.
- 12.4. The Bidding Price displayed on the Auction Platform does not include VAT, Bidder Commission, transportation costs, or the Deposit paid by the Registered Bidder.
- 12.5. The Auctioneer shall, upon request, provide the Bidder with a breakdown of the total cost of advertising and the reasonably calculated cost of Auction. Where additional costs have been disbursed, then the statement shall show such costs.
- 12.6. Two types of Bids may be made by the Registered Bidder on the Auction Platform:
- 12.6.1. AutoBid:
- 12.6.1.1. The Registered Bidder will submit the maximum Bidding Price that they are willing to Bid on the Auction Platform for Goods and/or Lots;
- 12.6.1.2. The Auctioneer may specify Bidding increments applicable to the specified Auction. All such Bids shall be made in the mandated increments;
- 12.6.1.3. The Auction Platform may then accept the Bid, unless the Goods/Lots are Subject to Confirmation, if stipulated, or the Bid is below the Reserved Price (either by the Auctioneer or the Seller);
- 12.6.1.4. Once the Bid is accepted, the Auction Platform will automatically Bid on behalf of the Bidder in such pre-set increments as selected by the Bidder;
- 12.6.1.5. Each time a third-party bidder makes a Bid, the AutoBid will make a higher Bid within the allowable increment – this will be permissible notwithstanding clause 6.5;

- 12.6.1.6. Should a bidding price exceed the AutoBid, then the Registered Bidder will be permitted to increase their AutoBid;
  - 12.6.1.7. If the Registered Bidder's AutoBid is the highest and final Bid at the Close of Auction, then the Bidder shall have successfully concluded an Online Transaction and will become a Purchaser;
  - 12.6.1.8. The sale by Auction is then completed at the Close of Auction;
  - 12.6.1.9. The Registered Bidder shall be required to check the Auction Platform regularly to ensure that their Bid remains the highest – the Auctioneer and/or Auction Platform may inform the Bidder of any higher Bids by electronic mail / sms, however, shall not be obligated to do so;
  - 12.6.1.10. The announcement in respect of the Close of Auction shall be signified by the timer counting down the Auction reaching 00:00.
- 12.6.2. Live/Quick bidding:
- 12.6.2.1. The Registered Bidder may make Bids on the Goods and/or Lots manually;
  - 12.6.2.2. During the Auction, the Registered Bidder may Bid for Goods and/or Lots by clicking on the Bid button/icon shown on the Auction Platform;
  - 12.6.2.3. Each click to Bid shall constitute a data message which is transmitted from the Bidder to the Auctioneer indicating that the Bidder makes an offer for the Goods and/or Lots;
  - 12.6.2.4. The Registered Bidder shall remain logged in on the Auction Platform to ensure that their Bid remains the highest – the Auctioneer and/or Auction Platform shall not inform the Bidder of any higher Bids;
  - 12.6.2.5. If the Registered Bidder's Bid is the final Bid at the Close of Auction, then the Registered Bidder shall have successfully bided and will become a Purchaser.
- 12.7. The Registered Bidder, by Bidding in terms of either clause 12.6.1 or 12.6.2, acknowledges that bidding in the Auction represents an *irrevocable and unconditional* offer made by the Registered Bidder for the Goods and/or Lots, each Lot constituting a separate Online Transaction, which offer is subject to the acceptance by the Auctioneer.
- 12.8. The Auctioneer shall be permitted to extend the Auction by any time they so seek without prior notice to the Registered Bidder. Until the Close of Auction, any Bid may be retracted or declined by the Auctioneer.
- 12.9. All Bids are subject to clause 12.7 even if submitted in error. The Registered Bidder accepts full responsibility for every Bid submitted on the Auction Platform using the Registered Bidder's account. Should the Registered Bidder Bid by accident, as a result of an error or fault or as a result of a third-party using their account, then the Deposit paid by the Registered Bidder will be used to settle part of the Purchase Price, and the Registered Bidder will be invoiced for the remainder of the Purchase Price, together with the applicable VAT, Bidder Commission any other fee.
- 12.10. No Bids will be accepted after the Close of Auction.

12.11. In the event of the highest Bid being tied, the earliest Bid received or recognised in the Auctioneer's sole discretion shall win the Auction.

12.12. All data produced, transmitted, or stored in connection with the execution of an Online Transaction on the Auction Platform may be stored, used, and transmitted as described in Auctioneer's privacy policy. The Auctioneer is the sole and exclusive proprietor of this data.

13. **SALE BY AUCTION**

13.1. The Auctioneer conducts the Auction as an agent and accepts no liability whatsoever. The Auctioneer is not obligated to ensure the authenticity of the information submitted by the Seller in relation to the Goods to be sold at Auction. The Auctioneer shall not be liable for any damages incurred or suffered by the Purchaser as a result of the Purchaser's reliance on the information posted to the Auction Platform describing the Goods.

13.2. Where a No Reserve Auction is conducted by the Auctioneer, the Auction will be conducted in accordance with the provisions of sub-regulation 20 (18) and 20 (19) of the CPA.

13.3. A secured party or other *lien* holder or any individual Entity is not prohibited from Bidding at a No Reserve Auction, provided such bidding does not constitute, nor is tantamount to the direct or indirect establishment or agreement to the establishment of a Reserve Price for the Goods and/or Lots.

13.4. Certain Goods and/or Lots may be Auctioned with a Reserve Price, whilst others are offered with No Reserve, at the same Auction and at the same time. This is permitted provided that it is made clear which Goods and/or Lots are offered by which method.

13.5. No Bid may be withdrawn after the Close of Auction. Where the Auction is subject to a Reserve Price, Subject to Confirmation or other conditions of sale (which would have been shown in the Advertisement), the offer made by the highest Bidder shall be open for acceptance by the Auctioneer and/or the Seller. Where the offer is accepted, the sale shall be deemed to be a sale by Auction for purposes of the CPA.

13.6. Where Goods and/or Lots are sold Subject to Confirmation, then the Auctioneer shall procure to obtain the Seller's confirmation and communicate same to the Purchaser within 48 (forty-eight) hours after the Close of Auction.

13.7. If the Bidder is successful, an email/sms notification will be sent to the said Bidder confirming that they have won the Goods and/or Lot and the Bid will automatically be added to the Bidder's account. The Bidder will be supplied with a VAT Invoice as stipulated in clause 14.1. Although Goods and/or Lots are sold separately, the Auctioneer shall generate a single invoice payable by the Purchaser for the total amount of Lots purchased.

14. **PAYMENTS BY THE REGISTERED BIDDER AND/OR PURCHASER**

14.1. The Auctioneer shall ensure that a valid tax invoice is submitted to the Purchaser within 24 hours after the Auction. The Purchaser will receive this invoice by electronic mail. The tax invoice shall clearly indicate the Bidding Price, VAT, Bidder Commission as well as any other costs.

14.2. The invoice and/or Purchase Price (which shall include the Bidding Price, VAT, Bidder Commission, Document Fees less the Deposit) shall become payable the moment:

14.2.1. The Seller accepts the Bid, where same is Subject to Confirmation; or

14.2.2. At Close of Auction.

14.3. The Purchaser shall be obligated to make payment of the Purchase Price within 24 hours after receipt of the tax invoice. Each Lot purchased shall form part of a single invoice, and the Purchaser is to make a single payment of each invoice.

14.4. All payments are to be made to the Auctioneer's nominated bank account by electronic funds transfer. The Auctioneer shall not allow cash deposits.

14.5. Should the Purchaser fail to pay the invoice value within 2 (two) Business Days after the Close of Auction, then the Auctioneer shall be permitted to re-auction the Goods and/or Lots.

14.6. Where the Purchaser fails to make payment of the Purchase Price, then the Purchaser shall remain liable for payment of:

14.6.1. Any difference in the Purchase Price payable by the Registered Bidder and a subsequent purchase price of another bidder to whom the Goods and/or Lots are sold at a later Auction; or

14.6.2. The Bidding Price; and

14.6.3. The Bidder Commission; and

14.6.4. Any damages suffered an/or incurred by the Auctioneer (which may be recovered from the Deposit).

14.7. Notwithstanding anything to the contrary, the Auctioneer shall be permitted to retain the Deposit until such time as the provisions of clause 14.6 have been fulfilled.

14.8. The Bidder Commission payable by the Bidder who fails to pay the Purchase Price shall be regarded as fair and just compensation to the Auctioneer for having to re-auction the Goods and/or Lots.

14.9. Where the Purchaser requires third party finance to purchase the Goods, then such finance must be procured and arranged prior to the Auction. Such finance shall include the Bidding Price, Bidder Commission, VAT and other costs, where necessary and applicable.

14.10. The Auctioneer shall hold a *lien* over all Goods which have been sold by Auction, however, which have not yet been paid. The *lien* will include a right of retention.

14.11. All amounts paid by the Purchaser shall be received by the Auctioneer in a trust account, alternatively, a similar account, which amount is received for the benefit of the Seller, with the exception of the Bidder Commission.

## 15. **DISPUTE BETWEEN REGISTERED BIDDERS**

15.1. If there is a dispute between two or more Registered Bidders, and the dispute is not resolved within a period of 10 (ten) Business Days after the Auction, then the Auctioneer may:

15.1.1. Declare the valid purchaser based on facts presented to the Auctioneer; or

15.1.2. Put the Goods or Lots up for sale again.

16. **REMOVAL, STORAGE, STANDING TIME AND DELIVERY**

- 16.1. Removal of any Goods and/or Lots by the Purchaser will not take place until payment of the full Purchase Price has been made to the Auctioneer and is reflected in the Auctioneer's bank account. This is notwithstanding the fact that risk in and to the Goods and/or Lots shall have passed to the Purchaser at the Close of Auction.
- 16.2. The Purchaser shall be afforded a maximum of 7 (seven) calendar days after payment of the Purchase Price reflects in the Auctioneer's banking account to collect the Goods and/or Lots purchased from the Seller or any alternative premises as indicated by the Auctioneer.
- 16.3. Storage and standing time must not be longer than 7 calendar days, and the Purchaser will be charged R400.00 (four hundred rand) per calendar day or any part thereof should the Goods and/or Lots still be at the premise of the Seller, Auctioneer or the alternative premises after expiration of the allowable 7 (seven) calendar day period.
- 16.4. In such event that the Goods and/or Lots require delivery to facilitate the transfer of ownership, such as vehicles, large equipment and specialised Goods, then the Auctioneer shall not be obligated to arrange for the delivery and/or deliver the Goods to the Purchaser.
- 16.5. The obligation to take delivery of such Goods lies with the Purchaser. The Purchaser shall bear the cost of such delivery, which cost need not be disclosed by the Auctioneer on the Auction Platform.

17. **OWNERSHIP AND RISK OF PURCHASED PRODUCTS**

- 17.1. Ownership in and to the Goods and/or Lots shall remain vested in the Seller until the Purchase Price has been paid to the Auctioneer in full.
- 17.2. Risk in the Goods and/or Lot shall be transferred to the Purchaser:
- 17.2.1. Where no Reserve Price is applicable, at the Close of Auction;
- 17.2.2. Where there is a Reserve Price, yet, same has not been attained, at the time when the Seller accepts the Purchase Price and the Purchaser is notified thereof; or
- 17.2.3. Where the Auction is Subject to Confirmation, at the time the Auctioneer notifies the Purchaser of the acceptance of their Bid.
- 17.3. Neither the Purchaser, nor the Seller, shall be entitled to apply set-off or to retain any monies owing arising from any claim they may have against each other or the Auctioneer with regards to any amount owing in terms hereof. The Auctioneer may, however, apply set off against any amounts which either the Seller or Purchaser owe the Auctioneer.

18. **FICA**

- 18.1. FICA is an anti-money laundering act promulgated in the Republic of South Africa.
- 18.2. The aim of the Act is to combat money laundering and imposes certain duties on certain organisations in order to prevent and combat money laundering.



- 18.3. All Auction registrations shall be accompanied by a FICA Declaration Form, this, to be submitted by the Registered Bidder in order to participate in Auctions.
- 18.4. The Registered Bidder shall be obligated to provide the Auctioneer with all such information as may be requested in terms of the FICA Requirements form, alternatively, any supplementary information thereto, prior to the Auction.
- 18.5. Should the Auctioneer become aware of any inaccuracies or irregularities in respect of the information submitted to the Auctioneer, then the Auctioneer reserves their right to suspend the Registered Bidder's participation on the Auction.
- 18.6. The Registered Bidder and Seller acknowledges that the information submitted to the Auctioneer pursuant to FICA shall be stored by the Auctioneer as part of a library.
- 18.7. The obligation to update the Registered Bidder's FICA information is a continuous obligation which shall be fulfilled by completing the FICA Declaration Form and submitting the said form to the Auctioneer.

19. **PROTECTION OF PERSONAL INFORMATION**

- 19.1. The Auctioneer shall ensure that all information received from the Registered Bidder shall be processed, stored, protected and dealt with compliant to the provisions of the Protection of personal information Act, 4 of 2013 (hereinafter referred to as the "Protection of personal information Act") and shall at all times adhere to the principles of the Protection of personal information Act.
- 19.2. The Registered Bidder acknowledges that the Auctioneer is tasked with collecting and recording the Registered Bidder's personal information, which may include a third-party's personal information (where a third-party is authorised to act on behalf of the Registered Bidder).
- 19.3. Where the Auctioneer is permitted access to such personal information for any reason pursuant to these Rules of Auction, then the Auctioneer may:
- 19.3.1. Use and/or hold such personal information only:
- 19.3.1.1. For purposes of performing its obligations under these Rules of Auction and to the extent reasonably directed by the Registered Bidder in writing;
- 19.3.1.2. In a manner so directed by the Registered Bidder and shall not otherwise modify, amend or alter the content of such personal information or disclose or permit the disclosure of such personal information to any third party, unless specifically authorised to do so by the Registered Bidder or as required by law or any regulatory body and shall take all such steps as may be necessary to safeguard such personal information;
- 19.3.2. Without prejudice to the generality of the foregoing, ensure that appropriate technical and organisational measures shall be taken by the Auctioneer to guard against the unauthorised or unlawful processing of such personal information and against the accidental loss or destruction of, or damage to, such personal information;
- 19.3.3. Not (and shall take reasonable steps to procure that its agents shall not) process or transfer any personal information outside the Republic of South Africa without the prior written consent of the Registered Bidder;

- 19.3.4. Comply with its own obligations under the Protection of Personal Information Act;
- 19.3.5. For the purposes of facilitating the Registered Bidder's compliance with the Protection of Personal Information Act, furnish the Registered Bidder with copies of such security, audit and control reports generated by the Auctioneer's information authority;
- 19.3.6. Promptly notify the Registered Bidder when the Auctioneer becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of the Rules of Auction relating to personal information;
- 19.3.7. Co-operate with the Registered Bidder in complying with any request for access or query from an individual who is the subject of personal information and/or responding to any enquiry made, or investigation or assessment of any processing initiated by a relevant regulatory authority in respect of such personal information;
- 19.3.8. Share such personal information with the Registered Bidder's reasonable request;
- 19.3.9. Not, under any circumstances sell, transfer, process or make the Registered Bidder's personal information available to any third party.

## 20. **LIMITATION OF LIABILITY**

- 20.1. Notwithstanding section 43 of the Electronic Communication and Transactions Act, 25 of 2002, under no circumstances will the Auctioneer, its affiliates or subsidiaries, or any shareholders of the Auctioneer and its subsidiaries, officers, directors, employees, or agents be liable for any loss or damage caused by:
  - 20.1.1. The Bidder's reliance on information obtained through the Advertisement or on the Auction Platform;
  - 20.1.2. By being exposed to information contained on the Auction Platform;
  - 20.1.3. The defamatory, offensive or illegal conduct of the Registered Bidder, other bidders or third parties;
  - 20.1.4. The use or inability to use the Auction Platform or the services or content provided from or through the Auction Platform;
  - 20.1.5. Any disruption in the internet connection resulting in the Bidder being disconnected from the Auction Platform for whatsoever reason;
  - 20.1.6. Any representation made by the Seller, whether such representation relates to the Goods and/or Lots, any defects or condition; or
  - 20.1.7. The failure to record a Bid as a result of being disconnected or the Auction Platform going offline during the auction process.
- 20.2. Neither the Auctioneer or any third-party content provider nor their respective agents shall be liable for any direct indirect, incidental, or consequential damages arising out of the use or inability to use or access the Auction site.
- 20.3. The Auctioneer makes no representation or warranties, implied or otherwise that:

- 20.3.1. The Auction will be uninterrupted and 100% (one hundred percent) error free;
- 20.3.2. That the Auction Platform will work on the Registered Bidder's chosen device;
- 20.3.3. That the Goods and/or Lots are fit for purpose;
- 20.3.4. That the purchase of the Goods and/or Lots shall achieve the Registered Bidder's desired outcome in relation thereto.

## 21. **VENDOR ROLL**

21.1. The Auctioneer shall keep a vendor's roll in which all details of the Auction, and moreover, those items listed below, will be kept:

- 21.1.1. These Rules;
- 21.1.2. The Advertisement;
- 21.1.3. Where applicable, the Auction catalogue;
- 21.1.4. The Bidder's Record;
- 21.1.5. A declaration that all monies payable to the Auctioneer pursuant to the Auction are to be paid to a trust account, alternatively, a similar account;
- 21.1.6. A declaration of the Goods;
- 21.1.7. The Seller's declaration of ownership, which declaration may be extracted from the Seller's Mandate;
- 21.1.8. The names of the successful Bidders, the Goods or Lots bought, and the prices paid in respect thereof;
- 21.1.9. The details of any challenges to the validity of the auction or the conduct thereof, and the particulars of the persons making such challenges, if available;
- 21.1.10. Any items not sold; and
- 21.1.11. The details of the Reserve Price.

21.2. The Bidder and/or Seller may not obtain access to the aforementioned merely because same has been included in these Rules. The Auctioneer shall use their discretion in making any of this information available to the Bidder and/or Seller.

## 22. **BREACH**

22.1. The Purchaser shall not be permitted to cancel, withdraw or terminate a Bid which has been made on the Auction Platform, and moreover, when such Bid has been accepted either in terms hereof or by the Seller. Nothing herein contained shall allow the Purchaser a right to terminate the agreement constituted by these Rules of Auction.

22.2. Where:

- 22.2.1. The Purchaser fails to make payment of the Purchase Price;
- 22.2.2. The Registered Bidder and/or Purchaser fails to comply with the FICA obligations set out herein -
- 22.2.3. Then the Purchaser shall have breached the provisions of the Rules of Auction whereby the Auctioneer shall be permitted to:
  - 22.2.3.1. Terminate the Online Transaction, and in doing so, the sale of the Goods and/or Lots;
  - 22.2.3.2. And in such instance that the Online Transaction is terminated, the Purchaser shall have no claim against the Auctioneer and/or Seller for delivery of the Goods and/or Lots.

22.3. Where the Online Transaction is terminated as a result of the Purchaser's breach, then the Purchaser shall remain liable for immediate payment of the amounts stipulated in clause 13.2.

22.4. All amounts which are due and payable to the Auctioneer as envisaged herein may be deducted from the Deposit.

22.5. The provisions of this clause 22 shall not disallow the Auctioneer to exercise any other remedy allowable in law.

## 23. **NOTICE**

23.1. Any reference in these Rules of Auction, the Bidder Application Form, the Auction Registration Form or the Seller's Mandate to notice shall be dealt with in accordance with this clause 23.

23.2. For avoidance of doubt, any notice herein may be delivered by way of electronic mail, hand delivery or registered post, whether through the South African Post Office or any private Entity.

23.3. For the Auctioneer:

23.3.1. By Electronic mail: info@auctionmp.co.za <mailto:auction@junkmail.co.za>;

23.3.2. By hand delivery and registered post: 1312 Pretorius Street, Hatfield.

23.4. For the Registered Bidder/Applicant/Seller:

23.4.1. By Electronic mail: as per the electronic mail address inserted in the Bidder Registration Form;

23.4.2. By hand delivery and registered post: as per the address inserted in the Bidder Registration Form.

23.5. Any Notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing, and it shall be acceptable to give Notice by electronic mail or registered post or hand delivery only.

23.6. Any Notice sent by prepaid registered post in a correctly addressed envelope bearing the nominated address as stated above shall be deemed to have been delivered and received on the 10<sup>th</sup> (tenth) day after posting unless the production of extrinsic evidence proves the contrary.

23.7. Any Notice delivered by hand delivery in a correctly addressed envelope shall be deemed to have been delivered and

received on the date that such person who is reasonably suspected to be older than 16 years of age and employed at the addressee, acknowledges receipt of such delivery, unless the contrary is proven by production of extrinsic evidence.

- 23.8. Any Notice sent by electronic mail to the correct addressee shall be deemed to have been delivered and received after the expiration of 1 (one) day after successful transmission unless the production of extrinsic evidence proves the contrary.
- 23.9. Notwithstanding anything to the contrary, any Notice received shall be deemed to have been delivered and received by the recipient thereof for purposes of this clause 23.
- 23.10. Notwithstanding clause 23.9, any Notice sent by short message Service, instant messaging, Skype, WhatsApp, WeChat, Facebook, Twitter or any other social media or instant messaging platform shall not be deemed delivered notwithstanding actual delivery and receipt of such Notice.
- 23.11. The Parties shall immediately inform each other of any change to the addresses above whereby said changes shall be brought by addendum and attested to by all Parties. Failure to bring any change herein envisaged to the attention of the corresponding Party shall have the effect that any Notice delivered to the old address shall be deemed to have been delivered and received.

24. **COST**

- 24.1. The Parties shall pay their own cost and be liable for same for the preparation, advice and negotiation of this Agreement.
- 24.2. Any cost relating to the enforcement of any provision of these Rules of Auction, alternatively, the protection of any rights herein contained shall be paid by the Party giving rise to any legal process for such enforcement and/or protection on an attorney and own client scale.

25. **GENERAL**

- 25.1. These Rules of Auction constitutes the entire Rules of Auction between the Parties in respect of the subject matter hereof and neither of the Parties shall be bound by any undertakings, representations, warranties or promises not recorded in these Rules of Auction whereby these Rules of Auction supersede any representations previously made, whether orally or in writing.
- 25.2. The Parties are prohibited to assign, transfer or attempt to assign or transfer their rights and / or obligations under these Rules of Auction without the others prior written consent.
- 25.3. Nothing in these Rules of Auction shall be construed as a waiver or limitation of the rights of any Party to enforce any common law or statutory right which it may have in regard to the subject matter of these Rules of Auction.
- 25.4. The Auctioneer shall be permitted to vary the terms of these Rules, including this clause, by notice published on the Auction Platform. No unilateral variation shall be permitted by the Bidder.
- 25.5. No waiver or indulgence of any of the terms and conditions of these Rules of Auction will be binding or effectual for any purpose unless expressed in writing and signed by the Party hereto granting such a waiver or indulgence and any such waiver or indulgence will be effective only in the specific instance and for the purpose given.
- 25.6. No failure or delay on the part of either and/or all Parties hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

25.7. The Parties specifically agree that:

25.7.1. They have each been afforded the opportunity to seek independent legal advice as to the nature and effect of these Rules of Auction and each provision herein;

25.7.2. That these Rules of Auction are accordingly concluded after each Party has taken such legal advice, alternatively, the Party concluding these Rules of Auction dispenses the necessity of such legal advice;

25.7.3. Each provision herein is fair, reasonable and necessary to reach the consensus sought on the matters herein provided for.

26. **APPLICABLE LAW AND JURISDICTION**

26.1. The interpretation, applicability and enforcement of these Rules of Auction shall be regulated by the relevant laws as they apply in the Republic of South Africa whereby the Parties nominate their *lex loci contractus* (law of the place where the contract is made) as South Africa.

26.2. The Parties consent to the jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

27. **AUTHORISATION**

27.1. The Parties warrant to each other that they have taken or caused to be taken all steps, actions and corporate or marital proceedings necessary to cause these Rules of Auction to be binding on themselves, including valid and binding resolutions authorising a Party to conclude these Rules of Auction. Any Party shall, if requested by any other Party, furnish to the latter sufficient evidence of the authority of the person or persons who shall, on behalf of the Party so requested, take any action or execute any documents required or permitted to be taken or executed by such person under these Rules of Auction.

Signed: \_\_\_\_\_

The Auctioneer

**Schedule A – Extract of CPA Terms**

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 anyone one person on behalf of the owner or auctioneer, as the case maybe, 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 sub-section has been violated.
- (6) The Minister may prescribe requirement 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.