

RULES OF BKB DIGITAL AUCTIONS,
TERMS AND CONDITIONS FOR ONLINE AUCTION PLATFORMS

1. This auction will be held under the control of BKB Limited registration number 1998/012435/06 with business premises situated at 63 Grahamstown Road North End Port Elizabeth.(hereinafter referred to as the Auctioneer or BKB)
2. These terms and conditions apply to all on line bidding at auction sales conducted.

3. Applicable Law

- 3.1 The auction will be governed by the Laws of the Republic of South Africa
- 3.2 The rules of this auction complies with section 45 of the Consumer Protection Act 68 of 2008 (CPA) and Section 43(1) of the Electronic Communications and Transactions Act 25 of 2002. (ECTA). For more information go to <http://www.legalrights.co.za/wp-content/uploads/2017/03/CONSUMER-PROTECTION-ACT-NO.-68-OF-2008.pdf> or https://www.gov.za/sites/default/files/gcis_document/201409/a25-02.pdf
- 3.3 Section 44(1) of the ECTA affording purchasers a cooling off period does not apply to online auctions.
- 3.4 All persons, when registering as a bidder must, in doing so, comply with Chapter 1 of the Financial Intelligence Centre Act (FICA)
- 3.5 The Auctioneer is hereby appointed by the Purchaser and Seller to act for and on behalf of the Purchaser and Seller as agent in accordance with Section 54 of the Value-Added Tax Act, 1991, in respect of all tax invoices, credit and/or debit notes in respect of all livestock, game and/or goods offered at the auction or any costs of transport and insurances premiums paid for on behalf of the Purchaser and Seller.

4. Bidder Registration and pre-inspection of goods and/or livestock

- 4.1 Any person who wishes to bid on the auction must register as a bidder online and in doing so comply with Chapter 1 of FICA. For more information on the requirements set out in FICA go to [https://www.fic.gov.za/Documents/FIC%20Act%20with%202017%20amendments%20\(1\)%20\(1\).pdf](https://www.fic.gov.za/Documents/FIC%20Act%20with%202017%20amendments%20(1)%20(1).pdf)
- 4.2 The online auction service is only available to legal and natural persons who can enter into legally binding contract under the laws of South Africa. Without derogating from the generality thereof, the auction services are not available to minors.
- 4.3 Any person registering as a bidder online is deemed to be the principle contracting party and no person will be allowed to register as an agent of a third party unless with the consent of the Auctioneer.
- 4.4 By registering online as a bidder, the bidder consents to the collection and use of personal information by the Auctioneer for the purposes of creating the registration, and participation in the online auction.

- 4.5 In the event that the Auctioneer consents to an agent registering on behalf of a principle then in that event such a person together with his principal must both register online prior to the auction and provide all necessary information as required in Chapter 1 of the regulations issued in terms of FICA 2001 with regard to proof of the principle's identity.
- 4.6 Where the bidder is a company the person completing the online registration must be duly authorised by resolution of the company to register as a purchaser and shall upload a certified copy of the resolution. (For purposes of this rule any reference to a company will include any reference to juristic person including partnerships, trusts or incorporated entities).
- 4.7 Once registered bidders must keep their account details confidential and must not permit third parties to use or access their account as purchasers will remain liable for all bids entered via their account online.
- 4.8 The final auction catalogue will be available online at least 24hrs before the commencement date and time of the auction.
- 4.9 Bidders who wish to inspect the various lots which will be presented at the auction, may inspect such lots online or at the seller's premises at a time and date specified on the Auctioneer website.
- 4.10 All livestock, game and goods are sold "voetstoots" and the purchasers do not enjoy the protection of Section 55 and 56 of the Consumer Protection Act.
- 4.11 Any information provided regarding the quality, breeding, age, date of insemination, condition, reproductive status or any information regarding health, production or mass or any other aspect of the livestock and/or game, is provided by the seller and any misrepresentation by the seller is without the cooperation or knowledge of the Auctioneer. Any right of recourse as a result of such misrepresentation shall be against the seller.

5. Bidding Procedure

- 5.1 The auction shall take place at the date and time as advertised or published and will not be postponed or delayed to enable any member or group of the public to partake in the auction.
- 5.2 The auction is not an absolute auction but subject to reserved prices settled by the sellers and as pointed out by the Auctioneer prior to the sale of the said asset or lot.
- 5.3 Should the Auctioneer become aware of any fault on advertising material or any other publication or amendment to these Rules of Auction, the Auctioneer will prior to the auction point out and when necessary amend such mistakes in the advertisement or publication.
- 5.4 Any bid made does not include VAT which, where applicable, will be added to the bidding price for which a VAT invoice will be issued.
- 5.5 During a sale for which the bidder has registered, the bidder can bid for a lot by clicking on the bid button.
- 5.6 The current bid will be displayed on the bidder's screen during the sale.

- 5.7 Until the fall of the hammer as contemplated in section 45(3) of CPA, any bid may be retracted or declined by the Auctioneer if not compliant with the CPA or the regulations issued in terms thereof.
- 5.8 The bidder acknowledge that he/she are bidding at a live auction and agree that each bid entered (unless withdrawn before the fall of the hammer) is binding even if submitted in error. The bidder accepts full responsibility for every bid submitted through his/her online bidding account.
- 5.9 Each lot is regarded as a separate sale transaction.
- 5.10 The sale by auction is complete at the fall of the hammer or any other practice through which the Auctioneer recognizes the highest bidder as the purchaser.
- 5.11 In the event of the highest bid being tied, the earliest bid received or recognised wins.
- 5.12 The Auctioneer reserves the right to reject a registration on line, may withdraw permission for the use of the online auction service for whatsoever reason before or during the sale.

6. Payment arrangements

- 6.1 All sales are for cash and purchase price is payable by electronic funds transfer (EFT) immediately to the Auctioneer on acceptance of the bid unless the purchaser has an approved credit facility with the Auctioneer. Any payment made in cash is further subject to cash or any other handling fees. Should the Purchaser however fail to make payment within 7 days from date of delivery, BKB will be entitled to add interest calculated at the current bank prime rate plus 5% to the capital amount outstanding. The interest will be calculated monthly and capitalised.
- 6.2 Should the purchaser not pay the purchase price immediately and has failed to make arrangements for payment with the Auctioneer, then the Auctioneer can/will cancel the sale and treat the assets or lots as unsold lots which may again be presented on the auction for sale or be sold out of hand by means of liaison services, depending on the seller's mandate to the auctioneer.
- 6.3 In the event that Purchaser has made necessary finance arrangements with BKB, the Purchaser hereby authorises BKB to pay the purchase price or costs of transport, insurance and any other agreed cost, minus BKB's commissions, on behalf of the Purchaser to the Seller and other service providers, in which event the said payment by BKB on behalf of the Purchaser will be deemed to be monies lent and advanced, the terms and conditions thereof being agreed with the Purchaser in a separate credit agreement or sale agreement. All payments made by BKB to the Seller on behalf of the Purchaser in terms of this clause will be made after the lapse of 5 (Five) working days from date of delivery of the asset to the Purchaser. Any payment made by BKB to the Seller prior to the lapse of the 5 (Five) working day period is made at the sole discretion of BKB and not an enforceable indulgence.

7. Ownership and risk in the sold goods.

- 7.1 Ownership in the lot or assets will remain that of the seller until the purchase price has been paid in full to the seller.
- 7.2 Risk in the lot or assets passes to the purchaser (the highest bidder) at the time of the Auctioneer notifies the purchaser of the acceptance of his/her bid
- 7.3 For as long as any amount is owing to BKB by the Purchaser, the Purchaser may not, where the assets are the subject of security of the Purchaser's credit facility with BKB, relinquish possession of the said asset, nor may he cede the asset or any of its rights and obligations in terms of this agreement to a third party or otherwise encumber, sell or dispossess the said asset or allow it to become the subject of any right of retention, hypothec, pledge or any encumbrance, whatever the cause thereof may be. BKB may be entitled to cede its rights and obligations without affecting its rights of recourse for any monies still due to it.
- 7.4 In the event of the Seller already being indebted to BKB or any of its affiliates at the time of this auction, the Seller hereby irrevocably authorises BKB to set off the purchase price due to the Seller by BKB (minus BKB's commission) against the amounts due by the Seller to BKB.
- 7.5 Where BKB, in terms of a credit agreement, lent and advanced monies to the Purchaser for payment of the purchase price of any asset or payment of any transport costs or insurance premiums, no defence of whatsoever nature which the Purchaser may raise against the Seller or the transport contractor or the insurance company may be raised against BKB and the Purchaser shall still be obligated to pay all amounts owing, together with further interest and costs thereon raised in terms of the credit agreement or sale agreement, to be BKB. The conditions of this clause do not interfere with the rights, entitlements or remedies the Purchaser may have against the Seller, transport contractor or insurance company.
- 7.6 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 BKB with regards to any amount owing in terms hereof.

8. Removal and Risk

- 8.1 Upon notification of acceptance of the purchasers' bid by the auctioneer, the risk will pass to the purchaser who will at his own risk and cost remove the lot or asset from the sellers' premise or auction terrain within five working days.
- 8.2 Removal of any assets or lots however will not be allowed by the Auctioneer until payment of the purchase price by the purchaser or acceptable arrangements for payment thereof have been made by the purchaser with the Auctioneer.

- 8.3 BKB will not accept liability for any loss or damage to the goods or livestock as a result of the purchasers failure to make adequate and timeous arrangements for the removal of the livestock or goods.
- 8.4 Under no circumstances will BKB be held liable for any loss or damage of any cause whatsoever albeit direct or indirect damages suffered by anyone if the livestock and/or game at the auction premises have to be placed under quarantine as a result of the presence of a livestock and/or game disease present. In such event BKB will have the right to cancel the auction as well as any already complete sales and no party will be entitled or have a right of recourse against BKB.
- 8.5 Any party requiring permits, removal certificate, documentation of identification or any other statutory prescribed document will solely be responsible for obtaining same. Any instructions to an auctioneer with regards to the loading, transporting, choice of transport contractors, insurance or choice of insurers will executed at the sole risk of the person acquiring such services and the Auctioneer will not be held responsible for any losses whether direct or indirect which may be suffered as a result of giving affect to the instructions by the Auctioneer.
- 8.6 Any agreement entered into by the Auctioneer with a transport company or insurer is done so in its representative capacity of the seller or purchaser. All transport costs or insurance premiums are therefore payable to the Auctioneer in cash except if acceptable alternative arrangements were made with the Auctioneer

9. Limitation of Liability

- 9.1 Notwithstanding the section 43 of ECTA, under no circumstances will BKB, its affiliates or subsidiaries, or any shareholders of BKB and its subsidiaries, officers, directors, employees or agents be liable for any loss or damage caused by:
 - 9.1.1 The bidder's reliance on information obtained through either the content or the services, or
 - 9.1.2 by being exposed to information contained on the site, or
 - 9.1.3 the defamatory, offensive or illegal conduct of other users or third parties or
 - 9.1.4 the use or inability to use the website or the services or content provided from or through the website or
 - 9.1.5 any disruption in the internet connection resulting in the bidder being disconnected from the online auction for whatsoever reason or
 - 9.1.6 the failure to record a bid as a result of being disconnected or the online platform going offline during the auction process.
- 9.2 Neither BKB 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 online auction site.

9.3 BKB makes no representation or warranties, implied or otherwise that the auction service will be uninterrupted and 100% error free. It is every users sole responsibility that the online auction site and services provided by BKB through this website will meet the user's individual requirements and be compatible with the user's hardware and software.

10. **General terms and conditions**

- 10.1 The Auctioneer will only be obliged to give reasons of the auction if such reasons are other than the voluntary sale of goods by its owners.
- 10.2 The bidders' roll and vendor roll will be available for registered purchasers for inspection with written notice and good reason during the normal office hours at the business premises of the Auctioneer.
- 10.3 Both the seller and the purchaser consent to the jurisdiction of the Magistrate's Court as contemplated in Section 45 of Act 32 of 1944 having regard to any action which the Auctioneer may institute against the purchaser or seller irrespective of the cause of action. Notwithstanding the aforesaid the Auctioneer will have the sole and absolute discretion to institute action in any High Court with appropriate jurisdiction.
- 10.4 Any legal costs that BKB may have or will incur as a result of the non-compliance of the Purchaser and/or Seller in terms of its or their obligations herein, shall be recoverable by BKB, together with collection commissions from the Purchaser and/or Seller on a scale as between attorney and own client.
- 10.5 No variation, amendment, novation or addition to these terms and conditions will have the effect of BKB renouncing any of its rights in terms hereof, unless it is reduced to writing and signed by BKB.
- 10.6 No relaxation or indulgence by the Auctioneer must be interpreted as a waiver of any of the Auctioneer's rights in terms hereof. Such relaxation or indulgence must also not be interpreted as a novation hereof.
- 10.7 Should any condition be unlawful or become retrospectively unlawful, that unlawful condition shall be deemed to be amended to the extent and in the manner as is necessary to make it lawful or should such amendment be impossible, the unlawful conditions shall be deemed devisable from the remainder of the conditions and pro no