



REGISTRATION:

Bidder Number: _____

Name & Surname: _____

Company Details (complete only if registering for a company / trust)

Company Name: _____

Co Vat Reg No: _____

Co Reg No: _____ Company

Address: _____ **PERSONAL**

DETAILS:

Identity Number: _____

Physical Address: _____

Phone Number: _____

Cell Number: _____

Email: _____

DEPOSIT AMOUNT: _____ **BIDDER**

BANKING DETAILS:

Account Holder name: _____

Bank & Branch: _____

Account Number: _____

Account Type: _____

Signed at _____ on this the _____ day of _____ 2019. _____

SIGNATURE

READ THE RULES OF AUCTION AND TERMS AND CONDITIONS OF SALE THAT APPLY TO ASSETS ON WHICH YOU WISH TO BID. FULLY ACQUAINT YOURSELF WITH ALL TERMS AND CONDITIONS

- NO CASH ON SITE
- 2% HANDLING FEE ON CASH DEPOSITS MADE INTO OUR BANK ACCOUNT
- DEPOSIT REFUND—48 HOURS
- SOLD GOODS MAY ONLY BE COLLECTED OR REMOVED FROM THE PREMISES ONCE PAYMENT IS REFLECTING IN AUCTION EVOLUTION PTY LTD BANK ACCOUNT

TERMS AND CONDITIONS.

I confirm that by signing this document I have read, I understand, and have no objections to any of the terms and conditions imposed by the Auction Evolution upon the auction. I further confirm that I have the necessary authority to participate in the auction and bind myself / the corporation (company / close corporation / trust / joint estate / partnership (when acting as an agent I confirm that I am duly authorised to act as such and to bind a third person and/or a corporation of any nature)) to the purchase agreement of goods and/or lots, with the terms and conditions as imposed herein.

CLIENT INITIAL

1. Definitions

- 1.1. "absolute auction": means the goods and lots sold to a purchaser without a reserve price, which sets a minimum required bid for the goods or lots to be sold;
- 1.2. "auctioneer": means the person who conducts the auction;
- 1.3. "auction house": means Auction Evolution (Pty) Limited or other juristic person which conduct auctions as part of its business;
- 1.4. "auction house fee / commission": means 10% of the winning / highest bid, payable over and above the bid and are exclusive of VAT (i.e. if winning bid is R 100 000.00, auction house fee will be R10 000.00 (exclusive of VAT in the amount R 1 400.00 that are further payable) over and above winning bid));
- 1.5. "auction premises": means the place where the auction is conducted;
- 1.6. "bid": means a binding offer made to purchase goods / lot / vehicle at the auction;
- 1.7. "bidder": means a person, natural or juristic, who has registered to purchase on an auction sale, and has paid the bidder's deposit;
- 1.8. "bidder's deposit": means a refundable deposit of R20 000.00 payable by all bidders prior to the commencement of the auction, and refundable within 2 business days after the auction, if no purchases are made;
- 1.9. "buyer": means a person, natural or juristic, who wishes to register to purchase on an auction sale;
- 1.10. "CPA": means the Consumer Protection Act, no. 68 of 2008 inclusive of the regulations;
- 1.11. "goods": means any asset of value;
- 1.12. "lots": means any group of goods sold or offered for sale as a unit and identified as such;
- 1.13. "owner": means a person, natural or juristic, who is the lawful owner of the assets, and who is entitled in law to sell the assets; 1.14. "parties" means the seller and the purchaser;
- 1.15. "purchaser": means the bidder who is the highest bidder for the good or lots offered on auction at the fall of the hammer;
- 1.16. "purchase price": means the winning bid amount, auction house fee / commission and registration fee (if applicable) collectively together (i.e. purchase of a vehicle with winning bid of R 100 000.00, total payable by the purchaser is R 111 500.00 exclusive of VAT (R 10 000.00 auction house fee / commission and R 1 500.00 registration fee).
- 1.17. "registration fee": means the fee payable by purchaser, over and above the winning bid amount and auction house fee / commission, and only applicable when purchasing of a vehicle which requires registration, which fee amounts to R 1 500.00 , exclusive of VAT.
- 1.18. "reserved price": means the minimum amount of money that the goods or lots will be sold to the purchaser.
- 1.19. "rules of auction": means and include includes the general rules of auction and the specific rules of auction which meet the regulations of the CPA.;
- 1.20. "seller": means a person, natural or juristic, who is entitled in law to sell the goods on auction, but not necessarily the owner;
- 1.21. "vehicles": means motor vehicles auctioned by the auctioneer.
- 1.22. "winning bid": means the highest bid made by a bidder and/or accepted by the auctioneer, and exclusive of VAT,

2. Compliance

2.1. Rules of Auction (Auction Procedure)

- 2.1.1. The auctioneer conducts the auction as an agent, on behalf of the seller, and accepts no liability whatsoever.
- 2.1.2. In the event of an auction subject to a reserved price, and provided notice has been given in advance in terms of section 45(4) of the CPA, the seller or the auction house, or any other person on behalf of the seller, or the auction house, as the case may be, may bid at the auction up to the reserve price but not equal to or exceeding the reserve price.
- 2.1.3. In the event of an absolute or auction without reserve, the auction will be conducted in accordance with the provisions of sub-regulation 20(18) and (19) of the CPA.
- 2.1.4. A secured party or other lien holder or any individual party who is not a seller is not prohibited from bidding at an auction without reserve, provided such bidding does not constitute, nor is tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price for the goods by the seller, or the auctioneer, or anyone aiding or assisting, or acting on behalf of the seller, or the auctioneer as the case may be.
- 2.1.5. The control of the auction shall be conducted by the auctioneer, who has the sole right to regulate the bidding process and control the bid increments. The auctioneer has the right to withdraw any vehicle scheduled to be auctioned.
- 2.1.6. The auctioneer may only sell to registered bidders and only registered bidders may participate in the auction. A prospective bidder cannot participate in the bidding process if not registered as a bidder. The registration process includes (i) registration of the prospective bidder's identity (copy of ID and/or registration documents of a corporation / company / cc / trust etc.), (ii) proof of residential / business address, (iii) contact details, (iv) payment of bidders deposit and (v) full signature on the bidder's roll prior to the commencement of the auction.
- 2.1.7. In terms of section 55(1) of the CPA, goods / lots / vehicles are sold "voetstoots", as is, with no guarantees or warranties; express or implied. Bidders are entitled at no fee to inspect the goods on offer prior to the commencement of the auction. A bid shall be taken as proof that the bidder has inspected the goods and/or has satisfied himself/herself/it with the condition of the goods for which he/she/it bids.
- 2.1.8. All vehicles which are auctioned are sold as salvage irrespective of their appearance or condition.
- 2.1.9. Bidders must direct their bids to the auctioneer or official bid assistants. The practice whereby bidders connive suppress prices or intimidate other bidders is prohibited.
- 2.1.10. Every bid constitutes a firm offer to purchase the goods or lots on offer for the amount bid. The bidder is permitted to retract his or her bid before the hammer falls or the auctioneer concludes bidding in any customary manner.
- 2.1.11. The goods / lot / vehicle shall be sold to the highest acceptable bidder at the fall of the hammer.
- 2.1.12. The purchaser shall be the highest bidder and/or highest acceptable bid. Should any dispute arise between two or more bidders, the lot or lots / goods shall be put up again for auction and resold; or the auctioneer may, after consultation, declare the purchaser.

- 2.1.13. Subject to any reserved price and acceptance of the highest bid by the Auctioneer, the highest bidder, when the auctioneer announces the completion of a sale by the fall of the hammer, or any other customary manner, is the purchaser of the goods or lots on auction. Should any dispute arise between two or more bidders regarding the identity of the highest bidder and purchaser, the decision of the auctioneer shall be final and binding.
- 2.1.14. In the event where the reserved price is not met after the completion of the auction, the highest bidder is bound by the auction rules and shall not have the opportunity to withdraw his bid until the Auction House / Seller has confirmed the sale or the stipulated acceptance period has expired. Negotiations between the highest bidder and Auction House / Seller may arise during such acceptance period, and should any subsequent bids be received during such acceptance period, the new bidder will register in terms of the rules of auction applicable to the auction, and will have only one opportunity to submit a higher bid. The highest bidder of the first instance shall have the sole right of refusal to equal or better such subsequent bid obtained. Any goods or lots knocked provisionally to the highest bidder subject to approval by the Auction House / Seller in terms of this clause is deemed not to be sold, until the Auction House / Seller has accepted the offer
- 2.1.15. The auctioneer, with the approval of the owner or the seller, reserves the right, at any time, to stop the auction, to reject any or all bids and to withdraw any goods or lots, or part thereof from the auction, either before or during the auction, without giving any reasons and without attracting any liability for such action.
- 2.1.16. All vehicles are sold voetstoots. There are vehicles sold with a reserve price, and same will be announced prior and/or during the auction.
- 2.1.17. The purchaser acknowledges that he/she/it has inspected the vehicle(s), has acquainted himself/herself/itself with the condition of the vehicle(s) and is aware of the fact that the condition of the vehicle(s) is such that it may be in need of repair in order to be driven safely in compliance with the relevant statutes, or at all. And further that that neither the auction house / seller / owner of the vehicle(s), or any representative of the aforementioned, warranted or guaranteed, or made any representations regarding *inter alia* the condition or state of any vehicle sold, the correctness of the amount of kilometres reflected of the odometer.
- 2.1.18. No bid may be withdrawn after the fall of the hammer if the auction is subject to a reserve price until the expiry of the confirmation period that is provided for in the Rules of Auction, during which time the offer shall be open for acceptance by the Seller or his agent and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.
- 2.1.19. The Auction house shall have the right to control and regulate the auction. The auction will be recorded. The recording shall not be available to the public or the Purchaser but Auction Evolution PTY LTD shall make the recording available shall it be required to do so by an order of court or by law. The recordings shall be prima facie (rebuttable/challengeable) proof of the auction proceedings.
- 2.1.20. The sale by auction is complete at the auctioneer's fall of the hammer or any other customary manner and until that announcement is made, a bid may be retracted.
- 2.1.21. All bids received exclude VAT, the commission and fees. These additional costs are payable by the Purchaser and a total breakdown of the costs will be available.
- 2.2. Acknowledgements
- 2.2.1. The Rules of Auction, including the general rules, specific rules, notice to bidders and all announcements made by the auctioneer at the commencement and during the course of the auction, whether or not the bidder is present at the time such announcements are made, collectively referred to as the "Rules of Auction" are the complete and final record of the rules of the auction and unless any warranties, undertakings or representations are set out herein, they are excluded. The Rules of Auction in their entirety shall form the basis of the bidding and bargaining carried out between the auctioneer and the bidders, and shall also govern the rules of each sale so concluded.
- 2.2.2. Rules of Auction are available to the general public prior to the commencement of the auction, either in printed format from the Auction House's place of business or electronically from the Auction House's website.
- 2.2.3. The act of not reading the Rules of Auction in their entirety and highlighting selected clauses for special mention at the auction should; in no way, be construed as an omission or admission that the Rules of Auction are not important.
- 2.2.4. The act of registering for the auction, signing the bidders' record and participation by any bidder in the auction shall be taken as confirmation that the bidder has read, understood, accepts and is bound by the Rules of Auction.
- 2.2.5. The auction and all matters connected with the auction including the Rules of Auction are governed by and constructed in accordance with the laws of the Republic of South Africa and the bidder, including foreign bidders consent to the jurisdiction of the South African courts.
- 2.2.6. For purposes of legal proceedings, the bidder shall be deemed to have selected and appointed as his/her *domicilium citandi et executandi* the address recorded by him or her or it in the bidders record upon registration.
- 2.2.7. The auctioneer / Auction house shall be entitled to institute legal proceedings in any court having jurisdiction against the purchaser for *inter alia* all amounts due in terms of the purchase of a lot / goods / vehicle, for specific performance, for damages, for auction house commission / auctioneer's fee, etc, and any legal costs, disbursements and charges incurred as a result of legal proceedings against a purchaser / highest bidder shall be calculated and recovered on the basis as between an Attorney and client scale.
- 2.2.8. Risk in and to the goods / lot / vehicle shall pass to the Purchaser on the fall of the hammer. The Purchaser acknowledges that he/she/it has inspected the goods/ lot / vehicle, noted the condition and state thereof, and is satisfied with the same. The goods/ lot / vehicle are sold subject to the condition report/inspection report furnished for same (for the auction) or in a document appended to or alongside the same. The Auction house is only aware of the condition and the state of goods as they are, and as disclosed by it, and has not any other knowledge of the goods/ lot / vehicle and the state and condition thereof. Accordingly, the goods/ lot / vehicle are sold in the condition and state that they are in and the Purchaser purchases the goods in accordance therewith.
- 2.2.9. The purchaser confirms that the auction, in compliance with the CPA, was duly advertised, and had the opportunity to inspect and satisfy him / her/ it of the status and condition of the goods/ lot / vehicle prior to the commencement of the auction, which inspection was permitted at no fee and/or charge.

- 2.2.10. The purchaser confirms that all bids received are exclusive of VAT, the Auction House fee / commission and registration fee. These additional costs are payable by the Purchaser and a total breakdown of the costs will be available.
- 2.2.11. The Purchaser shall not be entitled to take delivery of the goods / lot / vehicle until payment of the purchase price has been made to the auction house and the Purchaser is in possession of an invoice stating that the Purchaser has paid the purchase price. In the case of motor vehicles or other items requiring the completion and delivery of documents by the Seller or any third party, Auction House shall not be obliged to deliver such goods to the Purchaser until the relevant documentation, duly completed and signed, has been delivered to the Auction House.
- 2.2.12. Ownership and title in and over the goods / lot / vehicle will only be transferred upon payment of the purchase price in full, which payment must be made by way of cash, subject to a 2 % cash handling fee, EFT, or bank guarantee cheque, payable in full, without any deductions whatsoever.
- 2.2.13. The Purchaser agrees that the purchase price shall be payable to Auction House immediately after the fall of the hammer even though the goods / lot / vehicle have not been or may not be delivered to the Purchaser.
- 2.2.14. Delivery of the goods / lot / vehicle shall be deemed to have been made to the Purchaser upon delivery to the Purchaser of the paid invoice, alternatively upon delivery of an element of the goods / lot / vehicle or by which the goods / lot / vehicle can be identified (such as keys).
- 2.2.15. The Purchaser agrees that as the goods / lot / vehicle will not actually be physically delivered to the Purchaser's address or any address nominated by the Purchaser, the Purchaser shall be responsible for all of the costs of delivery. The Purchaser shall remove the goods / lot / vehicle from Auction premises within the period announced by the auctioneer at the relevant auction.
- 2.2.16. The Purchaser shall not be entitled to cancel the sale as a result of timeous non-delivery of the goods or on non-signature of the required documents.
- 2.2.17. After the fall of the hammer, the Purchaser shall bear all the risk in and to the goods / lot / vehicle even if the goods / lot / vehicle continues to remain at Auction premises. The Purchaser will hold the Seller / Owner / Auctioneer / Auction House harmless, and will not be permitted to institute legal proceedings against any of the aforementioned, for any reason whatsoever, for any damages whatsoever.
- 2.2.18. The Purchaser shall be liable to pay storage fee at a rate of R250.00 per day should he/she/it fail to remove the goods / lot / vehicle from the auction premises within a reasonable time.
- 2.2.19. Should the auction be subject to the payment of Value Added Tax (VAT); all bids will be exclusive of VAT and VAT will be added to the bid price at the rate applicable at the time the auction is conducted. The bid price plus the VAT portion, including auction house commission / fee and registration fee, where applicable, shall constitute the purchase price and shall be due and payable simultaneously.
- 2.2.20. Invoices will be made out to purchasers who are registered bidders. No changes to purchase statements will be allowed, and the splitting of invoices among purchasers is prohibited. The registered bidder is responsible for the payment of the full invoice.
- 2.2.21. Should the purchaser default in making payment of the purchase price, for any reason whatsoever, he understands that he / she / it will still be held liable for the payment of auction house commission / fee, and other related charges such as reasonable storage fee. The purchaser accordingly admits and understands that the auction house commission / fee is payable by him / her / it upon the fall of the hammer, and will be held liable for payment thereof. In an event of default by the purchaser, the refundable bidder's deposit will be retained and used to set-off the auction house commission / fee.
- 2.2.22. Should the purchaser for any reason whatsoever fails to make payment of the purchase price within twenty 24 hours after the auction / fall of the hammer, or any part thereof, the auction house and/or seller / and /or owner may cancel the sale of the goods/lot/vehicle, and claim specific performance and/or damages from him/her/it. In such instances the purchaser herewith forfeits the bidders deposit to be used in total towards the auction house commission / fee, storage fee and damages suffered by them / seller / owner, and further understands that the auction house and/or seller / and /or owner may claim the difference, if the bidder's commission is not enough to cover the auction house commission / fee, storage fee and damages suffered by the aforementioned.

2.3. General

- 2.3.1. The purchaser unconditionally accepts that the auction house and auctioneer has no involvement in the offering, description or sale of the goods and that its role is merely to facilitate the auction and therefore cannot accept any return of goods for any reason whatsoever.
- 2.3.2. Notwithstanding what is contained in these terms and conditions, the purchaser will be deemed to accept, acknowledge and agree that the auction house and auctioneer will not be held liable to the purchaser for any losses, damages, expenses or harm of whatsoever nature however same may arise.
- 2.3.3. No provision of the terms and conditions (including, without limitation, the provisions of this clause and terms and conditions) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the parties.
- 2.3.4. Any relaxation, indulgence or delay (together "Indulgence") by either party in exercising, or any failure by either party to exercise, any right under the terms and conditions shall not be construed as a waiver of that right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).
- 2.3.5. Except where expressly provided to the contrary in the terms and conditions, these terms and conditions constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the terms and conditions.
- 2.3.6. The Purchaser herewith agrees to the jurisdiction of the Magistrates Court for any proceedings that may be instituted in as a result hereof, in terms of section 45(1) of the Magistrates' Court Act.

2.4. Suretyship

- 2.4.1. I, by affixing my signature hereto (appearing on the cover page hereto), bind myself as in my private and individual capacity as surety and coprincipal in solidum with the Applicant in favour of Auction Evolution, for the due performance of any obligation of The Applicant (the bidder/purchaser) and for payment arising out of this application/agreement, of any amounts which may now or at any time be or become owing to Auction Evolution by The Applicant from whatsoever cause arising out of this agreement. I hereby renounce the legal benefits of excussion and division, cession of action, non causa debiti and duobus vel pluribus reis debendi, with the meanings of which I declare myself fully acquainted with.

Signed at _____ on this the ___ day of _____ 2019.

SIGNATURE (Authorised Representative – Surety)

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