

## Buyers and Sellers agreement to the Terms and Conditions:

### In respect of sales by CDP Auctioneers

1. All goods and livestock (hereinafter referred to as the “assets”) are sold by CDP Auctioneers as agent on behalf of the seller, who hereby authorizes CDP Auctioneers to collect the purchase price from the buyer.
2. These rules apply to bidders as well as sellers and the terms and conditions will be deemed to be accepted by them on completion of contracts and or with registration as a bidder.
3. Special terms and conditions relating to each auction, and/or to any of the lots may be announced prior to the commencement of the auction and/or during the auction itself.
4. The purchaser and seller shall be bound by all the terms and conditions specified during the announcements irrespective of whether he/she/it is present at the time such announcements are made.
5. CDP accepts no liability for any withdrawal of goods and animals from the sale, or for any express or implied statements or guarantees which may be contained in catalogues or advertisements be given verbally by its agents or employees, or by the seller.
6. All sales are “voetstoots”. Lots are sold without **any warranty on an as is basis as the goods are to be purchased at a public auction** as provided for under Section 55(1) of the Consumer Protection Act 168 of 2002.
  - 6.1. **The obligation vest with the Purchaser to acquaint himself fully as to the suitability for which the goods to be purchased is intended; the quality of the goods and the durability thereof** with the property and with all its defects, whether latent or patent, no guarantees are given in this regard.
  - 6.2. The seller does not provide any warranties whatsoever on the fit-for-purpose condition or mechanical ability of any lot. It is recorded that the bidder has had an opportunity to inspect the lot (and thereby accepted the condition and state thereof) and has decided, of his/her own free will, to bid on a lot.
  - 6.3. The auctioneer shall not be personally liable in consequence of any representation made by him at or before the sale nor shall he be personally liable for breach of any warranty given by him, whether in regard to his authority to sell the property in question or in regard to the quantity, quality or condition of the property in question.
  - 6.4. There is no duty on CDP to affect any latent or patent repairs on any lot.
7. The Rules of Auction comply with Section 45 of the Consumer Protection Act, Act 68 of 2008 (The Act hereafter) which Section stipulates:
  - a. 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.
  - b. 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.
  - c. 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.  
Notice must be given in advance that a sale by auction is subject to:
    - i. A reserved or upset price; or
    - ii. A right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or anyone person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.
  - d. 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 –
    - i. The owner or auctioneer must not bid or employ any person to bid at the sale;



CDP Afslalers/Auctioneers

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- ii. The auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and c) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.
8. The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of—the conduct of an auction; the records to be maintained with respect to property placed for auction; and the sale of any such property by auction. More info available of the Consumer Protection Act 68 of 2008 available at: [www.info.gov.za](http://www.info.gov.za).
  9. **Vehicles, machinery etc:**  
Where a motor vehicle is auctioned, the auctioneer will inform or attach a notice to the lot with information if available:
    - the vehicle's year of manufacture, if known;
    - the vehicle's year of first registration;
    - the vehicle's manufacturer and model designation;
    - the vehicle's registration number;
    - the vehicle's engine number;
    - the vehicle's identification number (VIN); and
  - 9.1. There is no duty on CDP to affect any latent or patent repairs on any lot. Any lot sold at this auction is sold 'voetstoots' or 'as is'.
  - 9.2. The odometer reading, if available, stated on the notice is as read by CDP and is not guaranteed. No obligations will be implied unless displayed in the notice.
  - 9.3. The seller does not provide any warranties whatsoever on the fit-for-purpose condition or mechanical ability of any lot. It is recorded that the bidder has had an opportunity to inspect the lot (and thereby accepted the condition and state thereof) and has decided, of his/her own free will, to bid on a lot.
  - 9.4. The seller will advise the local vehicle licensing authorities of the change of ownership details and the onus is on the purchaser to register the vehicle within 21 (twenty-one) days (from the date of receipt of the delivery note from the seller) in the purchaser's name.
  10. The sale by auction is subject to a reserve price, unless specifically stated to the contrary by the Auctioneer.
  11. The Auctioneer shall at his own discretion be entitled to re-auction any lot should a dispute arise between the Auctioneer and the bidders over such a lot.
  12. **The purchase price excludes VAT and VAT must be added** to the purchase price and paid by the purchaser, unless specifically stipulated otherwise by the auctioneer.
  13. The Seller/s warrant that 1) it is the owner of the movable properties and 2) that the movable properties are unencumbered in any way whatsoever, either in part or a whole, and 3) that the movable properties are not subject to any lease, hire purchase or credit instalment sale agreement or any other agreement with a 3<sup>rd</sup> party or entity including but not limited to an agreement falling under the National Credit Act 34 of 2005 and may lawfully be auctioned by CDP Auctioneer.
  14. The Seller/s accepts and acknowledges that CDP advertise the sale of listed assets, movable and/or immovable properties prior to the auction. Advertising budget is spent to attract a wide spectrum of buyers. Should items be withdrawn from the auction by the Seller/s, the Seller/s will be liable to pay to CDP a 10% commission (excluding VAT) of the reserve price of the movable properties. The Seller/s shall in addition to this commission, be liable to pay to CDP the pro rate advertising costs of any advertising done and/or placed by CDP or charged to CDP.
  15. The Seller/s chooses as his/her/its chosen domicilium citandi et executandi for all matters arising here from, the physical address reflected above.



# CDP

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16. The Seller/s shall not have any right, remedy or claim of any nature whatsoever against CDP for any loss, damage (whether general, special or consequential), expense or injury which may be suffered by the Seller/s, directly or indirectly, arising out of or relating to this pre-auction contract, irrespective of whether or not such loss, damage, expense or injury shall have been caused by CDP or any person for whose acts or omissions CDP is vicariously liable. Without derogating from the generality of the foregoing, CDP shall have no liability to the Seller/s in respect of any such loss, damage, expense or injury which may be suffered by the Seller/s from any fire in or on CDP Premises, or any theft from CDP Premises, or arising out of *vis major* or *casus fortuitous*, or arising out of any act of omission of any employee, representatives and/or agents of CDP which, or arising, in any manner whatsoever, out of the pre-auction contract.
17. The Seller/s hereby indemnifies the CDP and each of CDP's employees, representatives and/or agent against any claim of any nature whatsoever which may be made against CDP or any such employee, representatives and/or agent by any of the Seller/s servants, employees, agents, invitees, customers, dependants and/or contractors arising out of any event or cause of any action referred to in herein.
18. Should any provision of this pre-auction contract [including any schedules and/or annexures (if any)] become unenforceable, such provision shall be severed from this pre-auction contract and the remaining provisions shall be of full force and effect.
19. Words signifying the singular shall include the plural and vice versa.
20. Any assets entered or offered for sale are subject to payment by the seller of the agreed commission, or in absence of agreement, the usual commission by the seller to CDP auctioneers at the rate customarily charged by CDP Auctioneers from time to time, whether it was sold by auction or thereafter by the private treaty. Unless otherwise agreed in writing, commission shall become due and payable by the seller upon the fall of the hammer or upon the entering into of any private treaty involving the seller's said assets, which ever date is the earlier and notwithstanding any breach on the part of the seller. The seller authorizes CDP Auctioneers to deduct commission before payment of any moneys to the seller.
21. **If it happens that the buyer does not pay and whether the transaction is canceled for any reason, CDP Auctioneers cannot pay a seller and will attempt to resell item.**
22. **Payments to sellers will take place 7 working days after the auction date, after the invoice is signed by seller.**
23. The seller, who offers the animals for sale, accepts all liability regarding the information furnished as to pedigrees, ages, state of health or gestation or any other particulars which might be incorrect. In the event of any disputes, the buyer shall only have a claim against the seller and not against CDP Auctioneers.
24. **The purchase price is payable by the buyer to CDP Auctioneers in bank guaranteed cheque or electronic transfer (EFT) on the date of sale (the payment date), unless other payment terms are agreed in writing between CDP Auctioneers and the buyer.**
25. In the event of any conflict between the contents of this document and the payment terms agreement, the provisions of the payment terms agreement shall prevail; no application for credit as defined in section 8 of the National Credit Act, Act 34 of 2005, will be received or considered by the CDP Auctioneers.
26. The buyer shall not be entitled to withhold payment of the purchase price to CDP Auctioneers as a result of any possible or pending claim that he may have against the seller on the grounds of misrepresentation or for any other reason whatsoever.
27. Any potential buyer must register and must be in possession of a buyer's card.
  - a. In the event where buyers must register at an auction, and such registered buyer allows another person to purchase on his buyer's card, the registered buyer shall be liable for payment of such purchases. No bid by an unregistered buyer will be accepted by CDP Auctioneers and the buyer will have no claim to any of the assets allegedly purchased by him.
  - b. Any person who purchases on behalf of a principal, must furnish CDP Auctioneers with a "power of attorney" prior to the commencement of the sale. By failing doing that he will be personally liable for payment of any purchases made by him. The person bidding or signing on behalf of the buyer, pursuant



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to a successful bid, thereby binds himself personally as co-principal debtor with the buyer for payment of the purchase price and personally guarantees all the obligations of the buyer under these terms and conditions.

28. Subject to any reserve placed on any of the assets by the seller and the provisions, the buyer at any sale shall be the highest bidder indicated by CDP Auctioneers auctioneer by the fall of the hammer or by such other means as he may select.
29. Telephone bidding:
  - 29.1 Subject to a Buyer arranging with the Auctioneer before the auction and after completing the required documentation and paying the applicable registration fee, a Buyer bidding by phone deemed to accept these terms and conditions and to be bound and be bound thereby, shall then be permitted to bid by phone.
  - 29.2 The person who makes the bid by phone shall be deemed to be the buyer and shall be deemed to be personally liable for the payment of the purchase price.
30. **All assets shall, immediately after the bid is being knocked down, be deemed to have been delivered to the buyer. The sale shall be final and irrevocably concluded, subject only to any suspensive terms and conditions as may be applicable to the lot. Notwithstanding delivery, the buyer shall not be entitled to remove any purchased assets unless:**
  - 30.1.1. **The Auctioneers invoice in respect of such assets, has been paid in full and has cleared in CDP's bank account. When buyer pay via EFT; payment release must be on the same day.**
  - 30.1.2. **The Purchaser is in possession of a paid invoice and loading document.**
  - 30.1.3. Provided that in the case all other items, including motor vehicle sales, requiring the completion and delivery of documents by the Seller or any third party, CDP shall only be obliged to deliver such lots to the Purchaser after the relevant original documentation has been duly completed and signed by the Seller or any third party, is in the possession of CDP to hand over to the Purchaser.
31. The risk of profit and loss and the obligation of care devolve onto the buyer when the bid is knocked down.
32. The buyer who shall at his own risk and expense, remove it from the sale venue.
33. If the buyer doesn't collect items within the agreed time, storage costs will be applicable.
34. **The bidder is buying by piece to take the lot unless otherwise announced by the auctioneer.**
35. Once a bid has been made, it may not be withdrawn, unless it has been made and accepted in error by the auctioneer.
36. It is the responsibility of the bidder to ensure that he is fully aware of the lot and the specific goods or animals or items he is bidding on.
37. Should a cartage contractor remove any assets from the sale venue on instruction of CDP Auctioneers, the contractor will be deemed an agent of the buyer who accepts all costs and risks connected with such removal.
38. The Purchaser shall not be entitled to cancel the sale as a result of there not being timeous delivery or signature of the required documents. The Purchaser irrevocably waives his/her/its rights in this regard.
39. CDP shall be entitled, without penalty, to cancel the sale should the required documents not be signed and delivered to CDP within 21 (twenty-one) days of the date on which the sale becomes unconditional the said 21-day period may be extended by CDP for a further 14 (fourteen) days in CDP's sole and absolute discretion.
40. In the event of any Purchaser failing to pay the full purchase price of any lots ("the sale price") within the applicable time (as per the relevant announcement), and/or failing to remove the lots as aforesaid, and/or otherwise failing to comply with any of these terms and conditions, then, without prejudice to any other rights which CDP enjoys, the Purchaser shall be irrevocably forfeited to CDP any deposit paid by the Purchaser, for and on the Purchaser's behalf. CDP shall in addition, have a lien over the lots and shall have the right to re-sell such lots without notice to the Purchaser. Should CDP re-sell such lots and should the net proceeds thereof (after deducting commission and all costs incurred or to be incurred by having to re-sell the lot(s)), be less than the sale price, the Purchaser shall



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forthwith upon demand pay CDP, as pre-estimated, liquidated damages, such difference, less any deposited forfeited. This shall be without prejudice to the Seller and/or CDP's rights to claim all amounts/damages which it/they may claim in law.

41. CDP shall, under no circumstances, be liable to the Purchaser for any losses or damages suffered by the Purchaser as a result of the auction or termination of any sale concluded in respect of any lots in question, and/or the failure or inability of CDP to deliver any of the lots.
42. The Purchaser chooses as his/her/its chosen domicilium citandi et executandi for all purposes arising here from, the physical address reflected above.
43. The Purchaser consents to the jurisdiction of the Magistrates Court. CDP shall be entitled to institute an action in any competent division of the High Court of South Africa if it elects to do so.
44. In the event of it becoming necessary for CDP to take any action against the Purchaser, the Purchaser agrees to pay all the attendant costs and expenses incurred, including all legal costs incurred as between attorney and own client, should CDP institute legal proceedings against the Purchaser.
45. The auction shall take place under the exclusive control of CDP Auctioneers. CDP Auctioneers reserves the right, in its sole discretion, to refuse the bid of any person, to regulate the bidding, to indicate the highest bidder and to vary the order of the sale at any time without giving reasons, therefore. If the auctioneer suspects that a bidder has not made a bona fide bid, or is unable to pay the purchase price or has not made satisfactory arrangements for payment of the purchase price, he may refuse to accept the bid of such bidder or accept it provisionally until the bidder has satisfied him that he is in position to pay the purchase price or that he has made satisfactory arrangements for payment thereof. On refusal of a bid under such circumstances the assets may immediately be re-auctioned.
46. CDP Auctioneers shall not be liable for loss or damages caused to, or sustained in respect of any action by CDP Auctioneers or its helpers, employees or agents, notwithstanding an undertaking to care for attempt to, to dispatched or deliver the assets
47. The Purchaser indemnifies CDP against any claims or damages the Purchaser may sufferer relating to the lots, including but not limited to any errors of description of any of the lots.
48. The buyer shall, prior to the sale, ascertain whether there are any defects in the assets and any bid by a buyer shall be considered as acceptable of the assets with any patent or latent defects in their condition at the time of sale.
49. CDP Auctioneers reserves the right to refuse any cheque as payment.
50. Notwithstanding delivery, ownership of the purchased assets will not pass to the buyer until the full purchase price plus interest, if payable, is paid.
51. Until all amounts owing by the buyer had been paid in full, the buyer hereby:
  - 51.1. Irrevocably undertake to identify the purchased animals in such a manner that he can at any time identify and indicate the assets deemed to be the property of and pledged to, CDP Auctioneers;
  - 51.2. Grants CDP Auctioneers access at all reasonable times to the premises where the assets are stored for the purposes of perfecting its pledge and exercising any other rights in terms of these terms and conditions.
52. The entries made in the CDP Auctioneers auction roll shall be prima facie evidence of the transaction and shall be binding on the seller and buyer.
53. All persons and goods entering the sale venue do so at their own risk and CDP Auctioneers shall not be liable for any injuries, damages, theft or losses of any nature whatsoever.
54. Only representatives of CDP Auctioneers are entitled to control and load items or animals out. Sellers and buyers are not allowed to do it themselves. **No items or animals will be loaded during the auction.**
55. Any agreement contrary to these conditions of sale shall not be binding unless it is confirmed in writing and signed by management of CDP Auctioneers.
56. The Purchaser and Seller hereby acknowledges and confirms that he has read and understands all the foregoing conditions and in particular that he/she binds himself as surety for any principal for and on whose behalf, he may be purchasing goods at the auction.



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## Fica requirements:

### DEALERS/COMPANIES (Close corporation / (Pty) Ltd)

- Utility Bill with current business address (not older than 3 months)
- Resolution letter confirming the registered representative/s can buy on behalf of the company
- SARS letter with VAT Number (Notice of registration)
- Owner's ID Copy (all partners and members) as well as proof of private residential address (e.g. utility bill not older than 3 months)
- Proxy details/BRN certificate/Dealer stocking certificate/Traffic Register certificate (from the License Department)
- Proxy and representative's ID copies
- Copy of Original CK/CM documents (to confirm the identity of all members or directors)

**PLEASE NOTE THAT PRINTOUTS SUCH AS WINDEED, DEED SEARCH etc WILL NOT BE ACCEPTABLE.**

### **SOLE PROPRIETORS**

- Utility Bill with current residential address (not older than 3 months)
- Owner's ID copy
- Letter on a company letterhead confirming the existence of the business as a sole proprietorship
- If registered for VAT, SARS letter with VAT Number (Notice of registration)

### **PARTNERSHIPS**

- Partnership agreement
- Partners' ID copies and Proof of residential address (not older than 3 months)
- SARS letter with VAT Number (Notice of registration)
- Proof of business address (not older than 3 months)
- Resolution letter (authorizing representative to buy on behalf of company)
- Proxy details/BRN certificate/Dealer stocking certificate/Traffic Register certificate (from the License Department)

### **PRIVATE BUYERS**

- Utility Bill with current residential address (not older than 3 months)
- Registered buyer's ID copy

### **TRUSTS**

- Trust Deed.
- Letter of authority issued by the master of the high court.
- Authorization letter to buy on behalf of trust.
- Tax clearance certificate (if vat registered).
- ID's of all trustees.
- Proof of address of all trustees (not older than 3 months).
- Proof of address of the trust (not older than three months).



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**NOTES:**

- An affidavit may be submitted to confirm residence for those buyers that are residing or operating at someone else's premises together with the premise owners ID copy.
- A marriage certificate for spousal address confirmation.
- Lease agreement for those renting from agencies.
- Passport copy, valid visa copy, traffic register certificates for foreign buyers.
- Driver's licenses are not accepted as a form of identification (Bar coded ID Document)



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