

## RULES OF AUCTION

AUCTION HELD AT: \_\_\_\_\_

DATE OF AUCTION: \_\_\_\_\_

STARTING AT: \_\_\_\_\_

PARK VILLAGE AUCTIONS  
 UNIT 10, 355 OAK AVE, FERNDALE, RANDBURG  
 Tel: 011 789 4375  
 Fax: 011 7894369

### 1. DEFINITIONS

1.1 In these rules, the following terms have the meanings assigned to them below, namely –

1.1.1	“Act”	means the Consumer Protection Act 68 of 2008, as amended from time to time and any regulations promulgated in respect thereof;
1.1.2	“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;
1.1.3	“auction house”	means Park Village Auctions (Proprietary) Limited;
1.1.4	“auction without reserve”	means an auction at which goods are sold to the highest bidder without reserve; the auction does not require a minimum bid; the auction does not allow competing bids of any type by the seller or an agent of the seller; and the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids;
1.1.5	“auctioneer”	means C J Lazarus, R M Lazarus, L Nicholson, J Da Silva, N P Maree, K Green, K Dreyer, D Schoeman, N Techmann, J Moulder & A Venter;
1.1.6	“bidders record”	means the document contemplated in rule 26 of the regulations;
1.1.7	“closed auction”	means an auction where the auctioneer or the owner, as the case may be, issues an invitation to take part in an auction only to a finite list of consumers;
1.1.8	“consumer”	means a consumer as defined in section 1 of the Act and whose annual turnover or assets value falls below the threshold contemplated in section 5(2) of the Act and to whom the Act applies;
1.1.9	“lot”	means an asset or any group of goods sold or

		offered for sale as a unit and identified as such;
1.1.10	“mock auction”	means an auction in which goods are sold for less than the highest bid, or part of the purchase price is repaid to the purchaser; the right to bid for goods is restricted to persons who have agreed to buy other goods; or any goods that are given away as gifts;
1.1.11	“regulations”	means the regulations promulgated in terms of section 120 of the Act;
1.1.12	“vendor’s roll”	means the document contemplated in rule 28(4) of the regulations; and
1.1.13	“website”	means the website address of the auction house being – <a href="http://www.parkvillageauctions.co.za">www.parkvillageauctions.co.za</a> .

1.2 Unless a contrary intention clearly appears, the terms used in these rules shall have the meanings assigned to them in section 1 of the Act and rule 18 of the regulations.

1.3 These rules apply to all auctions irrespective of the goods on auction, the value of the property, or the reason for conducting the auction, and these rules do not detract from any other law.

## 2. HOUSEKEEPING

2.1 All prospective bidders must be registered with the auction house and/or the auctioneer as such prior to making bids during the auction.

2.2 The following provisions are brought to the consumers’ and the bidders’ attention: Section 45(2) and (3) of the Act provides that –

2.2.1 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; and

2.2.2 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.

2.3 These rules are compiled by the auctioneer in compliance with rule 21(1)(a) of the regulations.

2.4 These rules of auction comply with section 45 of the Act and with the regulations.

2.5 The sale by auction is subject to reserve prices as imposed by the auctioneers’ principle or owner. Therefore, the sale by auction is not an auction without reserve. A notice has been posted in this regard advising the bidders and the consumers that the auction is subject to reserve prices in compliance with section 45(4)(a) of the Act.

2.6 The auctioneer, the owner or the agent of the owner shall be entitled to bid up to the reserve price on behalf of the owner, but shall not be entitled to make a bid equal to or exceeding the reserve price. If no bid equals or exceeds the reserve price, the lot may be withdrawn from the auction. A notice has been posted in this regard advising the consumers and the bidders that the auctioneer, the owner or the agent of the owner shall be entitled to bid up to the reserve price in compliance with section 45(4)(b) of the Act.

- 2.7 The seller or owner is entitled to instruct the auctioneer to accept any lower bid.
- 2.8 In emphasis of 1.1.9, 2.5 and 2.6 above, all vehicles and/or other assets are, sold separately as contemplated in section 45 of the Act subject to the seller's or owners right to reserve prices, upset prices and/or to bid on each lot.

### **3. RULES RELATING TO ADVERTISING**

- 3.1 All goods forming the subject of auction have been advertised in compliance with the regulations in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods on offer, and these rules governing the auction.
- 3.2 A consumer may, at any time during ordinary business hours, request that the auctioneer to provide him/her with access to an advertisement relating to the auction, and the auctioneer shall forthwith, without charging any fee whatsoever, comply with such a request.
- 3.3 The auctioneer may provide a consumer with the website which will provide a copy of the full advertisement in a format generally used.

### **4. AUCTIONEER'S OBLIGATIONS**

- 4.1 An auctioneer shall not –
- 4.1.1 allow bidding on an item or a lot if the auction thereof has not been advertised;
- 4.1.2 during an auction, deviate from the sequence of goods as advertised;
- 4.1.3 knowingly misrepresent, or cause or permit to be misrepresented, the value, composition, structure, character or quality or manufacture of the goods put up for sale at the auction;
- 4.1.4 hinder the access of any person to any advertisement; or
- 4.1.5 pay any other person in order to be appointed as auctioneer, whether in general or for a particular auction, or in respect of any specific goods.

### **5. BIDDING**

- 5.1 The auction will commence at a published date set out in page 1 of the rules of auction, and will not be delayed to enable any specific person or more persons in general to take part in the auction.
- 5.2 The auctioneer will, during the auction, announce the reason for the auction, unless the reason is the normal and voluntary disposal of goods by the owner.
- 5.3 The rules of auction will not be read out at the auction if –
- 5.3.1 the rules of auction were, where applicable, available to the general public at least 24 hours prior to the commencement of the auction;
- 5.3.2 in the case of a livestock or game auction contemplated in rule 33 of the regulations are the same as for previous auctions and are generally available on the auction house or auctioneer's website, or at the auction house or auctioneer's business premises during normal business hours;

- 5.3.3 in the case of a closed auction, were made available to all persons to whom an invitation to take part in that auction was issued; and
- 5.3.4 at an auction, other than an auction through the internet, the auctioneer invites any person present to object to the rules of auction not being read upon, and nobody does.
- 5.4 A person who attends at the auction to bid on behalf of another person must produce a letter of authority meeting the requirements of rule 26(3) of the regulations in order to bid on behalf of that other person.
- 5.5 An auctioneer shall provide a prospective bidder, whose name appears in the bidders' record, with a bidder number before he or she may bid, as well as a paddle or other device to which that number is attached in such a way that it is clearly visible to the persons present at the auction.
- 5.6 The place where an auction is held shall be open and accessible to any member of the public, subject to the auctioneer's right to refuse a person the right to remain on the auction houses' premises in the event that that person repeatedly behaves in such a way so as to disrupt the auction.
- 5.7 An auctioneer shall have a vendor's roll in which all the details of the auction are recorded, which shall, as a minimum, include –
- 5.7.1 the advertising of the auction;
- 5.7.2 these rules of auction;
- 5.7.3 the bidder's record;
- 5.7.4 the declarations contemplated in rules 21(2)(h) and 27 of the regulations;
- 5.7.5 a list of all goods on auction, including goods which were withdrawn from auction;
- 5.7.6 the names of the successful bidders, the goods, or lots bought and the prices paid in respect thereof;
- 5.7.7 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;
- 5.7.8 any items or lots not sold; and
- 5.7.9 the details of any reserved price or any matter contemplated in section 45(4) and (5) of the Act.
- 5.8 A bidder shall have the right to inspect the goods as contemplated in rule 28(5) of the regulations. Notwithstanding that the auctioneer shall afford consumers a reasonable period of time and opportunity to inspect the goods on offer prior to the commencement of an auction, the auctioneer may –
- 5.8.1 refuse or restrict access to such goods if the consumer, after gaining access in any way, acts unlawfully or in contravention of these rules of auction; and
- 5.8.2 require the consumer to adhere to or submit to any security measures reasonably applicable in the circumstances.
- 5.9 In making a bid, a bidder shall be deemed to have made himself fully acquainted with the goods in the lot for which he or she bids. Neither the auctioneer, the auction house nor

the seller accepts any responsibility for the repair or maintenance of any goods sold at auction.

- 5.10 The auctioneer shall, upon concluding the proceedings of an auction, -
  - 5.10.1 announce that the auction has come to an end;
  - 5.10.2 sign the vendor's roll; and
  - 5.10.3 certify that the proceedings of the auction were to the best of his or her knowledge, conducted in accordance with these rules, the regulations and any other applicable law.

## 6. **BIDDING OUTCOMES**

- 6.1 A buyer making the highest accepted bid for a lot shall become the purchaser immediately as such lots have been knocked down to him. Should there be any dispute whatsoever over, or in respect of, any lot the auctioneer shall be entitled to settle such dispute at his sole discretion which shall include, but not be limited to, the absolute discretion to re-sell such lot or declare any bidder to be the purchaser. No party shall have a claim for damages of any nature in the event of the auctioneer settling any dispute. The auctioneer's decision is final and binding on all of the buyers.
- 6.2 In the event of sale of immovable property the highest bidder shall sign the conditions of sale agreement immediately following the fall of the hammer.

## 7. **PROHIBITED CONDUCT**

- 7.1 No person may promote, facilitate, conduct, or take part in a mock auction.
- 7.2 No person may promote, organise, participate in or benefit from any kind of conspiracy between an auctioneer, any participants in an auction, or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at an auction.

## 8. **LIABILITY**

- 8.1 In a case where the bidder or buyer is a consumer, these rules of auction will not –
  - 8.1.1 exclude liability in respect of inaccurate information provided in the advertising of the auction;
  - 8.1.2 exclude liability in respect of the rules of auction not meeting the requirements of the regulations; and
  - 8.1.3 contain any qualification, reservation, or diminution of the requirements of the regulations save where such qualification, reservation, diminution is permitted in terms of the regulations.
- 8.2 In circumstances where a bidder is not a consumer, neither the auctioneer nor the auction house shall be liable for return, repair, refund or any costs howsoever arising for any defects, failures, unsafe or hazards in any offered or auctioned goods. All goods are auctioned or offered as they are or stand (voetstoets).
- 8.3 In circumstances where the bidder is a consumer, and the auctioneer conducting an auction via the internet, the auctioneer may not exclude liability if any goods purchased by auction are not delivered to the purchaser thereof.

## **9. BIDDER'S RECORD**

- 9.1 The bidder's record and the vendor's roll are available for inspection during normal business hours without the charge of a fee, and where possible, such record and roll shall be made accessible through the website.
- 9.2 An auctioneer shall, for every auction, have a bidders' record to record the identity of all bidders at an auction.
- 9.3 Subject to rule 30(2) of the regulations, the auctioneer shall ensure that every prospective bidder must, prior to the commencement of an auction, register his or her identity in the bidders' record, and such registration shall with necessary changes meet the requirements of Chapter 1 of the rules promulgated in terms of the Financial Intelligence Centre Act, 2001 ("FICA").
- 9.4 The bidders' record is available for public inspection in respect of the names of the bidders and the bidders numbers only, at any time, free of charge –
- 9.4.1 during an auction, at the premises where the auction is being held; and
- 9.4.2 before or after an auction, at the auction house or auctioneer's place of business during normal business hours.
- 9.5 A prospective bidder in an auction to be held via the internet or other electronic platform must register by providing –
- 9.5.1 his or her full names, identification or passport number, age, physical address, internet protocol, address, and if applicable, login or name or password; and
- 9.5.2 the details of the means by which payment will be affected.

## **10. LOT SUBJECT TO CONFIRMATION**

- 10.1 On certain lots the seller reserves his or her right to sell the specific lot subject to confirmation (STC). In terms of the rules of the Master's Office this process is regarded as a continuation of the original auction process and any sale thus concluded shall be deemed a sale by auction.
- 10.2 No bid may be withdrawn after the fall of the hammer until the expiry of the confirmation period. The purchaser's offer shall remain open for acceptance by the seller or by the auctioneer on behalf of the seller, until expiry of the confirmation period.
- 10.3 It is also a condition that in the event of sale of a lot requiring the consent of a statutory authority or any court of law then the lot or auction sale, depending on the circumstances, shall be subject to the granting of such consent.
- 10.4 The length of the period of confirmation will be limited to a period as per the directives of the Master of the High Court or conditions set by the Master of the High Court.
- 10.5 Should the seller reject the purchasers offer or the necessary confirmation could not be given, the auctioneer will repay to the purchaser any deposit and/or commission paid to the auctioneer in terms of the condition of sale or otherwise. If no bid equals or exceeds the reserve price, the property may be withdrawn from the auction.

## 11. GENERAL RULES

- 11.1 The auctioneer does not guarantee the odometer reading on any of the lots, that is a vehicle, sold.
- 11.2 The auctioneer sells each lot as per the year of first registration as per certificate of registration in respect of motor vehicle (National Road Traffic Act 1996).
- 11.3 All vehicles and/or assets are sold exclusive of VAT. In other words if the bid price is R100 000.00 VAT must be added (R100 000.00 plus VAT @ 14% = R114 000.00).
- 11.4 All vehicles or lots are sold excluding documentation fee. The documentation fee may vary from auction to auction. This documentation fee is publicised excluding VAT, eg –
- |                        |  |
|------------------------|--|
| Bid Price              | R100 000.00;   |
| Documentation fee      | R1 300.00 (this amount may vary from auction to Auction) |
| Total Exclusive of VAT | R101 300.00  |
| + 14% Vat              | R14 182.00   |
| Total price            | R115 482.00  |
- 11.5 All accounts must be paid in by bank guaranteed cheque or electronic bank transfer (EFT), forthwith, at the conclusion of each day's sale, in default of which, the unpaid-for lots may, at the auctioneer's sole discretion, be re-sold and the defaulter shall be liable for any shortfall and any other costs relating to the resale.
- 11.6 Ownership of the goods sold vests in the auctioneer's principal until payment in full has been made.
- 11.7 Cheques tendered will not be regarded as payment until actually paid by the drawer bank.
- 11.8 All goods are sold exclusive of VAT.
- 11.9 The auctioneer's vendor roll of sale is final and binding on all buyers.
- 11.10 The auctioneer reserves the right to regulate the bidding, to withdraw any lot from the sale as instructed by the Seller prior to commencement of bidding thereon.
- 11.11 Every prospective bidder must read the conditions of sale and must not bid unless he or she has done so.
- 11.12 No lots can be sold subject to finance and such a bid will not be accepted so as to prevent disappointment. Kindly arrange finance prior to auction.
- 11.13 All lots bid on must be paid within 48 hours of the auction, failure to do so can result in the cancellation of the lot bid on and the bidder being liable to the auctioneer for the higher of 10% or the costs of advertising and holding the auction.
- 11.14 No fee may be charged for participation in an auction, however this does not apply to refundable deposits.
- 11.15 A R5 000.00 (five thousand rand) refundable deposit must be paid for each individual registration.

- 11.16 No cash will be accepted on the premises of the auction house. If cash is paid into the auction house's bank account, a 1.5% cash handling fee will be levied on the purchase price.
- 11.17 All rules of auction and regulations can be accessed through the website.
- 11.18 The risk in any goods sold, shall pass to the purchaser immediately as such goods have been knocked down to the purchaser. The purchaser acknowledges that the auctioneer will secure the goods in the same way as any other goods under his control and is not liable in any way for any damage to, or shortfall in, the goods or any goods stolen or destroyed before the purchaser takes delivery of the purchased goods.
- 11.19 The purchaser shall remove the purchased goods at his sole risk and cost and shall be liable to pay storage costs to the auctioneer, if the goods are not removed within 48 hours of the sale.
- 11.20 Should a need arise for legal proceedings to be instituted, the auctioneer may in his sole discretion, institute same, in his own name or that of the auction house.
- 11.21 The bidder shall be liable for all costs, charges and expenses of every nature whatever, including without limiting the generality of the foregoing, legal costs on the scale as between attorney and own client, disbursements and collection commission, which may be incurred by the auctioneer and/or the seller in enforcing its rights, against the bidder arising out of these rules of auction (including a breach of the rules of auction by the bidder), irrespective of whether any legal action is instituted.
- 11.22 The bidder consents in terms of section 45 of the Magistrates' Courts Act, No 32 of 1944, as amended, to the auctioneer and/or the seller, as the case may be, instituting any legal proceedings for enforcing any of its rights in terms of these rules of auction in the Magistrate's Court of any district having jurisdiction in respect of the bidder by virtue of section 28(1) of the aforesaid Act. Notwithstanding the bidder's consent to the jurisdiction of the Magistrate's Court aforementioned, the auctioneer and/or the seller, as the case may be, shall have the right to institute legal proceedings against the bidder in any other competent court having jurisdiction in the matter, including but not limited to any High Court of the Republic of South Africa.
- 11.23 Should the purchaser not comply with any of these conditions, the auctioneer shall, in addition to any other damages, be entitled to recover from such purchaser, any loss arising from re-sale of any goods, together with the charges and expenses in respect of both sales and any deposit held by the auctioneer, shall be forfeited.
- 11.24 A person wishing to bid on behalf of another person or trust, closed corporation, or company can only do so if a letter of authority, power of attorney or a resolution signed by the members, directors or the person giving the authority to bid on behalf of the company, closed corporation, trust or person with the full details, registration numbers, identity number and registered business address of such entity or person is handed to the auctioneer prior to the auction and on or before registration of the bidder.
- 11.25 The auctioneer shall ensure that if the person will be bidding on behalf of a company or a closed corporation, the letter as contemplated above must appear on the letterhead of such company or closed corporation and shall be accompanied by a certified copy of the resolution authorising him or her to do so.
- 11.26 The purchaser selects as his address of service for all purposes in terms hereof, the address as given during registration.
- 11.27 The above terms and conditions constitute all the rules of auction and form the agreement between the auctioneer and the purchaser.

- 11.28 No variation of the rules of auction, novation or consensual cancellation nor any waiver of any portion hereof shall be of any force or effect unless reduced to writing and signed by both parties.
- 11.29 No member of staff has any rights whatsoever to make representation on behalf of the auction house or, to bind the auction house in any way whatsoever, unless such representation is agreed to in writing by one of the directors of the auction house.
- 11.30 No warranties or representations whatsoever shall be of any force or effect, or be binding on the auctioneer unless given in writing and signed in a letter of authority by a director of the auction house. All goods sold, auctioned or offered are specifically without any warranties whatsoever.
- 11.31 Each rule contained herein is severable. In the event that any rule of auction is found by a court or tribunal of competent jurisdiction to be unenforceable for any reason, the remainder of the rules shall continue to apply and be of full force and effect.

**I hereby certify that the rules of auction, to the best of my knowledge, meet the requirements of the regulations, and I further acknowledge that I am personally accountable and liable for the content of the rules of auction.**

Rules of auction have been read out on this \_\_\_\_\_ day of \_\_\_\_\_ 2011 and are available for inspection on request

Auctioneer: C J Lazarus, R M Lazarus, L Nicholson, J Da Silva, N P Maree, K Green, K Dreyer, D Schoeman, N Techmann, J Moulder & A Venter.

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