

OOS VRYSTAAT KAAP OPERATIONS LIMITED
TERMS AND CONDITIONS OF ONLINE AUCTION:
AUCTION RULES

2020

OOS VRYSTAAT KAAP OPERATIONS LIMITED

Registration No. 1999/004069/06

(hereinafter referred to as “**OVK**”)

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TERMS AND CONDITIONS OF ONLINE AUCTIONS OF LIVESTOCK AND AUCTION RULES ("Auction Rules")

1. NOTICE AND ACKNOWLEDGEMENTS

- 1.1. The terms and conditions set out in this Auction Rules document 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 "**Auction Rules**" 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.
- 1.2. These Auction Rules shall 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.
- 1.3. Please take note that these Auction Rules need not to be read out in their entirety at the Auction to be valid, as long as they were made available to the general public at least 24 (TWENTY-FOUR) hours prior to the commencement of the Auction, either in printed format from the Auctioneers' place of business or electronically from the Auction Website.
- 1.4. The act of not reading the Auction Rules 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 Auction Rules are not important. 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 Auction Rules.

2. DEFINITIONS

For the purposes of these Auction Rules:

- 2.1. "**Auction**" means an online auction sale conducted by the Auctioneer in respect of Livestock and Lots, and shall include both a Timed Auction and a Live Auction and any reference to an "Auction" shall refer to either of a Timed Auction or a Live Auction, as the context may require;
- 2.2. "**Auctioneer**" means OVK, who shall conduct the Auctions on the Auction Website;
- 2.3. "**Auction Website**" means the auction website which is situated at [www.ovk-\[\]co.za](http://www.ovk-[]co.za);
- 2.4. "**Authorised Amount**" means the maximum amount a Bidder is authorised to spend at an Auction;
- 2.5. "**Authorisation Code**" means a code that has been issued to a Registered User by OVK to enable him to place a bid at an Auction;
- 2.6. "**Bidder**" means a person, natural or juristic, who is a Registered User and thus registered to purchase on an auction sale and who has been –
 - 2.6.1. issued an Authorisation Code;
 - 2.6.2. advised of an Authorised Amount; and
 - 2.6.3. who submits a bid in respect of any Lot or Livestock animal;
- 2.7. "**Buyer**" means a person, natural or juristic, who wishes to register to purchase on an auction sale;
- 2.8. "**Commencement Time**" in respect of a –
 - 2.8.1. Timed Auction means the commencement time of such Timed Auction and therefore when the bidding process can commence as specified on the Auction Website; and/or
 - 2.8.2. Live Auction means the commencement time of such Live Auction itself as specified on

the Auction Website;

- 2.9. “**CPA**” means the Consumer Protection Act 68 of 2008, inclusive of the regulations issued thereunder and as amended from time to time;
- 2.10. “**Cut-off Time**” in respect of a -
 - 2.10.1. Timed Auction means the termination time of all bidding on all Lots and therefore when such Timed Auction will terminate, as specified on the Auction Website; and/or
 - 2.10.2. Live Auction means the termination time of such Live Auction as specified on the Auction Website;
- 2.11. “**ECTA**” means the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time;
- 2.12. “**FICA**” means the Financial Intelligence Centre Act 38 of 2001, as amended from time to time;
- 2.13. “**Live Auction**” means a live Auction where registered Bidders can place a bid only for the duration when a specific Lot is auctioned off;
- 2.14. “**Livestock**” means any animal that is offered for sale at an Auction;
- 2.15. “**Lot**” means a group of Livestock sold or offered for sale as a unit and identified as such the Auction catalogue or on the Auction Website;
- 2.16. “**Law**” means the common law and any applicable Constitution, statute, by-law, proclamation, regulation, rule, notice, treaty, directive, code of practice, charter, judgement or order having force of law in South Africa, and any interpretation of any of them by any court or forum of law;
- 2.17. “**OVK**” means Oos Vrystaat Kaap Operations Limited, Registration No. 1999/004069/06, a company incorporated in accordance with the laws of the Republic of South Africa;
- 2.18. “**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, being the Livestock and/or Lots to be advertised and sold at an Auction;
- 2.19. “**Purchaser**” means the successful Bidder in respect of any Lot or Livestock offered on auction;
- 2.20. “**Registered User**” means a person who has been issued a username, account number and pin number by OVK;
- 2.21. “**Reserved Price**” means the minimum price of a Lot as advised by the Seller to OVK that must be achieved and/or exceeded before the electronic bidding system will accept a bid at any given moment during the Auction;
- 2.22. “**Seller**” means a person, natural or juristic, who is entitled in law to sell the goods on Auction, but not necessarily the Owner;
- 2.23. “**Timed Auction**” means an Auction that runs for a defined period of time, allowing registered Bidders to place bids for the duration of the Auction;
- 2.24. “**VAT**” means any value-added tax in terms of the Value Added Tax Act, or any similar tax which is imposed in place of or in addition to such tax Value Added Tax (where applicable) as levied under Applicable Law;
- 2.25. “**VAT Act**” means Value-Added Tax Act 89 of 1991, as amended from time to time;
- 2.26. “**With Reserve**” means where a Reserved Price has been set by the Seller and/or the Auctioneer, and where the Seller and/or OVK shall have the discretion to decide whether to accept or reject a bid, including the highest bid; and

- 2.27. **“Without Reserve”** means where no reserve price has been set by the Seller and/or OVK provided that the seller and/or OVK may in their sole discretion decide whether or not to accept the highest bid.

3. APPLICABLE LAW

- 3.1. The Auction and all matters related thereto, as well as these Auction Rules, will be governed by and construed 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.
- 3.2. 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 in the application form he or she completed and submitted when registering as a Registered User upon registration.
- 3.3. These Auction Rules comply with the provisions of section 45 of the CPA and section 43(1) of the ECTA and all persons, when registering as a Bidder must, in doing so, comply with Chapter 1 of the FICA.
- 3.4. The Auctioneer is hereby appointed by the Seller and the Purchaser to act for and on their behalf as agents in accordance with section 54 of the VAT Act, 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 insurance premiums paid for on behalf of the Seller and the Purchaser.

4. LEGAL AGE AND CAPACITY

- 4.1. OVK will not accept any Bidders, or representatives of Bidders, under 18 (EIGHTEEN) years of age or who otherwise do not have the relevant capacity to be bound by these Auction Rules. No one may participate in an Auction and/or accept these Auction Rules if they lack the necessary legal capacity to enter into a valid and binding contract with OVK as the Auctioneer.
- 4.2. By participating in an Auction, the Bidder warrants that he/she has attained majority status (18 years of age or older) and that his/her legal capacity is not diminished due to mental incapacity.

5. PRE-REQUISITES OF THE CONSUMER PROTECTION ACT AND REGULATIONS

- 5.1. The Auction was advertised in compliance with regulations 19 and 20 of the CPA, and the advertisement was placed in such a manner that the general public has had a reasonable opportunity to become aware of the Auction, the goods on offer and the rules governing the Auction.
- 5.2. Section 45(2) of the CPA prescribes if 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.
- 5.3. The Auction will commence at the published time and will not be delayed to enable any specific person or more persons in general to take part in the Auction.
- 5.4. Sub-regulation 26(2) of the CPA prescribes that every prospective Bidder must, prior to the commencement of an Auction, register his/her identity in the bidders' record, providing his/her positive identification, juristic registration documents, and proof of residence in terms of the FICA.
- 5.5. Sub-regulation 26(3) of the CPA declares that if a person intends to bid on behalf of another, he/she must produce a letter of authority expressly authorizing him/her to bid on behalf of that person, and both that person and the person bidding on his/her behalf must meet the requirements of sub-regulation 26(2) of the CPA.
- 5.6. Sub-regulation 26 (4) of the CPA states that if a person described in clause 5.5 intends to bid on behalf of a company, the letter of authority contemplated therein must appear on the

letterhead of the company and must be accompanied by a certified copy of the resolution authorizing him/her to do so.

- 5.7. Sub-regulation 28 (1) of the CPA prescribes that all prospective Bidders whose names appear in the bidders' record will be issued with visible bidder numbers.
- 5.8. Sub-regulation 26(5) of the CPA states that the bidders' record will be available for public inspection in respect of the names of bidders and bidders' numbers only, at any time, free of charge:
 - 5.8.1. during the Auction, at the premises where the auction is being held; and
 - 5.8.2. before and after the auction, at the auctioneer's place of business, during normal business hours.
- 5.9. Sub-regulation 28(4) of the CPA states that the Auctioneer will keep a vendor's roll in which all details prescribed therein will be recorded. The vendor's roll will be available for public.
- 5.10. Sub-regulation 21(2) (h) of the CPA, states that the Auctioneer has trust accounts into which all monies are paid for the benefit of the Seller, minus the agreed commission and costs in accordance with sub-regulation 21(2)(h) of the CPA.

6. ADMISSION AND REGISTRATION

- 6.1. The right of admission to the Auction is reserved and OVK shall have the right to refuse to register any natural or juristic person at their sole discretion. OVK shall have the right to request additional information and documentation to assist them in making a decision as to whether to permit access to their services.
- 6.2. It is the responsibility of all Registered Users and Bidders to keep their Authorisation Code secret. Any bid shall be irrefutably deemed to have been submitted by the Registered User to whom that Authorisation Code was issued by OVK and shall be binding upon that Registered User.
- 6.3. All persons who enter the Auction Website do so at their own risk and only registered Bidders may validly place bids at an Auction.
- 6.4. The Auctioneers, the Sellers, their agents and employees shall not be liable for any injuries, damages or any losses of any nature whatsoever arising from any person's attendance and/or participation in the Auction. Such persons together with their heirs, executors, administrators or assigns, release OVK, the Auctioneers, the Sellers, their agents and their employees and hold them harmless from any duty of care towards them and all claims which may otherwise have accrued to them whether or not any such claim may arise through the negligence of any person or from any of the risks, dangers or hazards occurring in the course of their association with the Auctioneers and the Sellers.
- 6.5. All Bidders and prospective Bidders shall be required to register as a Bidder in order to participate in the Auction and in doing so comply with the FICA requirements of the Auctioneer. Registration shall take place online by completing the application form and submitting the relevant supporting documents as prompted during the registration process.
- 6.6. 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 Auction.
- 6.7. Any person who bids, does so in his/her personal capacity, unless OVK (prior to the Auction in question) accepts the power of attorney or other written authority given to such person by his/her principal. If a dispute arises at any stage with regard to the existence or validity of such power of attorney or authority, the person who made a bid shall, without derogating from any right OVK or the Seller may have against his/her principal, immediately become personally

liable for any amount owing as a result of such bid. Should it transpire that the principal can also be held liable, the liability of the Bidder and the principal shall be joint and several.

- 6.8. If the Bidder is a company the person completing the online registration must be duly authorised by a resolution of the company to register as a Bidder and act as a Purchaser and must upload a certified copy of the resolution together with the terms of Chapter 1 of the regulations in terms of FICA. (Any reference to a company will include any reference to juristic person including a partnership, trust or incorporated entities).
- 6.9. In the event that the Auctioneer consents to an agent registering on behalf of a principal then the agent together with the principal must both comply in terms of Chapter 1 of the regulations in terms of the FICA.
- 6.10. At registration the Bidder is asked whether he/she would like to receive communication from OVK by SMS and/or email, and if the Bidder agrees his/her details are loaded onto the OVK system. Should the Bidder wish to stop receiving communication from OVK at any time, he/she can inform OVK accordingly.
- 6.11. OVK shall have the right to terminate any registration if -
 - 6.11.1. the Bidder or Purchaser fails to timeously comply with any obligation imposed either by legislation or by OVK;
 - 6.11.2. OVK have reason to believe that the Bidder or Purchaser has engaged in any unlawful or untruthful activity while making use of the services or has attempted to collude or deceive OVK or other users at any time; or
 - 6.11.3. the Bidder/the Purchaser does not comply with these terms and conditions set out in these Auction Rules.

7. AUCTION PROCEDURE

- 7.1. The Auctioneer conducts the Auction as an agent, on behalf of the Seller, and accepts no liability whatsoever. In the event of any disputes, the Purchaser shall only have a claim against the Seller, unless such disputes are as a result of the Auctioneer's gross negligence.
- 7.2. The Auction shall take place at the date and time as advertised or published and will not be postponed or delayed to enable anybody to partake in the Auction.
- 7.3. The Auction of a Lot shall occur as follows:
 - 7.3.1. in respect of a Timed Auction – from Commencement Time until the Cut-off Time;
 - 7.3.2. in respect of a Live Auction – from the time that the Auctioneer announces that bids can start on that specific Lot until fall of the hammer by the Auctioneer.
- 7.4. OVK will be entitled in its sole discretion to suspend or cancel the Auction prior to the Cut-off Time.
- 7.5. The final Auction catalogue will be available online at least 24 (TWENTY-FOUR) hours before the commencement date and time of the Auction. 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 Auction Website.
- 7.6. Prior to bidding it is the responsibility of each Bidder to confirm whether a Lot is auctioned With Reserve or Without Reserve. Sub-regulation 20(19)(d) of the CPA permits certain goods to be offered With Reserve and others offered absolute or Without Reserve at the same Auction, and at the same time, provided non-misleading advertisement make it clear, through appropriate emphasis, which goods are offered by each method.
- 7.7. 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.

- 7.8. The Auctioneer has the right to withdraw any item which was previously advertised to be auctioned.
- 7.9. The Auctioneer may only sell to registered Bidders. No bid will be taken from unregistered persons without bidder numbers as prescribed by sub-regulations 24(h) and 28(2) of the CPA.
- 7.10. During a sale for which the Bidder has registered, the Bidder can bid for a Lot by clicking on the bid button. The current bid will be displayed on the Bidder's screen during the sale.
- 7.11. Every bid constitutes a firm offer to purchase the goods or Lots on offer for the amount bid. The Bidder is permitted, in terms of section 45(3) of the CPA, to retract his/her bid before the hammer falls or the Auctioneer concludes bidding in any customary manner.
- 7.12. 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.
- 7.13. The Purchaser shall be the highest bidder. Should any dispute arise between two or more Bidders, the person who submitted the highest earliest bid received or recognised wins, subject thereto that if such person cannot be identified by the Auctioneer, the Lot or Lots shall be put up again for Auction and resold; or the Auctioneer may, after consultation, declare the buyer of its choosing.
- 7.14. Sub-regulation 28(6) of the CPA provides that subject to any Reserved Price and acceptance of the highest bid by the Owner or the Seller, 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.
- 7.15. In the event where the Reserved Price is not met in terms of regulation 28(6) of the CPA and the Seller has to accept or decline the highest bid after the completion of the Auction, the highest Bidder is bound by the Auction Rules and shall not have the opportunity to withdraw his/her bid until the Seller has confirmed the sale or the stipulated acceptance period has expired. Negotiations between the highest Bidder and the 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 Seller in terms of this clause 7.15 is deemed not to be sold in terms of section 45(3) and sub-regulation 28(6) of the CPA, until the Seller has accepted the offer.
- 7.16. No bid may be withdrawn after the fall of the hammer if the auction is subject to a Reserved 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 CPA.
- 7.17. 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.
- 7.18. Any error by the Auctioneer shall be entitled to be corrected by it, but the Auctioneer and the Seller shall not be bound by any mistake made by the Purchaser.
- 7.19. The Bidder accepts full responsibility for every bid submitted through his/her online bidding account and agree that each bid entered (unless withdrawn before the fall of the hammer) is binding even if submitted in error.

8. FINANCIAL ARRANGEMENTS

- 8.1. Once goods or Lots have been sold to the Purchaser Without Reserve or confirmed by the Owner or Seller in an Auction With Reserve, the sale of the goods or Lots is irrevocable and cannot be withdrawn. The Purchaser shall be liable for the settlement of such purchases failing which the Auctioneer, the Seller or the Owner, reserves the right to obtain the relief it is entitled to, including the amount paid, interest if applicable, legal costs and collection costs.
- 8.2. The final weight in kilogram of each Lot or Livestock animal (as the case may be) will be established at the time the Purchaser collects and take delivery thereof.
- 8.3. Upon delivery and establishment of the delivery weight, the Auctioneer will provide an invoice to the Purchaser reflecting the final purchase price of the specific Lot or Livestock animal calculated on the successful bid price per kilogram times the delivery weight.
- 8.4. 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 handling fee. Should the Purchaser however fail to make payment within 7 (SEVEN) days from the date of delivery, OVK will be entitled to add interest calculated at the current bank prime rate plus 8% (EIGHT PERCENT) to the capital amount outstanding. The interest will be calculated daily and capitalised monthly.
- 8.5. Should the Purchaser not pay the purchase price immediately and has failed to make arrangements for payment with the Auctioneer, then the Auctioneer will cancel the sale and treat the assets or Lots as unsold 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.
- 8.6. Auctions are cash transactions and not subject to any suspensive conditions such as the granting of finance to the purchaser. Therefore, Bidders intending to finance their purchases must obtain irrevocable approval or guarantee from their sponsors prior to the commencement of the Auction
- 8.7. All payments must be made in South African ZAR currency into the specific Trust account nominated by the Auctioneer for each Auction and provided to the Purchaser in the notice to Bidders.
- 8.8. Should the Auction be subject to the payment of 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 any commission and other fees, where applicable, shall constitute the purchase price and shall be due and payable simultaneously.
- 8.9. 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 Buyers is prohibited. The registered Bidder is responsible for the payment of the full invoice.
- 8.10. In the event that the Purchaser has made the necessary finance arrangements with OVK, the Purchaser hereby authorises OVK to pay the purchase price or cost of transport, insurance and any other agreed cost minus OVK's commissions, on behalf of the Purchaser to the Seller and other service providers, in which event the said payment by OVK on behalf of the Purchaser will be deemed to be monies lent and advanced, in terms and conditions thereof being agreed with the Purchaser in a separate credit agreement or sale agreement. All payments made by OVK 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 the date of delivery of the asset to the Purchaser.
- 8.11. In the event of payment made on behalf of the Purchaser by OVK as contemplated in clause

8.10 above, the purchaser acknowledges herewith being indebted to OVK for the invoiced amount.

9. VOETSTOOTS

- 9.1. In terms of section 55(1) of the CPA, goods 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 in accordance with sub-regulation 28(5) of the CPA. A bid shall be taken as proof that the Bidder has inspected the goods and/or has satisfied himself/herself with the condition of the goods for which he or she bids.
- 9.2. Without derogating from the generality of a foregoing, OVK shall not be held liable for or in respect of:
 - 9.2.1. any statements contained in catalogues and/or advertisements; and
 - 9.2.2. any information supplied with regard to the Lot for sale;
 - 9.2.3. any guarantee/warranty or misrepresentation, made with regard to the item; and
 - 9.2.4. any defect, whether latent or patent, in the item not known to OVK; and
 - 9.2.5. any information regarding the quality, age, condition, reproduction status or ability, fertility, health, mass, date of copulation, breeding or genealogy supplied by the Seller or any misinterpretation thereof by the Seller.

10. REMOVAL / COLLECTION OF AUCTIONED GOODS

- 10.1. The Seller hereby undertakes not to release the sold items without the specific instructions of OVK to the Seller, to release it. OVK will confirm that payment was received by them and that the items may be released. If the Seller release the sold items without the specific instructions of OVK, the Seller do it at his own risk and will the Seller be responsible for any loss suffered by OVK or him/herself.
- 10.2. Subject to clause 10.1 above, each Lot shall immediately after the date of notification by the Auctioneers to the Purchaser of acceptance of his/her bid deemed to be delivered to the Purchaser at the address of the Seller at which time the risk will pass to the Purchaser who will at his own risk and cost remove the Lots or assets from the Seller's premises. The Purchaser shall be responsible to arrange for the items to be removed from the Seller's premises within 24 (TWENTY-FOUR) hours after notification that his/her bid was successful and the requirements of clause 8 (*Financial Arrangements*) has been complied with.
- 10.3. After expiry of the 24 (TWENTY-FOUR) hour period referred to in clause 10.1,
 - 10.3.1. the Purchaser will be responsible for the following costs, including but not limited to -
 - 10.3.1.1. marketing costs; and
 - 10.3.1.2. sustenance costs of the Livestock (such as food and water); and
 - 10.3.2. OVK reserves the right to re-auction the Livestock and claim damages from the Purchaser.
- 10.4. No items may be removed from the Seller's premises before –
 - 10.4.1. The Purchaser has complied with the requirements of clause 8 (*Financial Provisions*) and the payment reflects in OVK's bank account; and
 - 10.4.2. OVK has given written confirmation to the Purchaser authorising the Purchaser to remove the said Livestock and/or Lots; and
 - 10.4.3. OVK has given permission to all the relevant parties that the said item may be removed, once the requirements of 10.1 [hashave](#) been complied with. Should the item be released

by the Seller before said permission is given by OVK, the item is released at the sole risk of the Seller.

- 10.5. Loading, transport, insurance and/or care of the Livestock, will be carried out at the sole cost of the Purchaser. If the Purchaser requires any permits, removal certificate or identification documents in this regard it shall be for the account of the Purchaser.

11. OWNERSHIP AND RISK

- 11.1. Ownership in the Lot or assets will remain that of the Seller until the purchase price has been paid in full to the Seller. The Seller warrants that he/she is the legal owner of the Livestock and that the Seller has the necessary authority to offer the Livestock for sale at the Auction. The Seller confirms that the Livestock is marked with the necessary identification's marks confirming ownership and hereby indemnifies OVK against any losses or claims in this regard
- 11.2. Risk passes from the Seller to the Purchaser (the highest Bidder) at the time of the Auctioneer notifies the purchaser of the acceptance of the bid.
- 11.3. For as long as any amount is owing to OVK by the Purchase, the Purchaser may not, where the assets are the subject of security of the Purchase's credit facility with OVK, relinquish possession of the said asset, nor may he cede the asset or any of its rights and obligations in terms of these Auction Rules 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. OVK may be entitled to cede its rights and obligations without affecting its rights of recourse for any monies still due to it.
- 11.4. Should the Seller at the time of the Auction owe an amount to OVK, from whatever the cause of action may be, OVK reserves the right to first credit such an outstanding amount, where after the difference, should there be any, will be paid to the Seller.
- 11.5. A certificate signed by any of OVK's Directors, General Managers, Company Secretary, Manager: Client Finance or Client Finance Manager, whose appointment as such OVK shall not be required to prove, which sets out the amount of the indebtedness of the Purchaser or the Seller to OVK, and the applicable maximum permissible rate of interest in terms of the National Credit Act 34 of 2005, shall constitute *prima facie* proof that such amount is due and payable, and shall be sufficient proof of the existence of the indebtedness set out in such certificate, the amount due, the ruling rate of interest from time to time which is certified therein, and the fact that such amount is liquid and due and payable, and has not yet been paid.
- 11.6. Neither the Purchaser nor the Seller shall be entitled to claim set-off or any deduction with regard to any amount owing to OVK or to each other in terms hereof or flowing from the Auction or any cancellation thereof. Should the Seller cancel the Auction, for whatever reason, the Seller will be liable to OVK for all costs, losses and expenses occurred up to the date of cancellation.

12. LIMITATION OF LIABILITY AND DISCLAIMER

- 12.1. Notwithstanding what is contained in these Auction Rules, the Purchaser will be deemed to accept, acknowledge and agree that OVK will not be held liable to the Purchaser for any losses, damages, expenses or harm of whatsoever nature however same may arise.
- 12.2. OVK cannot and will not be held responsible for any interruptions in service, errors, and/or omissions, caused by any means and does not guarantee continual, uninterrupted or error free services or use of the Auction Website. The Bidder acknowledges that this sale is conducted electronically and relies on hardware and software that may malfunction without warning. OVK, in its sole discretion, may void any sale, temporarily suspend buying and resell and item/lots that were affected by any malfunction. The decision of OVK is final in this

regard.

13. BREACH

In the event that the full payment of the total purchase price for all goods shown on the pro forma invoice has not been paid on due date, or the Purchaser cannot comply with FICA, the Purchaser will have breached the terms of the Auction and deemed to have defaulted on the sale and agrees to the following:

- 13.1. immediate cancellation of the sale(s) without notification to the Purchaser;
- 13.2. the Purchaser will have no further claim on any of the goods sold via the Auction;
- 13.3. the Purchaser may be blacklisted by OVK and such Purchaser may be refused permission to participate in any auctions conducted by OVK in the future.

14. JURISDICTION

All parties consent to the jurisdiction of the Magistrate Court as contemplated in section 45 of the Magistrates' Courts 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.

15. COSTS

All legal costs, including collection commission, incurred by OVK as a result of any non-compliance by the Seller or by the Purchaser with any of their respective obligations in terms hereof, may be recovered by OVK from the said defaulting party on the scale as between attorney-and-own-client.

16. GENERAL

- 16.1. OVK is providing services as an independent contractor for the Seller only and is not responsible for statements made by other parties.
- 16.2. No provision of the terms and conditions (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in these Auction Rules, unless it is reduced to writing and signed by OVK.
- 16.3. No relaxation or indulgence granted by OVK to The Purchaser or the Seller shall be deemed to be a waiver of any of OVK's rights in terms hereof and such relaxation or indulgence shall not be deemed to be or construed as a novation hereof.
- 16.4. 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 these Auction Rules.
- 16.5. Should any condition be unlawful or become 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 non scripto* (as if not written).