

OOS VRYSTAAT KAAP OPERATIONS LIMITED
TERMS AND CONDITIONS OF AUCTIONS
(“Auction Rules”) 2022/06/01

.OOS VRYSTAAT KAAP OPERATIONS LIMITED

Registration No. 1999/004069/06

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

19 Dan Pienaar Street Ladybrand, 9745

Telephone: 051 923 4500

The following Auction Rules serve as binding conditions to all auctions hosted by OVK:

1. DEFINITIONS

For the purposes of these Auction Rules, unless inconsistent with or otherwise indicated by the context, the following words and expressions shall have the meanings set out opposite them:

- 1.1. “**Assets**” means any Goods, Livestock, Lots, Property and/or Vehicles sold at an Auction conducted by the Auction House, as the context may require;
- 1.2. “**Auction**” means an auction sale conducted by the Auctioneer on behalf of the Auction House and shall include any of the following auctions:
 - 1.2.1. an Online auction;
 - 1.2.2. a Timed Auction; or
 - 1.2.3. a Live Auction
- 1.3. “**Auctioneer**” means the person who conducts the Auction;
- 1.4. “**Auction House**” means OVK or other juristic person which conduct auctions as part of its business;
- 1.5. “**Auction Rules**” means the rules of the auction as set out in this document including the notice to Bidders and all announcements made by the Auctioneer at the commencement and during the course of the Auction conducted by the Auction House, whether or not the Bidder is present at the time such announcements are made;
- 1.6. “**Bidder**” means person, natural or juristic, who is registered to purchase on an auction sale conducted by the Auction House;
- 1.7. “**Buyer**” means a person, natural or juristic, who wishes to register to purchase on an auction sale conducted by the Auction House;
- 1.8. “**CPA**” means the Consumer Protection Act 68 of 2008, inclusive of the regulations issued thereunder and as amended from time to time;
- 1.9. “**ECTA**” means the Electronic Communications and Transactions Act 25 of 2002, as amended from time to time;
- 1.10. “**FICA**” means the Financial Intelligence Centre Act 38 of 2001, as amended from time to time;

- 1.11. “**Goods**” means any asset of value, movable or immovable, that is offered for sale at an Auction conducted by the Auction House;
- 1.12. “**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;
- 1.13. “**Livestock**” means any animal that is offered for sale at an Auction conducted by the Auction House;
- 1.14. “**Lots**” means any group of Goods and/or Livestock sold or offered for sale as a unit and identified as such in the Auction catalogue;
- 1.15. “**No Reserve Price**” means that there is no established minimum price for the item being auctioned. This means that no matter what the highest bid is, the owner must sell it for such amount;
- 1.16. “**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;
- 1.17. “**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 at an Auction conducted by the Auction House;
- 1.18. “**Property**” means land, improvements, fittings and fixtures with regards to immovable assets that is offered for sale at an Auction conducted by the Auction House;
- 1.19. “**Purchaser**” means the successful Bidder in respect of any Assets offered at an Auction;
- 1.20. “**Reserved Price**” means a minimum price that has to be attained for the bid to be accepted;
- 1.21. “**Seller**” means a person, natural or juristic, who is entitled in law to sell the Assets at an Auction, but who is not necessarily the Owner;
- 1.22. “**Subject To Confirmation**” means that the Owner has to accept or reject the bid after finalization of the Auction within 48 (FORTY-EIGHT hours) (“**the Confirmation Period**”). No bid may be withdrawn after the fall of the hammer until the expiry of the Confirmation Period. During this time the offer shall be open for acceptance by the Seller or his/her agent and if the offer is accepted, the sale shall be deemed to be a sale by auction;
- 1.23. “**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;
- 1.24. “**VAT Act**” means Value-Added Tax Act 89 of 1991, as amended from time to time; and
- 1.25. “**Vehicles**” means motor vehicles that is offered for sale at an Auction conducted by the Auction House;
- 1.26. “**With Reserve**” means where a Reserved Price has been set by the Seller and/or the Auctioneer; and
- 1.27. “**Without Reserve**” means where no Reserved Price has been set by the Seller and/or the Auctioneer provided that the Seller and/or Auctioneer may in their sole discretion decide whether or not to accept the highest bid.

2. NOTICES AND ACKNOWLEDGEMENTS

- 2.1. It is hereby recorded that these Auction Rules are the complete and final record of the rules of any Auction conducted by the Auction House and unless any warranties, undertakings or representations are set out herein, they are expressly excluded.

- 2.2. These Auction Rules in their entirety 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.
- 2.3. 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 in question, either in printed format from the Auction House's place of business or distributed in electronic format or published electronically on the Auction House's official website.
- 2.4. 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.

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/her in the application form he/she completed and submitted when registering to participate in the Auction.
- 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 legislation.
- 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 Assets offered and sold 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 the Auctioneer and/or the Auction House.
- 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. 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 Assets 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 indicated in the Auction catalogue or as advertised on the Auction House's website, and will not be delayed to enable any specific person or more persons in general to take part in the Auction unless decided otherwise in the sole discretion of the Auctioneer.
- 5.4. 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 Assets to be offered for sale at an Auction, may inspect such Assets by arrangement with the Auction House at a time and date specified on the Auction catalogue or as agreed between the respective parties.
- 5.5. 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 legislation.
- 5.6. 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.
- 5.7. Sub-regulation 26 (4) of the CPA states that if a person described in clause 5.6 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.
- 5.8. 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.
- 5.9. 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 -
 - 5.9.1. during the Auction, at the premises where the Auction is being held; and
 - 5.9.2. before and after the Auction, at the Auction House' place of business, during normal business hours.
- 5.10. 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.
- 5.11. 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. Right of admission reserved

The right of admission to the Auction is reserved and the Auction House shall have the right to refuse to register any natural or juristic person at their sole discretion. The Auction House 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. Risk and limitation of liability

6.2.1. All persons, including Buyers who enter the Auction venue or website do so at their own risk.

6.2.2. The Auction House, 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 the Auction House, 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 Auction House, Auctioneers and the Sellers.

6.3. Registration

6.3.1. All potential Buyers and 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 Auction House.

6.3.2. Only registered Bidders may validly place bids at an Auction conducted by the Auction House.

6.3.3. In order to register and participate in the auction the purchaser will be required to complete and sign the registration document issued by the Auction House, pay the registration fee (if applicable) and submit the relevant supporting documents as communicated by the Auction House or Auctioneer during the registration process. Registration can also take place online, in the event of an online Auction, by completing the application form and submitting the relevant supporting documents as prompted during the registration process.

6.3.4. Such registration must meet the requirements of FICA and that person must sign the registration entry.

6.3.5. By registering as a Bidder, the Bidder consents to the collection and use of personal information by the Auction House and the Auctioneer for the purposes of creating the registration and participation in the Auction.

6.3.6. 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.

6.4. Capacity and proxies

6.4.1. Any person who bids, does so in his/her personal capacity, unless the Auction House (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 the Auction House 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.

6.4.2. If the Bidder is a company, the person completing the 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).

6.4.3. In the event that the Auction House 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.

6.5. Termination of registration

The Auction House shall have the right to terminate any Bidder's registration and cancel any purchase if-

6.5.1. the Bidder or Purchaser fails to timeously comply with any obligation imposed either by legislation or by the Auction House;

6.5.2. the Auction House has 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 the Auction House or other users at any time; or

6.5.3. the Bidder or the Purchaser does not comply with these terms and conditions set out in these Auction Rules.

7. AUCTION PROCEDURE

7.1. Disclaimer

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. Control of Auction

7.2.1. 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.

7.2.2. The Auctioneer shall have the right to control, regulate and record the Auction. The recording of the Auction shall be *prima facie* evidence of the Auction proceedings.

7.2.3. The Auctioneer may accept or reject bids in his sole discretion without providing reasons. This would include rejecting an offer previously accepted by the Auctioneer. In the event of a dispute between Bidders, the Auctioneer will have the discretion to put the Assets (movable/immovable) up for auction again and his decision shall be final and binding. The Auctioneer may, without penalty or prior notice, withdraw any item(s) from any Lots on auction at any time before the sale thereof or during the Auction.

7.3. Errors

7.3.1. Any *bona fide* error by the Auctioneer in the conduct or conclusion of any sale or arising from any incorrect information to the items for sale shall be entitled to be corrected by the Auctioneer, but the Auctioneer and the Seller shall not be bound by any mistake made by the Purchaser.

7.3.2. In the event that the error is capable of not being corrected, then the Auction shall be deemed not having taken place and no party at the Auction will have any claims against the Auctioneer, the Auction House or the Seller arising from the cancellation of the Auction.

7.4. Bids

7.4.1. Every bid constitutes a firm offer to purchase the Assets on offer for the amount bid and the Bidder accepts full responsibility for every bid submitted and agree

that each bid entered (unless withdrawn before the fall of the hammer) is binding even if submitted in error.

- 7.4.2. 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.
- 7.4.3. The highest Bidder shall be accepted by the Auctioneer as the Purchaser if no Reserve Price or Subject To Confirmation is applicable.
- 7.4.4. 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 Assets shall be put up again for Auction and resold; or the Auctioneer may, after consultation, declare the Buyer of its choosing.
- 7.4.5. 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.
- 7.4.6. 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.
- 7.4.7. Once Assets 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.

7.5. Auction subject to Reserve Price

- 7.5.1. 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 7.5.1 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.
- 7.5.2. 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.

7.6. Online auctions conducted via auction website

- 7.6.1 An Online auction means that the bidders take part in an auction by using the OVK electronic platform or another electronic platform which OVK offer for a particular auction.
- 7.6.1. Every bid (the act of clicking on the bidding button or submitting a bid price by the Bidder) shall constitute an offer to purchase such Assets for the amount placed as a bid. The current bid will be displayed on the Bidder's screen during the sale.
- 7.6.2. Please note that online bids are dependent on the Bidder's internet connection and OVK cannot be liable for any bids that are not received due to poor connection or unforeseen circumstances.
- 7.6.3. In the event that there is a problem with www.ovk.co.za (the website) the bidders will be notified of same.

7.7. **Timed Auctions**

- 7.7.1. A 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 (hereinafter referred to as a "**Timed Auction**"). The cut-off time in respect of a Timed Auction will be communicated in the Auction catalogue or advertised on the Auction House's website.

7.8. **Live Auctions**

- 7.8.1. A live Auction is where registered Bidders can place a bid only for the duration when specific Assets are auctioned off (hereinafter referred to as a "**Live Auction**"). This can take place at the specific premises as indicated on the catalogue and the Assets can be viewed.

8. **FINANCIAL ARRANGEMENTS**

- 8.1. On the acceptance of a successful bid at an Auction, the Auctioneer shall send a document detailing (herein after referred to as the "**Invoice**") the exact identification of the item sold at an Auction, the price, any additional cost including but not limited to commission payable to the Auction House, and terms of payment to the Purchaser in question. The Purchaser shall be deemed to accept the content thereof as summary of the sale and amount due by him/her.
- 8.2. All payments must be made in South African ZAR currency into the specific Trust account nominated by the Auction House and provided to the Purchaser in the notice to Bidders and as indicated on the Invoice.
- 8.3. 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.
- 8.4. The purchase price of each item, including the amounts as set out in the Invoice, will be payable immediately to the Auctioneer on acceptance of the bid by way of cash, a Bank Guaranteed cheque or Electronic Funds Transfer.
- 8.5. 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.
- 8.6. Should any item purchased be financed by the Purchaser through a financial institution, proof of approved finance must be presented to the Auctioneer during the Bidder registration process. Such proof must be sent to the Auctioneer at least 12 (TWELVE)

hours before the commencement of the Auction. Such proof must be sent to ldbkin9@ovk.co.za and it remains the duty of the Purchaser to confirm that such proof was indeed received by the Auctioneer. No item may be purchased subject to finance approval.

- 8.7. Any payment made in cash is further subject to cash handling fee. Should the Purchaser however fail to make payment within (FORTY-EIGHT) hours after the conclusion of the Auction, the Auction House 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.
- 8.8. Ownership of the Assets purchased at an Auction will only pass to the Purchaser on clearance of payment of the full amount as set out in the Invoice.
- 8.9. The bid price does not include VAT, unless otherwise specified by the Auctioneer. VAT will be calculated on top of the bid price, if applicable.
- 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.
- 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.
- 8.12. The Auction House shall only become liable to the Seller for the payment of such portion of the purchase price to which the Seller is entitled upon receipt of payment by the Auction House of the full amount recorded in the invoice referred to in clause 8.1 above.

9. VOETSTOOTS

- 9.1. All Assets offered for sale at an Auction are sold "voetstoots" to the extent legally permissible under the CPA.
- 9.2. 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.
- 9.3. 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.
- 9.4. No representations or warranties are made by the Auction House, Auctioneer or the Seller. The Purchaser shall be deemed to have, thoroughly examined the Assets and have irrevocably accepted the condition and state thereof. Neither the Seller nor OVK gives warranties or guarantees of or makes any representation in regards to the condition of sale of any Assets. OVK shall not be liable for any errors of description of any Assets offered for sale at any Auction.
- 9.5. Neither the Auction House / Auctioneer nor the Seller shall be liable in consequence of any representation made by them at or before the Auction; in particular no warranties are made regarding Property, Vehicles in respect of year, make or model thereof, and/or outstanding tickets or the roadworthiness thereof. It is specifically agreed that it is the sole responsibility of the Purchaser to acquaint and familiarize them with the Assets they are bidding on.

- 9.6. Without derogating from the generality of a foregoing, the Auction House shall not be held liable for or in respect of:
- 9.6.1. any statements contained in catalogues and/or advertisements; and
 - 9.6.2. any information supplied with regard to the Assets for sale;
 - 9.6.3. any guarantee/warranty or misrepresentation, made with regard to the item; and
 - 9.6.4. any defect, whether latent or patent, in the item not known to the Auction House; and
 - 9.6.5. 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 AND/OR COLLECTION OF AUCTIONED GOODS

- 10.1. Once full payment has been received by the Auction House, the Auction House will confirm to the Seller that payment was received by them and that the Assets may be released to the Purchaser.
- 10.2. The Seller hereby undertakes not to release the sold Assets without the specific instructions of the Auction House to that effect to the Seller, and which confirms that the Seller may release such Assets to the Purchaser.
- 10.3. If the Seller releases the sold Assets without the specific instructions of the Auction House as set out herein, the Seller shall do so at its own risk and the Seller will be responsible for any damages or loss suffered by the Auction House as a result thereof, as well as all damages or loss suffered by itself.
- 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 Arrangements*) and the payment reflects in the Auction House's bank account; and
 - 10.4.2. the Auction House has given written confirmation to the Purchaser authorising the Purchaser to remove the said Assets; and
 - 10.4.3. the Auction House has given permission to all the relevant parties that the said item may be removed, once the requirements of clauses 10.1 – 10.3 has been complied with.
- 10.5. Loading, transport, insurance, maintenance and/or care of the Assets sold at an Auction 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.
- 10.6. Should the Purchaser fail to remove any item after clearance of his/her payment, a storage fee of R450.00 (FOUR HUNDRED AND FIFTY RAND) plus VAT per item per day shall be charged to the Purchaser. Furthermore, should any items purchased not be removed after a period of 7 (SEVEN) calendar days, such items will be sold by the Auctioneer at the expense of the Purchaser and without any further notice thereof to the Purchaser. Alternatively, by written arrangement between the Auctioneer and the Purchaser, the Auctioneer will store the items at the expense of the Purchaser. Storage cost will be determined by the parties before conclusion of such an agreement in writing.

11. OWNERSHIP AND RISK

- 11.1. Ownership in 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 –

- 11.1.1. is the legal owner of the Assets and has the necessary authority to offer the Assets for sale at the Auction; or
- 11.1.2. has the necessary authority to offer the Assets for sale at the Auction on behalf of the Owner.
- 11.2. Risk on each Asset passes onto the Purchaser –
 - 11.2.1. on the fall of the hammer; or
 - 11.2.2. electronic notification of a successful bid once a particular sale closes on an online auction, even though upliftment/delivery has not yet taken place.
- 11.3. The Purchaser shall bear the risk of Assets remaining at the Auction House's premises, in particular for any shortages or damage which may occur. The Purchaser shall –
 - 11.3.1. remove the Assets from the Auction House's premises within 3 (THREE) days of the Auction or within a timeline stated by the Auction House, if such Assets are in the possession of the Auction House; or
 - 11.3.2. arrange for delivery from the Seller's premises, subject to the provisions of clause 10 (*Removal and/or collection of auctioned goods*),

only after full clearance of his payment as set out in the Invoice have been effected and all agreements required by the Auction House has been properly signed by all parties to such Agreement.
- 11.4. The Purchaser shall be liable for the costs of repair for any damages caused by him/her to the auction premises or any other item while removing his/her purchases or otherwise.
- 11.5. For as long as any amount is owing to the Auction House by the Purchaser, the Purchaser may not, where the assets are the subject of security of the Purchase's credit facility with the Auction House, relinquish possession of the said asset, nor may it 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. The Auction House may be entitled to cede its rights and obligations without affecting its rights of recourse for any monies still due to it.
- 11.6. Should the Seller at the time of the Auction owe an amount to the Auction House, from whatever the cause of action may be, the Auction House reserves the right to first credit such an outstanding amount, where after the difference, should there be any, will be paid to the Seller.
- 11.7. 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 as the Auction House, 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.
- 11.8. Neither the Purchaser nor the Seller shall be entitled to claim set-off or any deduction with regard to any amount owing to the Auction House or to each other in terms hereof or flowing from the Auction or any cancellation thereof. Should the Seller cancel the sale of any Assets, for whatsoever reason, the Seller will be liable to the Auction House for all costs, losses and expenses occurred up to the date of cancellation.

12. LIMITATION OF LIABILITY AND DISCLAIMERS

12.1. General

Notwithstanding what is contained in these Auction Rules, the Purchaser will be deemed to accept, acknowledge and agree that the Auction House will not be held liable to the Purchaser for any losses, damages, expenses or harm of whatsoever nature however same may arise.

12.2. Online Auctions

12.2.1. The Auction House 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 website on which an online Auction may take place.

12.2.2. The Bidder acknowledges that any sale conducted electronically will rely on hardware and software that may malfunction without warning. The Auction House, in its sole discretion, may void any sale, temporarily suspend buying and re-sell Assets that were affected by any malfunction. The decision of the Auction House and/or the Auctioneer 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 auction sale(s) without notification to the Purchaser;
- 13.2. the Purchaser will have no further claim on any of the Assets sold via the Auction; and
- 13.3. the Purchaser may be blacklisted by the Auction House and such Purchaser may be refused permission to participate in any future Auctions conducted by the Auction House.

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 the Auction House 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 the Auction House from the said defaulting party on the scale as between attorney-and-own-client.

16. GENERAL AND MISCELLANEOUS PROVISIONS

- 16.1. The Auction House 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 the Auction House.
- 16.3. No relaxation or indulgence granted by the Auction House to the Purchaser or the Seller

shall be deemed to be a waiver of any of Auction House'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).