

## **LIAISON AGREEMENT: TERMS AND CONDITIONS**

The Items are hereby sold by BKB Limited (Registration Number 1998/012435/06), with business premises situated at 61 Grahamstown Road, North End, Gqeberha or any of its subsidiary companies of the same address (hereinafter referred to as “BKB”) on behalf of the Seller to the Purchaser (hereinafter referred to as “this transaction”). The terms and conditions as set out hereunder shall apply to this transaction.

### **1. DEFINITIONS**

The following definitions and rules of interpretation shall be applicable to these Terms & Conditions:

- 1.1 **“Items”** means all goods, game and/or livestock presented for sale by the Seller in terms of this agreement as more fully described on the reverse side hereof.
- 1.2 **“Purchaser”** means the Purchaser whose information is captured on the reverse side of this document.
- 1.3 **“Seller”** means the Seller whose information is captured on the reverse side of this document and who is the legal owner of the Items presented for sale in terms of this transaction.
- 1.4 **“subsidiary companies”** means all companies in which BKB Limited holds a controlling share, whether directly or indirectly.
- 1.5 **“Total Cost to Purchaser”** means the purchase price of the Items, as well as statutory levies, transport costs (if any), insurance costs (if any) and any commissions and/or costs payable to BKB as set out on the counterfoil hereof (if any) in respect of this transaction.
- 1.6 Any expression which denotes:
  - 1.6.1 any gender includes the other gender; and
  - 1.6.2 the singular includes the plural and *vice versa*;
  - 1.6.3 reference to a person includes a reference to a Juristic Person and *vice versa*.
- 1.7 All headings are for convenience only and are not to be taken into account for the purpose of interpreting this document.

### **2. LEGISLATIONAL COMPLIANCE**

- 2.1 This agreement is, in its entirety, interpreted in terms of the laws of the Republic of South Africa and all disputes, actions and other matters arising here from shall be settled in terms of such legislation.
- 2.2 BKB is hereby appointed by the Purchaser and Seller to act for and on behalf of the Purchaser and Seller as agent in accordance with Section 54 of the Value-Added Tax Act of 1991, solely in respect of all tax invoices, credit and/or debit notes in respect of all Items offered at the auction or any costs of transport and insurances premiums paid for on behalf of the Purchaser and Seller.
- 2.3 Both the Seller and Purchaser must comply with Chapter 1 of the Financial Intelligence Centre Act 38 of 2001 (as amended) (“FICA”) and shall provide BKB with any documentation that identifies the Seller and Purchaser as prescribed in terms of FICA and the Risk Management Compliance Program (“RMCP”) adopted and amended by BKB from time to time. The RMCP can be accessed at: [www.bkb.co.za](http://www.bkb.co.za).
- 2.4 In the event that either the Seller or the Purchaser is a principal represented by another person, then and in that event such a person, together with his principal, must both provide the necessary documentation and information required in terms of clause 2.3 above, together with the Letters of Authority on the principal’s letterhead and, where the principal is a juristic

person, a certified copy of a resolution authorising the principal's representative to enter into this transaction on behalf of the principal. For purposes hereof, any reference to a juristic person includes partnerships, trusts or incorporated entities such as companies and close corporations).

- 2.5 Where either the Letter of Authority or resolution is not provided, the person who entered into this transaction on behalf of a principal will be held personally liable to give effect to the bidder's obligations.
- 2.6 Both the Seller and Purchaser consent to the collection and use of personal information by the BKB for the purposes of giving effect to this transaction.

### **3. INSPECTION OF ITEMS**

- 3.1 The Seller confirms that he is the sole owner of the Items and that there are no encumbrances over the Items and the Items have not been ceded as security to a third party.
- 3.2 All Items are sold "voetstoots".
- 3.3 The Purchaser is entitled to inspect the Items prior to taking delivery thereof to enable the Purchaser to establish whether the Items are of the type and quality which may be reasonably expected and whether the Purchaser's requirements in respect of the Items are met.
- 3.4 The Purchaser must do everything in his power to attend to inspection of the Items prior to taking delivery thereof, either in person or by means of an agent other than an official of BKB. Should the Purchaser fail to make use of the opportunity to inspect the Items prior to delivery, the Purchaser acknowledges that, subject to clause 6.2 below, he will have no right to refuse delivery of the said Items, nor have the right to return the said Items to the Seller on the grounds that the Items are not of the expected type or quality or does not meet specific requirements.

### **4. PAYMENT ARRANGEMENTS**

- 4.1 The Seller and the Purchaser confirm that this liaison sale agreement correctly reflects that the Seller and/or the Purchaser is registered for VAT and that the VAT numbers as stated therein are correct and actively used.
- 4.2 Upon both the Seller and Purchaser signing this document and entering into this transaction, BKB will provide an invoice to the Purchaser reflecting the Total Cost to Purchaser ("the invoice").
- 4.3 The Total Cost to Purchaser is payable by the Purchaser to BKB by means of cash or electronic funds transfer ("EFT") immediately upon rendering of the invoice, unless payment has been deferred by prior arrangement with BKB or the Purchaser has an approved credit facility with BKB from which the Total Cost to Purchaser will be paid in accordance with the terms and conditions of such facility. Any payment made in cash is further subject to cash or any other handling fees.
- 4.4 In the event that payment of the Total Cost to Purchaser is deferred to a date after rendering of the invoice as agreed to between the Purchaser and BKB, the Purchaser hereby irrevocably authorises BKB to pay the Total Cost to Purchaser, minus BKB's commissions, on behalf of the Purchaser to the Seller and other service providers (if applicable), for which the Purchaser hereby acknowledges being indebted to BKB. In such an event, repayment of the Total Cost to Purchaser is payable by the Purchaser to BKB upon expiry of the agreed time period for which payment was deferred.
- 4.5 In the event that the Total Cost to Purchaser is not paid by the Purchaser to BKB within 7 (seven) days after rendering of the invoice above, whether due to the Purchaser's failure to make payment or whether payment is deferred in terms of an arrangement concluded

between the Purchaser and BKB, BKB will be entitled to add interest calculated at the current bank prime rate, plus 5% (five percent) to the Total Cost to Purchaser, which interest will be calculated monthly and capitalised until such time as payment is received.

- 4.6 Where BKB made payments on behalf of the Purchaser in terms of this transaction, no defense of whatsoever nature which the Purchaser may raise against the Seller or the transport contractor or the insurance company may be raised against BKB and the Purchaser shall still be obligated to pay all amounts owing, together with further interest and costs thereon raised in terms of the credit agreement (if applicable) or this sale agreement, to be BKB. The conditions of this clause do not interfere with the rights, entitlements or remedies the Purchaser may have against the Seller, transport contractor or insurance company.
- 4.7 In the event that the Purchaser does not pay the Total Cost to Purchaser immediately upon rendering of the invoice and has failed to make arrangements with BKB for payment to be deferred, then BKB may cancel the sale and treat the Items as unsold, which may be presented at an auction for sale or be sold out of hand by means of liaison services, depending on the Seller's instructions to BKB ("the Subsequent Sale"). Should the Seller's proceeds in respect of such Subsequent Sale however be less than the amount of the Total Cost to Purchaser in terms of this transaction, the Purchaser shall be held liable for payment of the difference in proceeds to the Seller.
- 4.8 Where the Seller is already indebted to BKB or any of its subsidiary companies or any department of BKB prior to entering into this transaction, irrespective of the cause of such indebtedness, the Seller, by his signature hereto irrevocably authorises BKB to credit the net proceeds of this transaction against his account with BKB, such credit being payment of such proceeds on behalf of the Purchaser.
- 4.9 BKB shall be entitled to recover the commissions and/or costs as specified on the counterfoil of this document from the Purchaser and/or Seller.
- 4.10 All amounts due to the Seller in respect of this transaction, less any amounts due to BKB by the Seller as set out clause 4.9 above, will be made by BKB within 10 (ten) business days from date of delivery of the Items to the Purchaser. Any payment made by BKB to the Seller prior to the lapse of the 10 (ten) working day period is made at the sole discretion of BKB and not an enforceable indulgence.
- 4.11 Any agreement entered into by BKB with a transporter or insurer is done so in its representative capacity of the Seller or Purchaser. All transport costs or insurance premiums are therefore payable to BKB in cash, except if acceptable alternative arrangements were made with BKB.
- 4.12 Neither the Purchaser, nor the Seller, shall be entitled to apply set-off or to retain any monies owing arising from any claim they may have against each other or BKB with regards to any amount owing in terms hereof.

## **5. DELIVERY, RISK & OWNERSHIP**

- 5.1 Ownership in the Items will be retained until the purchase price has been paid in full to the Seller or where BKB has made payment to the Seller on instructions of the Purchaser, then until BKB has been paid in full.
- 5.2 For purposes hereof, it is deemed that delivery of the Items to the Purchaser takes place at the address of the Seller or BKB (as the case may be) upon conclusion of this transaction, at which time all risk associated with the Items will pass to the Purchaser. Where the Items are removed at the specific instance and request of the Purchaser by transport operators from the premises of the Seller or BKB, delivery to the Purchaser is deemed to take place at the time the Items are collected by the transport operators from the premises of the Seller or BKB.

- 5.3 The Purchaser shall, at his own risk and cost, remove the Items from the Seller's or BKB's premises. Removal of any Items will however not be allowed by BKB until payment of the Total Cost to Purchaser is received or payment of same has been deferred by agreement with BKB.
- 5.4 BKB will not accept liability for any loss or damage to the Items because of the Purchaser's failure to make adequate and timeous arrangements for the removal of the Items and the Total Cost to Purchaser at all times remain due and payable.
- 5.5 For as long as any amount is owing to BKB by the Purchaser in terms hereof, the Purchaser may not relinquish possession of the Items, nor may he cede the Items or any of his rights and obligations in terms of this agreement to a third party or otherwise encumber, sell or dispossess the said Items or allow the Items to become the subject of any right of retention, hypothec, pledge or any encumbrance, whatever the cause thereof may be. BKB is entitled to cede its rights and obligations without affecting its rights of recourse for any monies still due to it.

## **6. LIMITATION OF LIABILITY**

- 6.1 Any information provided regarding the quality, breeding, age, date of insemination, condition, reproductive status or any information regarding health, production or mass or any other aspect of any item is provided by the Seller and any misrepresentation by the Seller is without the cooperation or knowledge of BKB. Any right of recourse as a result of such misrepresentation shall be against the Seller, who indemnifies BKB against any claims instituted against BKB by the Purchaser or any third party, nor shall the Purchaser have any claim against BKB.
- 6.2 Within 48 (forty-eight) hours from delivery of Items taking place, the Purchaser must bring any misrepresentation referred to in this clause to the attention of BKB, who shall, in good faith and without accepting any liability, bring such allegation to the attention of the relevant Seller for his further consideration and action. Should the Purchaser fail to do so, it shall be deemed that no misrepresentation was made, and the Purchaser shall have no further recourse against the Seller.
- 6.3 Under no circumstances will BKB be held liable for any loss or damage of any cause whatsoever, albeit direct or indirect, or damages suffered by anyone if livestock and/or game traded in terms of this agreement, have to be placed under quarantine as a result of the presence of a livestock and/or game disease. In such event BKB will have the right to cancel this transaction and no party will be entitled or have a right of recourse against BKB.
- 6.4 Any party requiring permits, removal certificates, documentation of identification or any other statutory prescribed document will be solely responsible for obtaining same. Any instructions to BKB with regards to the loading, transporting, choice of transport contractors, insurance or choice of insurers will be executed at the sole risk of the person acquiring such services and BKB will not be held responsible for any losses, whether direct or indirect, which may be suffered as a result of giving effect to the instructions by BKB. The Auctioneer however does accept responsibility as contemplated in Section 35(2) of the Consumer Protection Act whilst the Items are under its control (if applicable).

## **7. NOTICES**

The Purchaser, Seller and BKB hereby respectively choose as their *domicilia citandi et executandi* for all notices and purposes arising from or in respect of this document to be the addresses as set out on the reverse side hereof.

## **8. GENERAL TERMS AND CONDITIONS**

- 8.1 Both the Seller and the Purchaser consent to the jurisdiction of the Magistrate's Court as contemplated in Section 45 of Act 32 of 1944, having regard to any action which BKB may institute against the Purchaser or Seller irrespective of the cause of action. Notwithstanding the aforesaid BKB will have the sole and absolute discretion to institute action in any High Court with appropriate jurisdiction.
- 8.2 Any legal costs that BKB may have incurred or will incur as a result of the non-compliance of the Purchaser and/or Seller in terms of his obligations herein, shall be recoverable by BKB, together with collection commission, from the Purchaser and/or Seller on a scale as between attorney and own client.
- 8.3 A certificate signed by any manager, secretary or accountant for the time being of BKB, whose appointment does not have to be proven by BKB, shall be considered *prima facie* proof of any amount owing or payable by the Purchaser or Seller to BKB in terms of this transaction.
- 8.4 No variation, amendment, novation or addition to these terms and conditions will have the effect of BKB renouncing any of its rights in terms hereof, unless it is reduced to writing and signed by BKB.
- 8.5 No relaxation or indulgence by BKB must be interpreted as a waiver of any of BKB's rights in terms hereof. Such relaxation or indulgence must also not be interpreted as a novation hereof.
- 8.6 Should any condition be 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 severable from the remainder of the conditions and *pro no scripto*.

**RULE OF AUCTION**  
**TERMS AND CONDITIONS**

1. This auction will be held under the control of BKB Limited whether directly or through a subsidiary company (hereinafter referred to as "the Auctioneer or BKB") with business premises situated at 63 Grahamstown Road North End Gqeberha:
2. The Auctioneer is hereby appointed by the Purchaser and Seller to act for and on behalf of the Purchaser and Seller as agent in accordance with section 54 of the Value Added Tax Act 1991, 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 Purchaser and/or the Seller.
3. The rules of this auction shall comply with the provisions of Section 45 and all relevant regulations to the Consumer Protection Act 68 of 2008.
4. For greater clarity Section 45(1-4) states as follows:
  - 4.1 In this section, "auction" includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction.
  - 4.2 When goods are put up for sale by auction, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
  - 4.3 A sale by auction is completed 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.
  - 4.4 Notice must be given in advance that a sale by auction is subject to:
    - 4.4.1 A reserved or upset price; or
    - 4.4.2 A right to bid by or on behalf of the owner or Auctioneer, in which case the owner or Auctioneer, or any one person on behalf of the owner or Auctioneer may bid at the auction.
5. Until the fall of the hammer as contemplated in Section 45(3) of the Act, any bid may be retracted or declined by the Auctioneer if not compliant with the regulations of the Consumer Protection Act.
6. The auction is further subject to the APAC Biosecurity Rules for Livestock Agents published in Board Notice 135 of 2020. These rules can be accessed at [www.bkb.co.za](http://www.bkb.co.za).
7. Unless so stated by the Auctioneer prior to commencement of the auction, the auction is not an absolute auction but subject to reserved prices settled by the Sellers and as pointed out by the Auctioneer prior to the sale of the specific asset or lot.
8. The Auctioneer provides no guarantee and makes no representation regarding sale prices and unless the Auctioneer's mandate states otherwise, the Sellers have the option to withdraw lots from the auction where reserve prices are not obtained. The Seller shall

instruct the Auctioneer in this regard who shall announce the Seller's decision after bidding has closed relating to a relevant lot.

9. The auction shall take place at the date and time as advertised or published and will not be postponed or delayed, enabling any member or group of the public to partake in the auction.
10. Should the Auctioneer become aware of any fault on advertising material or any other publication or amendment to these Rules of Auction, the Auctioneer will prior to the auction point out and when necessary, amend such mistakes in the advertisement or publication.
11. Any person attending the auction to enter a bid, must prior to the auction register as a buyer on the bidders' roll and provide documentation that identifies the bidder as prescribed by FICA and the Risk Management Compliance Program (RMCP) adopted and amended by BKB from time to time. The RMCP can be accessed at [www.bkb.co.za](http://www.bkb.co.za). The purchaser shall sign the bidders' roll.
12. Any person who attends the auction to enter a bid on behalf of another person must be duly authorised thereto by means of a written letter of authority from its principal and such a person together with his principal must provide both all necessary information as required by FICA and the RMCP regarding proof of their identity. The bidders' roll must be signed by such a person who will also sign on behalf of its principal duly authorised to do so.
13. Where the principal is a company the letters of authority shall appear on the letterhead of the company together with a certified copy of a resolution authorising the person to bid on behalf of the company and to sign the bidder's roll on behalf of the principal. (For purposes of this rule any reference to a company will include any reference to juristic person including partnerships, trusts or incorporated entities)
14. All bidders have a right to inspect all goods put up for sale and the auctioneer shall provide reasonable time and access prior to the start of the auction for such an inspection.
15. All livestock is sold "voetstoots" and the purchasers do not enjoy the protection of Section 55 and 56 of the Consumer Protection Act.
16. Any information provided regarding the quality, breeding, age, date of insemination, condition, reproductive status or any information regarding health, production or mass or any other aspect of the livestock, is provided by the Seller and any misrepresentation by the Seller is without the cooperation or knowledge of the Auctioneer. Any right of recourse as a result of such misrepresentation shall be against the Seller who indemnifies the Auctioneer against any claim or damages suffered and the Purchaser nor registered buyers shall have any claim against the Auctioneer.
17. Any bid made does not include VAT which, where applicable, will be added to the bidding price for which a VAT invoice will be issued.

18. The purchase price, Auctioneer's commissions (if payable by the purchaser), all statutory levies, the transport costs (if any) and the insurance costs (if any) are immediately payable in cash by the purchaser to the Auctioneer upon entering into the transaction or payable by EFT within an agreed time period thereafter if so agreed before the auction. Any payment made in cash is further subject to cash or any other handling fees.
19. Should the purchaser not pay the purchase price on finalisation of the auction and fail to make arrangements for payment with the Auctioneer, then the Auctioneer may cancel the sale and treat the assets or lots as unsold lots 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.
20. In the event that purchaser has made necessary finance arrangements with the Auctioneer or payment of the purchase price is only due within an agreed time period after the auction, the Purchaser hereby authorises the Auctioneer/BKB to pay the purchase price and/or costs of transport and/or cost of insurance and any other agreed cost on behalf of the purchaser to the Seller and other service providers. In such an event, payment of the purchase price is due by the Purchaser to BKB either on the expiry of the agreed time period calculated from the date of finalisation of the auction or on the terms of repayment agreed with the purchaser in a separate credit agreement or sale agreement entered into between the purchaser and the Auctioneer. Should the purchaser however fail to make payment within the agreed time, the Auctioneer will be entitled to add interest calculated at the current bank prime rate, plus 5% (five percent) from the due date to date of payment to the capital amount outstanding. The interest will be calculated monthly and capitalised.
21. All payments made by the Auctioneer to the Seller on behalf of the Purchaser in terms of this clause will be made no later than 5 (five) working days calculated from finalisation of the auction.
22. Where BKB lent and advanced monies to the purchaser for payment of the purchase price of any goods or livestock or payment of any transport costs or insurance premiums, no defense of whatsoever nature which the Purchaser may raise against the Seller or the transport contractor or the insurance company may be raised against BKB and the Purchaser shall still be obligated to pay all amounts owing, together with further interest and costs thereon raised as contemplated in clause 20, to BKB. The conditions of this clause shall not affect any rights, entitlement or remedies the purchaser may have against the Seller, transport contractor or insurance company.
23. Where the Seller is already indebted to BKB or any of its affiliate companies or any department of BKB prior to entering into this transaction, irrespective of the cause of such indebtedness, the Seller, by his signature hereto, irrevocably authorises BKB to credit the purchase price of this transaction against his account with BKB (less the Auctioneer's commission and agreed costs), such credit being payment of the purchase price on behalf of the Purchaser.



24. Ownership in the lot or assets is retained until the purchase price has been paid in full by the Purchaser to the Seller or BKB (where the Seller has been paid by BKB), with the provision that the risk in the assets or lot passes to the Purchaser at the fall of the hammer as set out in clause 28.
25. For as long as any amount is owing to BKB by the Purchaser in terms hereof, the Purchaser may not relinquish possession of the said asset, nor may he cede the asset(s) or any of its rights and obligations in terms of this agreement to a third party or otherwise encumber, sell or dispossess the said asset(s) or allow it to become the subject of any right of retention, hypothec, pledge or any encumbrance, whatever the cause thereof may be. BKB is entitled to cede or assign its rights and obligations in terms hereof without affecting its rights of recourse for any monies still due to BKB.
26. The Auctioneer shall pay all monies received from Purchasers into an account from where the Auctioneer shall account to the Seller the net proceeds, being the gross proceeds minus any Advance Amount, agreed commissions or agreed costs of auction.
27. Neither the purchaser, nor the Seller shall be entitled to apply set off.
28. Each lot shall immediately after the fall of the hammer deemed to be delivered to the Purchaser at which time all risk in and to the lot or asset sold will pass to the Purchaser who will at his own risk and cost remove the lots or assets from the auction terrain. Removal of any assets or loss, however, will not be allowed by the Auctioneer until payment of the purchase price by the Purchaser or acceptable arrangements for payment thereof have been made by the Purchaser with the Auctioneer.
29. The Auctioneer will only be obliged to give reasons of the auction if such reasons are other than the voluntary sale of goods by its owners.
30. The bidders' roll and vendor roll will be available for inspection by registered bidders during normal office hours at the business premises of the Auctioneer.
31. The rules of auction will only be read out at the auction if they are not available to the public at the place of business of the Auctioneer or at the auction facility. In the event of livestock and game auctions, the rules of auction remain unchanged and are in general available at the business premises of the Auctioneer or on the website of the Auctioneer.
32. Under no circumstances will BKB be held liable for any loss or damage of any cause whatsoever albeit direct or indirect damages suffered by anyone if the livestock accepted at the auction premises must be placed under quarantine during or after the auction because of the presence of a livestock disease present. In such an event BKB will have the right to cancel the auction as well as any already complete sales and no party will be entitled to or have a right of recourse against BKB.
33. Any party requiring permits, removal certificate, documentation of identification or any other statutory prescribed document will solely be responsible for obtaining same. Any instructions to an Auctioneer with regards to the loading, transporting, choice of transport contractors, insurance or choice of insurers will be executed at the sole risk of

the person acquiring such services and the Auctioneer will not be held responsible for any losses whether direct or indirect which may be suffered as a result of giving effect to the instructions by the Auctioneer. Any agreement entered by the Auctioneer with a transport company or insurer is done so in its representative capacity of the Seller or Purchaser. All transport costs or insurance premiums are therefore payable to the Auctioneer in cash except if acceptable alternative arrangements were made with the Auctioneer.

34. Both the Seller and the Purchaser consent to the jurisdiction of the Magistrate's Court as contemplated in Section 45 of 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.
35. Any legal costs that BKB may have or will incur because of the non-compliance of the Purchaser or the Seller shall be recoverable on a scale as between attorney and own client scale, together with collection commission and interest on overdue amounts.
36. No relaxation or indulgence by the Auctioneer must be interpreted as a waiver of any of the Auctioneer's rights in terms hereof. Such relaxation or indulgence must also not be interpreted as a novation hereof.
37. Should any conditions of this agreement be 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 an amendment be impossible, the unlawful conditions shall be deemed devisable from the remainder of the conditions of this agreement and pro non scripto.

**RULES OF BKB DIGITAL AUCTIONS,**  
**TERMS AND CONDITIONS FOR ONLINE AUCTION PLATFORMS**

These rules of auctions are applicable to all digital auctions held under the control of either BKB Limited (Registration Number 1998/012435/06), with business premises situated at 61 Grahamstown Road, North End, Gqeberha or any of its subsidiary companies of the same address (hereinafter referred to as “the Auctioneer “ or “BKB “).

These terms and conditions apply to all online bidding at auction sales conducted.

**1. DEFINITIONS**

The following definitions and rules of interpretation shall be applicable to these Terms & Conditions:

- 1.1 “**items**” means all goods, game and/or livestock presented for sale at auction by the Auctioneer on behalf of Sellers.
- 1.2 “**Purchaser**” means a bidder who’s bid has been successfully accepted by the Auctioneer;
- 1.3 “**Seller**” means the legal owner of the items presented for sale at auction by the Auctioneer;
- 1.4 “**Slaughter Animals**” mean livestock (usually sheep and cattle) specifically marketed and presented for sale to be slaughtered for the market and specifically excludes game and stud animals and any other animal lot so excluded by the Auctioneer;
- 1.5 “**subsidiary companies**” means all companies in which BKB Limited holds a controlling share, whether directly or indirectly;
- 1.6 “**Total Cost to Purchaser**” means the purchase price of all items for which the Purchaser has successfully bid on, as well as statutory levies, transport costs (if any) and insurance costs (if any) payable in respect of such successful bids;
- 1.7 Any expression which denotes:
  - 1.7.1 any gender includes the other gender; and
  - 1.7.2 the singular includes the plural and *vice versa*;
  - 1.7.3 reference to a person includes a reference to a Juristic Person and *vice versa*.
- 1.8 All headings are for convenience only and are not to be taken into account for the purposes of interpreting this document.

**2. APPLICABLE LAW**

- 2.1 These Terms and Conditions are, in their entirety, interpreted in terms of the laws of the Republic of South Africa and all disputes, actions and other matters arising here from shall be settled in terms of such legislation.
- 2.2 The rules of this auction comply with section 45 of the Consumer Protection Act 68 of 2008 (“CPA”) and Section 43(1) of the Electronic Communications and Transactions Act 25 of 2002 (“ECTA”). For more information go to:  
<http://www.legalrights.co.za/wp-content/uploads/2017/03/CONSUMER-PROTECTION-ACT-NO.-68-OF-2008.pdf>  
or  
[https://www.gov.za/sites/default/files/gcis\\_document/201409/a25-02.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a25-02.pdf)
- 2.3 Section 44(1) of ECTA affording Purchasers a cooling off period does not apply to online auctions.

- 2.4 When registering as a bidder, all persons must, in doing so, comply with Chapter 1 of the Financial Intelligence Centre Act 38 of 2001 (as amended) (“FICA”).
- 2.5 The Auctioneer is hereby appointed by the Purchaser and Seller to act for and on behalf of the Purchaser and Seller as agent in accordance with Section 54 of the Value-Added Tax Act of 1991, solely in respect of all tax invoices, credit and/or debit notes in respect of all items offered at the auction or any costs of transport and insurances premiums paid for on behalf of the Purchaser and Seller.

### **3. BIDDER REGISTRATION AND PRE-INSPECTION OF ITEMS**

- 3.1 Any person who wishes to bid at the digital auction must register online as a bidder and, in doing so, must comply with Chapter 1 of FICA. For more information on the requirements set out in FICA go to:  
[https://www.fic.gov.za/Documents/FIC%20Act%20with%202017%20amendments%20\(1\)%20\(1\).pdf](https://www.fic.gov.za/Documents/FIC%20Act%20with%202017%20amendments%20(1)%20(1).pdf)
- 3.2 The digital auction service is only available to juristic and natural persons who are legally capable and authorised to enter into a legally binding contract under the laws of South Africa. Without derogating from the generality thereof, the digital auction services are not available to minors.
- 3.3 Any person registering as a bidder online is deemed to be the principal contracting party and no person will be allowed to register as an agent of a third party unless with the written consent of the Auctioneer.
- 3.4 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 online auction.
- 3.5 A person registering as a bidder shall upload documentation that identifies the bidder as prescribed in terms of FICA and the Risk Management Compliance Program (“RMCP”) adopted and amended by BKB from time to time. The RMCP can be accessed at:  
[www.bkb.co.za](http://www.bkb.co.za).
- 3.6 In the event that the Auctioneer consents to an agent registering on behalf of a principal, then and in that event such a person, together with his principal, must both register online prior to the auction and upload all necessary information as required in terms of clause 3.5 above, together with the Letters of Authority on the Principal’s letterhead and the required resolutions dealt with in clause 3.7 below (where the Principal is a Juristic Person).
- 3.7 Where the bidder is a juristic person, the person completing the online registration must be duly authorised by resolution of the principal to register as a Purchaser and shall upload a certified copy of the resolution, together with a Letter of Authority (on an official company letterhead). For purposes hereof, any reference to a juristic person includes partnerships, trusts or incorporated entities such as companies and close corporations).
- 3.8 Where either the Letter of Authority or resolution is not provided, the person registering as the representative of the principal registering at the auction and entering a bid will be held personally liable to give effect to the bidder’s obligations.
- 3.9 Once registered, bidders must keep their account details confidential and must not permit third parties to use or access their account, as Purchasers will remain liable for all bids entered via their account online. It remains the obligation of the bidder to notify the Auctioneer immediately in the event of any security or privacy breach of the bidder’s account.

- 3.10 The final auction catalogue will be available online at least 24 (twenty four) hours before the commencement date and time of the auction.
- 3.11 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 Auctioneer's website.
- 3.12 All items are sold "voetstoots" and the Purchasers do not enjoy the protection of Section 55 and 56 of the Consumer Protection Act.

#### **4. BIDDING PROCEDURE**

- 4.1 The auction shall take place at the date and time as advertised or published and will not be postponed or delayed to enable any member or group of the public to partake in the auction.
- 4.2 The auction is not an absolute auction, but subject to reserved prices settled by the Sellers and as pointed out by the Auctioneer prior to the sale of the said items or lot.
- 4.3 The auctioneer provides no guarantee and makes no representation regarding sale prices and Sellers have the option to withdraw lots from the auction where reserve prices are not obtained. The Seller shall instruct the auctioneer in this regard, who shall announce the Seller's decision after bidding has closed and before the fall of the hammer relating to a relevant lot.
- 4.4 Should the Auctioneer become aware of any error on advertising material or any other publication or amendment to these Rules of Auction, the Auctioneer will, prior to the auction, point such error out and, if deemed necessary, amend such errors in the advertisement or publication.
- 4.5 Any bid made does not include VAT which, where applicable, will be added to the bidding price for which a VAT invoice will be issued.
- 4.6 During a sale for which the bidder has registered, the bidder can bid on a lot by clicking on the bid button.
- 4.7 The current bid will be displayed on the bidder's screen during the sale.
- 4.8 Until the fall of the hammer as contemplated in section 45(3) of CPA, any bid may be retracted or declined by the Auctioneer if not compliant with the CPA or the regulations issued in terms thereof.
- 4.9 The bidder acknowledges that he is bidding at a live auction and agrees that each bid entered (unless withdrawn before the fall of the hammer) is binding, even if submitted in error. The bidder accepts full responsibility for every bid submitted through his online bidding account.
- 4.10 Each lot is regarded as a separate sale transaction.
- 4.11 In the absence of any specific auction rule governing the pricing mechanism announced by the Auctioneer prior to the start of the Auction, Slaughter Animals (sheep or cattle) will be presented for sale at the auction on a Rand per Kilogram basis and bidders will enter bids reflecting prices per kilogram. On all other items presented for sale (including game and stud animals), bidders will enter bids which will reflect prices per head and not pricing per kilogram.
- 4.12 The sale by auction is complete at the fall of the hammer or any other practice through which the Auctioneer indicates the highest bidder as the Purchaser.
- 4.13 In the event of the highest bid being tied, the earliest bid received or recognised will be the successful bid.

- 4.14 The Auctioneer reserves the right to reject the online registration of a bidder and may withdraw permission for the use of the online auction service for whatsoever reason before or during the sale.

## **5. PAYMENT ARRANGEMENTS**

- 5.1 In the event of Slaughter Animals, the final weight in kilograms of each lot or animal (as the case may be) will be established at the time the Purchaser collects and takes delivery thereof ("the delivery weight"). For all other items including game and stud animals, the price is established per lot or head (as the case may be) on the fall of the hammer.
- 5.2 The Purchaser acknowledges that in the period between the fall of the hammer and when the Slaughter Animals are collected by or on behalf of the Purchaser, the Slaughter Animals will continue being fed by the Seller which may adversely affect the weight of each lot or animal. Notwithstanding the above, the Purchaser will remain liable for the successful bid price in Rand per kilogram.
- 5.3 Upon delivery of the items, the Auctioneer will provide an invoice to the Purchaser reflecting the final purchase price of the specific lot or item. In the event of Slaughter Animals, such purchase price shall be calculated by multiplying the successful bid price per kilogram with the delivery weight.
- 5.4 The Total Cost to Purchaser is payable by the Purchaser to the Auctioneer by means of electronic funds transfer ("EFT") immediately upon acceptance of the bid, unless payment has been deferred by prior arrangement with the Auctioneer or the Purchaser has an approved credit facility with the Auctioneer from which the Total Cost to Purchaser will be paid. Any payment made in cash is further subject to cash or any other handling fees.
- 5.5 In the event that payment of the Total Cost to Purchaser is deferred to a date after conclusion of the auction as agreed to between the Purchaser and BKB, the Purchaser hereby irrevocably authorises BKB to pay the Total Cost to Purchaser, minus BKB's commissions, on behalf of the Purchaser to the Seller and other service providers (if applicable) for which the Purchaser hereby acknowledges being indebted to BKB. In such an event, repayment of the Total Cost to Purchaser is payable by the Purchaser to BKB upon expiry of the agreed time period for which payment was deferred.
- 5.6 All payments made by BKB to the Seller and other service providers on behalf of the Purchaser in terms of clause 5.5 will be made within 10 (ten) business days from date of delivery of the items to the Purchaser. Any payment made by BKB to the Seller prior to the lapse of the 10 (ten) working day period is made at the sole discretion of BKB and not an enforceable indulgence.
- 5.7 In the event that the Total Cost to Purchaser is not paid by the Purchaser to the Auctioneer within 7 (seven) days after acceptance of a bid, whether due to the Purchaser's failure to make payment or whether payment is deferred in terms of an arrangement concluded between the Purchaser and the Auctioneer, the Auctioneer will be entitled to add interest calculated at the current bank prime rate, plus 5% (five percent) to the Total Cost to Purchaser, which interest will be calculated monthly and capitalized until such time as payment is received.
- 5.8 Where BKB made payment of the Total Cost to Purchaser or any part thereof, no defence of whatsoever nature which the Purchaser may raise against the Seller or the transport contractor or the insurer may be raised against BKB and the Purchaser shall still be obligated to pay all amounts owing, together with further interest and costs thereon raised in terms of the credit agreement or sale agreement, to be BKB. The conditions of this clause do not interfere with the rights, entitlements or remedies the Purchaser may have against the Seller, transport contractor or insurance company.

- 5.9 In the event that the Purchaser does not pay the Total Cost to Purchaser immediately upon acceptance of a bid and has failed to make arrangements with the Auctioneer for payment to be deferred, then the Auctioneer may cancel the sale and treat the assets or lots as unsold lots 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 ("the Subsequent Sale"). Should the Seller's proceeds in respect of such Subsequent Sale however be less than the amount of the Purchaser's accepted and unpaid bid, the Purchaser shall be held liable for payment of the difference in proceeds to the Seller.
- 5.10 Where the Seller is already indebted to BKB or any of its subsidiary companies or any department of BKB prior to the auction, irrespective of the cause of such indebtedness, the Seller, by his signature hereto irrevocably authorises BKB to credit the net proceeds in respect of the auction (minus BKB's commission) against his account with BKB, such credit being payment of such proceeds on behalf of the Purchaser.
- 5.11 Neither the Purchaser, nor the Seller, shall be entitled to apply set-off or to retain any monies owing arising from any claim they may have against each other or BKB with regards to any amount owing in terms hereof.
- 5.12 Any agreement entered into by the Auctioneer with a transporter or insurer is done in its representative capacity of the Seller or Purchaser. All transport costs or insurance premiums are therefore payable to the Auctioneer in cash, except if acceptable alternative arrangements were made with the Auctioneer

## **6. DELIVERY, RISK & OWNERSHIP**

- 6.1 Ownership in the items will remain that of the Seller until the purchase price has been paid in full to the Seller or where BKB has made payment to the Seller on instructions of the Purchaser, then until BKB has been paid in full.
- 6.2 Immediately after the date of the Auctioneer notifying the Purchaser that his bid has been accepted, all items shall be deemed to be delivered to the Purchaser at the address of the Seller or auction terrain (if applicable), at which time all risk associated with the items will pass to the Purchaser.
- 6.3 The Purchaser shall, at his own risk and cost, remove the items from the Seller's premises or auction terrain. Removal of any items will however not be allowed by the Auctioneer until payment of the Total Cost to Purchaser is received or payment of same has been deferred by agreement with the Auctioneer.
- 6.4 BKB will not accept liability for any loss or damage to the items as a result of the Purchaser's failure to make adequate and timeous arrangements for the removal of the items and the Total Cost to Purchaser at all times remain due and payable.
- 6.5 For as long as any amount is owing to BKB by the Purchaser, the Purchaser may not relinquish possession of the said items, nor may he cede the items or any of his rights and obligations in terms of this agreement to a third party or otherwise encumber, sell or dispossess the said items or allow the items to become the subject of any right of retention, hypothec, pledge or any encumbrance, whatever the cause thereof may be. BKB is be entitled to cede its rights and obligations without affecting its rights of recourse for any monies still due to it.

## **7. LIMITATION OF LIABILITY**

- 7.1 Notwithstanding section 43 of ECTA, under no circumstances will BKB, its subsidiary companies, or any shareholders of BKB and its subsidiaries, officers, directors, employees or agents be liable for any loss or damage caused by:

- 7.2 the bidder's reliance on information obtained through either the content or the services; or
- 7.3 by being exposed to information contained on the site; or
- 7.4 the defamatory, offensive or illegal conduct of other users or third parties; or
- 7.5 the use or inability to use the website or the services or content provided by or through the website; or
- 7.6 any disruption in the internet connection resulting in the bidder being disconnected from the online auction for any reason whatsoever; or
- 7.7 the failure to record a bid as a result of being disconnected or the online platform going offline during the auction process.
- 7.8 Neither BKB, nor any third party content provider or their respective agents shall be liable for any direct indirect, incidental or consequential damages arising out of the use or inability to use or access the online auction site.
- 7.9 BKB makes no representations or warranties, implied or otherwise, that the auction service will be uninterrupted and 100% error free. It is every user's sole responsibility that the online auction site and services provided by BKB through this website will meet the user's individual requirements and be compatible with the user's hardware and software.
- 7.10 Under no circumstances will BKB be held liable for any loss or damage of any cause whatsoever, albeit direct or indirect, or damages suffered by anyone if livestock and/or game at the auction premises have to be placed under quarantine as a result of the presence of a livestock and/or game disease. In such event BKB will have the right to cancel the auction, as well as any already complete sales and no party will be entitled or have a right of recourse against BKB.
- 7.11 Any information provided regarding the quality, breeding, age, date of insemination, condition, reproductive status or any information regarding health, production or mass or any other aspect of any item is provided by the Seller and any misrepresentation by the Seller is without the cooperation or knowledge of the Auctioneer. Any right of recourse as a result of such misrepresentation shall be against the Seller, who indemnifies the Auctioneer against any claims or damages suffered and neither the Purchaser, nor registered buyers shall have any claim against the Auctioneer.
- 7.12 Within 48 (forty eight) hours from delivery of items taking place, the Purchaser must bring any misrepresentation referred to in this clause to the attention of the Auctioneer, who shall, in good faith and without accepting any liability, bring such allegation to the attention of the relevant Seller. Should the Purchaser fail to do so, it shall be deemed that no misrepresentation was made and the Purchaser shall have no further recourse against the Seller.
- 7.13 Any party requiring permits, removal certificates, documentation of identification or any other statutory prescribed document will be solely responsible for obtaining same. Any instructions to the Auctioneer with regards to the loading, transporting, choice of transport contractors, insurance or choice of insurers will be executed at the sole risk of the person acquiring such services and the Auctioneer will not be held responsible for any losses, whether direct or indirect, which may be suffered as a result of giving effect to the instructions by the Auctioneer. The Auctioneer however does accept responsibility as contemplated in Section 35(2) of the CPA whilst the items are under its control as Auctioneer.



## **8. NOTICES**

The Purchaser and Seller respectively choose as their *domicilia citandi et executandi* for all notices and purposes arising from or in respect of this auction to be the addresses as provided when registering as a bidder at the auction.

## **9. GENERAL TERMS AND CONDITIONS**

- 9.1 The Auctioneer will only be obliged to give reasons for the auction if such reasons are other than the voluntary sale of items by its owners.
- 9.2 The bidders' roll and vendor roll will be made available for inspection to registered Purchasers upon receipt of written notice and good reason during the normal office hours at the business premises of the Auctioneer.
- 9.3 Subject to the Consumer Protection Act, both the Seller and the Purchaser consent to the jurisdiction of the Magistrate's Court as contemplated in Section 45 of 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.
- 9.4 Any legal costs that BKB may have incurred or will incur as a result of the non-compliance of the Purchaser and/or Seller in terms of his obligations herein, shall be recoverable by BKB, together with collection commission, from the Purchaser and/or Seller on a scale as between attorney and own client.
- 9.5 A certificate signed by any manager, secretary or accountant for the time being of BKB, whose appointment does not have to be proven by BKB, shall be considered *prima facie* proof of any amount owing or payable by the Purchaser or Seller to BKB in terms of the auction.
- 9.6 No variation, amendment, novation or addition to these terms and conditions will have the effect of BKB renouncing any of its rights in terms hereof, unless it is reduced to writing and signed by BKB.
- 9.7 No relaxation or indulgence by the Auctioneer must be interpreted as a waiver of any of the Auctioneer's rights in terms hereof. Such relaxation or indulgence must also not be interpreted as a novation hereof.
- 9.8 Should any condition be 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 severable from the remainder of the conditions and *pro no scripto*.