



Devhula Auctioneers (Pty) Ltd  
(Reg no: 2017/220005/07)  
FFC No: F145715

## **RULES OF AUCTION**

**21 FEBRUARY**

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### **1. INTRODUCTION**

- 1.1 Devhula Auctioneers (Proprietary) Limited ("Devhula") is a property auction house, which holds regular auctions at venues throughout the Republic of South Africa.
- 1.2 As Auctioneers, Devhula will usually act as an agent on behalf of the Seller of a lot.
- 1.3 The contractual relationship of Devhula with prospective Purchasers and Sellers is governed by:
  - 1.3.1 The rules of auction set out below;
  - 1.3.2 Any additional or special terms and conditions that Devhula may impose (whether in the form of notices/displays at the premises where an auction is conducted or announced by the Auctioneer prior to or during any auction and whether in respect of any specific lot or in general); and
  - 1.3.3 Such other terms and conditions as may be set out in any relevant mandate or agreement signed prior to or after an auction.

### **2. LEGISLATIVE FRAMEWORK**

- 2.1 These rules of action comply with section 45 of the Consumer Protection Act, Act 68 of 2008 ("the Act") and with the Consumer Protection Act Regulations ("the Regulations") promulgated in terms of the Act

- 2.2 Section 45 (2) of the Act provides that: “When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.”
- 2.3 Section 45(3) of the Act provides that: “A sale by auction is complete when the Auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.”
- 2.4 These rules are issued in terms of regulation 21 of the Act.
- 2.5 The Sale by Auction is subject to a reserve price and the owner or auctioneer, or any one person on behalf of the owner or auctioneer, has the right to bid at the scheduled auction.

### **3. AUCTION PROCEDURE**

#### **3.1 MANDATE:**

- 3.1.1 The Sellers irrevocably instructs Devhula to offer for sale at any auction property submitted for sale by the Seller and accepted by Devhula to sell same to a Purchaser of a lot, provided that the bid or offer (whether at auction or by private treaty) accepted from the Purchaser is equal to or higher than the reserve price (if any) on that lot. The seller may also accept an offer if the offer is lower than the reserve price.
- 3.1.2 The Seller acknowledges that Devhula is entitled to rely on the accuracy of the description of the lot, as provided by or on behalf of the Seller.

#### **3.2 PRE-AUCTION VIEWING**

It remains the responsibility of all prospective Purchasers to examine and satisfy themselves as to the condition of each lot prior to the auction and that the lot matches any verbal or written description provided by the Seller or Devhula. All maps, illustrations or descriptions of a lot are intended as guidance for Bidders. Devhula will encourage pre-auction viewing by prospective Bidders and Purchasers to acquaint themselves as to the condition of each lot prior to the auction.

#### **3.3 VENUES**

Auctions will be held at different venues or online from time to time. All advertisements of auctions will state the date, venue and time of the auction and will state where the rules of auction can be obtained. Potential Bidders and Purchasers are encouraged to make telephone enquires if they are uncertain where to find the place where the auction is to be held.

### 3.4 REGISTRATION

- 3.4.1 Anyone that intends to bid at the auction must register his or her identity on the Bidder's record prior to the commencement of the auction and such registration must meet the requirements of the Financial Intelligence Centre Act 38 of 2001 ("FICA") in respect of the establishment and verification of identity of the person and the person must sign the registration entry.
- 3.4.2 A person who attends the auction to bid on behalf of another person, close corporation, company, or association must produce a letter of authority that expressly authorises him or her to bid on behalf of that person. Where a person is bidding on behalf of a company, the letter of authority must appear on a letterhead of the Company accompanied by a certified copy of the resolution of the Company, authorising him or her to bid on behalf of a Company.
- 3.4.3 All Bidders wishing to make bids or offers and who have completed a registration form will also acknowledge that he or she is acquainted with and bound by the rules of auction on such registration form.
- 3.4.4 Bidders shall be personally liable for their bids and offers made during an auction and shall be jointly and severally liable with their principals if they are acting as agents.
- 3.4.5 Potential Bidders and Purchasers may also complete an absentee or telephone Bidder's form. These are written instructions from prospective Bidders and Purchasers instructing Devhula to bid on their behalf up to a specific amount for a specific lot. Bidders are advised to record the maximum limit to which they will bid, but they may well be successful in securing a lot at a lower figure, depending on the interest in the lot. In the event of an identical bid, the earliest received bid will take precedence.
- 3.4.6 Telephone absentee bids must be confirmed before the sale in writing. Prospective Bidders and Purchasers are encouraged to ensure that absentee bids are submitted at least 24 (twenty-four) hours before any auction.

### 3.5 ANNOUNCEMENTS

The Auctioneer will, during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of property by a Seller. Devhula and the Auctioneer each has the right, at its or his absolute discretion, to offer the property referred to for sale under a lot, to refuse any bid or offer, to combine 2 (two) or more lots, to withdraw any lot from an auction and to determine the description of lots, as they may deem fit and whether or not to seek the opinion of professional advisors.

### 3.6 BIDDING

- 3.6.1 The auction will commence at the published time and will not be delayed to allow any specific person or more persons to take part in the auction.
- 3.6.2 The sale shall be by the rise of a registration number and the property shall be sold to the highest Bidder subject to this Rules of Auction.
- 3.6.3 Every prospective Bidder must read the Rules of Auction and must not bid unless he or she has done so.
- 3.6.4 Every bid shall constitute an offer to purchase the lot for the amount bid upon the terms and conditions contained herein and, in any contract, entered into between the Auctioneer, Seller and/or Purchaser or any other terms and conditions accepted by the Seller or the Auctioneer, which they may accept or reject in their absolute discretion. The Seller shall be entitled, in its absolute discretion, to withdraw the lot or property from sale prior to acceptance by the Purchaser.
- 3.6.5 If no bid equals or exceeds the reserve price, the lot or property may be withdrawn from the auction. The Seller shall, however, be entitled to instruct the Auctioneer to accept any lower bid.
- 3.6.6 The highest Bidder ("the Purchaser") shall sign the Rules of Auction and Deed of Sale immediately on the fall of the hammer.
- 3.6.7 The Auctioneer will accept bids from those present in the sale room, by absentee written bids left in advance or from telephone Bidders.
- 3.6.8 The Auctioneer may bid on behalf of the Seller up to the amount of the reserve, by placing consecutive or responsive bids for a lot. This is only applicable on a private sale and not legal matters.
- 3.6.9 Bidders who are unable to attend the auction may arrange to bid on the telephone. A telephone clerk will call such Bidder from the sale room and bid on his/her behalf. To register, the telephone Bidder must complete a telephone bidding form. Prospective Bidders are encouraged and advised to leave maximum bids as a safeguard in the event of a breakdown in telephone communication.
- 3.6.10 Devhula will endeavor to execute absentee written bids and/or telephone bids, provided they are in Devhula' s absolute discretion, received in sufficient time and in legible form.
- 3.6.11 Every Bidder shall be deemed to act as Principal, unless prior to the commencement of the auction, Devhula provides a written

acknowledgement that a particular Bidder is acting on behalf of a third party.

### 3.7 RECORDS

The Bidder's record and the vendor roll will be made available for inspection at the offices of Devhula during normal business hours without the charge of a fee. The Bidders' record will also be available for inspection at the auction.

### 3.8 TRUST ACCOUNT

3.8.1 Devhula has a trust account. All money due to the Seller in terms of the Rules of Auction or any agreement signed, will be paid into this trust account for the benefit of the Seller, minus any commission payable to Devhula.

3.8.2 The total cost of advertising and conducting the auction of the lot or property will be made available on request. Such cost shall relate to a specific auction and a specific Seller. Such costs are broken down into among others the following categories:

- a) Advertising costs;
- b) Brochure and marketing material;
- c) Auction venue costs;
- d) Photography;
- e) Costs of professional service providers;
- f) Refreshments; and
- g) Travelling costs.
- h) Online Platforms

### 3.9 CONDUCT OF THE AUCTION

3.9.1 Devhula, with the express permission of the Seller, has the absolute discretion to withdraw or re-offer lots for sale, to accept and refuse bids and to re-open the bidding on any lot, should they believe there may be a dispute of any nature (including without limitation a dispute about the validity of any bid, or whether a bid has been made, or whether between two or more Bidders or between Devhula and any one or more Bidder(s)) or error of whatever nature and may further take such other action as he in his absolute discretion deems necessary or appropriate. Devhula shall commence and advance the bidding or offers for any lot in such increments as they consider appropriate.

3.9.2 Devhula may be entitled to place bids on any lot on the Seller's behalf up to the reserve, where applicable.

3.9.3 The contract between the Purchaser and the Seller of any lot shall be deemed to be concluded on the striking of the hammer at the purchase price finally accepted by Devhula (after determination of any

dispute that may exist). Devhula shall not be liable for any breach of that contract by either the Seller or the Purchaser.

#### **4. RESERVED PRICE**

- 4.1 If nothing is announced at the auction whether a lot is sold with or without reserve, such lot is sold with reserve or sold subject to confirmation.
- 4.2 In the event where a reserve or minimum price has been placed on a lot, such lot will be offered for sale, subject to that reserve. A reserve shall only be placed on a lot, if agreed in writing between the Seller and Devhula prior to the auction. A reserve, once placed on a lot, may not be changed by the Seller without the prior written consent of Devhula. Should Devhula consent to an increase of the reserve on a lot, Devhula reserves the right to charge the Seller an additional administrative fee, since the lot may not be sold at auction as a result of the increased reserve.
- 4.3 Where a reserve has been placed on a lot, only Devhula may bid on behalf of the Seller.
- 4.4 Where a reserve has been placed on a lot and, Devhula is of the opinion that the Seller or any person acting as agent of the Seller, may have bid on the lot, Devhula may knock down the lot to the Seller without observing the reserve and the Seller shall pay to Devhula the commission and all expenses for which the Purchaser is liable.
- 4.5 Should no reserve have been placed on the lot, Devhula shall not be liable if the purchase price of the lot, is less than the estimated selling price.

#### **5. ACCEPTANCE AND CONFIRMATION**

- 5.1 By signing the Deed of Sale at the end of the auction, the Purchaser offers to purchase the Property on the terms and conditions contained therein and the Purchaser's offer shall remain open for acceptance by the Seller or Devhula, acting as the Seller's Agent, until 18H00 on the date specified as the confirmation period in the Deed of Sale. The Purchaser and Devhula acknowledge and agree that this provision is inserted and intended for the benefit of the Seller.
- 5.2 The Purchaser's offer shall be deemed to have been accepted only when the Seller or Devhula, acting as its Agent, whichever may be applicable, has signed the Deed of Sale on behalf of the Seller in the space provided at the end thereof and the Seller shall not be required to notify the Purchaser of the acceptance of its offer prior to expiry of the confirmation period.
- 5.3 Should the Seller reject the Purchaser's offer, Devhula will repay to the Purchaser any deposit and/or commission paid to it in terms of this agreement. The Seller will then pay to Devhula any fee or commission not exceeding 10% of the purchase price offered by the Purchaser for the Property or the total costs

of advertising and conducting the action and all such costs as referred to in clause 3 above.

- 5.4 The Seller shall notify the Purchaser in writing of either its acceptance or its rejection of the Purchaser's offer immediately upon receipt of the signed Deed of Sale from the Purchaser, which request shall not be made before the last day of the confirmation period.
- 5.5 In the event of the sale requiring the consent of any statutory authority or any court of law, then this sale is subject to the granting of such consent.
- 5.6 Devhula shall not be under any obligation to disclose the name of the Purchaser to the Seller.
- 5.7 The Auctioneer/Agent shall have the right to extend the confirmation period with a reasonable time should the need arise, but not longer than an additional 14 days after the initial confirmation period as referred to in Schedule 2.

## **6. PURCHASE PRICE**

- 6.1 The purchase price of the Property, plus 15% Value-Added Tax ("VAT") and/or transfer duties, whichever is applicable, be the amount payable by the Purchaser, as stipulated in the schedule to the Deed of Sale.

The purchase price shall be paid as follows:

- 6.2 A deposit of 5% (five percent) of the purchase price to Devhula by the Purchaser immediately on the Seller's signature of the Deed of Sale, which amount the Purchaser hereby authorises Devhula to pay over to the nominated attorneys against registration of transfer of the property into the Purchaser's name in terms hereof and on acceptance by the Seller.
- 6.3 The Purchaser's signature of the Deed of Sale shall constitute the Purchaser's written consent to authorise Devhula (or nominated Attorneys) to invest all amounts paid on account of the Purchase Price in an interest-bearing account with a bank of their choice. The interest shall accrue to the Estate Agency Affairs Fidelity Fund in terms of section 32 (2) (c) of the Estate Agency Affairs Act or in terms of Section 86(2) of the Legal Practice Act No. 28 2014 to the Legal Practice Fidelity Fund unless the parties agree otherwise in writing.
- 6.4 The balance of the Purchase Price shall be paid in cash or secured by bank guarantee, to the satisfaction of the nominated attorneys, by a written bank guarantee from a registered financial institution, payable free of exchange, against registration of transfer of the Property into the Purchaser's name. The Purchaser may elect to secure the balance of the Purchase Price by payment in cash to the nominated attorneys, who shall hold same in trust, pending registration of transfer into the name of the Purchaser. The aforesaid bank guarantee shall be presented and/or cash shall be payable by the Purchaser to

the nominated attorneys within 45 (forty) days from receipt of a written request to that effect from the nominated attorneys.

- 6.5 All monies due by the Purchaser in terms of this Agreement, and unpaid on due date, shall bear interest at the rate of 2% (two percent) above the Prime Rate, per month, calculated from the due date of payment to the actual date of payment thereof, (both days inclusive).
- 6.6 Any payment made by the Purchaser in terms of this Agreement shall be allocated first to the payment of the commission and advertisement and auction costs when due, then interest, and thereafter to the payment of any other monies due in terms hereof.

## **7. VALUE ADDED TAX**

- 7.1 The purchase price is exclusive of 15% VAT and/or transfer duties.
- 7.2 In the event of VAT (or transfer duties) being payable on the purchase price as a result of the sale, such VAT (and/or transfer duties) shall be paid by the Purchaser to the **attorneys** nominated in the Deed of Sale agreement immediately on demand, therefore.
- 7.3 In the event of the rate at which VAT (or transfer duties) is chargeable being amended after the date of signature hereof by the Purchaser and in circumstances in which the amended rate will apply to this transaction, then the amount due shall be adjusted accordingly, the intention being that the Seller shall receive and retain the same amount after payment regardless of the rate at which VAT (or transfer duties) is payable.

## **8. AUCTIONEER'S COMMISSION**

- 8.1 The Seller shall be liable for and pay, in addition to the amounts payable in terms of clauses 6 and 7, Auctioneer's commission of 5% (five percent) of the purchase price, plus 15% VAT thereon, which commission shall be deemed to have been earned and is payable immediately upon the signing of the Deed of Sale by the Purchaser and the Seller.
- 8.2 If the agreed commission is not paid by the Purchaser to Devhula in terms hereof, for any reason whatsoever, the Seller hereby instructs the nominated attorneys to pay the commission or balance thereof, whichever may be applicable, to Devhula as a first draw from the proceeds of this sale, against registration of transfer of the Property into the name of the Purchaser.
- 8.3 The Purchaser shall be liable to pay to Devhula, upon demand, a fee equal to any bank charges that Devhula may become liable for upon payment of the commission into Devhula's chosen trust bank account.



8.4 The provisions of this clause are inserted and intended for the benefit of Devhula who by its signature hereto, accepts such benefit.

**9. LIABILITY**

Devhula shall not be liable for any error, misstatement, omission or spelling error in the description of a lot (whether in any advertisement or otherwise), unless Devhula, its employees or agents engage in intentional misleading or defective conduct.

**9. WITHDRAWAL**

9.1 A Seller may only withdraw a lot offered for sale, by written notification to Devhula, which is received by Devhula at least 24 (twenty-four) hours prior to the commencement of the auction, at which the lot is to be offered for sale.

9.2 Upon receipt of proper notification of withdrawal as envisaged above, Devhula reserves the right to charge the full auctioneer's commission calculated on the reserve price to the Seller as a withdrawal fee, , together with all advertisement costs and expenses incurred in relation to the lot or property as set out in clause 3 above, whichever one is the greatest of the two.

**10. PHOTOGRAPHY**

Devhula shall have the full and absolute right to illustrate, photograph or otherwise reproduce images of any lots submitted by the Seller for sale, whether or not in conjunction with the sale and to use such photography and illustrations at any time and in their sole and absolute discretion. The copyright of all photographs taken, and illustrations made of any lot by Devhula, shall be the sole and absolute property of Devhula.

**11. AMENDMENT OF RULES**

This Rules of Auction constitute the entire set of rules and shall supersede any previous rules in relation to matters referred to in these rules. In the event that the Rules of Auction are amended after its initial publication, but prior to the next auction, the Auctioneer will expressly indicate that the new version of the Rules of Auction is an amended version.

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