



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

## **RULES OF AUCTION**

**[INSERT DATE, PLACE & TIME OF THE AUCTION]**

**[INSERT NAME, ADDRESS & CONTACT DETAILS OF AUCTIONEER APPOINTED TO CONDUCT AUCTION]**

### **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 Purchaser(s) and Seller are 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 reserved price and the Seller or auctioneer, or any one person on behalf of the Seller or auctioneer, has the right to bid at the scheduled auction.

### **3. AUCTION PROCEDURE**

#### **3.1 MANDATE:**

- 3.1.1 The Seller 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.
- 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 potential Purchasers. Devhula will encourage pre-auction viewing by prospective Bidders and/or 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 from time to time, alternatively done on-line. All advertisements of auctions will state the date, venue (alternatively if conducted on-line) 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 or are unable to obtain an on-line link to enable them to connect to the scheduled on-line auction.

### 3.4 REGISTRATION

- 3.4.1 Anyone that intends to bid at the auction must register his, her or its 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 any juristic person or trust, the letter of authority must appear on a letterhead of the juristic person or trust accompanied by a certified copy of the resolution of the juristic person or trust, authorising him or her (or it) to bid on behalf of a said juristic person/trust.
- 3.4.3 All Bidders wishing to make bids or offers and who have completed a registration form will also acknowledge that he, she or it 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, she or it 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. Devhula 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 by Devhula. 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 (or virtual 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 price, by placing consecutive or responsive bids for a lot.
- 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/its 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 endeavour 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 is provided with a written acknowledgement that a particular Bidder is acting on behalf of a third party.
- 3.6.12 If for some reason the ONLINE AUCTION platform was faulty in any way, the auctioneer reserves the right to re-auction the property were the highest bidder as well as the party raising the dispute will compete against each other and where the same rules will apply.
- 3.6.13 The highest bidder has the first right of refusal should the seller receives a higher offer within the confirmation period. The higher offer made must be of a bidder which participated in the auction process.
- 3.6.14 The seller can only be approached once with a higher offer.
- 3.6.15 Any higher offer must be submitted by no longer than 5 days after the auction.

### 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 of 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 be payable by the specific Seller. Such costs are broken down into 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.

### 3.9 CONDUCT OF THE AUCTION

- 3.9.1 The 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 at the agreed reserve price. A reserve price shall only be placed on a lot, if agreed in writing between the Seller and Devhula prior to the auction. A reserve price, 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 (after the property has already been advertised for auction), Devhula reserves the right to charge the Seller an additional administrative and advertisement fees, since the lot may not be sold at auction as a result of the increased reserve. The lot may then be withdrawn for the scheduled auction date and readvertised for auction on the first available date thereafter.

4.3 Where a reserve price has been placed on a lot, only Devhula may bid on behalf of the Seller.

4.4 Where a reserve price 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 (or interferes with Devhula's mandate and the execution thereof), Devhula may knock down the lot to the Seller without observing the reserve price and the Seller shall pay to Devhula the commission (as agreed in the signed mandate) and all such expenses (such as advertisement costs, fuel costs, accommodation charges, time spent including travel time to advertise the properties levied at R 2,500.00 per hour plus 15% VAT incurred).

4.5 Should no reserve price 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 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 and that the seller may accept the offer at any time after or on the auction before the confirmation period has expired without having to notify the purchaser or other bidders.
- 5.2 The Purchaser's offer shall be deemed to have been accepted when Devhula , acting on behalf of the Seller/and/or the seller, has signed the Deed of Sale on behalf of the Seller in the space (SELLER) provided at the end thereof if the reserve price has been met or if the reserve has not been met, but Devhula has discounted its commission until the reserve has been met. 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 In the event that the reserve price was met during the auction, by the Seller the deciding to 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% plus 15% VAT of the purchase price offered (or the reserve price as agreed, whichever one is the highest) by the Purchaser for the property as well as all such expenses (such as auctioneer and advertisement costs (as referred to in clause 3 above), fuel costs, accommodation charges, time spent including travel time to advertise the properties levied at R 2,500.00 per hour plus 15% VAT incurred).
- 5.4 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.
- 5.5 It is specifically recorded that the bids of both the highest BIDDER and the under BIDDER (the second highest bid) will stand and be regarded as legally binding for consideration and acceptance by the SELLER(S). The decision regarding acceptance of any offer shall be entirely at the discretion of the SELLER(S).
- 5.6 The auctioneer reserves the right to extend the confirmation period within reason, but no more than an additional 30 days.

## **6. PURCHASE PRICE**

- 6.1 The purchase price of the Property, plus 15% Value-Added Tax ("VAT") and/or transfer duties/bond costs and all other fees associated with the transfer of the property to the conveyancer, whichever is applicable, including agent commission (if applicable) be the amount payable by the Purchaser, as stipulated in Deed of Sale.
- 6.2. The purchase price shall be paid as follows: -

- 6.2.1 A deposit of 05% (five percent) of the purchase price to Devhula 's trust account by the Purchaser immediately upon fall of the hammer/closure of the auction and/or the Purchaser's signature of the Deed of Sale, which amount the Purchaser hereby authorises Devhula to pay over to the appointed transferring attorneys trust account against registration of transfer of the property into the Purchaser's name in terms hereof.
- 6.2.2 The Purchaser's signature of the Deed of Sale shall constitute the Purchaser's written consent to authorise Devhula and/or the transferring attorneys to invest all amounts paid on account of the Purchase Price in a savings or interest-bearing account with a financial institution of their choice. Any interest that may accrue on any and all invested amounts paid on account of the Purchase Price, will be for the Purchaser's benefit, less any administrative fees paid by the transferring attorneys to invest the said monies into a savings or interest-bearing account. Should the Purchaser expressly elect not to invest any amounts paid in respect of the Purchase Price into not to invest any amounts paid in respect of the Purchase Price into a savings or interest-bearing account, pending registration or transfer of the Sale Object, any and all interest that accrues thereon will be forfeited to the Property Practitioners Fidelity Fund or the Legal Practitioners Fidelity Fund, which ever one is applicable.
- 6.2.3 The balance of the Purchase Price shall be paid in cash or secured by bank guarantee, to the satisfaction of the Seller and/or the transferring attorney, 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 transferring attorneys who shall hold same in trust, pending registration of transfer into the name of the Purchaser. The aforesaid guarantee shall be presented and/or cash shall be payable by the Purchaser to the transferring attorneys within **45 (forty-five) days** (from date of signature of the Deed of Sale by the last party signing same. The auctioneer reserves the right to extend the confirmation period (within reason) should the fault of the delay lies with the financial institution providing the finance.
- 6.2.4 All monies due by the Purchaser in terms of the Deed of Sale, and remains unpaid on due date, shall bear interest at the rate of 02% (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).
- 6.2.5 Any payment made by the Purchaser in terms of the Deed of Sale shall be allocated first to the payment of Devhula 's Commission and/or advertisement and auction costs (if applicable), when due then interest and thereafter to the payment of any other monies due in terms of the Deed of Sale.

## **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 transferring attorneys trust account as 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 of the Deed of Sale by the Purchaser and in circumstances in which the amended rate will apply to the sale 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 Purchaser shall be liable for and pay, in addition to the amounts payable in terms of clauses 6 and 7 above, Devhula's commission of \_\_\_\_\_ of the purchase price, plus 15% VAT thereon, which commission shall be deemed to have been earned and is payable immediately on the fall of the hammer/closure of the auction and/or upon the signing of the Deed of Sale by the Purchaser.
- 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 transferring attorney 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 provisions of this clause are inserted and intended for the benefit of Devhula who by its signature hereto, accepts such benefit.

## **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 plus 15% VAT calculated on the reserve price to the Seller as a withdrawal fee, together with all such expenses (such as auctioneer and advertisement costs (as referred to in clause 3 above), fuel costs, accommodation charges, time spent including travel time to advertise the properties levied at R 2,500.00 per hour plus 15% VAT incurred) incurred in relation to the lot or property.

## **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.

Auction House: Devhula Auctioneers Pty Ltd  
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(Version: 03/2023)