

RULES OF AUCTION IMMOVABLE ASSETS



TIRHANI AUCTIONEERS

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Eastgate Ext 4
Sandton

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www.tirhani.co.za

Seller: Legae Trust

Auction type: Online Auction

Property address: Unit 112 Tramonto, 77 Beyers Naude Avenue, Potchefstroom

GPS: -26.7134, 27.0899

Viewing Date: By Appointment

Auction Opens: 08 October 2018 @ 09H00

Auction Closes: 15 October 2018 from 14H00

Auction Type

Absolute	<input type="checkbox"/>	Reason for auction (Insolvency, Divorce, etc): Insolvent Estate
Reserved	<input type="checkbox"/>	
Sale By Court Order	<input type="checkbox"/>	
Sale In Execution	<input type="checkbox"/>	
Insolvency Auction	<input checked="" type="checkbox"/>	
Divorce Auction	<input type="checkbox"/>	
With Additions/Supplemented:	<input type="checkbox"/>	
Auctioneers' Name:	Tirhani Auctioneers	
Auctioneers' Contact Number:	011 608 2280	
Signed as correct by the Auctioneer:		

These Rules of Auction comply with Section 45 of the Consumer Protection Act No68, 2008 are available in printed format from The Tirhani Auctioneers Offices at 1 Centex Close, Eastgate Ext 4, Sandton, Gauteng between 08h30 and 16h30, Mondays to Fridays excluding public holidays or can be down loaded from our website www.tirhani.co.za.

RULES OF AUCTION

A. DEFINITIONS

For purposes of clarity, the following definitions are applicable to these rules of auction:

“asset”	means any asset of value; movable or immovable. “Goods” has the same meaning as “asset” .
“bid”	means a bidder's offer to buy goods/property at an auction, indicated by any sign (raise of a hand, nodding, winking, etc.) to the auctioneer or his/her assistants, or any other communicable gesture. Bids are usually in standardized increments established in agreement between the auctioneer and bidders.
“bid assistants”	means individuals of at a live auction team also known as “ringmen” , “bid spotters” or “groundsmen” whose primary responsibility is to assist both the auctioneer and bidders by accurately interpreting and effectively communicating bidders' participation to the auctioneer during an auction. They are also qualified to assist prospective bidders with the necessary information to make informed buying decisions.
“bid calling”	means the process an auctioneer uses to conduct a live auction by calling bids using the outcry method through verbal exchanges and physical gestures between the auctioneer and bidders; which exchanges and gestures consist of a series of invitations for offers made by the auctioneer and bids made by bidders culminating in the establishment of the “hammer price” , and the sale of the goods/property to the highest bidder. “Bidding” has the same meaning as “bid calling” .
“bid rigging”	means the unlawful practice whereby two or more bidders connive and agree not to bid against each other at an auction or intimidate other bidders with the intention to suppress the prices of goods/property on auction. “Collusion” has the same meaning as “bid rigging” .
“bidder”	means a person, natural or juristic, who has registered to purchase at an auction sale.
“bidder's choice”	means a method whereby the auctioneer offers bidders the option to bid for multiple lots or units/items with similar goods/property on a ‘price per lot or per unit/item’ basis, with the highest bidder having the choice to select one, multiple or all the lots or units/items at the bid price per lot or per unit/item multiplied by the number of lots or units/items in the particular lot. “Buyer's choice” has the same meaning as “bidder's choice” .
“buyer”	means the bidder who is the highest bidder on goods/property or lots offered on auction at the fall of the hammer. “Purchaser” has the same meaning as “buyer” .
“confirmation period”	means the period during which a seller must either confirm or reject an offer made by the highest bidder after the completion of an auction but falling short of the reserve price. The highest bidder is bound by the Rules of Auction and shall not have the opportunity to withdraw his/her offer until the seller has confirmed the sale, or the predetermined confirmation period has expired.
“ghost bidding”	means an auction where sellers use memberships of people they know, or fake memberships they have created, to put false bids on auctions to increase the price of goods/property they are selling.
“hammer price”	means the price established by the highest bidder and accepted by the auctioneer before dropping the hammer/gavel or announcing the close of the auction by any other customary means.
“lot”	means any unit/item or group of units/items of goods/property identified and listed for sale on auction.
“online auction”	means a competitive real-time auction conducted by rising bid on an Internet based platform.
“owner”	means a natural or juristic person who is the rightful owner of the assets, and who has the right to sell the assets, including that person's successors and assigns and an agent of that person.
“parties”	means the seller and purchaser.
“property”	means land, improvements, fittings and fixtures with regards to immovable assets or means all loose assets with regards to movable property.
“rules of auction”	means the general rules of auction, the specific terms and conditions, notice to bidders, auctioneer's announcements and offer to purchase (in the event of immovable property); severally or collectively.
“reserve price”	means the minimum price that a seller is willing to accept for goods/property to be sold at auction.
“seller”	means a natural or juristic person who has the right to sell assets on auction, and effectively signs the mandate to sell the goods/property but is not necessarily the owner or rightful holder.
“vendor bidding”	means an auction where the owner or auctioneer, or any person on behalf of the owner or auctioneer bids at the auction with the intention to protect the reserve price. For vendor bidding to be legal and not become “ghost bidding” , it must be practiced up to the reserve price but not equal to or exceeding the reserve price.

B. COMPLIANCE

- i. These Rules of Auction comply with Section 45 [sub-sections 1-5] of the Consumer Protection Act (CPA), No. 68 of 2008 and Regulations 18-33 contained therein applicable to auctions. An extract of section 45 of the Act appears below:

Section 45 [ss 1-5]: Auctions

- (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.
- (2) When goods/property 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.
- (3) 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.
- (4) Notice must be given in advance that a sale by auction is subject to: (a) a reserved or upset price, or (b) 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, as the case may be, may bid at the auction.
- (5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer; (a) the owner or auctioneer must not bid or employ any person to bid at the sale, (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a), and (c) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.

- ii. These Rules of Auction meet the requirements of regulation 21 of the CPA and have been signed by the auctioneer conducting the auction.

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RULES OF AUCTION

C. ACKNOWLEDGEMENT

- i. These Rules of Auction, including the general rules, specific terms and conditions, notice to bidders, offer to purchase and all announcements made by the auctioneer at the commencement and during the course of the auction, whether or not the bidder is present at the time such announcements are made, collectively referred to as the "Rules of Auction" are the complete and final record of the rules of governing an auction and unless any warranties, undertakings or representations are set out herein, they are excluded.
- ii. These Rules of Auction in their entirety shall form the basis of the bidding and bargaining carried out between the auctioneer and the bidders and shall also govern the rules of each sale so concluded.
- iii. In the event of a contradiction between the General Rules of Auction and the Specific Terms and Conditions, the Specific Terms and Conditions will take precedence.
- iv. As per sub-regulation 21 (8) (a), the Rules of Auction need not be read out at the auction to be valid, as long as they were made available to the general public prior to the commencement of the auction (at least 24 hours for movable assets, and at least five (5) working days for immovable assets), either in printed format from the auctioneer's place of business or electronically from the auctioneer's website.
- v. The act of not reading the Rules of Auction in their entirety and highlighting selected clauses for special mention at the auction should in no way be construed as an omission or admission that the Rules of Auction are not important.
- vi. The act of registering for the auction signing the bidders' record and participation by any bidder in the auction shall be taken as confirmation that the bidder has read, understood, accepts and is bound by the Rules of Auction.
- vii. The auction and all matters connected with the auction including the Rules of Auction are governed by and constructed in accordance with the laws of the Republic of South Africa and the bidder, including foreign bidders consent to the jurisdiction of the South African courts.
- viii. For purposes of legal proceedings, the bidder shall be deemed to have selected and appointed as his or her domicilium citandi et executandi the address recorded by him or her on the bidder's record upon registration.
- ix. The auctioneer shall be entitled to institute legal proceedings at any Magistrates Court having jurisdiction against the purchaser to recover the settlement contemplated in clauses 4.3 and 4.4 herein, and any legal costs, disbursements and charges calculated on the basis of an Attorney and own client scale.

D. GENERAL RULES OF AUCTION

1. MANDATORY INFORMATION REQUIRED BY THE CPA AND REGULATIONS

- 1.1. The auction must be advertised in compliance with regulations 19 and 20 of the CPA, and the advertisement must be placed in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods/property on offer and the rules governing the auction.
- 1.2. As per section 45(2) of the CPA, when goods/property 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.
- 1.3. The auction will commence at the published time and it will not be delayed to enable any specific person or more persons in general to take part in the auction.
- 1.4. As per sub-regulation 26(2) of the CPA, every prospective bidder must, prior to the commencement of an auction, register his or her identity in the bidders' record', providing his or her positive identification, juristic registration documents, and proof of residence in terms of the Financial Intelligence Centre Act (FICA), No. 31 of 2001 published in Notice R1595 in Gazette 24176 of 20 December 2002.
- 1.5. As per sub-regulation 26(3) of the CPA, if a person intends to bid on behalf of another person or entity, he or she must produce a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must meet the requirements of sub-regulation 26(2) of the CPA outlined in clause 1.4 herein. A draft letter of authority is provided herewith marked **Annexure A**.
- 1.6. As per sub-regulation 26(4) of the CPA, if a person described in clause 1.5 above intends to bid on behalf of a company, the letter of authority contemplated therein must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to do so.
- 1.7. As per sub-regulation 28(1) of the CPA, all prospective bidders whose names appear in the bidders' record will be issued with visible bidder numbers.
- 1.8. As per sub-regulation 26(5) of the CPA, the bidders' record will be available for public inspection in respect of the names of bidders and bidder's numbers only free of charge, at any time, before and after the auction at the auctioneer's place of business during normal business hours or during the auction at the premises where the auction is being held.
- 1.9. As per sub-regulation 28(4) of the CPA, the auctioneer will keep a vendor's roll in which all details prescribed therein will be recorded. The vendor's roll will be available for public inspection, at any time, free of charge.
- 1.10. As per sub-regulation 21(2)(h) of the CPA, the auctioneer has trust accounts into which all monies are paid for the benefit of the seller, minus the agreed commission and costs.

2. ADMISSION AND REGISTRATION

- 2.1. The right of admission is reserved. All persons, including buyers, enter the auction venue at their own risk. The auctioneer, the seller, their agents and employees shall not be liable for any injuries, damages or losses of any nature whatsoever arising from any person's attendance and/or participation in the auction. All persons together with their heirs, executors, administrators or assigns, hereby release the auctioneer, the seller, their agents and their employees and hold them harmless from any duty of care towards them and all claims which may otherwise have accrued to them whether or not any such claim may arise through the negligence of any person or from any of the risks, dangers or hazards occurring in the course of their association with the auctioneer and the seller.
- 2.2. During registration as contemplated in clause 1.4 of these Rules of Auction, prospective bidders may be required to pay a refundable deposit determined by the auctioneers from time to time.
- 2.3. All refundable deposits will be refunded only once the deposit reflects in the auctioneer's trust account and only if the bidder was unsuccessful in purchasing any items.
- 2.4. All deposits and other monies belonging to bidders and sellers will be held by the auctioneer as per section 65(2) of the CPA, which requires suppliers to hold and account for consumers' assets in their possession, including any prepayment, deposit, membership fee, or other money, or any other assets belonging to or ordinarily under the control of a consumer.
- 2.5. The auctioneer reserves the right to revoke a bidder's number at any time during the auction in terms of sub-regulation 28(3) of the CPA, thereby refusing a person the right to remain on the auction premises in the event that such a person repeatedly behaves in such a way so as to disrupt the auction.

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3. GENERAL AUCTION PROCEDURES

- 3.1. The auctioneer conducts the auction as an agent on behalf of the seller and accepts no liability whatsoever. In the event of any disputes, the purchaser shall only have a claim against the seller, unless such disputes are because of the auctioneer's negligence or conduct.
- 3.2. The control of the auction shall be entirely managed by the auctioneer, who has the sole right to regulate the bidding process and control the bid increments. The auction will be conducted per rising bid in South African rands.
- 3.3. The auctioneer may only sell to bidders registered in terms of clauses 1.4 and 1.7 herein. No bid will be taken from unregistered persons without bidder numbers as per sub-regulations 24(h) and 28(2) of the CPA.
- 3.4. A duly registered bidder is entitled to use "**absentee or commission bidding**" whereby the bidder participates in the auction in absentia, either by authorising the auctioneer to bid on his or her behalf up to a predetermined amount or by bidding telephonically through one of the auctioneer's assistants. Absentee/commission bidders must fulfil all the registration requirements of the auction in order to participate. Tirhani Auctioneers practices absentee/ commission bidding transparently, including announcing the amount of commission bids to bidders after the hammer price is established.
- 3.5. In terms of section 55(1) of the CPA, goods/property are sold "**voetstoots**", as is, where is in their present condition, with no express or implied guarantees or warranties regarding the condition and fitness of the goods/property for a particular use. Buyers bid at their own risk and are advised to inspect the goods/property on offer prior to the commencement of the auction in accordance with sub-regulation 28(5) of the CPA. Participation in the auction shall be taken as proof that the bidder has acquainted himself or herself with the condition of the goods/property.
- 3.6. In the event of an auction subject to a reserved or upset price, and provided notice has been given in advance in terms of section 45(4) of the CPA, the seller or the auctioneer, or any other person on behalf of the seller, or the auctioneer, as the case may be, may bid at the auction up to the reserve price but not equal to or exceeding the reserve price.
- 3.7. In the event of an absolute or auction without reserve, the auction will be conducted in accordance with the provisions of sub-regulation 20(18) and (19) of the CPA. In particular, goods/property will not be offered or sold at an absolute or auction without reserve unless there is a bona fide intention at the time of the advertising and at the time of the auction to sell the goods/property and transfer ownership of the goods/property, regardless of the amount of the highest and last bid, to the highest bidder, without any requirement for a minimum bid, and without allowing competing bids of any type by the seller, or any agent of the seller. In addition, the seller of the goods/property cannot withdraw the goods/property from auction after the auction is opened and there is public solicitation or calling for bids at an absolute or auction without reserve.
- 3.8. Notwithstanding the provisions of clause 3.7 herein, a secured party or other lien holder or any party who is not the seller is not prohibited from bidding at an auction without reserve, provided such bidding does not constitute, nor is tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods/property by the seller, or the auctioneer, or anyone aiding or assisting, or acting on behalf of the seller, or the auctioneer.
- 3.9. As per sub-regulation 20 (19) (d) of the CPA, certain goods/property may be offered with reserve and others offered absolute or without reserve at the same auction and at the same time, provided non-misleading advertisement makes it clear, through appropriate emphasis, which goods/property are being offered by either method.
- 3.10. Bidders must direct their bids to the auctioneer or official bid assistants. The practice of bid rigging as defined in the Rules of Auction are prohibited and may be treated as per clause 2.5 of "Admission and Registration" herein.
- 3.11. Notwithstanding the provisions of sub-regulation 24(h) of the CPA, goods/property or lots may be grouped or divided with the unanimous consent of all buyers.
- 3.12. Bidders may also be offered the option of exercising "**bidder or buyer's choice**", by bidding for multiple lots or units/items with similar goods/property on a '**price per lot or per unit/item**' basis, with the highest bidder having the choice to select one, multiple or all the lots or units/items at the bid price per lot or per unit/item multiplied by the number of lots or units/items in the particular lot.
- 3.13. Every bid shall constitute a firm offer to purchase the goods/property or lots on offer for the amount bid.
- 3.14. Notwithstanding the provisions of clause 3.13 herein, the bidder is permitted, in terms of section 45(3) of the CPA, to retract his or her bid before the hammer falls or the auctioneer concludes bidding in any customary manner.
- 3.15. In accordance with sub-regulation 28(6) of the CPA, subject to any reserved price and the acceptance of the highest bid by the owner or the seller, the highest bidder, when the auctioneer announces the completion of the sale by the fall of the hammer, or any other customary manner, is the purchaser of the goods/property or lots on auction. Should any dispute arise between two or more bidders regarding the identity of the highest bidder and purchaser, the auctioneer shall use his or her discretion to resolve the dispute, including declare the buyer, re-auctioning the disputed lot or lots or even withdrawing the lot or lots. The decision of the auctioneer shall be final and binding.
- 3.16. Notwithstanding the provisions of clause 3.15 herein, and subject to the provisions of clause 3.6 herein, the owner or the seller, reserves the ultimate right, apart from the auctioneer, to fix a minimum bid for acceptance and to decline to sell to the highest or any bidder, or even to accept any lower bid, without giving any reasons.
- 3.17. The auctioneer, with the approval of the owner or the seller, reserves the right, at any time, to stop the auction, to reject any or all bids and to withdraw any goods/property or lots or part thereof from the auction, either before or during the auction, without giving any reasons and without attracting any liability for such action.
- 3.18. The auctioneer, with the approval of the owner or the seller, reserves the right, at any time, to stop the auction, to reject any or all bids and to withdraw any goods/property or lots or part thereof from the auction, either before or during the auction, without giving any reasons and without attracting any liability for such action.
- 3.19. Once the reserve price determined by the seller is reached, the auction becomes absolute, and the auctioneer is authorised to sell to the highest bidder at the fall of the hammer or any customary method used by the auctioneer to close the auction.
- 3.20. Should the reserve price not be met in terms of regulation 28(6), the auctioneer will either announce that the goods/property are unsold or knock the goods/property to the highest bidder provisionally subject to confirmation (STC) by the seller, and only the highest bidder will be entitled to negotiate with the auctioneer and the seller for the final purchase of the goods/property. If the negotiations do not result in the sale of the goods/property, such goods/property will remain unsold. No negotiations will be entertained with other bidders, unless the seller instructs otherwise.
- 3.21. Goods/property or lots knocked provisionally to the highest bidder subject to approval by the seller in terms of clause 3.21 herein are deemed not to have been sold in terms of section 45(3) and sub-regulation 28(6) of the CPA until the seller has confirmed the offer. However, the highest bidder is bound by the Rules of Auction and shall not have the opportunity to withdraw his bid until the seller has confirmed the sale or the stipulated confirmation period has expired. Negotiations between the highest bidder and the seller may arise during the confirmation period.

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- 3.22. Should the seller decide to entertain subsequent bids during the confirmation period, such higher offers must be made to the auctioneer on the same terms and conditions applicable to the auction. Subsequent bidders will have only one opportunity to submit higher offers. The highest bidder of the first instance shall have the sole right of refusal to equal or better subsequent offers, on condition that the right to counter is exercised within 24 hours (excluding public holidays and weekends) after notification by the auctioneer.
- 3.23. In the event of an auction sale requiring the consent of any statutory authority or any Court of Law, then the conclusion of the auction sale is subject to the granting of such consent.
- 3.24. Buyers are not permitted to enter into any transaction on the seller's premises. In particular, the re-auctioning of goods/property by bidders is prohibited within the premises of the auctioneer or the seller.

4. FINANCIAL ARRANGEMENTS

- 4.1. Once goods/property or lots have been sold to the purchaser as contemplated in clause 3.155 herein, the sale of the goods/property or lots is irrevocable and cannot be withdrawn, and the purchaser shall be liable for the settlement of such purchases, and hereby binds himself or herself as surety and principal debtor, subject to the provisions of clauses 1.5 and 1.6 herein, failing which the auctioneer, the seller or the owner, reserves the right to demand payment to recover the amount owing, including any interest, legal costs and collection costs thereof.
- 4.2. Notwithstanding the provisions of section 19 of the CPA with regard to the delivery of goods/property, the risk of the goods/property or lots purchased on auction shall pass to the buyer upon the fall of the hammer. However, ownership and title will only be transferred upon full settlement as contemplated in clauses 4.3 and 4.4 hereunder. No complaints will be entertained thereafter.
- 4.3. With regard to movable goods/property, settlement for goods/property or lots purchased as contemplated in clause 4.1 herein, including advertised fees and commission, is payable upon delivery on the day of the auction. Should the auction finish after banking hours, purchases must be settled by 12h00 the day after the auction or the first working day after the day of the auction where the day after falls on a weekend or statutory public holiday.
- 4.4. With regard to immovable property, settlement for goods/property or lots purchased as contemplated in clause 4.1 herein, including advertised fees and commission, is payable upon the signing of a written agreement in respect of the sale of such immovable property by the purchaser and the seller.
- 4.5. Auctions are cash transactions and not subject to any suspensive conditions such as the granting of finance to the purchaser. Therefore, bidders intending to finance their purchases must obtain irrevocable approval or guarantee from their sponsors prior to the commencement of the auction, so that they will be able to fulfil the settlement requirements contained in clauses 4.3 and 4.4 herein.
- 4.6. In line with clause 4.5 above, payment terms regarding the settlement of purchases in terms of these Rules of Auction are strictly cash or EFT, payable in full, without deduction and free of set off for any claim the purchaser may have against the seller or the owner.
- 4.7. Cheques are not accepted as payment for purchases. This includes bank guaranteed cheques and bank cashier's cheques.
- 4.8. All payments must be made in South African ZAR currency, into the specific Trust Account nominated by the auctioneer for each auction and provided to the buyer/purchaser in the Notice to Bidders forming part of the Rules of Auction.
- 4.9. In accordance with money laundering regulations and in the interest of security, the auctioneer does not accept cash at its auction sites. Cash deposits must be made at the bank and the proof thereof must be presented on site or at the auctioneer's premises. Cash payments shall attract a cash deposit fee determined by the auctioneer from time to time and provided to the purchaser in the Notice to Bidders forming part of the Rules of Auction.
- 4.10. Should the auction be subject to the payment of Value Added Tax (VAT); all bids will be exclusive of VAT and VAT will be added to the bid price at the rate applicable at the time the auction is conducted. The bid price plus the VAT portion, including any commission and other fees; where applicable, shall constitute the purchase price and shall be due and payable simultaneously.
- 4.11. Invoices will be made out to buyers/purchasers who are registered bidders in terms of clauses 1.4 and 1.7 herein. No changes to purchase statements will be allowed, and the splitting of invoices among buyers is prohibited. The registered bidder is responsible for the payment of the full invoice.
- 4.12. Should the buyer/purchaser default, a forfeit fee not exceeding 10% of the full purchase price or the total costs of advertising and conducting the auction, including any additional costs that may have been reasonably incurred in accordance with regulation 21(2)(l) of the CPA, whichever is the lesser. In such an event of default by the buyer/purchaser, the refundable registration deposit will be retained and used to set-off the forfeit fee contemplated in this clause 4.12, or part thereof if the fee is lesser. Should the retained refundable registration deposit be greater, the difference will be refunded to the buyer/purchaser.
- 4.13. Should the seller reject the buyer/purchaser's offer or default for whatever reason, the purchaser will not be charged any fee or commission, and where such fee or commission has already been paid by the buyer/purchaser, such fee or commission will immediately be refunded to the purchaser, including the refundable registration deposit. The parties shall have no further obligations under the Rules of Auction thereafter.
- 4.14. In the event of any claim by the buyer/purchaser in terms of the asset/s purchased, the buyer/purchaser must take up such claim with the seller and not the auctioneer. The auctioneer acts solely on behalf of the seller and is indemnified against any claim by the buyer/purchaser against the seller. The auctioneer may, as his discretion attempt to mediate any claim by the buyer/purchaser against the seller.
- 4.15. Without exception, no assets will be released to the buyer/purchaser until the total invoice amount has been paid in full and the funds paid reflect in the balance of the specific Trust Account nominated by the auctioneers. In the case of immovable property, the transaction deposit must reflect in the balance of the specific Trust Account nominated by the auctioneers for the offer to purchase to be submitted to the seller for acceptance.

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E. SPECIFIC TERMS AND CONDITIONS FOR ONLINE IMMOVABLE PROPERTY

1. WELCOME AND INTRODUCTION

- 1.1. Welcome to Tirhani Auctioneers' online auction for Unit 112 Tramonto, 77 Beyers Naude Avenue, Potchestroom on behalf of Legae Trust.
- 1.2. Special welcome to anyone participating in an auction for the first time. We hope you will enjoy the auction experience.
- 1.3. Auctions are not as mythical and scary as most people think. However, it is advisable for you to do your homework by familiarising yourself with the Rules of Auction as buying on auction is final and irrevocable once you are declared the highest bidder and purchaser. Inspect the property you wish to buy thoroughly. Stick to your budget and factor in all additional costs such as VAT, commission, transfer duty, rates, taxes, levies, etc.
- 1.4. Contact Tirhani Auctioneers on **011-608-2280** or property@tirhani.co.za if you have any questions.

2. COMPLIANCE WITH CONSUMER PROTECTION ACT

Tirhani Auctioneers is fully compliant with the requirements of sections 45 and 65 of the Consumer Protection Act (CPA), Act 68 of 2008, as well as Regulations 18-33 thereof.

3. REASON FOR THE AUCTION

The reason for today's auction is Insolvent Estate by the seller.

- 3.1. Insolvency auction of W.J Serfontein: Master's Reference number: B12/2018

4. TYPE OF AUCTION AND VENDOR BIDDING

Mention either the auction is 'With Reserve' or Without Reserve' as outlined hereunder:

- 4.1. The auction is "**With Reserve**", and the Unit 112 Tramonto, 77 Beyers Naude Avenue, Potchestroom shall be sold to the highest bidder subject to the seller's approval.
 - 4.1.1. However, even though the auction is "With Reserve" there will be no vendor bidding at this auction.
 - 4.1.2. I hereby give notice in terms of Section 45 (4) of the CPA that the auctioneer, owner or any other person on behalf of the auctioneer or the owner may bid at the auction to protect the reserve price.

5. AUDITABLE BIDDING RECORD

- 5.1. Tirhani Auctioneers' online auction system records a full digital auditable record of the bidding process, including the bidder's number, bid amount and time of bid placement.
- 5.2. By registering for the auction, and signing the Bidder's Record, bidders understand and hereby authorise Tirhani Auctioneers to use the audit trail for dispute resolution and reporting purposes.

6. REGISTRATION AND REFUNDABLE DEPOSIT

- 6.1. As per sub-regulation 26 (2) of the CPA and clauses 1.4, 1.5 and 1.7 of Tirhani Auctioneers' General Rules of Auction, anyone wishing to participate in the online auction for Unit 112 Tramonto, 77 Beyers Naude Avenue, Potchestroom on behalf of Legae Trust must comply with FICA requirements as set out in **Annexure B** attached herewith.
- 6.2. To register, bidders must log in, create an account and download the bidder participation form. A copy of the bidder participation form is attached herewith marked **Annexure C**.
- 6.3. Registering on the system to participate on Tirhani Auctioneers' online auction does not automatically entitle a bidder to participate in the auction.
- 6.4. Apart from fulfilling the registration criteria, bidders must be approved by Tirhani Auctioneers before they can participate in an online auction. The registration requirements and conditions may vary from auction to auction and will be detailed in the bidder's participation form.
- 6.5. A refundable deposit of R2000.00 is payable for registration.
- 6.6. The deposit will be refunded to the bidder should the bidder not buy anything on the auction.
- 6.7. Should a bidder become a successful buyer, the deposit will only be refunded once all the purchased lots have been removed from the auction site. Therefore, the deposit cannot be used a part payment for the auction invoice.
- 6.8. As per sub-regulation 26 (5) of the CPA, a Bidders' Record is available at Tirhani Auctioneers' for public inspection at any time, free of charge, in respect of the names of bidders and bidder numbers only.

7. ONLINE AUCTION RULES

- 7.1. The Rules of Auction governing the online auction for Unit 112 Tramonto, 77 Beyers Naude Avenue, Potchestroom on behalf of Legae Trust include the General Rules of Auction, the Specific Terms and Conditions and Offer to Purchase (OTP); severally or collectively.
- 7.2. The Rules of Auction in their entirety shall form the basis of the bidding and bargaining carried out by the online auction system which will act as an invisible auctioneer regulating bid increments, updating bid prices real-time and conducting the entire bidding process until the highest bidder wins at the close of the bidding.
- 7.3. In the event of a contradiction between the General Rules of Auction and Specific Terms and Conditions, the Specific Terms and Conditions will take precedence.
- 7.4. In the event of a contradiction between the Specific Terms and Conditions and OTP, the OTP will take precedence.
- 7.5. The Rules of Auction in their entirety are downloadable electronically from Tirhani Auctioneers' website and available in printed format at Tirhani Auctioneers' place of business on **1 Centex Close, Corner Katherine Street, Eastgate Extension 4, Sandton**.
- 7.6. The Rules of Auction were published at least 5 working days prior to the auction as per sub-regulation 21 (8) (a) of the CPA which provides that the Rules of Auction need not be read out in their entirety at the auction to be valid, if they were made available to the general public prior to the commencement of the auction.
- 7.7. The act of only highlighting selected clauses should not be construed as an omission or admission that the entire Rules of Auction are not important and applicable to the auction.
- 7.8. By registering for the auction, signing the Bidders' Record and participating in the auction, bidders tacitly confirm that they have read, understood, accepted and agreed to be bound by the Rules of Auction in their entirety.
- 7.9. **DO NOT BID UNLESS YOU AGREE TO BE BOUND BY THE RULES OF AUCTION IN THEIR ENTIRETY. YOUR BID SHALL BE TAKEN AS PROOF THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE RULES**

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OF AUCTION IN THEIR ENTIRETY, HENCE THEY WILL BECOME FINAL AND IRREVOCABLE UPON YOU BECOMING THE HIGHEST BIDDER AND BUYER.

- 7.10. In terms of section 55 (1) of the CPA, the property will be sold “*voetstoots*”, as is, where is in their present condition, with no express or implied guarantees or warranties regarding the condition and fitness of the property for a particular use.
- 7.11. The Legae Trust has no duty to repair, and is not liable for any defects (patent, latent or otherwise), nor for any damages occasioned to or suffered by the purchaser consequent to such defect. No complaints or negotiations will be entertained once bidding closes and the online auction system declares the highest bidder as the purchaser.
- 7.12. Bidders bid at their own risk and are advised to inspect the property on offer prior to the commencement of the auction.
- 7.13. Participation in the auction shall be taken as proof that the bidder has acquainted himself or herself with the condition of the property.
- 7.14. Every bid shall constitute a firm offer to purchase the property on offer for the amount bid. Unlike live auction where the highest bidder is permitted to retract his or her bid before the hammer falls or the auctioneer concludes bidding on a lot in any customary manner, in terms of section 45 (3) of the CPA and clause 3.13 of Tirhani Auctioneer's General Rules of Auction, the online auction system automatically declares the highest bidder the buyer, provided the reserve price has been met.
- 7.15. The following bidding terms and conditions apply to online auctions:
 - 7.15.1. **EXTENDED BIDDING:** Tirhani Auctioneers' online auction system has a feature which allows last minute bids to extend bidding on each lot for predetermined time until all bids have been submitted.
 - 7.15.2. **MAXIMUM BID:** Tirhani Auctioneers' online auction system provides for the placement of maximum bid by a bidder such that the system automatically places counter bids in specified increments on behalf of the bidder up to, and not exceeding the set maximum bid. The Max Bid feature alerts the bidder in the event he/she gets outbid.
 - 7.15.3. **FORCED BID:** Unlike Max Bid, placing a forced bid makes the online auction system to jump to the desired amount automatically, provided such an amount exceeds the current asking price.
 - 7.15.4. **TECHNICAL ISSUES:** In the event of technical difficulties related to the server, software, Internet or any other technological challenge, Tirhani Auctioneers reserves the right to extend bidding. Neither Tirhani Auctioneers nor its technology suppliers shall be held responsible for a missed bid or failure of the software.
- 7.16. If a bidder places an incorrect bid, the bidder is entitled to have the incorrect bid removed. The bidder must immediately inform the auctioneers of the incorrect bid and request that this bid be removed. No bids will be modified or removed once the bidding for a lot has closed.
- 7.17. Should the bidding system fail to go offline for any reason whatsoever, the auctioneers will extend the closing time by an appropriate amount of time relative to the amount of time the system was offline, with a minimum of 30 mins.
- 7.18. On an online auction all lots have a reserve value set. Once this value has been reached or surpassed by the bidders, the lot will be deemed to be sold to the highest bidder and the bidder can no longer withdraw from the purchase.
- 7.19. All online auctions have extended bidding time implementation. Even though an online auction has an advertised closing time, this time will extend beyond the advertised closing time if there is active bidding on the lot within the last ten minutes of the closing time. This activity will trigger an extension of the closing time and this process will continue until there is no more activity in the last ten minutes of bidding.
- 7.20. All online auctions are subject to vendor bidding up and until the reserve price.

8. PROPERTY DESCRIPTION

Sect 112 of plan 938/2008 known as TRAMONTO Situated at RE of Ptn 641 Farm 435 TOWN AND TOWNLANDS OF POTCHEFSTROOM Reg Div: IQNORTH-WEST

9. INSPECTION AND NON-SUSPENSIVE CONDITIONS

- 9.1. The property will be sold on a non-suspensive basis, and the bidder agrees that the sale of the property shall not be contingent upon any inspection, financing or any other condition.
- 9.2. The purchaser admits that he/she has inspected the property to his/her satisfaction, and that no guarantees or warranties were made by neither Tirhani Auctioneers nor Legae Trust regarding the condition of the property or improvements

10. OFFER TO PURCHASE (OTP) AND ACCEPTANCE

- 10.1. The highest bidder declared the purchaser shall sign an offer to purchase (OTP) upon the conclusion of the auction. A copy of the OTP is attached herewith marked Offer to Purchase.
- 10.2. The “*hammer price*” offered by the highest bidder constitute the purchase price.
- 10.3. The OTP shall be irrevocable and open for acceptance by the Legae Trust within 21 days from the date the OTP is signed.
- 10.4. The Legae Trust can withhold the acceptance of the OTP without furnishing reasons.
- 10.5. Should the Legae Trust decide to entertain subsequent bids during the confirmation period, such higher offers shall be made to Tirhani Auctioneers on the same terms and conditions applicable to the auction. Subsequent bidders will have only one opportunity to submit higher offers. The highest bidder of the first instance shall have the sole right of refusal to equal or better subsequent offers, on condition that the right to counter is exercised within 24 hours (excluding public holidays and weekends) after notification by Tirhani Auctioneers.
- 10.6. If the transaction requires the consent of the Master of the High Court or any other legal authority to pass transfer, then, the sale of the property shall be subject to such consent being given.

11. SETTLEMENT OF THE PURCHASE PRICE

- 11.1. The purchaser acknowledges and agrees that the sale of the property shall be negotiated on a cash basis.
- 11.2. Should the purchaser not be settling the purchase price on a cash basis, it is assumed that the purchaser has arranged financing prior to participating in the auction.
- 11.3. The purchase price shall be settled as follows:
 - 11.3.1. A deposit of 10% of the purchase price by way of electronic transfer or bank guaranteed cheque upon signature of the OTP. The deposit shall be paid into Tirhani Auctioneers' nominated Trust Account whose particulars are as follows:



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BANK DETAILS

All monies due must be DEPOSITED INTO Tirhani Auctioneers TRUST ACCOUNT:

ACCOUNT NAME	:	Tirhani Auctioneers Trust Account
BANK	:	First National Bank
ACCOUNT NUMBER	:	62461764287
CLEARANCE CODE	:	250655

DEBIT AND CREDIT CARDS ARE NOT ACCEPTED AS FORMS OF PAYMENT.

- 11.3.2. The balance of the purchase price shall be paid in cash or secured by means of a written bank guarantee or other guarantee acceptable to the Legae within 30 days from the date the OTP's acceptance.
- 11.3.3. The balance of the purchase price is payable to the Conveyancers of the Legae Trust who are authorised to invest all funds received from the purchaser in an interest-bearing account until registration and transfer of the property.
- 11.3.4. Interest from the investment shall be for the credit and benefit of the Estate Agency Fidelity Fund in terms of section 32 (2) (c) of the Estate Agency Affairs Act, No. 112 of 1976.
- 11.3.5. All monies owing by the purchaser but unpaid on due date shall bear interest at the rate of **2% (Two Per Centum)** above the prime lending rate per month calculated from the due date to the actual date of payment (both days inclusive).
- 11.4. Should the purchaser, after signing the OTP, fail to settle the purchase price, such conduct shall constitute breach, and be dealt with according to regulation 21 (2) (l) of the CPA which provides that: **"Should the purchaser default, a forfeit fee not exceeding 10% (Ten Per Centum) of the full purchase price or the total costs of advertising and conducting the auction, including any additional costs that may have been reasonably incurred in accordance with regulation 21(2)(l) of the CPA, whichever is the lesser. In such an event of default by the purchaser, the refundable registration deposit will be retained and used to set-off the forfeit fee, or part thereof if the fee is lesser. Should the retained refundable registration deposit be greater, the difference will be refunded to the purchaser"**.

12. CONVEYANCING AND TRANSFER

- 12.1. Registration and transfer of the property shall be processed by the seller's Conveyancers paid or secured the purchase price in full, and fulfilled the following requirements regarding the payment of VAT or Transfer Duty (whichever is applicable):
 - 12.1.1. If SARS regards the sale of the property as a vatable transaction, the purchaser shall pay VAT to the seller's Conveyancers upon demand, it being specifically recorded that the purchase price excludes VAT.
 - 12.1.2. If the sale of the property is not a vatable transaction, the purchaser shall pay Transfer Duty to the seller's Conveyancers upon demand, it being specifically recorded that the purchase price excludes Transfer Duty.

13. LIABILITIES OF THE PURCHASER

- 13.1. The sole risk, profit or loss of the property shall pass to the purchaser upon acceptance of the OTP by the Legae Trust, and the purchaser shall; from the date of acceptance, be liable for the payment of all rates, levies, taxes and any other municipal charges.
- 13.2. No auctioneer's commission/buyer's premium for the property.
- 13.3. The auctioneer's commission/buyer's premium shall be deemed to have been earned upon the registration of the property and immediately payable into Tirhani Auctioneers' nominated Trust Account by Seller.

14. LIABILITIES OF THE SELLER

- 14.1. The Purchaser is liable for all outstanding rates, taxes and levies (if applicable) on the property.
- 14.2. The Purchaser shall, at his own cost, obtain an electrical certificate of compliance (COC) issued by a qualified electrician and any other necessary certificates to the effect that the buildings on the property are free from timber destroying insects, or gas or any other certificates of whatsoever nature that may be required.

15. OCCUPATIONS AND TENANCIES

- 15.1. Possession and/or occupation prior to registration and transfer of the property will be given by the Legae Trust and taken by the purchaser subject to any existing lease agreements, leasing, tenancy or legal or illegal occupation, on the date of the OTP's acceptance, or as agreed upon in writing with the purchaser.
- 15.2. The purchaser shall be liable for the payment of interest calculated at **11% (Eleven Per Centum)** per annum on the purchase price from date of possession and/or occupation (whichever occurs first) to date of registration and transfer (both days inclusive), which interest shall be deemed as occupational rent.

16. ANNOUNCEMENT OF FUTURE AUCTIONS

No Announcement

GOOD LUCK WITH YOUR BIDDING

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ANNEXURE A: FORMAT OF LETTER OF AUTHORITY

Buyer Details:

Company Name: _____

Authorising Persons Name: _____

Physical Address: _____

Date:

Tirhani Auctioneers
1 Centex Close
Eastgate Ext 4
Sandton

Reference: Authority for _____

To Whomsoever It May Concern,

I, the undersigned, hereby authorises to the above-mentioned person to purchase at the auction on my/this companies' behalf binding me/this company to the rules of auction and any other conditions specified by the auctioneer on the day of the auction.

(If buying on behalf of a company, attach a certified copy of the company resolution authorising the said person to do so)

Yours sincerely

(Signature)

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ANNEXURE B: FICA REQUIREMENTS

The requirements of the Financial Intelligence Centre Act (FICA) are applicable as follows:

1. NATURAL PERSONS

1.1. FICA requirements:

- South African identity document / Foreigner passport;
- Utility bill addressed to your residential address less than 3 months (accounts for mobile phones are not acceptable);
- South African Income Tax reference number, and;
- Confirmation marital status, i.e. ANC or COP.

1.2. FICA requirements for married people:

- Marriage certificate – Community of property – Copy of spouses ID;
- Ante nuptial Contract – Copy of contract;
- Page 1 (and page 2 if necessary) reflecting the registered number and names of both parties, if your marriage is governed by the Laws of another country/state; and
- Name of the country/state governing your marriage, i.e. the country where the Seller was living at the time of the marriage with the intention of staying there permanently.

2. ENTITIES

2.1. FICA requirements:

- Person acting on behalf of the Entity must comply with the above requirements, and;
- All directors / members / trustees must also comply with above requirements.

In addition to compliance with the above requirements, the following documents must be attached:

2.1.1. For Companies:

- CM1; and
- CM22.

2.1.2. Close Corporations:

- CK1, and, if applicable; and
- CK2.

2.1.3. Trusts:

- Letters of Authority/Master's Certificate;
- Trust Deed and all amendments thereto.

Resolution to approve the purchase (and loan application, if applicable) taken before the Offer to Purchase was signed. (The only exception is where it is a cash transaction and all the Trustees have signed the Offer to Purchase.)

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ANNEXURE C: BIDDER'S PARTICIPATION FORM

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