

# MOTUS

## AUTO AUCTIONS

### RULES OF AUCTION

#### Motus Auto Auctions, a Division of Motus Group Limited

(previously trading as Imperial Auto Auctions)

(Reg. no. 1983/009088/06 FSP 25934)

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#### **Important Notice:**

**Kindly familiarise yourself with these Rules of Auction. All auctions conducted by Motus Auto Auctions, a Division of Motus Group Limited ("MAA") will be subject to the terms and conditions set out herein after. If any term is unclear and / or need further explanation, kindly discuss your concern with the Auctioneer prior to the start of the auction. By registering as a Bidder at any auction, it will be accepted that you have perused these Rules of Auction, that you understand the contents thereof and that you accept being bound to the legal consequences thereof.**

#### A DEFINITIONS

In these Rules of Auction, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the *Consumer Protection Act, Act 68 of 2008* (herein after referred to as "the Act") has the same meaning, and –

1. "Auction House" means a person, company or other juristic person which from time to time conducts auctions as part of its business. For the purpose of these Rules of Auction, any reference to the Auction House will specifically refer to Motus Auto Auctions, a Division of Motus Group Limited - Reg. no. 1983/009088/06 (FSP 25934), previously trading as Imperial Auto Auctions ("MAA");
2. "auction without reserve" means an auction at which –
  - 2.1 goods are sold to the highest Bidder without reserve;
  - 2.2 the auction does not require a minimum bid;
  - 2.3 the auction does not allow competing bids of any type by the seller or an agent of the seller; and
  - 2.4 the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids;
3. "Auctioneer" means the person conducting an auction, irrespective of whether he or she is doing so for his or her own account or as employee of or agent for an auction house or another person. For the purpose of these Rules of Auction the Auctioneer will be the person conducting an auction and appointed by MAA;
4. "Bidder" means a party who is duly registered to bid at the auction;
5. "Bidders' record" means the document contemplated in the *Act's Regulations* (herein after referred to as "the Regulations") 26;
6. "Business Day" means any day other than a Saturday, Sunday or official public holiday;
7. "defaulting party" means the defaulting Bidder and in the event that the defaulting Bidder is representing a principal or acts as a duly authorised representative on behalf of a legal entity at the auction, then also the principal or legal entity he represents;
8. "vendor's roll" means the document contemplated in Regulation 28(4);
9. "URL" means an operational uniform resource locator, providing access to information on the internet.
10. Any reference in these Rules of Auction to:
  - 10.1 a clause is, subject to any contrary indication, a reference to a clause of this Rules of Auction;
  - 10.2 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
  - 10.3 If any provision in a definition confers rights, or imposes obligations on any party, effect is given to it as a substantive provision of these Rules of Auction;
  - 10.4 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular;
  - 10.5 Any number of days prescribed in this Agreement refers to business days and excludes the first day and includes the last day;
  - 10.6 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day;
  - 10.7 A time of day is a reference to South African time;
  - 10.8 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
  - 10.9 "fall of the hammer" will refer to the physical fall of the Auctioneer's hammer at the end of a bidding process confirming a successful bidder (if the use of a physical hammer is applicable), alternatively the Auctioneer's acceptance of the highest bid at the end of the bidding process confirming the successful bidder.

## B TERMS AND CONDITIONS

1. The auction will be conducted as an auction with reserve, unless specifically stated otherwise in the notice of auction or so announced by the Auctioneer at the start of the auction.
2. These Rules of Auction comply with the provisions of Section 45 of "Act" and the Regulations, as applicable, which read as follows:  
**Section 45: "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 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.*
  - 6) *The Minister may prescribe requirements to be complied with by an Auctioneer, or different categories of Auctioneer, in respect of—*
    - a) *the conduct of an auction;*
    - b) *the records to be maintained with respect to property placed for auction; and*
    - c) *the sale of any such property by auction.*
3. The Auction House is fully committed to comply with the relevant provisions contained in the Act, including the Regulations contained therein. For ease of reference, please find a URL to the Act: <https://www.gov.za/documents/consumer-protection-act> and Regulations: <https://www.gov.za/documents/consumer-protection-act-regulations>.
4. The auction is conducted for the normal and voluntary disposal of vehicles by its registered Owner or duly authorised representatives, unless specifically stated otherwise in the notice of auction or so announced by the Auctioneer at the start of the auction.
5. The auction shall take place under the direct and exclusive control of the Auctioneer, who will receive his mandate from the Auction House.
6. The Auctioneer has the right to, in his sole discretion, refuse the bid of any Bidder, to regulate the bidding and to indicate the highest Bidder. If the Auctioneer suspects that a Bidder has not made a *bona fide* bid, or is unable to pay the purchase price or has not made satisfactory arrangements for payment of the purchase price, he may refuse to accept the bid of such Bidder or accept it provisionally until the Bidder has satisfied him that he is in a position to pay the purchase price or that he has made satisfactory arrangements for payment thereof. On refusal of a bid under these circumstances, the vehicle or lot in question may immediately be re-auctioned. The Auctioneer will exercise the right afforded to him in this clause in his sole and absolute discretion.
7. In the event of an online or timed online auction (if applicable) neither the Auction House nor the Auctioneer will be responsible or incur any liability (including but not limited to a loss of a potential purchase) for any interruption in internet connection for whatever reason which may result in a bidder being disconnected from an auction.
8. The auction will start at the published time. The auction will not be delayed to allow any specific person or more persons to take part in the auction.
9. All prospective Bidders must register as such before the start of the auction. No bid will be accepted by the Auctioneer from an unregistered Bidder under any circumstances. In order to comply with the provision so the Financial Intelligence Centre Act, Act 38 of 2001 (herein after referred to as "FICA"), prospective Bidders will be required to provide the documents set out in Annexure "A" hereto. The registration process at the auction involves the following:
  - 9.1 Payment of a refundable R5000.00 deposit. For the payment of the deposit the use of credit cards, debit cards, bank cheques and electronic funds transfer are recommended. No personal cheques or cash will be accepted; and
  - 9.2 Provide proof of identity (ID book); and
  - 9.3 Provide proof of address. Proof of address must be current and not older than three months. Any utility bill in the prospective Bidder's name which confirms his address will be accepted, provided that the utility bill is not older than three months; and
  - 9.4 A person who attends the auction and register to bid on behalf of another person or legal entity, must produce a letter of authority meeting all the requirements of Regulation 26(3), in order to register and bid on behalf of that person or legal entity. A person who attends the auction and /or register to bid on behalf of another person or legal entity as duly authorised representative hereby binds himself/herself personally as co-principal debtor with the Bidder for payment of the purchase price and personally guarantees all the obligations of the Bidder under these Rules of Auction.
  - 9.5 Once a prospective Bidder has completed the registration form and provides the information referred to in clauses 9.1 to 9.4, he will be issued with a bidding number which will enable him to take part in the bidding, subject to what is stated in 10 herein under.
  - 9.6 A prospective buyer must register for a new bid number for each auction. Old numbers from previous auctions may not be used, unless a permanent number has been allocated to Bidder. Notwithstanding the allocation of a permanent number, all prospective buyers must register for each and every auction to be able to bid.
  - 9.7 If any registered Bidder did not buy anything on the auction, the R5 000.00 refundable deposit paid referred to in 9.1 above will be refunded to him as soon as possible, but no later than 14 business days after the date of the auction.

- 9.8 In the event where a Bidder allows another person to purchase on his/her/its Bidder's number, the registered Bidder will be liable for payment of such purchases. No bid by an unregistered Bidder will be accepted by the Auctioneer and the Bidder will have no claim to any of the vehicle he/she/it claims to have bought. The Bidder is responsible for all actions on his or her account and the use of his/her/its online password (if applicable).
- 9.9 If for whatever reason a successful Bidder does not pay the vehicle(s) which was bought by him at the auction within two business days from the date of auction and take delivery of the vehicle, he will in addition to any other remedy the Auction House has in law forfeit the full deposit and may be blacklisted with all financial institutions as a result of the default.
10. In the event that the Auction House is not the owner or rightful holder (who has been mandated by the Owner with the right to sell) of a vehicle to be auctioned, the proceeds on the sale of any such vehicle(s) will be paid into the Auction House's bank account where it will be kept on behalf of the Owner after all agreed commissions and / or costs (as set out in the mandate agreement) have been deducted.
11. The auction will start and come to an end when the Auctioneer makes an announcement to this effect.
12. All vehicles at the auction are sold as "voetstoots" with no duty to repair. "As you see them, so you buy them". No claims in this respect will be entertained after the sale. The Bidder's right to safe and good quality vehicles bought on auction is specifically excluded by the Act.
13. All vehicles on auction are sold without any warranties or guarantees of whatever nature. Prospective Bidders will be allowed to inspect the vehicles on auction prior to the start of the auction, alternatively on any of the Auction House's digital platforms (including but not limited to the Auction House's website and Facebook page) provided by the Auction House (if applicable). All registered Bidders need to ensure that they have carefully inspected the vehicles they may be interested in bidding on, including all details supplied pertaining to the vehicle and physical conditions, before the auction starts. The Bidder will have no recourse (claim) whatsoever against the owner, Auctioneers or Auction House, including any latent or patent defects present in the vehicle at the fall of the hammer. By bidding on a lot, the Bidder confirms that he/she/it was given enough opportunity to inspect the vehicle.
14. The Owner of any vehicle that is put up for auction, warrants that there are no encumbrances on the vehicle, that the vehicle is the property of the Owner, and that the Owner is competent and legally entitled to dispose of the vehicle. If the Auction House sells any vehicle on behalf of an Owner, the Owner confirms that he/she/it is competent and legally entitled to mandate the Auctioneer and the Auction House to sell the vehicle on his behalf.
15. The Owner of each vehicle to be sold by auction has supplied all the information relating to the vehicle, as published or which is made available during inspection or on the day of auction. The Auction House, its shareholders, directors, employees, contractors and Auctioneer give no warranty as to the correctness of any information (including but not limited to the date of first registration, year of manufacture, status, condition (if damaged and repaired that it was repaired to manufacturer's standard) and the odometer reading listed on the vehicle) received on a *bona fide* basis from the Owner or Owner's representative.
16. The Bidder agree that it is unreasonable to expect the Auction House to have discovered any unsafe characteristic, failure, defect or hazard, in any of the vehicles put on auction having regard to the Auction House's role in marketing the vehicles to consumers and the fact that the Auction House did not manufacture the vehicle. For this reason, the Auction House cannot accept any liability for any failure in the vehicle or any consequential losses that may result from such failure.
17. An offer made by a Bidder before the start of an auction may at any time be accepted by the auctioneer (in his sole and absolute discretion) prior to the start of the auction and if this happens, the relevant vehicle / lot will be withdrawn from the auction. If the offer is not accepted before the start of the auction, that offer will be placed as a bid on the day of the auction.
18. The Auctioneer and Auction House (unless also the Owner of the vehicle) do not accept any liability regarding the information on the vehicle which may be incorrect. Neither the Auction House nor Auctioneer will be liable for any misrepresentation or non-disclosure made by an Owner of a vehicle and the Bidder herewith indemnifies both in this respect.
19. Neither the Owner, Auction House nor Auctioneer warrant that the vehicle purchased on auction will be usable and durable for a reasonable period, having regards to the use to which it would normally be put and all surrounding circumstances of its supply.
20. A Bidder shall be deemed to have made him fully acquainted with the vehicle(s) in the lot(s) on which he bids.
21. Every bid shall constitute an offer to purchase the vehicle for the amount bid, which the Auctioneer may accept or reject in their absolute discretion.
22. STC Lots refers to lots on auction which are sold "*subject to confirmation*" and the Owner of a vehicle in such a lot has forty-eight business hours to confirm with the Auctioneer whether the bid on the STC lot is either accepted or decline. The Auctioneer will announce all STC lots at the start of the auction, alternatively before a STC lot is put up for auction. The Auctioneer will immediately and without delay confirm the Owner's decision with the successful Bidder.
23. Subject to any reserve price placed on any of the vehicles on auction and the provisions referred to in clause 22 above (STC Lots), the successful Bidder at the auction shall be the highest Bidder indicated by the Auctioneer at the fall of the hammer or by such other means as the Auctioneer may select.
24. If no bid equals or exceeds the reserve price (if applicable) on a vehicle or the Owner on a STC Lot does not accept the winning bid, the vehicle may be withdrawn from the auction. The Auctioneer may also, in his sole discretion, withdraw any vehicle at any stage prior to the fall of the hammer. The Auctioneer and Auction House accept no liability for any withdrawal of vehicles from the auction.
25. No bid may be withdrawn after the fall of the hammer, unless specifically authorised by the Auctioneer in its sole discretion.
26. In the event of a dispute arising amongst the Bidders and / or the Auctioneer, the vehicle(s) in dispute shall, at the sole discretion of the Auctioneer, be re-auctioned.
27. Any error by the Auctioneer shall be entitled to be corrected by him immediately upon discovery of such error.
28. Any indulgence granted by the Auctioneer to any registered Bidder or an Owner will not prejudice the rights of the Auctioneer in terms of these Rules of Auction and such indulgence will not constitute an amendment or waiver or novation of any of these Rules of Auction.
29. The risk in loss and damage in any vehicle sold on auction transfers from the Owner to the successful Bidder upon the fall of the hammer. The Auctioneer has no liability in respect of loss and / or damage to a vehicle sold on auction after the fall of the hammer. Ownership of the vehicle however remains reserved until the total purchase price has been paid by the successful Bidder.
30. In the event of the sale requiring the consent of any statutory authority or any court of law, then the auction will be subject to the granting of such consent.

31. The total purchase price in respect of all vehicles bought on auction will be paid directly to the Auction House within two business days from the date of the auction.
32. No cash will be accepted by the Auction House as payment from any successful Bidder in respect of any lot sold. Payment must be done by either bank guaranteed cheque, debit card or electronic funds transfer or a release note from a reputable Finance institution. Credit card machine facilities at the auction can only be utilised for the payment of deposits and cannot be used to pay for any successful bid. The Auction House reserves the right to refuse any other method or means as payment.
33. Please note that the Auction House will only release a vehicle purchased on auction once the total purchase price (which includes the sundry items referred to in clause 29 herein under) reflects in its bank account.
34. In addition to the final bid accepted on any vehicle at the fall of the hammer, additional charges such as Value Added Tax (VAT), handling fee and storage costs (if applicable), will be added to the cost of the vehicle to make up the total purchase price.

**For example:**

Successful bid:	R50,000.00
Handling fee:	R2,500.00
Storage fee (if applicable):	
Total excluding VAT:	R52,500.00
Plus 15% VAT:	R7,875.00
<b>TOTAL PURCHASE PRICE:</b>	<b>R60,375.00</b>

35. No vehicle (or any other item) bought on auction will be handed / delivered to a successful Bidder unless the Total Purchase Price (see schedule above) has been settled in full.
36. All purchases must be paid for in full and collected within two business days from the date of the auction. Failure to pay the total purchase price or to collect your vehicle within the aforementioned two business days, will result in mora interest, as well as storage penalties calculated at a rate of R250.00 (Excluding VAT) per day, as well as movement costs if applicable, being charged to the successful Bidder (including his principal if applicable) on the vehicle.
37. Neither the owner, Auctioneer nor the Auction House have any obligation to test any vehicle (or other item sold on auction) to determine whether it is working condition or roadworthy state or to register the vehicle in the name of the Bidder. Should any bidder require the Auctioneer or Auction House to assist with any such services, the Auction House in its sole discretion be entitled to assist the Bidder and will be entitled to charge any additional fee for such services it may require, which will be due and payable on demand and must be paid before the delivery of the vehicle to the Bidder.
38. Proof of payment of the total purchase price and confirmation that the funds have been cleared in the Auction House's bank account, as well as confirmation of the successful Bidder's identity who collects the vehicle, is required on collecting of all vehicles. If the vehicle is collected by any other person than the successful Bidder, proof of authority to do so must be supplied. It will remain within the Auction House's sole discretion to either accept or reject any party's authority to collect a vehicle bought on auction.
39. The entries made in the Auctioneer's vendor roll shall be prima facie evidence of the transaction and shall be binding on the Owner and the successful Bidder.
40. The Bidders' record and the vendor roll will be available for inspection within a reasonable time after the auction at the Auction House during normal business hours free of charge.
41. Any agreement contrary to these Rules of Auction shall not be binding unless it is confirmed in writing and signed by a duly authorised representative of the Auction House.
42. A certificate issued by a director of the Auction House, whose appointment and authority shall not be necessary to prove, shall be prima facie proof of the amount owing by the successful Bidder to the Auctioneer.
43. The Auction House and Bidder confirm that any action brought by either party to protect their rights in terms hereof, may do so in any competent Court having jurisdiction. This agreement will be governed in accordance with the laws of the Republic of South Africa.
44. In the event that the successful Bidder, including his principal if the successful Bidder acted in a representative capacity, refusing or otherwise failing to pay the total purchase price on vehicle bought on auction within two business days from the date of auction, the Auctioneer shall be entitled to:
  - 44.1 cancel the successful sale and claim damages; and / or
  - 44.2 retake possession of the vehicle bought if delivery of the vehicle has been done; and / or
  - 44.3 claim interest from the defaulting party at the prescribed mora interest rate calculated from the date of the auction to date of payment, and/or
  - 44.4 claim storage fees from the defaulting party at a rate of R250.00 (Excluding VAT) per day; and / or
  - 44.5 retain the vehicle(s) bought on auction and to resell same at the risk of the defaulting party, who shall be liable for all costs in connection with the resale and any loss or damage incurred (the defaulting party will not be entitled to any profit that may arise from the resale), and/or
  - 44.6 recover the Auction House's legal costs, calculated at the Attorney and Client tariff, including but not limited to collection commission, tracing fees, storage costs and transport costs, from the defaulting party; and
  - 44.7 utilise the defaulting party's deposit as full or partial payment towards any indebtedness towards the Auction House.
45. The defaulting party chooses as his *domicilium citandi et executandi* for the purpose of serving legal documents and pleadings, the address provided by him on the registration documentation.
46. These Rules of Action will be governed in accordance with the laws of the Republic of South Africa. If any clause or term of these Rules of Auction should be found to be invalid, unenforceable and / or illegal, then the remaining terms and provisions of these Rules of Auction shall be deemed to be severable therefrom and shall continue in full force and effect.
47. The Auction House reserves the right to amend these Rules of Auction. If any of these rules of action are amended, the amendment will be in writing and signed by a duly authorised representative of the Auction House and the Auctioneer will announce the changes at the start of the auction. By entering a bid all registered Bidders binds himself or herself to these Rules of Auction, as well as any special conditions of sale that may be applicable and announced by the Auctioneer at the start of the auction or that may have been contained in any brochure / catalogue.

48. The Auction House and Auctioneer confirm that they are compliant with all the provisions of the *National Credit Act, Consumer Protection Act, Financial Intelligence Centre Act and Financial Advisory and Intermediary Services Act* (whichever may be applicable) and will report all incidents required by these Acts to the relevant authorities.

## **ANNEXURE "A"**

### **FICA DOCUMENTATION REQUIRED FOR REGISTRATION**

*In order to register for the auction, all prospective Bidders are required to provide the following FICA documentation (Please note: No registration without the required documentation):*

#### **1. PRIVATE BUYERS**

- 1.1 Proof of current residential address (not be older than 3 months)
- 1.2 Copy of ID

#### **2. DEALERS & COMPANIES**

- 2.1 Proof of current business address (not be older than 3 months)
- 2.2 Resolution letter confirming the registered representative/s can buy on behalf of the company
- 2.3 SARS letter with VAT Number (not be older than 3 months)
- 2.4 Owner's ID Copy (all partners and members) as well as proof of private residential address (not be older than 3 months)
- 2.5 Proxy details/BRN certificate/Dealer stocking certificate/Traffic Register certificate (from the License Department)
- 2.6 Proxy and representative's ID copies
- 2.7 Copy of Original CK/CM documents (to confirm the identity of all members or directors)

**Please note:** Self printed copies from WINDEED, DEED SEARCH etc., may not be used.

#### **3. SOLE PROPRIETORS**

- 3.1 Proof of current residential address (not be older than 3 months)
- 3.2 Owner's ID copy
- 3.3 Letter on a company letterhead confirming the existence of the business as a sole proprietorship
- 3.4 If registered for VAT, SARS letter with VAT Number (not be older than 3 months)

#### **4. PARTNERSHIPS**

- 4.1 Partnership agreement
- 4.2 Partners' ID copies and Proof of residential address (not be older than 3 months)
- 4.3 SARS letter with VAT Number (not be older than 3 months)
- 4.4 Proof of current business address (not be older than 3 months)
- 4.5 Resolution letter (authorising representative to buy on behalf of company)
- 4.6 Proxy details/BRN certificate/Dealer stocking certificate/Traffic Register certificate (from the License Department)

#### **5. TRUSTS**

- 5.1 Trust deed
- 5.2 Letter of authority issued by the master of the high court
- 5.3 Authorization letter to buy on behalf of trust
- 5.4 Tax clearance certificate (if vat registered)
- 5.5 ID's of all trustees
- 5.6 Proof of current residential address for all trustees (not be older than 3 months)
- 5.7 Proof of current business address for the trust (not be older than 3 months)

#### **6. ADDITIONAL NOTES**

- 6.1 Prospective Bidders residing or operating from someone else's premises may submit an affidavit with an ID copy of the premises' owner. A lease agreement may be submitted to Imperial Auto Auction, for those renting from agencies
- 6.2 Foreign buyers may submit copies of Passports, Valid VISAs or Traffic register certificates instead of IDs.
- 6.3 Drivers Licenses may NOT be used as form of identification