



AUCTIONS TERMS AND DEFINITIONS

1. Auction terms and definitions

The following terms and definitions apply to auctions.

- 1.1. **“Absentee or commission bid”** refers to a procedure that allows a bidder to participate in the bidding process without being physically present. Generally, a bidder submits an offer on an item prior to the auction. Absentee bids are usually handled under an established set of guidelines by the auctioneer or auction company. The particular rules and procedures of absentee bids are unique to each auction company.
- 1.2. **“Absentee or commission bidder”** means a person (or entity) that is not present at the auction but submits, in advance, a written, oral or telephone bid that is the maximum price they will pay for a given asset. An absentee or commission bidder must fulfill all the registration requirements of the auction in order to participate.
- 1.3. **“Absolute auction or auction without reserve”** means an auction at which:-
 - (a) goods/assets are sold to the highest bidder without reserve;
 - (b) the auction does not require a minimum bid;
 - (c) the auction does not allow competing bids of any type by the seller or an agent of the seller;
 - (d) the seller of the goods/assets cannot withdraw the goods/assets from auction after the auction is opened and there is public solicitation or calling for bids; and
 - (e) the seller has a bone fide intention to transfer ownership of the goods/assets regardless of the price realised on auction in terms of regulations 20 (18-19) and 22 (3) (i) of the CPA.
- 1.4. **“Agent”** means a person who acts on behalf of another individual or entity.
- 1.5. **“Apprentice auctioneer”** means an auctioneer who is in training, operating under the supervision or mentorship of an experienced professional auctioneer. A distinguishing feature of an apprentice auctioneer is that he cannot exercise the authority to:-
 - (a) enter into an auction agreement;
 - (b) independently manage an auction company;
 - (c) independently manage an auction house; or
 - (d) maintain an auction trust account.
- 1.6. **“Auction”** means a method of marketing and selling goods/assets on a predetermined date, time and place by means of a physical exchange or online electronic transmission via the Internet, or by any other means where there is a solicitation of offers and competitive bidding by the public.
- 1.7. **“Auction block”** means the podium or raised platform where the auctioneer stands while conducting the auction. "Placing (an item) on the auction block" means to sell something at auction.

- 1.8. "Auction catalogue"** means a publication listing and describing the goods/assets available for sale at a public auction, often including photographs, goods/assets descriptions and the terms and conditions of the sale.
- 1.9. "Auction company"** means a juristic person defined in terms of the Companies Act; whose core business is to arrange, manage, sponsor, advertise, or conduct auctions from time to time. A distinguishing feature of an auction company is that; unlike an auction house, an auction company does not trade for its own account, meaning that an auction company does not buy and sell goods, but auction goods as an agent on behalf of another person, including sellers.
- 1.10. "Auction house"** means an established place of business including an auction mart, a sale barn, and a sale pavilion and its contiguous surroundings where at least two (2) or more auctions are held within any twelve (12) month period and where representations are regularly made that goods are sold at auction. Each day during which goods are offered for sale at auction shall constitute one (1) auction.
- 1.11. "Auction mandate"** means a contract executed by the auctioneer and the seller which authorizes the auctioneer to conduct the auction and sets out the terms and conditions of the agreement and the rights and responsibilities of each party.
- 1.12. "Auction services"** means the activities and tasks an auctioneer undertakes to market and sell goods on auction as an agent of the owner or rightful holder, including:—
- (a) accepting auction mandates;
 - (b) performing marketing activities for auctions;
 - (c) making logistical arrangements for auctions, including site preparation, asset preparation, layout, lot numbering, stock loading and cataloguing; and
 - (d) administering auctions; including clerking, cashiering, dispatch; and
 - (e) conducting auctions either using physical exchange or online electronic transmission via the Internet, or by any other means where there is a solicitation of offers and competitive bidding by the public.
- 1.13. "Auction with reserve or auction with upset price"** means an auction where:-
- (a) the seller reserves the right to establish a stated minimum bid, the right to reject or accept any or all bids, or the right to withdraw the goods from auction at any time prior to the completion of the auction by the auctioneer;
 - (b) goods/assets are sold to the highest bidder subject to the reserve price and acceptance of the highest bid by the seller in terms of regulation 28 (6) of the CPA;
 - (c) 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; provided notice has been given in advance that the sale by auction is subject to a '*reserved*' or '*upset price*'; and

- (d) the auction becomes '*absolute*' or '*without reserve*' once the reserve price determined by the seller is reached, and the auctioneer is authorised to sell the goods/assets to the highest bidder at the fall of the hammer or close of the auction.

1.14. "Auctioneer" means a qualified and experienced professional auctioneer who is entitled to practice and engage in all the activities of an auctioneer; including the authority to:–

- (a) act as a principal auctioneer;
- (b) conclude auction mandates;
- (c) independently manage the affairs of an auction company;
- (d) independently manage the affairs of an auction house;
- (e) maintain an auction trust account; and/or
- (f) sponsor, mentor and coach apprentice auctioneers.

A distinguishing feature of a professional auctioneer is that; unlike a dealer, a professional auctioneer does not trade for his own account; meaning that an auctioneer does not buy and sell goods, but auctions goods as an agent on behalf of another person, including sellers of goods, or as an employee or agent of an auction company or an auction house.

1.15. "Bid" means a prospective buyer's indication or offer of a price they are willing to pay to purchase goods/assets at auction. Bids are usually in standardized increments established by the auctioneer.

1.16. "Bid assistants" means individuals of a live auction team also known as "*ringmen*", "*bid spotters*" or "*groundsmen*" whose primary responsibility is to accurately interpret and effectively communicate buyer participation to their auctioneer. They are also qualified to assist prospective bidders with the necessary information to make informed buying decisions.

1.17. "Bid caller" means the person who actually "calls," "chants", "cries" or "auctions" the goods/assets at an auction, recognizing bidders and acknowledging the highest bidder. The bid caller is commonly known as the auctioneer.

1.18. "Bid calling" means a method of conducting an auction using live verbal exchange by calling bids using the outcry method or using physical gestures between an auctioneer and members of the public or prospective purchasers; which exchanges and gestures consist of a series of invitations for offers made by the auctioneer and bids made by members of the public or prospective purchasers.

1.19. "Bid rigging" or "collusion" means the unlawful practice whereby two or more people agree not to bid against each another at an auction with the intention to deflate the value of goods/assets on auction.

1.20. "Bidder's card" means the number issued to each person who registers to participate at an auction.

1.21. "Bidder's record" means the document contemplated in regulation 26 of the CPA.

- 1.22. “Buyer or bidder’s choice”** means a method where the auctioneer offers buyers goods/assets from a grouping of similar or like-kind goods/assets per piece, on a ‘per unit/item’ basis; with the highest bidder having the choice to take one or more units/items at the bid price multiplied by the number of units/items in the particular lot. After the highest bidder’s selection, the goods/assets are taken out of the vendor roll, and the second round of bidding commences, with the highest bidder in round two choosing units/items, and so on, until all the goods/assets from a grouping of similar or like-kind goods/assets are sold.
- 1.23. “Buyer’s premium”** means in simple language, a buyer’s premium is an additional charge that is levied by the auctioneer on the buyer over and above the bid price. Therefore, in the event of a buyer’s premium, the buyer will pay an additional amount over and above the purchase price. For example if the rate of the buyer’s premium is 10%, a buyer who purchases land worth R1,000,000-00 at the fall of the hammer will pay the auctioneer R1,100,000-00, i.e., R1,000,000-00 for the land plus R100,000-00 buyer’s premium at 10% of the value of the land.
- 1.24. “Closed auction”** means an auction where the auctioneer, the owner or rightful holder; as the case may be, issues an invitation only to a finite list of consumer to take part in an auction.
- 1.25. “Commission” or “NCC”** means the National Consumer Commission established in terms of Section 85 of the CPA.
- 1.26. “Companies Act”** means the Companies Act and Regulations, No.71 of 2008.
- 1.27. “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 on condition that:–
- (a) the seller has to confirm or reject an offer within fourteen (14) calendar days after the completion of the auction;
 - (b) the highest bidder is bound by the rules of auction and shall not have the opportunity to withdraw his offer until the seller has confirmed the sale or the predetermined confirmation period has expired; and
 - (c) negotiations between the seller and the highest bidder may arise during the confirmation period; should a further offer be received before the confirmation of the sale, the highest bidder will have the right of first refusal.
- 1.28. “Consumer”** shall have the meaning ascribed to it in terms of the CPA and shall include:–
- (a) a person to whom auctions are marketed in the ordinary course of the auctioneer’s business; and
 - (b) a person who has entered into a transaction with an auctioneer in an ordinary course of business of auctions.
- 1.29. “CPA” or “the Act”** means the Consumer Protection Act, No. 68 of 2008.
- 1.30. “Dual agency”** means the representation of opposing principals (buyers and seller) at the same time by one agent. This practice is not encouraged as opposing principals have conflicting interests.

- 1.31. **“Due diligence”** means the process of viewing, inspecting and gathering information about the condition and legal status of assets to be sold.
- 1.32. **“EAAB”** means the Estate Agency Affairs Board established in terms of the Estate Agency Act.
- 1.33. **“Estate agent”** means an estate agent defined in terms section 1 of the Estate Agency Act.
- 1.34. **“Estate Agency Act”** means the Estate Agency Affairs Act, No.112 of 1976.
- 1.35. **“Game”** means game as defined in section 1 of the Game Theft Act, 1991, No. 105 of 1991. Game means all animals kept or held for commercial or hunting purposes, and includes the meat, skin, carcass or any portion of the carcass of that animal.
- 1.36. **“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 in an attempt to increase the price of goods they are selling.
- 1.37. **“Goods”** includes; where appropriate, services.
- 1.38. **“Hammer price”** means the price established by the highest bidder and acknowledged by the auctioneer before dropping the hammer/gavel or announcing the close of the auction by any other customary means.
- 1.39. **“Insolvency Act”** means the Insolvency Act, No. of 24 of 1936.
- 1.40. **“Liquidator”** means an insolvency practitioner as defined by the Insolvency Act.
- 1.41. **“Live on-location or on-site auction”** means the competitive marketing and disposal of goods/assets whereby buyers congregate physically at one place and the auctioneer takes bids from the floor.
- 1.42. **“Live webcast auction”** means an auction process similar to online auction, except that bidders can participate remotely from any location around the world on the Internet via live link to a ‘live on-location’ auction site. Both online and live webcast auctions have the advantage and convenience of saving the buyer the cost of travel and loss of productivity.
- 1.43. **“Livestock”** includes cattle, sheep, goats, pigs, horses, mules and donkeys.
- 1.44. **“Lot”** means any item or group of goods sold or offered for sale as a unit and identified as such.
- 1.45. **“Market value”** means the highest price that goods/assets will bring in a competitive and open market under all conditions requisite to a fair sale; where the buyer and seller are each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus.
- 1.46. **“Master”** means the officer of the High Court defined in terms of the Administration of Estates Act.
- 1.47. **“Mock auction”** means an auction in which:-
- (a) goods are sold for less than the highest bid, or part of the purchase price is repaid or credited to the purchaser;
 - (b) the right to bid for goods is restricted to persons who have bought or have agreed to buy other goods; or
 - (c) any goods are given away as gifts.

- 1.48. **“Motor vehicle”** means a motor vehicle as defined in terms of the National Road Traffic Act.
- 1.49. **“Multiple property auction”** means an auction process which allows portfolios of properties belonging to one or more sellers to be marketed and sold to buyers at a single event, essentially providing a mechanism to sell properties in bulk. Multiple auctions can be conducted at hotels or conference venues, and are facilitated by large screens where buyers can experience virtual tours and view pictures and videos of the properties for which they intend to bid. Among others, multiple property auctions have the advantage that they facilitate a high profile event at a reasonable marketing cost and they realize higher prices by attracting a wide buyer network thereby encouraging competition between buyers.
- 1.50. **“Multi-Par auctions”** means an auction method that uses a sophisticated computer program to sell undeveloped land and apartments per square meter. The computer program is designed to protect individual buyers from big developers as it allows them to place their highest bid on a single plot or single unit.
- 1.51. **“National Road Traffic Act”** means the National Road Traffic Act, No. 93 of 1996.
- 1.52. **“No sale fee”** means a charge paid by the owner of goods/assets offered at a reserve auction in the event where the goods/assets does not sell.
- 1.53. **“Online auction”** means a competitive marketing and disposal of goods/assets conducted on an Internet based platform for a pre-determined period of time with each lot sequentially closing at a given time. Prospective buyers bid online from the comfort of their offices or homes. Online auctions enable buyers to bid against each other with the system acting as an invisible auctioneer and regulating bid increments and the entire bidding process. Bid prices are updated in real time as bidding progresses and the highest bidder wins at the close of the bidding.
- 1.54. **“Open house”, “viewing” or “inspection”** means specified date and time an immovable property is available for prospective buyers viewing and audits.
- 1.55. **“Opening bidder”** means the first bid offered by a bidder at an auction.
- 1.56. **“Owner” or “rightful holder”** means the person who holds the legal title to goods or property, that person’s successors and assigns and an agent of that person.
- 1.57. **“Person”** means any natural person, and **“juristic person”** means an entity; whether or not it has a separate legal personality, which is not a natural person and includes a body corporate, company, close corporation, trust, partnership or an association.
- 1.58. **“Reserve” or reserve price”** means the minimum price that a seller is willing to accept for goods/assets to be sold at auction.
- 1.59. **“Rules of auction”, “conditions of sale” or “terms & conditions”** means the legal terms that govern the conduct of an auction, including acceptable methods of payment, terms, buyer’s premiums, possession, reserves and any other limiting factors of an auction. The CPA prescribes that the rules of auction must be published twenty four (24) hours before the auction

(in the event of movable auctions) and at least five (5) days before the auction (in the event of immovable auctions) and also announced by the auctioneer prior to the start of the auction.

- 1.60. “Seller”** means the person who signs the mandate for an auctioneer to sell goods on auction, including the owner or rightful holder.
- 1.61. “Seller’s commission”** means that the seller pays the auctioneer from the proceeds of the auction. In the event of a seller’s commission, the buyer only pays for the amount of his bid price plus transfer costs and other associated costs such as vat or transfer duty, whichever is applicable. For example if a property is auctioned for R1,000,000-00 and the rate of the seller’s commission is 10%, the auctioneer will be paid R100,000 from the proceeds, thus leaving the seller with net proceeds of R900,000.
- 1.62. “Seller’s settlement”** means a report issued to the seller by the auctioneer or auction company detailing the financial aspects of the auction.
- 1.63. “Subject to confirmation (STC)”** refers to an auction where:-
- (a) the sale of the goods is not complete at the fall of the hammer or close of the auction because the reserve price determined by the seller was not met; and
 - (b) the auctioneer knocks the hammer or closes the auction provisionally to the highest bidder STC by the seller within a predetermined confirmation period.
- 1.64. “Tie bids”** means when two or more bidders bid exactly the same amount at the same time. The auctioneer has the duty to resolve by the auctioneer.
- 1.65. “URL”** means an operational uniform resource locator, providing access to information on the internet.
- 1.66. “Valuation”** means a written or oral statement, independently objectively and impartially prepared by a qualified valuer, prepared in accordance with generally accepted valuation standards, setting forth an opinion of defined value of an adequately described asset, as of a specific date, supported by the presentation and analysis of relevant market information.
- 1.67. “Vendor bidding”** means an auction where the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, bids at the auction with the intention of protecting the owner’s reserve price.
- 1.68. “Vendor’s roll”** means the document contemplated in regulation 28 (4), in which all details of the auction are recorded.
- 1.69. “Voetstoets”** means selling or purchasing goods/assets at one’s own risk, without guarantees or warranties as to the condition and/or the fitness of the goods/assets for a particular use, otherwise known as *“As Is, Where Is”* and *“In its Present Condition”*. Buyers are solely responsible for examining and judging the goods/assets for their own protection.
- 1.70. “Withdrawal”** means taking an item or asset out of an auction because of failure to reach the reserve price or due to insufficient bidding.