Mining & Commercial - Sale 28

BIDDERS CHOICE (PTY) LTD ONLINE AUCTION TERMS & CONDITIONS – MOVEABLE ASSETS

Auction closing date:	**18 May 2023**
Payment date by:	**25 May 2023**
Collection date by:	**1 June 2023**

By participating in this Online Auction, you consent to be bound by these terms and conditions in addition to our general terms and conditions as well as any additional terms that may be imposed by the seller or announced at the auction, included within the Notice to Purchasers, Rules of Auction and/or set forth on individual asset lot pages. For the purposes of these terms and conditions, we refer to any person or entity registering to offer or offering to buy goods as a "buyer" regardless of whether any contract of sale is concluded.

1. Auctioneer's role in Online Auctions

For the purpose of the Online Auction, Bidders Choice (Pty) Ltd will be the auctioneer and agent for the seller (the "Auctioneer") and will sell goods to a buyer. The Auctioneer may at its discretion or upon the instruction of the seller:

(a) alter or withdraw all or any lots up to the moment at which such lot(s) are indicated as "SOLD" (the "Announcement of Sale");
(b) Where a reserve has been placed on any lot, withdraw that lot in the event that the highest bid price at the end of the Online Auction does not meet the reserve;
(c) Bid for any lot or lots offered for sale at the Online Auction on its own account
(d)Bid for any lot or lots offered for sale at the Online Auction on behalf of third parties
(e) Bid for any lot or lots offered for sale at the Online Auction on behalf of sellers but, if on behalf of sellers, not at or in excess of the reserve price; and/or
(f) Combine (including in bulk), sub-divide or amend a lot or lots as the Auctioneer deems appropriate.

The Auctioneer, Bidders Choice (Pty) Ltd, any Bidders Choice Group Company or an Associated Auctioneer may participate as sellers in Online Auctions from time to time.
Buyers agree that Bidders Choice and/or, where applicable, the Auctioneer may at any time and from time to time without notice: (i) discontinue an Online Auction either temporarily or permanently; or (ii) extend an Online Auction beyond the period indicated on the Site.

2. Sale

Unless otherwise indicated, all lots are offered subject to a reserve, which is the confidential minimum price below which a lot will not be sold. The reserve price may be decreased by the Auctioneer or seller at any time before or during the online auction. The reserve price may be decreased to the level of the highest Autobid if that bid is below the current reserve price with the effect that the highest Autobid may be accepted.
Subject to the reserve price (if any) being met, each lot shall be sold to the highest bidder. All sales are final.

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In the event of any dispute arising between buyers such dispute shall be dealt with in such manner as the Auctioneer may in its absolute discretion determine. The Auctioneer reserves the right to resell any lot in dispute by putting it up for auction again. The Auctioneer reserves the right to rescind any sale for any reason in which case the buyer's sole remedy shall be the refund of the amount of the purchase price and any Buyer's Premium actually paid.
The completion of a sale shall be indicated on the Site by showing the item as "SOLD" online - if an Online Auction for a lot closes without the lot being sold, it will show as "CLOSED", if a lot is withdrawn, it will show as "WITHDRAWN".

3. Regulation
Bidding shall be regulated by the Auctioneer in such manner as it may think fit and, without prejudice to the generality of the foregoing, the Auctioneer may without ascribing any reason therefore, refuse to accept any bid or may facilitate automatic bids on behalf of buyers during the Online Auction process.

4. Notice to Purchasers
The Site will show a separate Notice to Purchasers for each Online Auction which will stipulate a payment date ("Payment Date") for each lot in an Online Auction and the date by which the goods will have to be removed by the successful buyer ("Clearance Date" or "Removal Date") and certain other terms and conditions which form part of these Terms and Conditions.

5. Buyer's Premium
The buyer will pay to the Auctioneer such premium ("Buyer's Premium") on the Announcement of Sale as stipulated in the Notice to Purchasers for the Online Auction in question to which will be added any applicable value added tax or the equivalent or similar sales taxes in the relevant jurisdiction at the current rate. The Buyer's Premium is not negotiable and is payable by all buyers. The Auctioneer, when acting as agent for the seller, may also receive commission from the seller.

6. Buyer's obligations
(a) Payment
Unless otherwise provided for in the Notice to Purchasers for the Online Auction in question, immediately after the Announcement of the Sale, the successful buyer shall pay a R 10 000.00 deposit towards the purchase price. Where applicable, buyers expressly authorise Bidders Choice and/or the Auctioneer to charge buyers' credit cards for the amount of such deposit. If a successful buyer fails to make a timely deposit, the Auctioneer and the seller may resell the item in question without notice. In addition, unless otherwise provided for in the Notice to Purchasers, the successful buyer shall pay the full purchase price of the lot (including in addition Buyer's Premium and any value added tax or the equivalent or similar sales taxes) to the Auctioneer on behalf of the seller (in cleared funds) on or before the Payment Date. More information about the applicable taxes may be given in the Notice to Purchasers for the Online Auction in question, however, buyers should seek their own tax advice. The buyer agrees that invoices may be issued in electronic form by email. Payment shall be made in the currency specified on the relevant Notice to Purchasers. Any bank charges in respect of conversion or transfer of monies shall be met by the buyer. If goods are exported, tax refunds or zero rating may apply, tax refunds (if any) will be made by the Auctioneer, subject to receipt of (i) satisfactory proof of export by the buyer; (ii) the corresponding amount of tax refund from the relevant tax authority or the seller and (iii) the relevant tax forms (if applicable).

(b) Collection/Removal
Unless otherwise provided for in the Notice to Purchasers for the Online Auction in question, the buyer will:
(i) remove lots from the seller's premises during normal business hours and not later than the Clearance Date/Removal Date for the lot in question and this condition shall be of the essence of the contract;
(ii) only remove lots by previous arrangement with, and subject to the supervision of, the Seller or its agent(s) or appointed representative(s);
(iii) not be permitted to remove any lots it has purchased from the seller's premises until all sums due in respect thereof have been paid; and
(iv) be responsible for the removal and insurance of the purchased lot(s) at its own expense.

If the lots are not removed from site before or on the Removal Date, the Seller reserves the right to charge the Purchaser storage fee of R 500.00 excl. VAT per lot per day from the first day of breach of contract in terms of the Removal Date, up until the final date of removal.
If, in the Auctioneer's opinion, removal of any lot or part thereof will be likely to cause serious damage to the seller's premises, or any other damage which the buyer is either unable or unwilling to rectify, the Auctioneer may by notice to the buyer rescind the sale of such lot or permit the removal thereof from the premises to proceed subject to such conditions as it may think fit to impose. Bidders Choice shall have no responsibility to disconnect utilities to the sold asset, including electric, gas, waste and water lines.
The buyer shall provide, or ensure that their agent(s) performing removals on its behalf, provide on demand, evidence of insurance policies reasonably satisfactory to the Auctioneer, Bidders Choice and/or the Seller.
Should any party claim possession of or title to all or part of a lot prior to its removal from the seller's premises, the Auctioneer reserves the right to rescind the sale thereof or to remove or permit the removal thereof from the seller's premises subject to such conditions as it may think fit to impose. Should the buyer fail to comply with any of the foregoing requirements the lot or lots which have been subject to an Announcement of Sale to him or any part thereof may, without further notice, be re-offered for sale, destroyed or otherwise disposed of by the Auctioneer in any manner as it shall in its absolute discretion deem fit, and any monies paid shall be forfeited.
Without prejudice to any claims that the Auctioneer and/or the seller may have against the buyer for breach of contract or otherwise the buyer will become liable from the Clearance Date/Removal Date for all storage, security and administration expenses and the cost of and incidental to re-selling and/or otherwise disposing of uncleared items.

7. Buyer's responsibilities and conduct
The buyer will be responsible for all damage that it, its carriers or its agents may do to the property of any third party (and, in particular, to the seller's premises) in removing the lot(s) it has purchased. Should the Auctioneer consider such damage likely to occur, it may require the buyer to deposit such sum of money with the Auctioneer, by way of security for the costs of reinstating that part of the premises likely to be damaged by the removal of a lot, as the Auctioneer may require. Should the buyer refuse to deposit such monies, the Auctioneer may refuse the buyer access to the seller's premises for the purpose of collecting all or any of the lots it has purchased, or rescind the sale of such lot.
By placing a Bid on a lot, the buyer represents warrants and undertakes that it has the authority and capacity to enter such Bid and close the transaction and that any Bid that it makes constitutes an irrevocable offer to buy the lot in question for the full amount of the Bid.

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8. International statutory compliance exclusion

(a) It is expressly brought to the buyer's attention that, at the time of sale, any item of plant, machinery or equipment contained in the lot(s):
may not necessarily comply with the Occupational Health and Safety Act 1993, National Environmental Management Act 1998, Environmental Conservation Act 1989 or any other South African Legislation Regulations, Directives or their applicable laws or equivalent or similar laws in any relevant jurisdiction or; and could contain blue or white asbestos, hazardous substances, dangerous chemicals etc. which if not handled correctly during their removal from a site could be in breach of the Environmental Conservation Act, Occupational Health and Safety Act 1993, or any other current legislations covering the use of such substances in a working environment in South Africa, Southern African Development Community ("SADC"), the UK, the EC, the United States or any other relevant jurisdiction.
(b) The buyer undertakes to:
remove, ship and use any purchased plant and equipment within South Africa or SADC or any other relevant jurisdiction in a way that does not contravene any relevant legislation and in full compliance with all applicable health and safety standards and regulations;
comply with all current applicable legislations in any relevant jurisdiction and reasonable instructions by the Auctioneer in relation to the removal/disposal of waste including hazardous waste.
Participants agree to comply with all applicable export or import control or related laws or regulations and not to violate any applicable local, state, national or international law, statute, ordinance, rule or regulation.
Participants acknowledge that the Auctioneer is not the exporter of any asset unless expressly stated. The Auctioneer gives no representation or warranty concerning and has not conducted any investigation to ascertain which items, if any, constitute, for example, "Restricted Technology" for US law purposes or whose export is otherwise restricted under applicable law. The Auctioneer and the seller reserve the right to cancel or rescind any sale in an Online Transaction at any time if either of them determines, in its absolute discretion, that the sale does or may violate applicable export or import control or related laws and regulations.

9. Intellectual Property Rights

The buyer acknowledges that any software or intellectual property rights attaching to a lot or lots may not be the property of the seller or capable of transfer by the seller. Neither the seller nor the Auctioneer is in any way authorising the use by the buyer of such software or intellectual property rights and any use of such software or exploitation of such intellectual property rights shall be at the buyer's sole risk.

10. Transfer of risk

Upon the Announcement of Sale the buyer shall assume all risks in and relating to such lots. The buyer is advised to effect in respect of all such risks arising thereafter any insurance it may consider necessary. The duty of the Auctioneer and/or the seller to make lots available shall be deemed performed upon Announcement of Sale even if a lot is subsequently damaged and/or part thereof has been lost.
Property and title in each lot shall not pass to the buyer until:
(a) full payment therefore has been received or (where payment or part payment is made by cheque) until the
cheque(s) in question have been cleared; and
(b) each such lot has been removed from the seller's premises in its entirety.

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11. As Is

All goods are sold "AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT RECOURSE". Illustrations, pictures or videos posted on the Site are for the convenience of the buyers only.

The seller, the Auctioneer and, where applicable, Bidders Choice has used its reasonable endeavours to ensure that the description of each lot(s) appearing on the Site are accurate, but the buyer relies upon such description at its own risk. Buyers should satisfy themselves prior to the sale as to the condition of the lot and should exercise and rely on their judgment as to whether the lot accords with its description at their own risk.

Subject to the obligations accepted by Bidders Choice and, where applicable, the Auctioneer under these Terms and Conditions neither the seller nor Bidders Choice nor, where applicable, the Auctioneer nor any of their respective employees or agents are responsible for errors of description or for the genuineness or authenticity of any lot and no warranty whatever is given by Bidders Choice or, where applicable, the Auctioneer, or the seller or their respective employees or agents to the buyer in respect of any lot and any express or implied conditions or warranties are hereby excluded to the greatest extent permitted by law.

The Buyer acknowledges and agrees that the Seller has not made any warranties or undertakings of any nature whatsoever regarding the serviceability of the goods. The Buyer shall be solely responsible for having the goods calibrated, inspected, overhauled or taking any other steps necessary to make the goods serviceable and suitable for its own use."

12. Liability

Where the buyer loads any item of plant, machinery or equipment contained in a lot or lots to remove it from a site, neither the seller nor Bidders Choice nor, where applicable, the Auctioneer shall be under any liability whatsoever to the buyer or any third party for any damage however so caused by the removal and the buyer shall be responsible for and indemnify the seller and Bidders Choice and, where applicable, the Auctioneer against any damage or loss which the seller or Bidders Choice or, where applicable, the Auctioneer may suffer or incur in respect of loss, damage or injury suffered by the buyer's employees or any third party arising from the removal of the plant, machinery or equipment.

The Auctioneer is acting as agent of the seller in an Online Auction and is not responsible for acts and omissions of the seller or any of the seller's principals, officers, directors, employees or other agents.

13. Limitation of liability

Neither seller nor Bidders Choice nor, where applicable, the Auctioneer shall be liable, in contract, tort (including negligence) or for breach of statutory duty or in any other way for:

1. any loss arising from or in connection with loss of revenue, profits, contracts or business or failure to realise anticipated savings or profits;
2. any loss of goodwill or reputation; or
3. any indirect or consequential losses suffered or incurred by buyer,

arising out of or in connection with these Terms and Conditions and any of the actions or events contemplated within them or deriving from a sale of goods pursuant to them (“Relevant Events”).

The aggregate respective liability of seller or Bidders Choice in respect of any other loss or damage suffered by a buyer and arising out of or in connection with these Terms and Conditions or arising out of or in any way connected with any Relevant Events, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed (i) in the case of the

seller, the amount of the purchase price paid by the buyer; and (ii) in the case of Bidders Choice the buyer's premium paid by the buyer, in each case in respect of the goods which are the subject of the claim. The Buyer undertakes to defend (by counsel satisfactory to BIDDERS CHOICE) and indemnify Bidders Choice and seller and hold BIDDERS CHOICE and seller harmless from and against any claim, demand, cause of action, liability or expense (including attorneys' fees and costs) asserted against or incurred by Bidders Choice the seller or any third party in connection with the sale, removal, shipment or use of any purchased assets or a breach by the Buyer of these Terms and Conditions. Nothing in this clause shall limit or exclude liability for death or personal injury resulting from the negligence of seller or Bidders Choice or their respective employees or agents.
Notwithstanding any contrary provision in these Terms and Conditions, neither the Seller nor Bidders Choice limits or excludes its liability in respect of fraud, or any other statutory or other liability which cannot be excluded under applicable law.

14. Choice of Law and Venue
ALL DISPUTES RELATING TO THESE TERMS AND CONDITIONS BETWEEN PARTICIPANTS AND THE AUCTIONEER SHALL BE EXCLUSIVELY GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF SOUTH AFRICA.
PARTICIPANTS AND THE AUCTIONEER HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE SOUTH AFRICAN COURTS OVER ANY CLAIMS, DISPUTE OR MATTER ARISING UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THEIR ENFORCEABILITY. EACH PARTICIPANT ACKNOWLEDGES THAT BIDDERS CHOICE WOULD NOT PERMIT THE PARTICIPANT TO REGISTER AS A BUYER OR SELLER IF THE TERMS OF THIS CLAUSE 14 WERE NOT VALID, BINDING AND ENFORCEABLE.
Participants irrevocably consent to any process in any legal action or proceedings arising out of or in connection with these Terms and Conditions or its enforceability being served in accordance with the provisions of these Terms and Conditions relating to the service of notices. Nothing contained in these Terms and Conditions shall affect the right to serve process in any other manner permitted by the laws of the country in which service is to be affected.

If a sale consists of real property, the Participants and Bidders Choice agree, to do all things and execute all contracting deeds, assignments, instruments, transfers and other documents as may be necessary or desirable to give full effect to the transaction in that country.

Signed by the bidder: _____ **Bidder No: _____**
(who warrants that he/she is duly authorized)

Company: _____

Name: _____ **Date: _____**