

## ESFANÉ STUD CONDITIONS OF SALE

Terms and conditions applicable to all purchases made during the auction as well as to all private sales made before and after the auction, *mutatis mutandis*.

1. The auction is held under the control of Nicolaas van der Walt and his auctioneer, hereafter called Nico.
  - 1.1 Every bid is irrevocable and Nico shall have the sole power and discretion to: reject any bid, indicate the highest bid; change the sequence of sale; suspend the auction during the course; in the event of a dispute arising, declare a sale null and void and to put the livestock or goods up for resale.
  - 1.2 Nico, the seller and the buyer shall not be bound by any mistake made by Nico. Any such mistake shall be rectified immediately upon the discovery thereof.
  - 1.3 Nobody shall have any right of recourse against Nico with regard to the exercise of Nico's power/discretion as contemplated in Clause 1.1 above, or the correction of a mistake as contemplated in Clause 1.2 above.
  - 1.4 All livestock and goods are sold "voetstoots" as they stand. Without derogating from the generality of the foregoing, Nico shall not be held liable for or in respect of:
    - 1.4.1 any allegations contained in catalogues and/or advertisements; and/or
    - 1.4.2 any information supplied with regard to the quality, breeding, pedigree, age, date of service, condition, fecundity, production capacity, weight or any other aspect relating to the livestock; and/or
    - 1.4.3 any guarantee/warranty or misrepresentation, whether the same was made negligently or otherwise, made with regard to the livestock or goods; and/or
    - 1.4.4 any defects, whether latent or patent, in the livestock or goods.
  - 1.5 The buyer acknowledges that no employee of Nico is entitled to furnish any guarantee/warranty or make any representations whatsoever on behalf of Nico with regard to the livestock or goods offered for sale. The buyer acknowledges further that any information given with regard to the livestock or goods offered for sale is given by or on behalf of the seller. The buyer's rights of recourse, if any, shall be exercised solely against the seller.
  - 1.6 Each lot shall be deemed to be delivered to the buyer on the fall of the hammer and shall thereafter be at the risk of the buyer, who shall, at his own costs, remove the same from the auction grounds.
2. Every seller warrants that his livestock is free from any controlled animal disease and Nico shall under no circumstances whatsoever be held liable by anybody whomsoever for any loss or damage of any nature whatsoever, whether direct or indirect, consequential or otherwise, should the livestock be placed under quarantine as a result of the presence of a controlled animal disease under any livestock on the auction grounds. Nico shall have the right to suspend the auction and declare every sale null and void, and nobody shall have any right of recourse against Nico with regard to the exercise of this right of Nico.
3. Entries made on the auction list shall serve as *prima facie* proof of the particulars of the transactions there in recorded.
4. Any person who bids, does so in his personal capacity, unless Nico prior to the auction accepts the power of attorney/authority given to such person by his principal. Should a dispute arise at any stage with regard to the existence or validity of such power of attorney/authority, the person who made the bid shall, without derogating from any right, Nico may have against his principal, immediately become personally liable for any amount owing as a result of such bid. Should it transpire that the principal can also be held liable, the liability of the bidder and the principal shall be joint and several.
- 5 All sales are strictly cash and the purchase price is payable to Nico on the fall of the hammer, unless otherwise agreed to in writing with Nico prior to the sale. Internet banking facilities will be available on Nico's premises.
  - 5.1 Any instructions, which must be in writing, given to Nico with regard to the loading and/or transport and/or insurance and/or care of the livestock or goods, are carried out at the sole risk of the buyer, and Nico shall not be held liable for any loss or damage of any nature whatsoever, whether direct or indirect, consequential or otherwise, sustained as a result of any conduct or omission, whether negligent or otherwise, on the part of Nico. Any agreement which may be conducted by Nico with the carrier or insurer, is concluded by Nico as the agent of the buyer. All transport costs and insurance premiums are payable to Nico in advance in cash. Parties requiring any permits shall be personally responsible for obtaining same.
  - 5.2 Livestock and goods stay the property of the seller, and will only change ownership and may only be removed from Nico's premises, after the buyer has paid the purchase price in full to Nico, and Nico issued an invoice which will serve as a removal certificate.
6. All legal costs, including collection commission, incurred by Nico as a result of any non-compliance by the buyer with any of the latter's obligations in terms hereof, shall be recovered by Nico from the buyer on the scale as between an attorney and his own client.
7. The buyer and the seller hereby, as is contemplated in section 45 of Act No. 32 of 1944, consent to the jurisdiction of the Magistrate's Court, which has jurisdiction over the buyer or seller in terms of Section 28 of the said Act, in respect of any action which Nico may institute against the buyer or the seller,

notwithstanding that the matter, cause of action, amount of claim may otherwise exceed the jurisdiction of that Court. Notwithstanding the foregoing, Nico shall, in its sole and absolute discretion, be entitled to institute action in any Supreme Court of competent jurisdiction.

8. No relaxation of indulgence granted by Nico to the buyer or the seller shall be deemed to be a waiver of any of Nico's rights in terms hereof and such relaxation or indulgence shall not be deemed to be or construed as a novation hereof.
9. Nico shall be entitled, without prior notice, to add to, curtail or alter these terms and conditions.