

Terms & conditions of sale

A. DEFINITIONS:

1. In these conditions of business, headnotes are for convenience only and shall not be used in their interpretation, any expression which denotes any gender shall include the other gender, any expression which denotes the singular shall include the plural (and vice versa), any expression which denotes a natural person shall include a juristic person (and vice versa) and the following terms shall have the following meanings:
 - i. "auction" means any private treaty or auction sale at which a lot is offered for sale
 - ii. "The CWA" means The Afrasia Bank Cape Wine Auction
 - iii. "auctioneer" means the representative of The CWA conducting an auction;
 - iv. "bidder" means any person making, attempting or considering to make a bid or offer to buy a lot at an auction, or private treaty sale;
 - v. "Buyer" means the bidder who makes the bid or offer for any lot that is finally accepted by the auctioneer (after determination by the auctioneer of any dispute that may exist in respect thereof) at a sale of that lot, and (where the Buyer is an agent acting for a principal), the Buyer and the Buyer's principal jointly and severally;
 - vi. "Buyer's premium" means the premium payable (if applicable) by the Buyer of a lot to The CWA on the sale of that lot, calculated on the hammer price of that lot at the relevant current rates;
 - vii. "catalogue" means any advertisement, brochure, estimate, price-list, condition report and other publication (in whatever medium, electronically or otherwise) published by The CWA in respect of any auction;
 - viii. "current rates" means The CWA's current rates of commission, premiums and other amounts payable to The CWA for the time being, together with VAT thereon (if any), all as published by The CWA (whether in a catalogue or otherwise) or as agreed between a prospective Buyer or Auctioneer (as the case may be) and The CWA;
 - ix. a "deliberate forgery" means an imitation made with the intention of deceiving as to authorship, origin, date, age, period, culture or source, which is not shown to be such in the description in the catalogue and which at the date of the sale had a value materially less than it would have had if it had been in accordance with that description and includes any misrepresentation made with intention of deceiving as to authorship, origin, date, age, period, culture or source;
 - x. "hammer price" means the bid or offer made by the Buyer for any lot that is finally accepted by the auctioneer (after determination by the auctioneer of any dispute that may exist in respect thereof) at a sale of that lot, together with VAT thereon (if any);
 - xi. "lot" means any item or items to be offered for sale by The CWA at an auction or private treaty sale;
 - xii. "prime rate" means the publicly quoted base rate of Interest as being its prime overdraft rate;
 - xiii. "private treaty" means the sale of any lot other than by auction sale at a price privately agreed on by the Buyer and Seller;
 - xiv. "purchase price" means the hammer price of any lot at a sale thereof, plus the applicable Buyer's premium for that lot (if applicable), plus all recoverable expenses for which the Buyer is liable in respect of that lot;
 - xv. "recoverable expenses" includes all fees, taxes (including VAT if applicable), charges, and expenses incurred by The CWA in relation to any lot that The CWA is entitled to recover from a Buyer or Seller;
 - xvi. "reserve" means the confidential minimum hammer price (if any) at

which a lot may be sold at an auction as agreed between the Buyer of that lot and The CWA in writing;

- xvii. "sale proceeds" means the amount due to The CWA by the Buyer of a lot in respect of the sale of that lot, made up of the hammer price of the lot, less the applicable Auctioneer's commission (if applicable) for that lot, less all recoverable expenses for which the Seller is liable in respect of that lot and any other amounts due to The CWA by the Buyer in whatever capacity and howsoever arising (if applicable);
- xviii. "sale" means the sale of any lot at an auction, whether done by private treaty or auction sale, and "sell" and "sold" shall have corresponding meanings;
- xix. "Seller" means the person named as the Seller of any lot, being The CWA offers the lot for sale;
- xx. "Auctioneer's commission" means the commission payable by the Buyer to The CWA on the sale of a lot that is calculated on the hammer price of that lot at the relevant current rate (if applicable);
- xxi. "VAT" means value added tax levied in terms of the Value Added Tax Act, 1991.

B. GENERAL TERMS AND RULES OF AUCTION

Every auction and/or sale shall be governed by these terms, section 45 of the Consumer Protection Act 68 of 2008 ("the Act") and the rules of auction and in accordance with the laws of South Africa.

The provisions of section 45 reads as follows:

1. Auctions

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.

- i. 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.
- ii. 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.
- iii. Notice must be given in advance that a sale by auction is subject to:
 - i. A reserved or upset price; or
 - ii. A right to bid by or on behalf of the owner, 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.
- iv. 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:
 - i. The auctioneer must not bid or employ any person to bid at the sale;
 - ii. The auctioneer must not knowingly accept any bid from a person contemplated in paragraph A.1.5 (a); and
 - iii. The consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.
- v. The Minister may prescribe requirements to be complied with by an auctioneer, or different categories of auctioneer, in respect of:
 - i. The conduct of an auction;
 - ii. The records to be maintained with respect to property placed for auction; and
 - iii. The sale of any such property by auction.

2. The rules of the auction are those promulgated in terms of the Regulations promulgated by the Minister of Trade and Industry dated 23 November 2010 under Government Gazette No. 33818 on 1 April 2011 and any subsequent amendment and/or variation to the rules and these terms.
 3. The auctioneer is the agent for the CWA.
 4. These conditions of Purchase, as amended by addenda or oral announcements during the sale, constitute the entire terms and conditions of seller with respect to the sale and purchase of auction lots listed herein. By bidding, the bidder agrees to be bound by these Conditions of Purchase.
 5. Seller does not warrant or represent, expressly denies responsibility for, and in no event shall be liable for, the accuracy of the description of the wines (or other items) offered, or the correctness of the catalogue, including, but not limited to: the origin, rarity, age, genuineness, quantity, aging potential, present and future quality or condition of wines offered.
 6. All bids are per lot as announced by the auctioneer, listed in the catalogue.
 7. All statements by seller are merely statements of opinion and are not to be relied upon by prospective purchasers as warranties or representations of fact, and prospective bidders, by so bidding, acknowledge that they have inspected the wines to their satisfaction and bid only as a result of their own inspection and opinion. All wine is sold on strictly a "Voetstoots" basis.
 8. Auctioneer may, at any time prior to the close of any auction (or fall of the gavel in a live auction), withdraw the lot from sale.
 9. Auctioneer shall have the right to reject any bid at any time prior to the close of any auction (or fall of the gavel in a live auction). Bids will be accepted only from registered bidders.
 10. In the event of there being a discrepancy between the rules and the terms herein, the rules shall be operative and overriding.
 11. Every bid constitutes an offer, open for acceptance by the Auctioneer and such acceptance shall be signified by the fall of the hammer, or by the acceptance of the offer by The CWA in the event of a private sale.
 12. Buyers are solely responsible to satisfy themselves prior to auction/ private treaty sale as to the condition of each lot and should exercise and rely on their own judgement as to whether the lot accords with the description or not.
 13. Any lot which proves to be a 'deliberate forgery' (which will only be the case if an expert appointed by The CWA for such purposes confirms same in writing) may be returned by the Buyer (as his sole remedy hereunder or at law) to The CWA within 21 day of the date of auction in the same condition in which it was at the time of the auction, accompanied by a statement of defects, the number of the lot, and the date of the auction at which it was purchased. If The CWA is satisfied that the item is a 'deliberate forgery' and that the Buyer has and is able to transfer a good and marketable title to the lot, free from any third-party claims, the sale will be set aside and any amount paid in respect of the lot will be refunded, subject to the express condition that the Buyer will have no rights or claims against The CWA if:
 - i. the description in the catalogue at the date of the sale was in accordance with the then generally accepted opinion of scholars and experts or fairly indicated that there was conflict of such opinion; or
 - ii. the only method of establishing at the date of publication of the catalogue that the lot was a deliberate forgery was by means of a scientific process not generally accepted for use until after publication of the catalogue, or by a process which was unreasonably expensive or impractical;
 - iii. Buyer's claiming under this condition will be limited to any amount paid in respect of the lot and will not extend to any loss or damage of whatsoever nature suffered or expense incurred by him/her;
 - iv. the benefit of this condition will not be assignable and will rest solely and exclusively in the Buyer who, for the purpose of this condition, will be and only be the person to whom the original invoice is made out by The CWA in respect of the lot sold. The CWA will have the sole, exclusive and absolute right, at its discretion to refuse admission to any person to its premises or any other premises at which such auction is to be conducted.
 14. The CWA has the sole and absolute discretion without having to give any reasons therefore, to refuse any bid, withdraw or reoffer lots for auction (including after the fall of the hammer, cancel any sale if the Auctioneer and/or The CWA believes that there may be an error or dispute of any nature whatsoever, and shall have the right, as it deems fit, to divide any lot, to combine any two or more lots, or to put up any lot for auction again. Any notice required to be given in connection with this agreement:
 - i. if given by The CWA, shall be delivered by hand, or sent by registered post; or by email, provided such address is given in which event such address shall constitute the domicilium et citandi et executandi of the person to whom notice must be given. Notice shall be deemed to have been received by the person who is required to receive such notice, whether given personally or to a third party or any other manner as envisaged by this clause:
 - i. on the date of delivery if delivered by hand or email;
 - ii. on the seventh (7th) day from the date of posting, including the date of posting, if posted by prepaid registered post from within the Republic of South Africa, which postage shall be deemed to have been sent on receipt of the post office of proof of posting.
 15. If required by The CWA, such written notification must be given to The CWA at its email address as published in the brochure, alternatively The CWA's published address and/or telephone number.
 16. The Seller submits to the non-exclusive jurisdiction of the South African courts.
 17. The Buyer and/or Seller, as the case may be, hereby pledges the goods either sold and/or bought as security to The CWA for amounts which are owing to it.
 18. No variation, alteration, consensual termination, representation, condition, term or warranty, relaxation or waiver or release by The CWA, or estoppel against The CWA, or the suspension by The CWA, in respect of these terms and conditions of business, or any part thereof, shall be of any force or effect unless reduced to writing and signed by The CWA and the Buyer.
 19. The Buyer shall be responsible for the payment of The CWA's legal costs, calculated on the scale as between attorney and client, incurred by The CWA in enforcing any of its rights of its principal whether such rights are exercised by way of legal proceedings or not.
 20. Notwithstanding the nature or amount of the claim by The CWA, The CWA and the Buyer hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction; this consent is without prejudice to the right of The CWA to institute proceedings and to obtain judgment or any order in the High Court of competent jurisdiction, The CWA nevertheless still being entitled to claim on the High Court scale of costs and expenses, all as set out in this agreement.
- C. TERMS RELATING TO BUYERS OF GOODS AT AN AUCTION OR BY PRIVATE TREATY**
- 1. Buyer's Registration**
 - i. Buyer bidders must prior to the commencement of an auction register his/her identity on The CWA's Buyer's card and such registration must with the necessary changes meet the requirements of Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act, 2011, published in Notice No. R. 1595 in Gazette No. 24176 of 20 December 2002, in respect of establishment and verification of identity, and sign that entry.
 - 2. Auction Bids**
 - i. The goods (lots) sold shall be to the highest bidder whether the sum bid be equivalent to the real value or not. Where the sale is announced to be with reserve, the goods shall be sold to the highest bidder either on or in excess of the reserve price.
 - ii. No person shall, at any bid, advance less than the amount fixed for that purpose by the Auctioneer. Bids can be retracted before the fall of the hammer but the Auctioneer may refuse any bid.

- iii. Should there be a dispute as to the highest bid, even after the fall of the hammer the auctioneer shall in his sole and absolute discretion, determine which bid shall be accepted and The CWA and/or the Auctioneer shall be absolved of any liability of any nature whatsoever in regard thereto. In the event of a dispute the Auctioneer may determine the dispute in his absolute discretion, or the property may, at the Auctioneer's option, either be put up again at the least undisputed bid, or be withdrawn.

3. Absentee Bids

- i. Upon request, The CWA shall execute absentee bids on behalf of intending Buyers. Absentee bids are a service provided by The CWA for the Buyers benefit and The CWA cannot be held responsible for errors or omissions with respect to the bidding process. Lots will be bought as cheaply as is allowed by other bids placed and the Seller reserves. In the event of identical bids, the earliest will take precedence. When absentee bids are placed by telephone they are accepted at the Buyer's risk, and must be confirmed prior to the sale by letter or facsimile.
- ii. All absentee bids shall be registered with The CWA in accordance with The CWA's procedures and requirements. The CWA reserves its rights, at its sole and absolute discretion, to receive and/or reject such absentee bids and/or to receive and/or reject absentee bids if not registered. Absentee bidders must register his/her identity as per clause 10.a above.

4. Telephone Bids

- i. Subject to a Buyer arranging with The CWA and subject to a Buyer completing such documentation as The CWA may require it to do, whether it be by fax or by electronic transmission, or any other form of transmission, a Buyer, on making such telephone call, is deemed to accept these Terms and Conditions and to be bound thereby and shall be permitted to bid by means of a telecommunication. The right of a Buyer to bid is subject to a telecommunication line being available, fully functional and operative. The person who makes the bid on the telephone shall be deemed to be the Buyer and shall be deemed to be personally liable for the payment of the purchase price and other amounts as are required to be paid. In executing bids on the telephone, the Buyer waives and abandons any claim howsoever or whatsoever arising against The CWA and/or the Auctioneer, including any act or omission and/or act of negligence and/or any act on the part of The CWA and the Auctioneer, or in failing to have regard or failing to take cognisance of such bid.
- ii. The CWA reserves its rights, at its sole and absolute discretion, to receive and/or reject such telephone bids and/or to receive and/or reject telephone bids if given less than twenty-four hours before the auction and/or private treaty sales.
- iii. The CWA reserves the right to record telephone bidding and the telephone bidder consents to such recording.

5. Payment

- i. The hammer price as defined in clause A.1.x above, including further amounts payable in terms hereof such as Value Added Tax (if any), shall forthwith become due, owing and payable to The CWA in full immediately upon the knock down of the hammer and/or acceptance of the offer.
- ii. Any payment by a Buyer to The CWA shall be applied by The CWA towards any sums owing by the Buyer to The CWA on any account whatever without regard to any directions of the Buyer or his/her agent, whether express or implied.
- iii. The purchase price shall be paid in South African Rands. Foreign Buyers are required to make arrangements with their banking houses to transfer forex funds equivalent to the Rand value as stated on the purchase tax invoice. All fees relating to this transfer of funds from the foreign bank to The CWA's South African account shall be for the account of the Buyer.
- iv. The CWA accepts only EFT's (electronic funds transfers) and Credit Card payments. No cheque payment or cash payments will be accepted.

COMPANY'S CURRENT ACCOUNT:

Name of Account: The Cape Wine Auction Trust
Name of Bank: Nedbank
Branch Code: 198765
Account Number: 1148964762
Swift code: NEDSZAJJ

6. Credit terms and Invoicing

- i. No credit shall be given to any Buyer unless prior to the auction The CWA has in its absolute discretion agreed in writing in response to a request to grant the Buyer credit. The Buyer shall make payment of such amounts of interest and other charges as are permitted in terms of the National Credit Act 34 of 2005. Ownership of the goods sold shall not vest and/or pass to the Buyer until such time as the full purchase price including VAT (if applicable) thereon and any other amounts have been paid in full.
- ii. Buyers will be invoiced within 72hrs of Auction and have 30 days in which to make payment in full, but no lot may be collected/ redeemed until such time as there has been full and final payment as confirmed by The CWA. Any amounts outstanding will attract interest at 2% above the ruling South African prime interest rate
- iii. Any auction lots unpaid 90 days after billing will automatically attract a 10% surcharge on the amount outstanding and be subject to legal proceedings being instituted by the CWA for collection of outstanding monies.

7. Collection of goods

- i. Ownership of the goods purchased by a Buyer shall remain vested in The CWA, until such time as the Buyer has made full payment to The CWA which payment includes the payment of the purchase price of the goods, The Auctioneers commission (if applicable), Value Added Tax on the sale (if applicable) and any other amounts as provided for herein.
- ii. The Buyer will be responsible for all packing, removal, insurance, transport and storage charges.
- iii. The Buyer will be responsible for the collection of the goods as per prior arrangement with the donor of the goods and only upon receipt of proof of payment that such goods have been paid for. Such proof of payment shall be obtained from The CWA.

8. The Buyer's Risk

- i. The Buyer shall be solely responsible for any loss of and/or damage to and/or diminution in value of and/or deterioration of any goods (lots) purchased at the auction immediately upon the knock down by the Auctioneer to the Buyer of the hammer price.

9. Breach by the Buyer

- i. Should the Buyer breach any of the terms and conditions thereof, alternatively not make payment in full or collect the items bought as provided herein, or should there be any other breach, the Auctioneer, agent for the Seller (alternatively The CWA in the event of it being the Seller of its own goods) will, and at its absolute and sole discretion, and without prejudice to any other rights it may have in law, be entitled to exercise one or more or all of the following remedies:
 - i. to institute proceedings against the Buyer for payment and/or damages for breach of contract;
 - ii. to cancel the sale of that or any other lots sold to the defaulting Buyer at the same time or at any other auction;
 - iii. to remove, store and insure the goods at the sole expense of the defaulting Buyer and if such goods are stored either at The CWA's premises or any other place as The CWA may require such goods to be stored at, the Buyer shall be responsible for all charges associated therewith;
 - iv. to charge interest on such monies as are due, owing and payable.