



# PARK VILLAGE AUCTIONS

*Trusted by banks, respected by buyers*

## SPECIAL CONDITIONS OF SALE

### FINSCH DIAMOND MINE (PTY) LTD (IN BUSINESS RESCUE) – TIMED ONLINE AUCTION

(To be read in conjunction with Park Village Auctions' Rules of Auction and Conditions of Sale)

Please note that some Assets are located in areas with restricted access. Purchasers, their transporters and any contractors must comply with all applicable mine health, safety, induction, vetting, access-control and security requirements. The allocated mine teams may assist with upliftment and loading onto the Purchaser's nominated transport vehicle. Such assistance does not include transportation or delivery of the Assets from the mine to the Purchaser's premises or any other destination.

#### AUCTION DETAILS

|                               |                                                                                                                                                                                                     |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Auctioneer</b>             | Park Village Auctions & Property Sales (Pty) Ltd t/a Park Village Auctions (Registration Number 2014/120424/07) ("PVA" or "the auctioneer")                                                         |
| <b>Physical address</b>       | Unit 10, Ferndale Mews North, 355 Oak Avenue, Ferndale, Randburg                                                                                                                                    |
| <b>Telephone / Email</b>      | 011 789 4375 / auctions@parkvillage.co.za                                                                                                                                                           |
| <b>Website</b>                | www.parkvillage.co.za                                                                                                                                                                               |
| <b>Seller</b>                 | Finsch Diamond Mine (Pty) Ltd (In Business Rescue) ("the Seller"), represented by its joint Business Rescue Practitioners, Luke Saffy and Danie van Jaarsveld ("the Business Rescue Practitioners") |
| <b>Reason for the auction</b> | Disposal of the Seller's movable assets by the Business Rescue Practitioners in the Seller's business rescue proceedings in terms of the Companies Act 71 of 2008                                   |
| <b>Type of auction</b>        | Timed online auction on PVA's bidding platform. There is no live auctioneer or webcast.                                                                                                             |
| <b>Closing</b>                | Lots close from 10h00 on Wednesday 30 September 2026, each at the closing time shown for that lot on the bidding platform, subject to extensions in terms of clause A48                             |
| <b>Location of the Assets</b> | Finsch Diamond Mine, Lime Acres, Northern Cape ("the Premises")                                                                                                                                     |
| <b>Registration deposit</b>   | See clause A15                                                                                                                                                                                      |

#### 1. DOCUMENTS APPLICABLE TO THIS AUCTION AND ACCEPTANCE

- 1.1 These Special Conditions of Sale ("these Special Conditions") apply to the timed online auction of the Seller's movable assets ("the Assets") described above ("the Auction"). They are to be read together with PVA's standard Rules of Auction and PVA's standard Conditions of Sale, which are incorporated into these Special Conditions by reference as if set out in full.
- 1.2 **In the event of any conflict or inconsistency between these Special Conditions and PVA's standard Rules of Auction and/or PVA's standard Conditions of Sale, these Special Conditions shall prevail to the extent of such conflict or inconsistency.**
- 1.3 Any notes, lot descriptions or additional terms published by PVA on the auction listing or on an individual lot on the bidding platform before that lot closes form part of these Special Conditions.
- 1.4 By registering for the Auction and/or placing a bid, the bidder/Purchaser expressly and irrevocably agrees to be bound by these Special Conditions, PVA's standard Rules of Auction and PVA's standard Conditions of Sale, in their entirety. No signature is required. Such

agreement is not dependent on the bidder having actually read the documents, and every bidder is deemed to have read, understood and accepted them.

- 1.5 These Special Conditions consist of Part A (Auction and Sale Terms), Part B (Removal, Upliftment and Transport of Mining Assets) and Part C (General). References to a clause with the prefix "A", "B" or "C" are to the clause of that number in the relevant Part.
- 1.6 Without limiting clause 1.2, the following provisions of PVA's standard Rules of Auction and/or Conditions of Sale do not apply to this Auction and are replaced by the clauses of these Special Conditions indicated:
- the sale being concluded, and the bidder becoming the purchaser, on the fall of the hammer or knock-down – replaced by clauses A6, A24, A26 and A48.7;
  - risk passing on the fall of the hammer or knock-down – replaced by clause A38;
  - payment forthwith at the conclusion of the day's sale, or within 48 hours of the sale – replaced by clause A34;
  - payments being non-refundable – replaced by clauses A15.3 and A25;
  - removal within 48 hours or 10 days of the sale and the related storage charges – replaced by clauses A39, B5 and B16;
  - buyer's premium – replaced by clause A40;
  - the 3% cash handling fee – replaced by clause A33;
  - acceptance of the offer by signature of the Conditions of Sale – replaced by clauses A24 and A55; and
  - any limitation of the damages or amounts recoverable from a defaulting purchaser – replaced by clause A57, to the extent permitted by law.

## **PART A – AUCTION AND SALE TERMS**

- A1. The auctioneer certifies that to the best of its knowledge and belief, these Special Conditions, read with PVA's standard Rules of Auction, comply with Section 45 of the Consumer Protection Act 68 of 2008 ("the Act") and the Regulations ("the Regulation/s") that have been published in terms thereof in Government Gazette No. 34180 on the 1 April 2011 and any amendment/s thereto from time to time.
- A2. Notice is hereby given that the Auction is subject to:
- 2.1 a reserved / upset price, where applicable and as announced or advertised;
  - 2.2 confirmation and written acceptance of the sale by the Seller and any approval, consent and/or ratification by the Business Rescue Practitioners, secured creditors and/or any other authorised party as may be applicable;
  - 2.3 a right on behalf of the Seller to bid at the Auction; and a right of the auctioneer to bid at the Auction on behalf of the Seller or as proxy for a registered bidder, subject to applicable law.
- A3. Only the auctioneer or its agent/s shall be entitled to bid up to the reserve price on behalf of the Seller but shall not be entitled to make a bid equal to or exceeding the reserve price.
- A4. The auctioneer has a non-interest bearing trust account into which all moneys will be paid for the benefit of the Seller, less any commission, fees or costs payable to the auctioneer in terms of these Special Conditions, PVA's standard Rules of Auction and PVA's standard Conditions of Sale. No interest shall accrue to the Purchaser on any deposit or payment held by the auctioneer.
- A5. These Special Conditions comply with and are subject to Section 45 of the Act and the following provisions are brought to the bidders' attention:
- "45 (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.”
- A6. Subject to any reserved price, the confirmation provisions applicable to the sale, and written acceptance by the Seller together with any required approval, consent and/or ratification, the highest bidder on a lot when that lot closes on the bidding platform shall be the successful Offeror. No bidder acquires any right to the goods/lots merely because a lot has closed with that bidder as the highest bidder where the sale is subject to confirmation.
- A7. Each bid will constitute an offer to the Seller on the terms contained in these Special Conditions, PVA's standard Rules of Auction and PVA's standard Conditions of Sale.
- A8. These Special Conditions, PVA's standard Rules of Auction and PVA's standard Conditions of Sale are available to the general public for inspection on the auctioneer's website ([www.parkvillage.co.za](http://www.parkvillage.co.za)), at the auctioneer's offices at the physical address above, and on the bidding platform.
- A9. Every prospective bidder must, before bidding, read and understand these Special Conditions, PVA's standard Rules of Auction and PVA's standard Conditions of Sale. A prospective bidder may not bid unless he or she has done so. Any queries in connection with these documents must be raised with the auctioneer before bidding.
- A10. Lots will close at the published closing times (see Auction Details and clause A48). Closing times will not be delayed to enable any specific person or other persons in general to take part in the Auction, save for the automatic extensions provided for in clause A48.
- A11. Any person who registers to bid on behalf of another person or a company/close corporation, trust or other entity must, at registration, provide a letter of authority expressly authorising him or her to bid on behalf of that person/entity. Where a person is bidding on behalf of a company/close corporation or other entity, the letter of authority must appear on the entity's letterhead and must be accompanied by a certified copy of the resolution authorising him or her to bid on behalf of the entity.
- A12. In terms of Regulation 20(2)(h)(iii) all prospective bidders must register his or her identity in the bidders' record prior to the commencement of the auction and such registration must meet the requirements of Chapter 1 of the Regulations in terms of the Financial Intelligence Centre Act, 2001, published in terms of Notice No. R.1595 in Gazette No. 24176 of the 20 December 2002, in respect of the establishment and verification of identity, and that person must sign the registration entry.
- A13. For the purposes of Regulation 26(2), and in compliance with Regulation 30(2), a prospective bidder in an auction to be held via the internet or other electronic medium or platform must register by providing:
- 13.1 his or her full names, identification or passport number, age, physical address, internet protocol address, and where applicable, login code or name, and password; and
- 13.2 the details of the means by which payment will be effected.
- A14. The auctioneer may not accept bids from bidders who are not registered in accordance with these Special Conditions, PVA's standard Rules of Auction and the bidders' record. A bid taken from an unregistered person is invalid.
- A15. **Registration deposit**
- 15.1 A registered bidder must pay a refundable registration deposit before bidding. The amount of the deposit is linked to the number of lots, as follows:
- R50,000 (fifty thousand rand) – up to 3 (three) lots;
  - R100,000 (one hundred thousand rand) – up to 10 (ten) lots; and
  - a further R100,000 (one hundred thousand rand) for each additional 10 (ten) lots or part thereof.
- 15.2 The auctioneer may, in its sole discretion, limit the number of lots on which a bidder may bid, and/or the number of lots which a bidder may purchase, to the number of lots covered by the deposit paid by that bidder, and may refuse, disregard or cancel any bid which exceeds such limit.

- 15.3 The deposit of an unsuccessful bidder will be refunded after the Auction. The deposit of a successful bidder may be held by the auctioneer and set off against the amounts payable by the Purchaser in terms of these Special Conditions, and is subject to the rights of the Seller and the auctioneer in the event of the Purchaser's default.
- A16. The reason for the Auction is set out under "Auction Details" above.
- A17. The conduct of the Auction is subject to the control of the auctioneer, who has the sole right to regulate the bidding procedure, including bid increments on the bidding platform. No "auction ringing" shall be permitted, and if the auctioneer suspects that bidders are involved in such activity, the auctioneer will be entitled to suspend or terminate bidding on any lot or the Auction, or to prohibit those bidders suspected of such activity from making any further bids.
- A18. The bidders' record contemplated in Regulation 26 and the vendor's roll contemplated in Regulation 28(4) are available for inspection at the offices of the auctioneer during normal business hours, free of charge. The vendor's roll of the Auction is final and binding on all bidders.
- A19. The sale shall be by timed online bidding and each lot shall be sold to the highest bidder when that lot closes, subject to these Special Conditions.
- A20. Every bid shall constitute an offer to purchase on the terms contained in these Special Conditions. The Seller and PVA may accept or reject any offer, in whole or in part, in their sole discretion. The Seller reserves the right, in its sole discretion, to withdraw any Asset or Assets from the sale at any time prior to written acceptance, without prior notice and without liability to any bidder. Asset schedules and inventories are subject to amendment and/or withdrawal prior to acceptance.
- A21. In the event of any dispute between the bidders, the decision of the auctioneer shall be final and binding including, but not limited to, the right to reopen bidding on or resell the goods/lot(s) or to declare any bidder the purchaser. The auctioneer shall be entitled to correct any error it might make, including any error on the bidding platform. No bidder shall have any claim for damages or loss of any nature against the auctioneer flowing from or arising out of the auctioneer's decision or as a result of the correction of any error which the auctioneer may have made.
- A22. No bid may be withdrawn after the lot has closed until the expiry of the confirmation period provided for in clause A41, during which time the offer shall be open for acceptance by the Seller or its agent and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.
- A23. The purchaser's bid/offer shall remain open for acceptance by the Seller or by the auctioneer on behalf of the Seller until the expiry of the confirmation period. The purchaser and the auctioneer acknowledge and agree that this provision is for the benefit of the Seller. Negotiations between the highest bidder and the Seller may arise during such confirmation period and should any subsequent bid be received during such confirmation period, the new bidder will be required to register in terms of these Special Conditions and will have one opportunity to submit a higher bid and the highest bidder of the first instance shall have the right to equal or better such subsequent bid.
- A24. The Purchaser's bid/offer shall be deemed to have been accepted only when the Seller or the auctioneer on behalf of the Seller has accepted the offer in writing and all required approvals, consents and/or ratifications applicable to the sale have been obtained. Until then, the Purchaser acquires no right to the Assets.
- A25. Should the Seller reject the purchaser's bid/offer, the auctioneer shall refund the purchaser's deposit and any commission and fees paid in terms of these Special Conditions.
- A26. Notwithstanding anything contained in these Special Conditions, the acceptance of any bid/offer shall be subject to such approval, consent and/or ratification by the Seller, the Business Rescue Practitioners, secured creditors, any statutory authority, court of law and/or any other authorised party as may be applicable. No bidder shall acquire any right to the Assets until all required approvals and/or consents have been obtained and the offer has been accepted in writing.
- A27. [Not used.]
- A28. Bidders shall be given a reasonable time and opportunity to inspect the goods/lot(s) before the lots close, at a date and time specified by the auctioneer, and it is the bidder's responsibility

to do so. No fee will be charged for such opportunity. Access to the Premises for inspection is subject to Part B. An auctioneer may however:

- 28.1 refuse or restrict access to such goods/lot(s) if the prospective bidder, after gaining access, in any way acts unlawfully or contravenes these Special Conditions; and/or
  - 28.2 require a prospective bidder to adhere to or submit to any security measures reasonably applicable in the circumstances.
- A29. All goods/lot(s) are sold voetstoots (as is). All descriptions, asset numbers, serial numbers, quantities, photographs and other information relating to the Assets are provided for identification and information purposes only. Neither the Seller nor PVA warrants the accuracy or completeness thereof. It is the responsibility of each bidder to inspect and verify the Assets and all relevant particulars before bidding. No express or implied representations, guarantees or warranties of any nature are made regarding the condition, quality, description or any other characteristic of the goods/lots. The Seller shall not profit by any excess nor be answerable for any deficiency in the quantity, extent or condition of the Assets.
- A30. Where any Asset comprises a motor vehicle or trailer, the Purchaser confirms that it has been afforded an opportunity to inspect it and independently verify its particulars. Odometer readings, year, make, model and other descriptions are not warranted. No warranty or representation is given that the original registration certificate or NaTIS documentation is available, nor that the vehicle or trailer is currently registered on the NaTIS system. The Purchaser acknowledges and accepts that certain vehicles or trailers may have been deregistered and/or removed from the NaTIS system. The Purchaser shall be solely responsible, at its own cost and risk, for any re-registration and/or reinstatement on the NaTIS system, where possible, together with all licensing fees, arrears, penalties, interest, roadworthy requirements and other costs or formalities associated with registration and/or transfer. Neither the Seller nor PVA warrants that re-registration, reinstatement or transfer will be possible, unless expressly confirmed otherwise in writing.
- A31. No goods/lot(s) shall be removed prior to full payment therefor and not without a valid release note.
- A32. All goods/lot(s) are sold exclusive of VAT and in particular all motor vehicles are sold excluding documentation fees which may vary from auction to auction, and shall at all times after the sale remain the liability of the purchaser. Documentation fees are advertised excluding VAT.
- A33. All payments must be made by electronic funds transfer into the auctioneer's bank account. No cash will be accepted at the auctioneer's offices or at the Premises, and any payment in cash deposited into the auctioneer's bank account will attract a cash handling fee of 3.5% (three and a half percent) of the amount deposited in cash, which shall be for the Purchaser's account.
- A34. **The balance of the purchase price, together with VAT, PVA's commission, the upliftment and loading fee (clause A40), VAT thereon and all other amounts payable in terms of these Special Conditions, shall be paid in full and in cleared funds within 48 (forty eight) hours after written acceptance of the offer by the Seller (or by the auctioneer on its behalf). This period runs continuously, including over weekends and public holidays.** Any extension of this period is only valid if granted by PVA in writing. The purchase price and PVA's commission and fees shall be paid simultaneously, without deduction or set-off, and payment of both is required for the Purchaser to discharge its obligations. Failure to pay within this period shall constitute a breach and may result in cancellation in terms of clause A54 and the exercise of the Seller's and/or PVA's remedies under these Special Conditions and applicable law.
- A35. Ownership of all goods/lot(s) on auction shall remain vested in the Seller until paid for in full.
- A36. No goods/lot(s) are sold subject to a bidder obtaining finance for the purchase price or any part thereof, and any such a bid will not be accepted. In order to avoid disappointment bidders must arrange finance in advance.
- A37. [Not used.]
- A38. Where a bid/offer is subject to confirmation, risk in and to the goods/lots shall pass to the Purchaser only upon written acceptance of the offer by the Seller and once any required approvals, consents and/or ratifications have been obtained. The Purchaser shall arrange appropriate insurance from that time. Ownership, possession and release shall remain subject to full payment in cleared funds and the other requirements of these Special Conditions.

Delivery shall be deemed to take place in situ at the Premises. The Assets are sold in the condition in which they are on the date of delivery, and the Purchaser accepts delivery in that condition.

- A39. The purchaser shall remove the purchased goods/lot(s) at its sole risk, cost and expense on the upliftment date and time allocated to it in terms of Part B, and shall be liable for storage costs in terms of clause B16 if the goods/lot(s) are not removed as required.
- A40. **The Purchaser shall, in addition to the purchase price and VAT thereon, pay PVA's commission calculated at 7% (seven percent) of the purchase price (excluding VAT), plus VAT on the commission, together with an upliftment and loading fee calculated at 1% (one percent) of the purchase price, plus VAT thereon.** The upliftment and loading fee is subject to Part B, including liability for any shortfall where the actual upliftment and loading costs exceed the 1% fee. The Seller and the Purchaser irrevocably authorise PVA to deduct its commission, the upliftment and loading fee, VAT thereon and any shortfall or other agreed expenses from any funds held by it and paid by the Purchaser.
- A41. If any goods/lot(s) is/are sold subject to confirmation, the confirmation period will be 14 (fourteen) business days (excluding Saturdays, Sundays and public holidays) from the date on which the relevant lot closes, during which period the purchaser shall not be entitled to withdraw his or her offer.
- A42. In compliance with Regulation 21(2)(1) of the Act, the auctioneer hereby notifies that the total costs of advertising and conducting the auction is the sum of R\_\_\_\_\_ calculated as follows:
- 42.1 Press adverts R\_\_\_\_\_
  - 42.2 Web advertising R\_\_\_\_\_
  - 42.3 Street boards R\_\_\_\_\_
  - 42.4 SMS and social media campaigns R\_\_\_\_\_
  - 42.5 Travelling expenses per kilometre at AA rates R\_\_\_\_\_
  - 42.6 Storage fees R\_\_\_\_\_ per day
- A43. The bidder/purchaser shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the auctioneer/Seller in successfully enforcing these Special Conditions, PVA's standard Rules of Auction and/or PVA's standard Conditions of Sale.
- A44. Bidders/purchasers agree to accept service of any notice or Court process at the address given with registration.
- A45. All disputes relating to these Special Conditions, PVA's standard Rules of Auction or PVA's standard Conditions of Sale shall be governed exclusively by the Laws of the Republic of South Africa.
- A46. All parties should note that the auctioneer is only acting as an agent on behalf of the Seller in the Auction.
- A47. The auctioneer certifies that to the best of its knowledge these Special Conditions, read with PVA's standard Rules of Auction, meet the requirements of Regulation 21 of the Act.
- A48. **Timed Online Bidding**
- 48.1 The Auction is a timed online auction conducted on PVA's bidding platform. There is no live auctioneer or webcast.
  - 48.2 Each lot has its own closing time, which is shown for that lot on the bidding platform. Lots close from 10h00 on Wednesday 30 September 2026.
  - 48.3 To prevent "sniping", if a bid is placed on a lot shortly before that lot's closing time, the closing time of that lot will automatically be extended, as shown on the bidding platform. Extensions may repeat until no further bid is received on that lot within the extension period. Extensions apply per lot.
  - 48.4 The time recorded by the bidding platform is the official time for all purposes. A bid is placed only when it is received and recorded by the bidding platform, and not when it is sent.

- 48.5 Bid increments are determined by PVA and displayed on the bidding platform, and may be changed by PVA.
- 48.6 Where the bidding platform allows a bidder to enter a maximum bid, the platform will bid automatically on the bidder's behalf in the applicable increments up to that maximum. A maximum bid is a binding offer up to its full amount.
- 48.7 When a lot closes, the highest bid recorded on the bidding platform constitutes an offer to purchase that lot, subject to any reserve price, confirmation and acceptance in terms of clauses A2, A6, A24 and A26. The closing of a lot does not by itself create a binding sale.
- 48.8 Bidders are responsible for all bids placed using their login details.
- 48.9 PVA cannot guarantee the uptime of the bidding platform and cannot accommodate slow or lost internet connections or delays in bids being received or recorded. Neither PVA nor the Seller shall be liable for any bid that is not received or recorded, for whatever reason. Bidders should therefore bid early.
- 48.10 Should the bidding platform fail or any error occur, PVA may, in its sole discretion, extend the closing time of any affected lot, reopen bidding, cancel any bid placed or recorded in error, or withdraw and re-offer any lot.

**A49. Location of Lots**

- 49.1 The Assets are located at various places on the Premises, including areas with restricted access. The Purchaser must confirm the location of each lot it intends to bid on. PVA will not be liable to bidders who do not know a lot's location.
- 49.2 Where branding appears on a Lot, the Seller reserves the right to remove such branding prior to collection.

**A50. Removal**

No goods may be removed during the Auction. The Purchaser shall remove the lots from the Premises on the upliftment date and time allocated to it in terms of Part B. It is the responsibility of the Purchaser to ensure that it complies with all health, safety or procedural requirements of the auctioneer, the Seller and the mine.

**A51. Ownership of the Assets**

- 51.1 The Assets are, to the best knowledge of the Seller, the lawfully owned property of the Seller. Notwithstanding this, the Seller does not warrant that it is entitled to sell such Assets and the Purchaser accepts the risk that some of the Assets may not be owned by the Seller.
- 51.2 In the event that it comes to either party's attention that any of the Assets are not owned by the Seller, the Purchaser shall return the relevant Asset to the true owner and shall in turn be compensated for such Asset in the portioned amount of the purchase price as reasonably determined by the Seller in its sole and absolute discretion. The Purchaser shall have no further claims against the Seller and/or PVA in such event, including for any further damages or consequential losses.
- 51.3 Notwithstanding the exclusion of any Asset from the sale in terms of clause A51.2, the sale of the balance of the Assets purchased shall continue to be of full force and effect.

**A52. Condition of the Assets and the Seller's circumstances**

The Assets may have originated from an entity in financial or other distress and may have been neglected, abused, inadequately serviced, or may be in a state of disrepair and may contain latent and unknown defects, as well as patently obvious defects, damage, wear and tear or other shortcomings. Neither the Seller nor PVA purport to be experts in relation to the particular Assets. The Purchaser irrevocably and unconditionally acknowledges that the Seller is an entity in business rescue against which recourse (arising from any damages suffered) may be impossible to enforce, and that neither the Seller, PVA nor any third party (including without limitation any manufacturer of any of the Assets) has any obligation or liability of any nature whatsoever to service, repair, replace and/or maintain (and/or to provide any after-sales and/or other services and/or any spare parts for) the whole or any part of any of the Assets for any reason and in any manner whatsoever.

- A53. **Force majeure.** Should an event of force majeure occur, neither the Seller nor PVA will be liable for any loss, damages or costs incurred by the Purchaser as a result of the Purchaser's inability to exercise its rights in terms of these Special Conditions.
- A54. **Default.** Should the Purchaser fail to pay the purchase price, PVA's commission, fees and any other amounts due within the period set out in clause A34, the Seller or PVA (on behalf of the Seller) may immediately cancel the sale without any breach notice being required, without prejudice to any other rights and remedies of the Seller and/or PVA in terms of these Special Conditions, PVA's standard Rules of Auction, PVA's standard Conditions of Sale and applicable law.
- A55. **Notice of acceptance.** The Seller's written acceptance of an offer may be communicated to the Purchaser by PVA by email or SMS to the email address or cellphone number provided at registration, and shall be deemed to have been received on the date and time of transmission, unless the contrary is proven. Should an offer not be accepted within the confirmation period in clause A41, it lapses, the deposit is refunded in terms of clause A25, and the bidder shall have no claim against the Seller or PVA arising from such lapse.
- A56. **Exclusion of claims and indemnity**
- 56.1 Neither the Seller nor PVA makes any representations or warranties of any nature whatsoever, whether express or tacit or implied by law, contract or otherwise, and whether or not they induced the Purchaser to bid, and the Purchaser irrevocably and unconditionally waives any right (common law or otherwise) that it may have to rely on any representation or warranty.
- 56.2 The Purchaser shall have no claim of whatsoever nature against the Seller and/or PVA in relation to the Assets, including without limitation the transportation, relocation, damage to and/or any consequential loss and/or indirect loss of the Purchaser in relation to the Assets (whether in respect of death, personal injury, damage to property or otherwise) ("Excluded Claim"). The Purchaser irrevocably and unconditionally waives any right (common law or otherwise) that it may have to rely on, or institute, any action in relation to an Excluded Claim, unless the Excluded Claim is directly attributable to any criminal or grossly negligent conduct on the part of the Seller and/or PVA.
- 56.3 The Purchaser indemnifies and holds the Seller and PVA free and harmless from any cost or claim howsoever arising in connection with the sale of the Assets, including any licence fees (past, present or future), costs and claims registered on the National Traffic Information System (eNaTIS) as contemplated in the National Road Traffic Act 93 of 1996 and its Regulations, which the Purchaser undertakes to settle on demand by the relevant authority.
- 56.4 Nothing in this clause shall exclude or limit liability to the extent that such exclusion or limitation is prohibited by law.
- A57. **Rouwkoop.** In the event that the sale is cancelled in terms of clause A54, the Seller shall be entitled to retain any and all payments already made by the Purchaser at the date of cancellation, including the deposit ("the pre-payments"), as rouwkoop, failing which as a penalty, failing which as liquidated damages, failing which as payment in respect of the prejudice which the Seller will suffer as a result of the Purchaser's breach. If the Seller is obliged by law to prove or quantify such rouwkoop, penalty, damages or prejudice, the Seller shall be entitled to retain the pre-payments until such rouwkoop, penalty, damages or prejudice are quantified and determined by a judgment of a competent court having jurisdiction, whereupon the Seller shall be entitled to set off the judgment amount against the pre-payments so held. This clause is without prejudice to PVA's entitlement to its commission and fees and to any other rights and remedies of the Seller and PVA, and applies to the extent permitted by law.

## **PART B – REMOVAL, UPLIFTMENT AND TRANSPORT OF MINING ASSETS**

### **RIGHT OF ADMISSION RESERVED**

**AUCTION SITE SAFETY NOTICE:** The Assets are located on mine premises where people, goods and vehicles are constantly moving and where associated safety and security risks may arise. All persons attending the Premises must familiarise themselves with the environment and comply with all applicable mine health, safety, security and access requirements. Attendance at the Premises is at each person's own risk, subject always to applicable law.

**B1. Compliance with Mining Health and Safety Legislation**

- 1.1 All purchasers, their employees, agents, contractors, subcontractors, transporters and any other persons entering the mine premises for purposes of inspecting, dismantling, loading, removing or transporting purchased assets shall comply strictly with:
- the Mine Health and Safety Act 29 of 1996, as amended (“MHSA”);
  - all regulations promulgated under the MHSA;
  - all applicable mandatory Codes of Practice, standards, mine safety procedures and risk-control measures;
  - all lawful instructions issued by the mine, Seller, mine management, safety personnel or authorised representatives; and
  - all site-specific health, safety, environmental, access-control and security requirements applicable to the mine.
- 1.2 Nothing contained in these Special Conditions shall be interpreted as excluding, limiting or overriding any obligation imposed by applicable legislation, including the MHSA.
- 1.3 Where there is any conflict between these Special Conditions and any mandatory statutory health and safety requirement, the statutory requirement shall prevail.

**B2. Authorised Removal Teams**

- 2.1 No purchaser shall be permitted to remove, dismantle, load, disconnect, move or otherwise uplift any asset from the mine premises unless the purchaser:
- 2.1.1 utilises the removal/upliftment team or teams allocated or approved by the Seller/mine; or
  - 2.1.2 obtains the prior written approval of the Seller/mine to utilise its own removal team, contractor or subcontractor.
- 2.2 Any purchaser wishing to use its own personnel or contractors must submit the required information and documentation to the Seller/mine and/or its appointed safety representative for vetting and approval before such persons will be permitted onto the mine premises.
- 2.3 The Seller/mine reserves the right, in the interests of health and safety, to refuse access to or prohibit the use of any person, contractor, subcontractor, transporter, equipment or vehicle which does not satisfy the applicable site requirements.
- 2.4 No purchaser shall appoint or substitute removal personnel without prior approval where such approval is required by the mine’s health and safety procedures.
- 2.5 Where any machinery, plant or equipment is connected to electrical, mechanical, hydraulic or other services, the manner of isolation, disconnection and removal shall be determined by the Seller/mine and shall be carried out only by persons authorised by the Seller/mine and in accordance with all applicable health and safety requirements. Neither the Seller nor PVA shall be liable for any damages, losses, expenses, reconnection costs or charges which the Purchaser or any person claiming through the Purchaser may sustain or incur as a result of such isolation, disconnection or removal.

**B3. Induction, Vetting and Access**

- 3.1 Only persons who have been properly registered, vetted, inducted and authorised in accordance with the mine’s applicable requirements shall be permitted to enter the relevant areas of the mine for purposes of upliftment.
- 3.2 Every person entering the mine for purposes of removal shall comply with all applicable induction, identification, access-control, personal protective equipment, medical, competency, training and other health and safety requirements applicable to that person’s activities and the relevant work area.
- 3.3 No person shall be permitted to undertake any work for which that person is not appropriately competent, trained, authorised or otherwise legally permitted to perform.

- 3.4 All removal and upliftment activities shall take place under the supervision and/or control of the persons designated by the Seller/mine for that purpose.
- 3.5 The Seller/mine shall be entitled to stop any removal activity immediately if, in its reasonable opinion, the activity creates or may create a health, safety, environmental, security or property risk.
- 3.6 A purchaser and its personnel shall immediately comply with any instruction to stop work, leave an area or vacate the mine premises issued by authorised mine or safety personnel.

**B4. Upliftment and Loading Fee**

- 4.1 The Purchaser shall pay an upliftment and loading fee calculated at 1% (one percent) of the purchase price, plus VAT thereon. The fee relates solely to the administration, coordination and assistance provided by the Seller/mine and/or allocated mine teams in facilitating upliftment and loading the purchased Assets onto the Purchaser's nominated transport vehicles at the relevant Premises.
- 4.2 Should the actual costs associated with the upliftment and loading of the purchased Assets exceed the 1% (one percent) upliftment and loading fee, the Purchaser shall be liable for any shortfall and shall pay such additional amount, together with VAT thereon where applicable, prior to the release and upliftment of the relevant Assets.
- 4.3 For the avoidance of doubt, the upliftment and loading fee does not include the transportation, delivery or conveyance of the Assets from the Premises to the Purchaser's premises or to any other destination. The Purchaser shall, at its own cost and risk, arrange and provide suitable transport vehicles for collection and transportation of the Assets from the Premises.
- 4.4 Once the purchased Assets have been loaded onto the Purchaser's nominated transport vehicle, neither the Seller, PVA nor the allocated mine teams shall have any obligation to transport or deliver the Assets to the Purchaser or to any other destination.
- 4.5 All applicable purchase consideration, PVA's commission, upliftment and loading fees, any shortfall in respect of actual upliftment and loading costs, and any other amounts required to be paid before upliftment must be paid in full and in cleared funds before an upliftment date and time will be allocated to the Purchaser.
- 4.6 No Purchaser shall acquire a right to uplift or remove any Asset merely by virtue of having been declared the successful bidder. Such right remains subject to full payment and compliance with all applicable sale, mine, access-control and health and safety requirements.

**B5. Staggered Upliftment Calendar**

- 5.1 In order to ensure the safe, orderly and efficient removal of assets, and to prevent congestion, bottlenecks, unnecessary transport waiting time and associated risks, upliftment shall take place strictly in accordance with a staggered upliftment calendar determined by the Seller/mine and/or PVA.
- 5.2 Each purchaser shall be allocated a specific date and, where applicable, a specific time slot for the removal of its assets.
- 5.3 The allocation of dates and time slots shall be determined having regard to, amongst other things:
  - the nature, size and location of the assets;
  - the equipment and personnel required for removal;
  - mine access and traffic-control requirements;
  - health and safety requirements;
  - availability of mine personnel and removal teams;
  - loading facilities;
  - transport requirements;
  - the number of purchasers requiring access; and
  - the need to maintain safe and orderly operations on the premises.
- 5.4 Purchasers shall strictly adhere to their allocated upliftment date and time.

- 5.5 A purchaser shall ensure that all necessary personnel, contractors, transport vehicles, lifting equipment and other resources required for upliftment are available and ready at the allocated time.
- 5.6 A purchaser who fails to arrive on time, is not ready to commence upliftment, or otherwise fails to comply with its allocated upliftment slot may be refused access for that period and shall be allocated a new date and/or time slot, subject to availability. (This may attract a storage fee in terms of clause B16, so buyers must make sure of the calendar dates allocated.)
- 5.7 PVA and the Seller shall not be liable for any costs, losses, transport charges, standing time, storage charges, contractor costs or other expenses incurred by a purchaser as a result of the purchaser failing to comply with its allocated upliftment date and time, or in the event that upliftment takes longer, due to difficulty or upliftment taking longer by teams.

**B6. No Unscheduled Upliftment**

- 6.1 No purchaser, transporter, contractor or other person may enter the mine premises for purposes of upliftment outside of the purchaser's allocated date and time without prior written authorisation.
- 6.2 The fact that a purchaser has purchased an asset does not entitle that purchaser to attend at the mine at any time of its choosing to remove the asset.
- 6.3 No purchaser may interfere with, obstruct or otherwise disrupt the removal activities of another purchaser.
- 6.4 The Seller/mine shall be entitled to refuse access where permitting access would create congestion, an unsafe condition or a breach of mine safety procedures.

**B7. Responsibility for Purchaser's Personnel and Contractors**

- 7.1 The purchaser shall remain responsible for ensuring that all persons engaged by it or acting on its behalf comply with these Special Conditions and all applicable mine health and safety requirements.
- 7.2 Any breach by a purchaser's employee, contractor, subcontractor, transporter, agent or other representative shall be deemed a breach by the purchaser for purposes of these Special Conditions.
- 7.3 The purchaser shall be responsible for any damage, loss, injury, cost, expense, delay or claim arising from the negligent, unlawful, reckless or unsafe conduct of the purchaser or any person acting on its behalf, to the extent permitted by law.
- 7.4 Nothing in these Special Conditions shall relieve any person from liability imposed by applicable law.

**B8. Damage to Mine Property and Assets**

- 8.1 Purchasers shall exercise all reasonable care to prevent damage to:
- the purchased assets;
  - other mine property;
  - buildings and infrastructure;
  - roads and access ways;
  - electrical, mechanical, hydraulic or other installations;
  - plant and equipment;
  - underground or surface workings; and
  - any property belonging to the Seller or any third party.
- 8.2 Any dismantling, disconnection, cutting, lifting, loading or removal operation which could affect mine infrastructure, services or safety shall only be undertaken with the prior approval of the authorised mine representative and in accordance with the applicable safe work procedure.
- 8.3 The purchaser shall be liable for damage caused by its negligence, misconduct, breach of these Special Conditions or breach of applicable legislation, to the extent permitted by law.

- 8.4 PVA will not be responsible for any damages caused during removal or releasing of equipment. It will be the Purchaser's responsibility to make right any damages to property even if the Purchaser has nominated to use a third-party company or mine team to remove the assets. Should the Purchaser damage a building or any permanent structure or article or movable assets situated at the Premises when removing the Assets, it will be liable, at its own cost, to restore or repair or make good any damage so caused, and such repairs shall only be deemed to have been satisfactorily completed once the Seller and the landlord/s (if any) have accepted same.

**B9. Right to Stop Work and Remove Persons from the Premises**

- 9.1 The Seller, mine management, authorised safety personnel or any other person lawfully exercising authority at the mine may immediately stop any upliftment or removal activity where the activity is considered unsafe, unlawful or contrary to mine procedures.
- 9.2 Any purchaser, employee, contractor, subcontractor, transporter or other person who:
- fails to comply with a lawful safety instruction;
  - breaches the MHSA or applicable regulations;
  - breaches the mine's safety procedures;
  - enters an unauthorised area;
  - undertakes unauthorised dismantling or removal;
  - acts recklessly or negligently;
  - creates a danger to any person or property; or
  - otherwise materially breaches these Special Conditions,
- may be required to immediately cease the relevant activity and leave the affected area or the mine premises.
- 9.3 Where necessary for health, safety or security reasons, such person may be escorted from the premises by authorised personnel.
- 9.4 Any removal of a person from the premises shall not prejudice any other rights or remedies available to the Seller, mine or PVA in terms of the auction conditions, contract or applicable law.

**B10. Consequences of Breach**

- 10.1 Any purchaser who materially breaches these Special Conditions may, subject to applicable law, have its upliftment activities suspended until the breach has been remedied and the purchaser has been re-authorised.
- 10.2 Where the breach is serious, repeated or creates a health, safety, security or property risk, the purchaser may be denied further access to the premises.
- 10.3 The Seller and/or PVA shall be entitled to recover from the purchaser, to the extent permitted by law, any reasonable losses, costs, damages or expenses caused by the purchaser's negligent, reckless, unlawful or unauthorised conduct.
- 10.4 Nothing in these Special Conditions limits any statutory right, duty, power or remedy available to the Seller, mine management, an inspector, the Department of Mineral and Petroleum Resources or any other competent authority.

**B11. No Liability for Failure to Comply with Mine Safety Requirements**

- 11.1 The purchaser acknowledges that access to and removal of assets from an operating or former mining area may involve inherent risks and that access is subject to the mine's health and safety requirements.
- 11.2 No purchaser shall have a claim against the Seller or PVA arising merely from the enforcement of statutory or mine health and safety requirements, including the refusal, suspension or postponement of access where such action is reasonably required for compliance with applicable law or the protection of persons or property.
- 11.3 The Seller and PVA shall not be responsible for any delay or additional cost suffered by a purchaser where such delay or cost arises from the purchaser's failure to comply with the applicable health and safety, access-control, induction, vetting or upliftment requirements.

- 11.4 Nothing in this clause shall exclude or limit liability to the extent that such exclusion or limitation is prohibited by law.

**B12. Acknowledgement by Purchaser**

By participating in the Auction and/or purchasing any asset, each purchaser acknowledges and agrees that:

- 12.1 upliftment is subject to the requirements of the mine and applicable law;
- 12.2 payment of the purchase price, VAT, PVA's commission, the upliftment and loading fee, any shortfall in actual upliftment and loading costs and all other applicable amounts is a prerequisite to the allocation of an upliftment date;
- 12.3 only properly authorised, inducted and approved persons may enter the mine for upliftment purposes;
- 12.4 the purchaser will comply with the allocated upliftment date and time;
- 12.5 the purchaser will ensure that all persons acting on its behalf comply with the same requirements;
- 12.6 the Seller/mine has the right to stop unsafe or unauthorised activities immediately; and
- 12.7 the purchaser accepts that orderly and staggered upliftment is necessary to protect persons, property and the mine and to minimise congestion, delays and safety risks.

**B13. Governing Legislation**

- 13.1 These Special Conditions shall be interpreted and applied subject to the laws of the Republic of South Africa.
- 13.2 In particular, all parties shall comply with the Mine Health and Safety Act 29 of 1996, as amended, and all applicable regulations, Codes of Practice, directives and lawful requirements applicable to the mine and the activities contemplated by these Special Conditions.
- 13.3 These Special Conditions shall not be interpreted as permitting any act or omission which would constitute a contravention of applicable mining, occupational health and safety, environmental, transport or other legislation.
- 13.4 Where a provision of these Special Conditions is found to be invalid or unenforceable, that provision shall, to the extent necessary, be severed or read down without affecting the validity of the remaining provisions.

**B14. Final Authority on Site Safety**

- 14.1 For purposes of immediate operational health and safety, all purchasers and their representatives shall comply with the lawful directions of the mine's authorised management and safety personnel.
- 14.2 The Seller and PVA reserve the right to amend or supplement upliftment procedures where reasonably necessary to comply with legislation, mine safety requirements, changes in site conditions or instructions from a competent authority.
- 14.3 Any such amendment shall apply to the extent reasonably necessary to ensure the safe and lawful removal of assets.

**B15. Non-delivery and documents**

The Purchaser shall not be entitled to cancel the sale as a result of timeous non-delivery of the lots or on non-signature of the required documents. PVA shall be entitled, without penalty, to cancel the sale should the required documents of or relating to the lots not be signed and delivered to PVA within 21 days of the date of the Auction; the Purchaser must look to the Seller for any damages that the Purchaser may have suffered due to such non-delivery or non-signature. Purchasers must remove assets on the date allocated.

**B16. Storage**

The Purchaser shall be liable to pay daily storage fees of 1% of the value of the item(s) not collected, with a minimum fee of R100 per lot per day, if the lots remain on the Premises after the Purchaser's allocated upliftment date without written approval. Should PVA, after the

upliftment period, need to remove an asset from the Premises for any reason whatsoever, PVA will nominate a service provider to undertake the removal. The actual invoice cost for any such removal plus a 20% (twenty per cent) handling fee will be for the account of the Purchaser, as will any additional storage fees. No lots will be released until the full invoice price of such removal cost has been paid.

## **PART C – GENERAL**

- C1. **Indulgence.** No variations or amendments to these Special Conditions shall be of any force and effect unless reduced to writing and signed by the Purchaser and PVA, save for notes and terms published by PVA on the auction listing or bidding platform in terms of clause 1.3 and procedures amended in terms of clause B14. No indulgence which the Seller and/or PVA may grant to the Purchaser shall prejudice, or constitute a waiver of, the rights of the Seller and PVA, who shall not thereby be precluded from exercising any rights against the Purchaser which may have arisen in the past or may arise in the future.
- C2. **Domicilium and jurisdiction.** The Purchaser chooses as domicilium citandi et executandi (the address of delivery for all purposes arising from these terms and conditions) the physical address of the Purchaser reflected on the registration form or reflected in any document signed or handed by the Purchaser to PVA in respect of the lots and/or the Auction. The Purchaser consents to the jurisdiction of the Magistrate's Court and agrees that the Seller and/or PVA shall be entitled to institute proceedings in the High Court. In the event that any legal steps are taken against the Purchaser, the Purchaser agrees to pay all of the legal costs (on the attorney and own client scale) of PVA and/or the Seller which is or may be actually paid to PVA's/the Seller's attorneys (by agreement or otherwise), alternatively, where there is no such agreement, on the attorney and own client scale as per the tariff of the relevant Court involved.
- C3. **FICA compliance and sharing of information.** Any personal information and/or documents belonging to you or that of any third party as required by the Financial Intelligence Centre Act, 38 of 2001, that is processed through the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, use or such other means as defined in the Protection of Personal Information Act, 4 of 2013, as provided by you to us shall be processed for legitimate business purposes in the provision of any products or services herein, which may include the transmission of such information to our Sellers (or any such division, subsidiary or affiliate) for processing.
- C4. **Risk assessment.** In the event that a further risk assessment is required, PVA and/or the Seller reserves the right to conduct such assessment after the auction process is concluded and may cancel the sale transaction should PVA and/or the Seller no longer deem the transaction to fall within an acceptable threshold of their risk appetite to conclude the sale. Release of the asset will be subject to the completion of the risk assessment.

**IMPORTANT:** Registration for and/or participation in the Auction constitutes acceptance of these Special Conditions, together with PVA's standard Rules of Auction and Conditions of Sale and any site-specific mine health and safety requirements communicated to purchasers. No signature is required.