

# The Nedbank Cape Winemakers Guild Auction

## Standard Terms and Conditions of Auction

### Date of auction:

Saturday 5 October 2019 at Spier Conference Centre, Stellenbosch from 09h00

### Auctioneers:

Please note the following requirements of the Consumer Protection Act:

- 1. All prospective bidders must register for the Auction by completing an Auction Purchasers Card and providing proof of identity and residence prior to making any bids during the auction.**
- 2. A person who intends to bid on behalf of another, must produce a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must provide a copy of proof of identity and residence.**
- 3. A person bidding on behalf of a company, close corporation or trust must produce a letter of authority expressly authorising him or her to bid on behalf of that company and the letter of authority must appear on the letterhead of the company and must be accompanied by a certified copy of the company resolution authorising him or her to do so. That person making the bid must present proof of identity and residence.**

The Standard Terms and Conditions of Auction (hereinafter referred to as “the Auction Conditions”) for the Nedbank CWG Auction (hereinafter referred to as “the Auction”) are as follows:

1. The Auction Conditions shall govern the Auction and any matter relating thereto or resulting therefrom, including, but not limited to the relationship/s between the auctioneer, the Cape Winemakers Guild (hereinafter referred to as “the Guild”), the seller, the bidder and the purchaser and/or the wine being sold.
2. Registration to purchase wine at the Auction implies that the bidder and/or purchaser is familiar with and fully and irrevocably accepts the Auction Conditions as contained herein. No person or entity shall be allowed to take part in the Auction unless:
  - 2.1 he has registered and duly completed and signed an Auction Purchaser’s Card to the satisfaction of the Guild;
  - 2.2 they attend the Auction and intend to bid on behalf of another person or a legal entity, have produced a letter of authority that expressly authorises him/her to bid on behalf of such person or legal entity. Where the person is bidding on behalf of a company, close corporation or trust, the letter of authority must appear on the letterhead of such company, close corporation or trust and must be accompanied by a certified copy of the resolution authorising him/her to bid on behalf of the company, close corporation or trust.
  - 2.3 he has paid a refundable deposit of R5 000, either by credit card or electronic transfer, although the Guild in its sole and absolute discretion may waive the requirement for a deposit by any one or more bidder and/or purchaser. The Guild reserves the right, in its absolute discretion, to instruct the auctioneer not to accept any bids from a bidder or purchaser if the amount of the bid exceeds the amount of the deposit. The deposit shall be applied to any wine or lots purchased by the purchaser.
3. The bidders roll will be made available for inspection at the Auction and at the auctioneer’s office during normal business hours without the charge of a fee.
4. The Auction Conditions shall be read out at the Auction and a copy will be made available to all registered bidders and/or purchasers.

5. At the Auction, after the reading of the Auction Conditions and before bidding starts, bidders and/or purchasers will be able to ask questions regarding the auction procedure or the wine for sale.
6. All wines sold at the Auction are sold “voetstoots”
  - 6.1 The bidder and/or purchaser shall be given an opportunity, if he so wishes, to inspect the wine prior to the Auction during the period designated for inspections;
  - 6.2 No warranty is given or implied by the designation in the catalogue and no allowance whatsoever will be made for misdescription or errors of whatsoever nature.
  - 6.3 A bid shall be taken as proof that bidders or purchasers have made themselves acquainted with the lot for which they have bid.
7. Every sale shall be subject to the control of the auctioneer who shall have the sole and absolute right to regulate the bidding procedure, to advance in the bidding and to record the Auction and any sale.
8. Every bid shall constitute an offer to purchase the wine or any lot auctioned for sale at the amount bid. The auctioneer, in his sole discretion, reserves the right to withdraw any lot or lots or to vary the order of same without attracting any liability to any party to the Auction, including the seller, bidder or purchaser.
9. The auctioneer shall be entitled to correct any error made by him.
10. All sales shall be in South African Rand.
11. The highest bidder at the Auction shall be the person indicated by the auctioneer by the fall of the hammer or by such other means as the auctioneer may select.
12. In the event of a dispute arising between any two or more bidders, the auctioneer shall have the right in his sole discretion to declare the sale to be of no force or effect and to re-sell the wine in question, alternatively to select the purchaser to whom the respective lot shall have been sold. The auctioneer, in his sole discretion, may accept or reject any bid without giving a reason. The auctioneer’s decision in all cases is final and binding on all parties.
13. Any successful bid shall result in an agreement of sale between the seller and purchaser.
14. The bidder and/or purchaser irrevocably agree and consent to the seller ceding any claim which it may have against the bidder and/or purchaser to the Guild and neither the seller nor the Guild will be required to give any notice of such cession.
15. The auction clerks will issue, upon request, pro-forma invoices (excluding VAT, delivery and insurance) on the day of the Auction to successful purchasers of the wine. The Auctioneer, Guild and/or Seller shall be entitled to correct any error in calculation in the pro-forma invoice and/or incorrect information that may be reflected thereon.
16. Tax invoices (including VAT, delivery and insurance where applicable) for the wine sold at the Auction to the purchasers will be presented to the purchasers by the sellers within 14 days of the Auction, although any failure to do so will not invalidate any sale in terms of the Auction Conditions.
17. Payment shall be made immediately upon receipt of the tax invoice either by cash, credit card or electronic transfer into the Guild’s bank account.
18. Ownership in the wine shall not pass until the purchase price and all other amounts in terms of the Auction Conditions have been paid in full. No lot or lots may be removed until the purchase price and all storage fees and costs under these Auction Conditions have been settled in full.

19. All purchasers shall take possession of their purchases within 8 (EIGHT) weeks from the date of Auction, unless otherwise arranged and agreed with the Guild in writing. The Guild and/or the seller reserve the right to charge storage fees on wines not collected by 30 November 2019 at the applicable industry rate and the purchaser agrees to pay such storage fees.

20. The price bid for any wine shall not include Value Added Tax, Insurance, Transportation, Export Charges and "FOBBING" costs of any wines shipped overseas. Wines shipped overseas are sold ex-cellar and all fobbing costs are for the account of the bidder.

21. The wine shall be delivered by the seller and/or the Guild or by a courier elected by the seller and/or the Guild.

22. The risk in the wine shall pass to the purchaser:

22.1 where the purchaser takes possession of the wine within the 8 (EIGHT) week period in clause 19 above, upon the wine leaving the premises of The Vineyard Connection or when collected by the purchaser from the premises of the seller.

22.2 where the purchaser has requested the wine to be exported to an address outside of South Africa and takes possession of the wine within the 8 (EIGHT) week period in clause 19 above, upon delivery of the wine to the shipping agent / freight forwarder;

22.3 where the purchaser fails to take possession of the wine within the 8 (EIGHT) week period in clause 19, upon the expiry of the 8 (EIGHT) week period.

23. The Seller shall dispatch the wine purchased at the Auction within 8 (EIGHT) weeks from the date of the Auction, provided payment by the purchaser has been received in full by the Guild or seller.

24. The auctioneer's Vendue Roll of Sale is final and no dispute will be taken into consideration as to the correctness of the same. All lots knocked down are subject to the Auction Conditions, including all conditions relating to condition of the wine and passing of risk, at the fall of the hammer.

25. The auctioneer and/or the Guild are prepared to execute bids on behalf of purchasers if instructed to do so in writing prior to the Auction and subject to the Auction Conditions.

26. Notwithstanding the acceptance of a postal bid mandate by the auctioneer and/ or the Guild, the auctioneer and/ or the Guild shall not be obliged to execute such a bid and the bidder or purchaser shall have no claim whatsoever, including any claim for damages, whether direct or indirect or consequential and arising from whatsoever cause, against the auctioneer, the Guild and/ or any person nominated by the Guild and the purchaser indemnifies and hold free the auctioneer and the Guild from any claims which may be instituted against the auctioneer and/or Guild in this regard.

27. The purchaser chooses his domicilium citandi et executandi at the address given on the Auction Purchaser's Registration form under the header "Physical Address".

28. The Purchaser consents to the jurisdiction of the Magistrate's Court, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court, and the auctioneer and/or Guild and/or seller has the sole discretion to institute any action in the Magistrate's Court, if appropriate and applicable, or any other competent court.

29. In the event that it becomes necessary for the auctioneer, the Guild and/or the Seller to take any legal action to ensure performance of the Auction Conditions or any agreement concluded pursuant thereto or in respect of any transaction which is governed by these Auction Conditions, the purchaser shall be obliged to pay the auctioneer, the Guild and/or the Seller as the case may be, any and all legal costs and expenses incurred on the scale as between attorney-and-own-client including collection commission and the auctioneer, the Guild and/or the Seller shall be entitled to claim the same.