

TRIGGA TRADER PROPRIETARY LIMITED
Registration Number: 1961/001996/07

TERMS AND CONDITIONS OF TRADE

in regard to the sale, purchase, transportation and slaughter of Pigs
purchased on Trigga Trader's Auction

APPLICATION AND ACCEPTANCE OF THESE TERMS AND CONDITIONS:

- a) These Terms and Conditions shall apply to all Offerors, Sellers, Bidders, and Purchasers who participate in Trigga Trader's Auction, unless otherwise agreed by Trigga in writing. By participating in an Auction, the Offerors, Sellers, Bidders and Purchasers accept these Terms and Conditions, as amended from time to time.
- b) These Terms and Conditions also apply to both the Transporters instructed by Trigga to transport the Pigs and to the Abattoirs who are instructed by Trigga to slaughter the Pigs.
- c) By rendering the Transport Services, a Transporter accepts these Terms and Conditions, as amended from time to time.
- d) By rendering the Slaughtering Services, an Abattoir accepts these Terms and Conditions, as amended from time to time.

1. Definitions and Interpretation

- 1.1 The words and expressions set out below shall for the purpose of these Terms and Conditions have the meanings assigned to them unless the context clearly indicates a contrary intention:

| | |
|------------------------------|---|
| "Abattoir" | means an abattoir, which receives the Pigs purchased on the Auction for slaughter; |
| "Animal Diseases Act" | means the Animal Diseases Act No. 35 of 1984 , as amended, or any act which expressly replaces it; |
| "Animal Health Act" | means the Animal Health Act No. 7 of 2002 , as amended, or any act which expressly replaces it; |
| "Auction" | means Trigga's online auction, where the Seller's Pigs are offered to Bidders for sale; |

INITIAL HERE:

| | |
|--------------------------------------|---|
| “Auctioneer” | means Trigga; |
| “Auction Price” | means the price, expressed in Rands per kilogram excluding VAT, which the Highest Bidder, being the Purchaser, pays for a Lot sold to it on the Auction; |
| “Authorised Person” | means any government agency or its official or nominee, which is authorised by law or regulation to act in relation to diseases in pigs, or to procure the maintenance or enforcement of relevant standards, laws and/or regulations; |
| “Bidder” | means a person, who places a bid for a Lot on the Auction and “Bidders” means two or more of them; |
| “Bidding Platform” | means the Auctioneer’s platform on which its web-based auction application is placed; |
| “CCM” | means the cold carcass mass, which is the WDM of a Pig less 3% (three) percent of that mass; |
| “CPA” | means the Consumer Protection Act, No. 68 of 2008 (as amended); |
| “Commission” | means the commission of three percent (3%), excluding VAT, calculated on the Auction Price, which is payable to the Auctioneer by the Purchaser; |
| “Condemned Pig” | means a Pig, which after slaughter by the Abattoir and after a primary or secondary meat inspection, as the case may be, by an Authorised Person is condemned as being unfit for human consumption; |
| “Consignment” | means a load of Pigs, which is to be transported by the Transporter to an Abattoir in accordance with these Terms and Conditions; |
| “Controlled Animal Disease” | means any disease classified, or capable of being classified under the Animal Diseases Act (or its replacement), or under the Animal Health Act, whichever is in force at any material time; |
| “Credit Facilities Agreement” | means the written Credit Facilities Agreement containing the Credit Terms, concluded between Trigga and the Purchaser in respect of the payment of the Auction Price and/or any other amount due to Trigga from time to time; |
| “Credit Terms” | means the credit terms and the credit limit, detailed in the Credit Facilities Agreement concluded between Trigga and the Purchaser; |
| “DIP” | means ‘dead-in-pen’ in relation to a Pig; |
| “DOA” | means ‘dead-on-arrival’ in relation to a Pig; |
| “Date of Sale” | means the date on which a particular Lot of Pigs is sold on the Auction; |
| “Delivery” | means the delivery of the Pigs as contemplated in clause 8.2 read with clause 8.3; |
| “Highest Bidder” | means the Bidder who offers the highest price for a Lot on a particular Auction; |
| | |

| |
|---------------|
| INITIAL HERE: |
|---------------|

| | |
|---|--|
| Levy | means the statutory levy payable by the Seller, on each Pig slaughtered by an Abattoir, which levy is imposed in terms of the Marketing of Agricultural Products Act ; |
| “Loading Point” | means the address where the Purchaser is to load the Pigs as detailed on the Bidding Platform (or the place where the Transporter is to load the Pigs as detailed in the applicable Transport Order issued by the Auctioneer); |
| “Lot” | means a single Pig or a parcel of the Pigs, to be offered for sale by the Auctioneer on the Auction; |
| “Marked Pig” | means a Pig that is marked as potentially unfit to be transported as contemplated in clause 12.5.2; |
| “Marketing of Agricultural Products Act” | means the Marketing of Agricultural Products Act No. 47 of 1996 , as amended, or any Act which expressly replaces it; |
| “Meat Safety Act” | means the Meat Safety Act No. 40 of 2000 , as amended, or any act which expressly replaces it; |
| “Offeror” | means a person who offers its Pigs for sale on an Auction; |
| “Off-Loaded” | means once the Consignment has been off-loaded by the Transporter at the Abattoir and the Abattoir has taken delivery of such Pigs by signing the POD after inspecting the Pigs; |
| “Off-Loading Date” | means the date on which the Pigs are off-loaded at the Off-Loading Point; |
| “Off-Loading Point” | means the address of the Abattoir where the Pigs are to be off-loaded, which shall be detailed in the applicable Transport Order, where Transporter is attending to the Transport Services; |
| “POD” | means a written receipt, signed by a representative of the Abattoir at the Off-Loading Point, evidencing proof that the Pigs have been delivered; |
| “Party” | means the Seller, the Purchaser, the Bidder, the Auctioneer, the Transporter and the Abattoir and “Party” means any one of them as the context indicates; |
| “Pigs” | means the Pigs to be offered for sale on the Auction (and “Pig” shall have a corresponding meaning), as described in the applicable Lot, which Pigs shall not be classified as Condemned Pigs, Rejected Pigs or Pigs suffering from a Controlled Animal Disease; |
| “Purchaser” | means the Highest Bidder in regard to a particular Lot; |
| “RMLA” | means the Red Meat Levy Administrator which performs the function of administering the collection of the Levy for and on behalf of the South African Pork Producers’ Organisation; |
| | |

INITIAL HERE:

| | |
|----------------------------------|---|
| “Red Meat Regulations” | means the regulations published in Government Notice 1072 in the Government Gazette number 26779 dated 17 September 2004, as issued in terms of section 22 of the Meat Safety Act, as amended, or any regulation which expressly replaces it; |
| “Registered Veterinarian” | means a veterinarian who is a registered inspector who provides meat inspection services in a particular abattoir, in terms of the Meat Safety Act; |
| “Rejected Pig” | means a Pig rejected by the Abattoir because it is determined by the Authorised Person to be unfit for slaughter; |
| “Reserve Price” | means the reserve price, being the minimum price required for a Lot, which reserve price is disclosed on the Bidding Platform; |
| “Seller” | means a person, natural or juristic, who is the lawful Seller of the Pigs; |
| “Sick Pig” | means a Pig which is identified as being potentially unfit for slaughter during an ante-mortem inspection performed by an Authorised Person; |
| “Slaughter Charges” | means the amount, which the Abattoir charges the Auctioneer, on behalf of the Purchaser, for rendering the Slaughtering Services; |
| “Slaughter Date” | means the date on which a Pig or Pigs are slaughtered by an Abattoir having been sold by the Seller to the Purchaser on the Auction; |
| “Slaughter Instruction” | means a written order issued by the Auctioneer to the Abattoir from time to time, instructing the Abattoir to slaughter Pigs for and on behalf of the Purchaser; |
| “Slaughtering Services” | shall mean the service of slaughtering Pigs in accordance with the Slaughter Instruction; |
| “Service Fee” | means the service fee detailed on the Bidding Platform from time to time, excluding VAT, calculated on the Transport Charges and/or the Slaughter Charges, which service fee is payable to the Auctioneer by the Purchaser, where the Purchaser requires the Auctioneer to arrange the Transport Services and/or the Slaughtering Services, as the case may be, in respect of the Pigs purchased by the Purchaser on the Auction; |
| “Terms and Conditions” | means these terms and conditions of trade in regard to the sale, purchase, transportation and slaughter of Pigs; |
| “Transit” | means the point at which the Pigs are loaded onto the truck by the Seller from the Loading Point until the point where the Abattoir has signed the POD; |
| “Transporter” | means the road transporter who uplifts and transports the Pigs in terms of a Transport Order; |
| “Transport Charges” | means the amount, which the Transporter charges the Auctioneer on behalf of the Purchaser for rendering the Transport Services; |
| | |

 INITIAL HERE:

| | |
|----------------------|---|
| “Transport Order” | means a written order issued by the Auctioneer to the Transporter from time to time, instructing the Transporter to collect Pigs from a particular Loading Point and to deliver such Pigs to a particular Off-Loading Point for and on behalf of the Purchaser; |
| “Transport Services” | shall mean the service of transporting a Consignment by road in accordance with the Transport Order; |
| “Trigga” | means Trigga Trader Proprietary Limited, registration number: 1961/001996/07, a company registered in accordance with the laws of the Republic of South Africa; |
| “Unfit Sick Pig” | means a Pig which is sick and unfit for slaughter as contemplated in clause 13.9; |
| “VAT” | means value added tax as per the Value Added Tax Act, No. 89 of 1991 , as amended; |
| “Vendor Form” | means the form contemplated in clause 2.1, which the Auctioneer requires the Offeror to complete and sign prior to offering Pigs for sale on the Auction; and |
| “WDM” | means the warm dressed mass, which is the mass of a Pig carcass immediately after slaughter with its head, caul fat and kidneys still intact minus any part that has been removed on the instruction of an Authorised Person. |

1.2 General Interpretation:

In addition to the definitions in clause 1.1, unless the context requires otherwise:

1.2.1 In these Terms and Conditions words importing natural persons shall include a reference to bodies corporate and other legal *personae* and *vice versa*; a reference to any one gender shall include a reference to the other two genders; and a reference to the singular shall include a reference to the plural and *vice versa*;

1.2.2 references to a statute or a statutory provision include any subordinate legislation made from time to time under that statute or provision and references to a statute or a statutory provision include that statute or provision as from time to time modified, re-enacted or replaced as far as such modification, re-enactment or replacement applies, or is capable of applying, to these Terms and Conditions or any transaction entered into in accordance with these Terms and Conditions;

1.2.3 references in these Terms and Conditions to “clauses” are to clauses of these Terms and Conditions;

| |
|---------------|
| INITIAL HERE: |
|---------------|

- 1.2.4 if there is any conflict between these Terms and Conditions and the terms and conditions of any other valid legal agreement between any of the Parties, then in those circumstances, these Terms and Conditions shall take precedence over the other valid legal agreements, but only in respect of such conflict;
- 1.2.5 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day;
- 1.2.6 whenever the word “includes” or “including”, or the words “such as”, is/are used in this Terms and Conditions, the words “without limitation” shall be deemed to follow;
- 1.2.7 no rule of construction shall be applied to the disadvantage of the Auctioneer because the Auctioneer was responsible for the preparation of these Terms and Conditions or any part of it; and
- 1.2.8 all the headings and sub-headings in these Terms and Conditions are for convenience only and are not to be taken into account for the purposes of interpreting it.

2. **Vendor Form and Credit Facilities Agreement**

- 2.1 Before utilising the Auction, an Offeror shall complete and sign a Vendor Form. An Offeror may not place Pigs on the Auction until the Auctioneer has approved the completed and signed Vendor Form in writing.
- 2.2 Before utilising the Auction, a Bidder shall conclude a Credit Facilities Agreement with Trigga. A Bidder may not bid on the Auction until the Credit Facilities Agreement has been concluded with Trigga.
- 2.3 The Bidder’s credit limit as detailed in the Credit Facilities Agreement, is the maximum amount up to which the Bidder may bid on an Auction (“**Maximum Amount**”).
- 2.4 A Bidder may not exceed the Maximum Amount referred to in clause 2.3. If the Bidder does exceed the Maximum Amount, the Auctioneer may unilaterally cancel the sale in respect of the purchases in excess of the Maximum Amount, without prejudice to any other remedies it has in law. The Bidder will be liable for all legal costs in this regard on the scale as between ‘attorney-and-client’.

3. **Auctions**

- 3.1 The date and time for each Auction, will be as published on the Bidding Platform.
- 3.2 The Auctioneer reserved the right to postpone the date and time of an Auction, with or without notice in its sole and absolute discretion.
- 3.3 The Auctioneer may suspend and/or cancel an Auction at any time in its sole and absolute discretion.

INITIAL HERE:

3.4 The Auctioneer reserves the right in its sole and absolute discretion to suspend or exclude an Offeror and/or Bidder from participating in an Auction for any reason whatsoever and the Offeror and the Bidder hereby accepts Trigga's right in this regard.

4. **Auction Catalogue**

4.1 Once the Offeror has notified Trigga of the number of Pigs it wishes to sell on an Auction either via e-mail using the e-mail address: caroline@trigga.co.za or via WhatsApp using the number: 082 555 5113, the Offeror may not withdraw its Pigs from such Auction without the prior written consent of the Auctioneer, which consent may be withheld.

4.2 The catalogue for each Auction shall be available on the Bidding Platform prior to each Auction. The Auctioneer reserves the right to amend the catalogue at any time prior to the commencement of the Auction.

4.3 The catalogue shall detail the Lots to be auctioned by the Auctioneer on the Auction.

4.4 The Seller of a Lot is solely responsible for providing an accurate description of such Lot. Any claim which the Purchaser has in regard to an inaccurate description of a Lot shall rest with the Seller. The Purchaser hereby accepts that it shall not have any claim of any nature whatsoever against the Auctioneer arising out of any inaccurate description of a Lot.

4.5 The Seller hereby indemnifies and holds the Auctioneer harmless against any claim made against the Auctioneer arising out of an inaccurate description of a Lot, including but not limited to the Auctioneer's legal costs on an 'attorney-and-client' scale.

5. **Administration of the Auction**

The Auctioneer shall be responsible for administering the Auction and it shall be entitled to the payment of the Commission for this function, which Commission shall be paid by the Purchaser free of any deduction or the application of 'set-off'.

6. **Sale by auction**

6.1 A Bidder may bid for one or more Lots by following the procedure on the Bidding Platform.

6.2 The Auctioneer may, in its sole and absolute discretion, change the bidding procedure on the Bidding Platform from time to time.

6.3 The Reserve Price for a particular Lot is the starting price for such Lot.

6.4 All bids received by the Bidder exclude VAT and the Commission.

INITIAL HERE:

- 6.5 The Commission is payable by the Purchaser on any Lot which it purchases.
- 6.6 A Bidder may not withdraw its bid once bidding on the Bidding Platform has closed in regard to the particular Lot. The Auctioneer's decision on whether bidding has closed in regard to a particular Lot shall be final and binding on the Bidder and the Offeror.
- 6.7 The bid of the Highest Bidder in respect of a particular Lot, subject to the Reserve Price, shall be deemed to be the Purchaser of such Lot once the bidding closes for such Lot.
- 6.8 In the event that there is a dispute between two or more Bidders, the Auctioneer may in its sole absolute discretion put the Lot up for sale again or the Auctioneer may declare one of the Bidders to be the Highest Bidder, which declaration shall be final and binding on the disputing Bidders.

7. **Auction Price**

- 7.1 The Auction Price in respect of a particular Lot purchased on the Auction shall be calculated based on the CCM of all the Pigs making up such Lot.
- 7.2 The Pigs shall be slaughtered on a date agreed between the Purchaser (or the Auctioneer, where the Auctioneer is acting as the Purchaser's agent as contemplated in clause 10.1) and the Abattoir, which date shall be within a period of 10 (ten) calendar days calculated from the Date of Sale.
- 7.3 The Abattoir shall deliver the CCM of all the Pigs slaughtered by it to the Auctioneer within a period of 1 (one) calendar day calculated from the Slaughter Date.

8. **Delivery of the Pigs making up the Lot**

- 8.1 The Purchaser shall take delivery of the Pigs purchased at the Loading Point.
- 8.2 Delivery of the Pigs shall be deemed to be complete once the Seller has loaded the Pigs onto the Purchaser's truck, or the truck of its duly authorised representative, or the Transporter's truck, where a Transporter is appointed to transport the Pigs by the Auctioneer in terms of a Transport Order.
- 8.3 The Pigs will be deemed to have been loaded once they are secured on the truck so that the truck may depart from the Loading Point in order to proceed to the Off-Loading Point.

| |
|-----------------------|
| INITIAL HERE: |
|-----------------------|

8.4 Notwithstanding that the Seller is responsible for loading the Pigs, the Purchaser or the Transporter, as the case may be, shall be responsible for ensuring that the truck transporting the Pigs is not overloaded and that it is safe for the truck to depart from the Off-Loading Point. The Purchaser or the Transporter, as the case may be, shall be responsible for all traffic fines arising out of transporting the Pigs, including but not limited to, overloading.

9. Transport Services

9.1 Where the Purchaser requests the Auctioneer to act as its agent in order to appoint a Transporter to render the Transport Services, the Auctioneer may agree to do so, provided it does so in writing.

9.2 The Purchaser shall pay the Auctioneer the Transport Charge on delivery of a VAT invoice, free of any deductions or the application of set-off. The Auctioneer shall pay the Transporter the Transport Charge on receipt of such payment from the Purchaser. The Auctioneer is not obliged to pay the Transporter the Transport Charge until it has received payment from the Purchaser.

9.3 The Purchaser shall pay the Auctioneer the Service Fee for arranging the Transporter to render the Transport Services. The Purchaser shall pay the Auctioneer the Service Fee in regard to the Transport Service on delivery of a VAT invoice, free of any deductions or the application of set-off.

9.4 The Service Fee in regard to the Transport Services excludes VAT and the Commission.

10. Slaughtering Services

10.1 Where the Purchaser requests the Auctioneer to act as its agent in order to appoint an Abattoir to render the Slaughtering Services, the Auctioneer may agree to do so, provided it does so in writing.

10.2 The Purchaser shall pay the Auctioneer the Slaughtering Charge on delivery of a VAT invoice, free of any deductions or the application of set-off. The Auctioneer shall pay the Abattoir the Slaughtering Charge on receipt of such payment from the Purchaser. The Auctioneer is not obliged to pay the Abattoir the Slaughtering Charge until it has received payment from the Purchaser.

10.3 The Seller shall pay the Levy directly to the Abattoir.

10.4 On receipt of the Levy from the Seller, the Abattoir shall be responsible for paying the Levy to the RMLA in accordance with the provisions of the Marketing of Agricultural Products Act.

10.5 The Purchaser shall pay the Auctioneer the Service Fee for arranging the Abattoir to render the Slaughtering Services. The Purchaser shall pay the Auctioneer the Service Fee on delivery of a VAT invoice in regard to the Slaughtering Services, free of any deductions or the application of set-off.

INITIAL HERE:

- 10.6 The Service Fee in regard to the Slaughtering Services excludes VAT and the Commission.
11. **Commission**
- 11.1 Unless otherwise agreed in writing, the Auctioneer shall charge the Purchaser the Commission.
- 11.2 Unless otherwise agreed in writing, the Auctioneer shall charge the Purchaser the Service Fee for arranging the Transport Services in respect of Pigs purchased by the Purchaser on the Auction at the rate stipulated on the Bidding Platform.
- 11.3 Unless otherwise agreed in writing, the Auctioneer shall charge the Purchaser a Service Fee for arranging the Slaughtering Services in respect of Pigs purchased by the Purchaser on the Auction at the rate stipulated on the Bidding Platform.
12. **Risk**
- 12.1 Where the Auctioneer does not act as the Purchaser's agent as contemplated in clause 9.1, risk in and too the Pigs shall pass from the Seller to the Purchaser on Delivery.
- 12.2 Where a Transporter is appointed by the Auctioneer to uplift the Pigs from the Loading Point, risk in and too the Pigs shall pass from the Seller to the Transporter on Delivery and risk shall remain with the Transporter during Transit.
- 12.3 The Seller, the Purchaser and the Abattoir shall have no claim against the Auctioneer arising out of the appointment of the Transporter and/or the rendering of the Transport Services, including but not limited to any claim in respect of any loss of or damage to the Pigs during Transit.
- 12.4 Should any Pig be found to be dead at the Loading Point prior to Delivery, ownership and risk in and to the dead Pig shall remain with the Seller. The dead Pig shall be disposed of by the Seller and all costs associated therewith shall be for the Seller's account. The Purchaser shall not be required to pay the Auction Price in respect of the dead Pig and the Seller shall be responsible for paying the Auctioneer, the Commission on such dead Pig on the same payment terms which are applicable to the particular Purchaser.
- 12.5 The Purchaser and/or the Transporter, as the case may be, shall have the discretion to either:
- 12.5.1 refuse to load a Pig, which either of them, as the case may be, deems to be unfit for transportation. In such instances, the rejected Pig shall be replaced by the Seller with a Pig substantially the same as the rejected Pig; or

| |
|---------------|
| INITIAL HERE: |
|---------------|

- 12.5.2 mark such Pig as a health concern (“**Marked Pig**”). Risk in and to Marked Pigs will remain with the Seller notwithstanding that the Purchaser or the Transporter, as the case may be, shall have control over such Pig during Transit. The Seller shall have no claim arising out of any loss or damage to a Marked Pig during Transit.
- 12.6 If the Seller elects not to replace such Marked Pig and such Marked Pig is found DOA or DIP, neither the Purchaser nor the Transporter shall be liable for such loss, notwithstanding anything to the contrary contained in these Terms and Conditions. The Purchaser shall not be required to pay the Auction Price in respect of the dead Pig and the Seller shall be responsible for paying the Auctioneer the Commission in regard to such dead Pig on the same Credit Terms, which are applicable to the Purchaser.
- 12.7 Where the Pigs are Off-Loaded by the Transporter appointed by the Auctioneer as contemplated in clause 12.2, risk in and to the Pigs shall pass from the Transporter to the Abattoir once the POD is signed. The Abattoir shall ensure that the POD is signed within a period of sixty (60) minutes from the time that off-loading of the Pigs is complete.
- 12.8 If a Pig is off-loaded, inspected by an Authorised Person and it is declared to be a Rejected Pig, then the following will apply:
- 12.8.1 if a Rejected Pig is a Marked Pig, risk in and to such Pig shall be deemed not to have passed from the Seller to the Transporter notwithstanding the provisions of clause 12.2. The Seller shall be responsible for collecting such Rejected Pig from the Abattoir. The Seller shall collect the Rejected Pig within a period of 2 (two) calendar days from the Off-Loading Date, at its cost and the Seller shall be responsible for compensating the Abattoir for the reasonable costs of watering and feeding such Rejected Pig pending collection. The Purchaser shall not be liable to pay the Seller for such Rejected Pig and the Seller shall be responsible for paying the Auctioneer the Commission in regard to such Rejected Pig, on the same Credit Terms which are applicable to the Purchaser;
- 12.8.2 if a Rejected Pig is a not a Marked Pig, risk in such Pig shall not pass from the Transporter to the Abattoir as contemplated in clause 12.9. The Transporter shall be responsible for uplifting such Rejected Pig from the Abattoir. The Transporter shall be liable to compensate the Purchaser for such Rejected Pig and the Transporter shall be liable to compensate the Purchaser for the Commission payable to the Auctioneer for the sale of such Pig, on the same Credit Terms, which are applicable to the Purchaser; and

| |
|---------------|
| INITIAL HERE: |
|---------------|

- 12.8.3 if either the Seller or the Transporter refuse or neglect to collect or uplift a Rejected Pig as contemplated in clauses 12.8.1 and 12.8.2, the Abattoir may euthanise and dispose of such Rejected Pig and the Seller or the Transporter, as the case may be, shall be responsible for all the costs in that regard.
- 12.9 Once the Transporter has off-loaded the Consignment and it has been inspected by the Authorised Person, a representative of the Abattoir shall sign the POD and hand the original POD to the Transporter. Once the POD is signed, risk in and to the Pigs shall pass from the Transporter to the Abattoir.
- 12.10 The following shall apply to a Pig (which is not a Marked Pig), which is either DOA or DIP:
- 12.10.1 the Purchaser shall be obliged to pay the Seller the Auction Price in respect of a Pig, which is DOA. The Transporter shall be liable to compensate the Purchaser for the Auction Price in respect of such Pig as well as the Commission payable by the Purchaser to the Auctioneer in respect of such Pig, on the same Credit Terms applicable to the Purchaser. The Transporter shall be liable for all the direct costs incurred by the Abattoir in regard to the disposal of such Pig; and
- 12.10.2 the Purchaser shall be obliged to pay the Seller the Auction Price in respect of a Pig, which is DIP. The Abattoir shall be liable to compensate the Purchaser for the Auction Price in respect of such Pig as well as the Commission payable by the Purchaser to the Auctioneer in respect of such Pig, on the same Credit Terms which are applicable to the Purchaser. The Abattoir shall be liable for all the costs incurred in regard to the disposal of such Pig.
- 12.11 For the purposes of clauses 12.4, 12.6, 12.8, 13.9, 13.10, 13.11 and 13.12, the Commission payable by the Seller or Transporter, as the case may be, on a dead Pig and/or a Marked Pig, which is found to be DOA or DIP or a Rejected Pig, or Unfit Sick Pig or a Condemned Pig shall be calculated on the average price of all the Pigs slaughtered in the particular Consignment received by the Abattoir from the Purchaser.
- 12.12 The Seller, the Purchaser and the Transporter shall have no claim against the Auctioneer arising out of the appointment of the Abattoir and/or the rendering of the Slaughtering Services, including but not limited to any claim in respect of any loss of or damage to the Pigs during the slaughtering process.
13. **Slaughtering of Pigs**
- 13.1 If the Auctioneer has agreed to act as the Purchaser's agent as contemplated in clause 10.1, it may issue a Slaughter Instruction from time to time in respect of Pigs purchased by the Purchaser on the Auction.

| |
|---------------|
| INITIAL HERE: |
|---------------|

-
- 13.2 Once the Pigs are delivered to the Abattoir, such Pigs shall be slaughtered, in accordance with the Slaughter Instruction within a period of 1 (one) calendar day calculated from the Off-Loading Date.
- 13.3 The Abattoir shall comply with all laws in regard to the slaughtering of the Pigs including but not limited to the Meat Safety Act and all Regulations promulgated under such Act.
- 13.4 If a Pig is injured during Transit, Off-Loading or in lairage the Abattoir shall attend to the emergency slaughter of such injured Pig without undue delay in the appropriate circumstances.
- 13.5 The Abattoir may not slaughter any Pig, which it suspects has been exposed to a forbidden substance as defined in the Red Meat Regulations.
- 13.6 If any Pig in a Consignment is DOA or DIP, such Pig must be disposed of as condemned material as contemplated in the Red Meat Regulations.
- 13.7 If a Pig is determined to be a Sick Pig, a Registered Veterinarian must determine whether the Sick Pig must be provisionally slaughtered or disposed of as condemned material. Should the Registered Veterinarian determine that the Sick Pig is to be provisionally slaughtered the carcass of the Sick Pig must be subjected to a second meat inspection by a Registered Veterinarian, as contemplated by the Red Meat Regulations, to determine whether the Sick Pig is fit for human consumption or if the Sick Pig is a Condemned Pig.
- 13.8 If the Sick Pig is determined to be unfit for slaughter by the Registered Veterinarian, such Pig shall be euthanised and disposed of as condemned material ("**Unfit Sick Pig**"). The Registered Veterinarian shall determine the cause of the Sick Pig being unfit for slaughter.
- 13.9 If the Unfit Sick Pig is a Marked Pig, the Purchaser shall not be obliged to pay the Seller the Auction Price in respect of such Unfit Sick Pig, which is a Marked Pig. The Seller shall be liable to compensate the Purchaser for the Commission payable by the Purchaser to the Auctioneer in respect of such Unfit Sick Pig, which is a Marked Pig, on the same Credit Terms applicable to the Purchaser. The Seller shall be liable for all the direct costs incurred by the Abattoir in regard to euthanising and the disposal of such Unfit Sick Pig, which is a Marked Pig.
- 13.10 If the Sick Pig is not a Marked Pig and the Registered Veterinarian determines that the cause of the Sick Pig being unfit for slaughter arose:

| |
|---------------|
| INITIAL HERE: |
|---------------|

- 13.10.1 prior to Delivery, the Purchaser shall not be obliged to pay the Seller the Auction Price in respect of such Unfit Sick Pig. The Seller shall be liable to compensate the Purchaser for the Commission payable by the Purchaser to the Auctioneer in respect of such Unfit Sick Pig, on the same Credit Terms which are applicable to the Purchaser. The Seller shall be liable for all the direct costs incurred by the Abattoir in regard to euthanising and the disposal of such Unfit Sick Pig;
- 13.10.2 during Transit, the Purchaser shall be obliged to pay the Seller the Auction Price in respect of such Unfit Sick Pig. The Transporter shall be liable to compensate the Purchaser for the Auction Price in respect of such Unfit Sick Pig as well as the Commission payable by the Purchaser to the Auctioneer in respect of such Unfit Sick Pig, on the same Credit Terms which are applicable to the Purchaser. The Transporter shall be liable for all the direct costs incurred by the Abattoir in regard to euthanising and the disposal of the Unfit Sick Pig; and
- 13.10.3 after the POD is signed by the Abattoir, the Purchaser shall be obliged to pay the Seller the Auction Price in respect of such Unfit Sick Pig. The Abattoir shall be liable to compensate the Purchaser for the Auction Price in respect of such Unfit Sick Pig as well as the Commission payable by the Purchaser to the Auctioneer in respect of such Unfit Sick Pig, on the same Credit Terms which are applicable to the Purchaser. The Abattoir shall be liable for all the costs in regard to euthanising and the disposal of the Unfit Sick Pig.
- 13.11 If the Condemned Pig is a Marked Pig, the Purchaser shall not be obliged to pay the Seller the Auction Price in respect of such Condemned Pig, which is a Marked Pig. The Seller shall be liable to compensate the Purchaser for the Commission payable by the Purchaser to the Auctioneer in respect of such Condemned Pig, which is a Marked Pig, on the same Credit Terms applicable to the Purchaser. The Seller shall be liable for all the direct costs incurred by the Abattoir in regard to euthanising and the disposal of such Condemned Pig, which is a Marked Pig.
- 13.12 If a Pig is not a Marked Pig and such Pig is determined to be a Condemned Pig by the Authorised Person, then the Authorised Person shall determine the cause of such condemnation. If the cause of the condemnation arose:
- 13.12.1 prior to Delivery, the Purchaser shall not be obliged to pay the Seller the Auction Price in respect of such Condemned Pig. The Seller shall be liable to compensate the Purchaser for the Commission payable by the Purchaser to the Auctioneer in respect of such Condemned Pig, on the same Credit Terms which are applicable to the Purchaser. The Seller shall be liable for all the direct costs incurred by the Abattoir in regard to euthanising and the disposal of such Condemned Pig;

| |
|---------------|
| INITIAL HERE: |
|---------------|

- 13.12.2 during Transit, the Purchaser shall be obliged to pay the Seller the Auction Price in respect of such Condemned Pig. The Transporter shall be liable to compensate the Purchaser for the Auction Price in respect of such Condemned Pig as well as the Commission payable by the Purchaser to the Auctioneer in respect of such Condemned Pig, on the same Credit Terms which are applicable to the Purchaser. The Transporter shall be liable for all the direct costs incurred by the Abattoir in regard to euthanising and the disposal of the Condemned Pig; and
- 13.12.3 after the POD is signed by the Abattoir, the Purchaser shall be obliged to pay the Seller the Auction +the Auction Price in respect of such Condemned Pig as well as the Commission payable by the Purchaser to the Auctioneer in respect of such Condemned Pig, on the same Credit Terms which are applicable to the Purchaser. The Abattoir shall be liable for all the costs in regard to euthanising and the disposal of the Condemned Pig.

14 Payment of the Purchase Price

- 14.1 All Pigs that are purchased on the Auction shall be slaughtered as the Auction Price is calculated on the CCM of each Lot.
- 14.2 Where the Purchaser makes arrangements directly with an Abattoir to slaughter the Pigs, the Purchaser shall arrange for proof of the CCM in respect of such Lots to be delivered to the Auctioneer within a period of 10 (ten) calendar days calculated from the Date of Sale.
- 14.3 The Purchaser shall pay the Auctioneer the full Auction Price (on behalf of the Seller), plus VAT, in respect of the Pigs purchased on the Auction within seven (7) calendar days from the Slaughter Date. The Purchaser shall also pay the Auctioneer the Commission, plus VAT, in respect of the Pigs purchased on the Auction within seven (7) calendar days from the Slaughter Date. On receipt of the Auction Price, the Auctioneer shall pay the Seller the Auction Price less any amounts due by the Seller to the Auctioneer.
- 14.4 Except as otherwise provided in these Terms and Conditions, all payments due by the Purchaser to the Auctioneer shall be effected strictly in accordance with the Credit Terms.

15. Application of Set-Off

The Seller, the Purchaser, the Transporter and the Auctioneer, hereby agree that the Auctioneer may apply the principle of 'set-off' in regard to the payment of any amounts due by a Party as contemplated in these Terms and Conditions including but not limited in regard to DOA and DIP Pigs, Rejected Pigs, Condemned Pigs, Unfit Sick Pigs, Slaughter Charges and Transport Charges.

INITIAL HERE:

16. **Exclusion for Non-payment**

Should a Purchaser or a Seller fail to make payment of any amount due to the Auctioneer as provided in these Terms and Conditions, the Auctioneer may exclude such Purchaser or Seller, as the case may be, from participating in any future Auctions.

17. **No Warranties or Guarantees**

17.1 No warranties or guarantees of any kind or of any nature are given by the Auctioneer with regard to the Pigs, the Transport Services and or the Slaughtering Services.

17.2 The Auctioneer shall not be responsible for any errors or inaccuracies in regard to the description, number of Pigs, identification or any other information in regard to a Lot or the Pigs in such Lot.

17.3 In the event that the Auctioneer makes a *bona fide* error in regard to the catalogue, the Auctioneer may in its sole and absolute discretion cancel the sale of such Lot, even after the Lot has been sold to the Highest Bidder but before such Pigs are slaughtered.

18. **CPA**

18.1 In order to qualify as a Bidder, a Bidder must be a “consumer” as contemplated in section 5(2)(b) of the CPA. The Bidder warrants that it is a “consumer” as described in Section 5(2)(b) of the CPA, that is, a consumer whose asset value or annual turnover exceeds the threshold determined by the responsible Minister in terms of Section 6 of the CPA.

18.2 In the event that the Auctioneer ascertains that the Bidder is not a “consumer” as contemplated in section 5(2)(b) of the CPA, it may in its sole and absolute discretion, disqualify such Bidder from participating in the Auction and/or cancel any sale with such Bidder arising from the Auction.

19. **Ownership**

Ownership of a Lot shall pass from the Seller to the Purchaser on Delivery, notwithstanding that the Auction Price in respect of such Lot has not been paid as the CCM will not have been determined.

20. **Limitation on Liability**

20.1 Notwithstanding anything to the contrary contained in these Terms and Conditions, the Offerors, the Sellers, the Bidders, the Purchasers, the Transporters and the Abattoirs hereby accept and agree that the Auctioneer shall not in any circumstances howsoever arising be liable to such, Offerors, Sellers, Bidders, Purchasers, Transporters and Abattoirs whether in contract, delict or otherwise, for any special, consequential or incidental losses and / or damages (including but not limited to loss of profits and/or loss of business), arising from or in connection with the Auction including but not limited to as a result of the negligent actions and omission of the Auctioneer (and the Auctioneer’s employees); and/or a breach of these Terms and Conditions.

INITIAL HERE:

20.2 Notwithstanding anything to the Contrary contained in these Terms and Conditions, the Offerors, the Sellers, the Bidders, the Purchasers, the Transporters and the Abattoirs all agree that the maximum amount of any claim which any one of them may have against the Auctioneer from time to time shall not exceed the sum of R50,000.00 (fifty thousand Rand) per claim. The Auctioneer shall have no further liability arising pursuant to or in connection with a claim arising out of these Terms and Conditions in excess of the abovementioned R50,000.00 (fifty thousand Rand) per claim.

20.3 The Auctioneer shall not be responsible for any interruption with regard to the internet or the internet connection and/or any electricity power-outage during an Auction resulting in a Bidder being disconnected from the online Auction, whether or not the cause is the Bidder's internet connection being interrupted or that of the Auctioneer.

21 **Legal Costs arising out of a Breach**

In the event that an Offeror, Seller, Bidder, Purchaser, Transporter and/or Abattoir breaches any of these Terms and Conditions, it shall be liable to pay the costs incurred by the Auctioneer as a result of such breach on the 'attorney-and-client' scale.

22 **Breach**

22.1 Should a Party ("**Defaulting Party**") commit a breach of any of the provisions of these Terms and Conditions, then the other Party or Parties ("**Aggrieved Party**") shall be entitled to give the Defaulting Party 3 (three) calendar days' prior written notice to remedy the breach.

22.2 If the Defaulting Party fails to comply with such notice to remedy the breach, the Aggrieved Party shall be entitled to pursue, against the Defaulting Party, any remedy available to it in law, subject to the limitation on liability detailed in clause 20.

23 **Dispute Resolution**

23.1 This clause 23 is separate and divisible from the rest of these Terms and Conditions and shall not become void, voidable or unenforceable by reason of any alleged misrepresentation, mistake, duress, undue influence, impossibility, illegality, immorality, absence of consensus, lack of authority or any other cause relating to the rest of these Terms and Conditions. The Parties intend that any such issue shall be subject to arbitration in terms of this clause 23.

23.2 The Parties to a dispute agree to meet together within a period of 3 (three) calendar days and to exercise their reasonable endeavours to resolve any difference or dispute that may arise between them in an amicable, informal and expeditious manner.

INITIAL HERE:

- 23.3 Any unresolved dispute which arises out of these Terms and Conditions of any nature whatsoever, including but not limited to: (1) the existence of these Terms and Conditions apart from this clause 23; (2) the interpretation and effect of these Terms and Conditions; (3) the Parties' respective rights and/or obligations under these Terms and Conditions; (4) the amendment of the Terms and Conditions; (5) the breach, termination or cancellation of these Terms and Conditions or any other matter arising out of the breach; (6) damages or any other claim for compensation; and (7) any other dispute that may be as a result of these Terms and Conditions, shall be finally determined by arbitration.
- 23.4 Unless the disputing parties can agree on the nomination of an arbitrator within a period of 2 (two) calendar days following their meeting in terms of clause 23.2, either Party may refer the dispute to the Registrar of the Arbitrator Foundation of Southern Africa (“AFSA”). The Parties agree that:
- 23.4.1 if the matter is primarily of an accounting nature, the arbitrator shall be an independent practising chartered accountant of not less than 10 (ten) years standing with experience in dispute resolution matters, appointed by the Registrar of AFSA for the time being; or
- 23.4.2 if the matter is primarily of a legal nature or any matter which is neither primarily of an accounting nature or a legal nature, the arbitrator shall be a practising advocate of not less than 10 (ten) years standing, appointed by the Secretariat of AFSA for the time being (“the Secretariat”).
- 23.5 If the Parties fail to agree whether the matter is primarily of an accounting, legal or other nature, the matter shall be deemed to be primarily of a legal nature.
- 23.6 The arbitration shall be held in Durban or such other venue agreed to by the Parties in writing.
- 23.7 The arbitration shall be governed in terms of the AFSA Rules for Expedited Arbitrations.
- 23.8 The Parties shall use their best endeavours to ensure that the arbitration is completed within 10 (ten) calendar days after the appointment of the arbitrator.
- 23.9 The provisions of this clause 23 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions.
- 23.10 Notwithstanding anything contained in this clause 23, nothing shall prevent a Party from approaching a court of competent jurisdiction for urgent interim relief.

| |
|---------------|
| INITIAL HERE: |
|---------------|

24 **Amendment to the Terms and Conditions**

24.1 The Auctioneer may unilaterally amend these Terms and Conditions from time to time, however the Auctioneer may not amend the Terms and Conditions during the 5 (five) day period immediately before an Auction.

24.2 The Terms and Conditions displayed on the Bidding Platform 5 (five) days preceding an Auction shall apply to such Auction.

24.3 Each Bidder hereby accepts that it is responsible for checking the prevailing Terms and Conditions for an Auction prior to placing a Bid on such Auction.

25 **General**

25.1 The termination of these Terms and Conditions for any cause shall not release a Party from any liability or claim which at the time of termination has already accrued to the Auctioneer or which thereafter may accrue in respect of any act or omission prior to such termination.

25.2 If any provision of these Terms and Conditions, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law it shall be severable from these Terms and Conditions and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

25.3 These Terms and Conditions shall only be amended in accordance with clause 24.

25.4 These Terms and Conditions constitute the entire terms and conditions with regard to their subject matter. The Parties shall not have any claim or right of action arising from any undertaking, representation or warranty not included in these Terms and Conditions. No indulgence, leniency or extension of time which the Auctioneer ("**the Grantor**") may grant or show the other Party or Parties, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.

25.5 The failure by the Auctioneer to enforce any provision of these Terms and Conditions shall not affect in any way its right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

25.6 The Parties acknowledge that they are free to secure independent legal and other advice as to the nature and effect of all of the provisions of these Terms and Conditions and that it has either or both have taken such independent legal or other advice or dispensed with the necessity of doing so.

INITIAL HERE:

-
- 25.7 No remedy conferred by these Terms and Conditions is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by the Auctioneer shall not constitute a waiver by the Auctioneer of its right to pursue any other remedy.
- 25.8 The termination or expiry of these Terms and Conditions shall not affect those provisions of these Terms and Conditions which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

END OF THE TERMS AND CONDITIONS

INITIAL HERE: