

# CONDITIONS OF SALE

## EZEMVELO KZN WILDLIFE - GAME AUCTION 2019

### 1. EXCLUDING WARRANTIES, REPRESENTATION, LIABILITIES

- a. It is an express condition of the sale of game that Ezemvelo KZN Wildlife can give no warranty as to its suitability for any purpose for which it may be required, its state of health, condition, nature, quality or sex.
- b. No guarantee therefore is given concerning any such feature of any animal sold, save as may be specifically recorded in writing, and game is accordingly purchased as it appears upon inspection, with all defects that it may possess, be they patent or latent.
- c. It follows that Ezemvelo KZN Wildlife cannot be liable to any purchaser or third party arising from any loss that may arise following the purchase and sale of any game whether such loss is direct, or indirect, or consequential.
- d. The mass of any game, if stipulated, is determined on a mass meter prior to or at the time of sale, and any mass so stipulated, is no more than a reasonable estimate and is given for guidance only, there being no warranty or representation or stipulation, express or implied, being given as to the accuracy thereof.
- e. The sex, ratio and age group structure of games species sold on catalogue shall be that determined by the Seller in its sole discretion, provided that in the case of sex ratio, the number of males will not exceed females, unless otherwise stated. Game will be commonly delivered in family groups, which family groups may not necessarily comprise only adult stock and/or breeding stock. The sex ratios of game in the auction pens will be determined as far as reasonably possible before sale, but no guarantee as to the accuracy is given.
- f. In the event of game purchased on catalogue and delivered upon capture, should circumstances dictate that a group of less or more than that advertised for sale is delivered, the Buyer understands that this will have been dictated by conservation requirements. In that event, the Buyer agrees that, in the event of more game being supplied than was purchased, payment pro-rata will be made immediately upon delivery; and in the event of less, the Seller will refund pro-rata. NO failure to deliver the same numbers as were stipulated in catalogue sales will in any way affect the validity of any purchase.
- g. **All sales are subject to same not conflicting with Ezemvelo KZN Wildlife's primary role as guardian of the Provinces game. Should any transaction be determined by Ezemvelo KZN Wildlife in its discretion to conflict such rule, it shall be entitled to cancel such sale. The purchaser accepts that Ezemvelo KZN Wildlife's decision shall:**
  - (i) be final and binding; and
  - (ii) Not require to be supported by the delivery of reasons.

### 2. CONDUCT OF PUBLIC AUCTION - BUYERS TO REGISTER

- a. The Public Auction is conducted subject to these Terms and Conditions of Auction, and further subject to all specific stipulations formally announced by the Auctioneer, either at the commencement of or during the Auction, whether or not the Buyer may have been present at the time any such announcement may have been made. Each Bidder shall be bound by the terms of these Conditions, which shall form the basis of the bargaining carried on between the Auctioneer and the Bidders, and shall also govern the terms of each sale so concluded.
- b. The game will be sold by Public Auction, the Seller, being Ezemvelo KZN Wildlife (EKZNW) (either as owner or as the authorised agent of the owner), ultimately reserving the right to itself, apart from the Auctioneer, to decline to sell to the highest or any Bidder. The Auctioneer may without assigning a reason reject any bid. The regulating and control of the Auction shall be entirely in the hands of the Auctioneer, who will regulate the advances in the bidding.
- c. All Bidders are required to register with the Seller (EKZNW) as Buyers prior to the commencement of the Auction, and shall be required to furnish their names, ID number, status, selected address and any other general information required by the Seller (EKZNW). The Seller (EKZNW) reserves the right to refuse registration of any Buyer; if the Seller (EKZNW) having registered any Buyer is nonetheless not satisfied with regard to the details furnished, it shall be obliged to disregard any bid made by any such Bidder and/or cancel any sale forthwith.

### **3. BIDS AT THE AUCTION**

- a. Each bid shall be an irrevocable offer and shall remain irrevocable until the bid has been accepted finally or has been overtaken by a higher bid. If the bid is provisionally accepted, it may not be withdrawn until such time as it has been finally accepted. Acceptance and communication thereof by the Auctioneer will be indicated by the fall of the hammer but will remain subject further to confirmation by the Seller, and subject to all of the remaining Terms and Conditions of Auction hereof. Notwithstanding final acceptance of the bid and confirmation by the Seller, the game which is the subject of the bid may be withdrawn from the sale by the owner, without recourse and without having to give reason, at any stage prior to receipt of the full amount of the purchase price.
- b. The Auctioneer shall have the right to fix a minimum bid.
- c. Whether or not a dispute arises, the Auctioneer shall have the sole right to decide who the last Bidder is at any stage of the sale. He may at his discretion recommence the Auction, put any of the game up for re-sale, withdraw the game from the sale and resell at any future time, subject to that which appears above. Although the sale shall be concluded at the fall of the Auctioneer's hammer, the Auctioneer shall be entitled to at his discretion to cancel the sale and resell the game sold. In the event of the Buyer defaulting in payment or any other regard with the result that the sale is cancelled, the Buyer shall be responsible for all expenses incurred in any such resale, together with any loss sustained, without being entitled to any benefit or profit which may be derived from the re-sale.
- d. All game is put up for auction for sale and all bids are made on a "per head" basis, unless otherwise expressly stipulated by the Auctioneer during the sale. Thus any bid is a bid per animal with the Buyer taking the whole of any particular auction lot, at a price equal to the bid to be multiplied by the number of animals in that lot.
- e. Bids are taken in South African Rand.

#### 4. PAYMENT OF PURCHASE PRICE

- a. Payment of the purchase price shall be made by the Buyer in cash or bank - guaranteed cheque in a proper form, acceptable to and made payable to Ezemvelo KZN Wildlife, immediately after the fall of the hammer. The purchase price shall be paid without deduction and free of set off.
- b. All transactions at the Auction should be considered as cash transactions. The full purchase price is due owing and payable on the day of knock down, and transport and any other costs due on the date of delivery.
- c. In the event of the Buyer failing to pay the full purchase price on due day, or any transport costs or any other costs due by the Buyer on due date, the full amount will without notice become payable and the Seller (EKZNW), may take such steps as it may be entitled to do, by operation of Law. No failure to strictly enforce any right accorded to it hereunder shall in any way constitute a waiver or novation of such right.
- d. In the instance of catalogue sales of animals, payment of the full purchase price shall be made on the date of Auction, notwithstanding that delivery is not immediately available. Delivery in the instances of the catalogue animals shall be (unless the Buyer has made prior payment for such transport) the date upon which the Seller advises the Buyer that the catalogue animals are available for collection from the capture site.

#### 5. BOMA FEES

- 5.1 In the event of animals being offered on live auction, these animals will be held in the bomas free of charge for up to and including 10 days after the date of the Auction.

Thereafter the fees detailed in Table 1 will be levied per head on a daily basis for the next 14 days. Thereafter the fees detailed in Table 2 will be levied per head on a daily basis.

TABLE 1

SPECIES	RATE PER DAY
Common Species	R 60
Zebra	R 80
Buffalo	R 100
Giraffe	R 120
Hippo	R 280
White Rhino	R 450
Black Rhino	R 550

TABLE 2

SPECIES	RATE PER DAY
Common Species	R 120
Zebra	R 160
Buffalo	R 200
Giraffe	R 240
Hippo	R 540
White Rhino	R 900
Black Rhino	R 1 100

NOTE: These costs are applicable to buyers who request animals to boma trained or where buyers fail to collect their purchased animals within the specified time frames.

- 5.2 In the case of game purchased on catalogue auction, there shall be no concessionary holding period, except in the case of nyala and black rhino specifically sold as boma trained.

## 6. RISK AND TRANSPORTATION

- a. Unless specified to the contrary elsewhere herein, all risk in and to any game shall pass to the Buyer at the fall of the hammer and delivery shall be deemed to have been made upon payment of the purchase price. Buyers are advised to avail themselves of insurance facilities available.
- b. Any game confined in a boma after the fall of the hammer, whether at the Buyers request or for any reason, shall be so confined entirely at the Buyers risk. Game for purposes of this clause shall include catalogue animals which are caught and confined after the fall of the hammer.
- c. The Buyer may transport the game at the Buyer's own risk, in vehicles and in containers and in a manner approved by the Seller, and in such event the Buyer shall be required to make application for such approval prior to the Public Auction. If the Buyer has requested the Seller to transport and deliver the game on the Buyer's behalf, the transport charges shall be paid to the Seller (EKZNV) in advance not later than the completion of the Auction on the day of the Auction. If the required transport charges are not so paid in advance, the transport arrangements and delivery from the Auction pen to the Buyer's premises shall remain the obligation of the Buyer.
- d. Should the Buyer fail to make all of the necessary prior arrangements with the Seller to undertake and complete the transport, the Buyer shall be obliged to transport game himself, and in such event:
  - i. the Seller may, in its sole discretion prohibit the removal and transportation of the game if the Seller in its sole discretion does not approve the vehicle or container or other manner of transportation, in that same does not comply with the Seller's specifications (which are available on request), or if the arrangements for such removal and transport are considered by the Seller to be inadequate. In the event of removal being prohibited, the Seller shall not be responsible for any costs incurred by the Buyer, nor shall the Seller be responsible for any loss of life of game or injury to the game that may occur after the sale has taken place.
  - ii. the Buyer will be informed by the Seller where the game is to be collected, and the date on which it is to be collected. Should the Buyer fail to collect the game at the specified place and on the specified date during the hours of daylight, the Seller shall, in its sole discretion, be entitled to immediately cancel the sale in whole or in part, upon notice to the Buyer, without prejudice to the Seller's rights to recover any costs or losses incurred by it in consequence of any failure to collect and the consequent cancellation of the sale.
  - iii. the Seller shall not be responsible for any loss of, or damage to, any vehicle or injury to any person or property and the Buyer indemnifies the Seller against any claim, loss or damage arising from the time the risk has passed to the Buyer as set out in paragraph 6(a) above.
  - iv. the Buyer must be prepared to load game at short notice and must be prepared to accept animals before or after dates stipulated as the expected capture date. The onus remains with the Buyer to be available at capture in the case of catalogue animals. The Seller shall not be responsible for any costs or losses resulting from delays in capture.

- v. the Buyer should inspect and count his purchases, sign and record any comments on the delivery note before loading takes place.

**e. Where transport is undertaken by the Seller:**

- i. all risk in and to the game shall pass to the Buyer immediately the game is off-loaded from the vehicle used by the Seller. Game dying after being released from the Seller's vehicle will neither be replaced nor will the Buyer be refunded the cost of such dead game. Buyers are advised to avail themselves of insurance facilities available.
- ii. the following transport rates shall apply:

**Delivery charges per km**

Single rhino transporter (4 x 4 truck)	R 38.00
20 ton mass rhino transporter (2 - 6 animals)	R 42.00
3 -14 ton antelope transporter	R 34.00
Trailer	R 9.00
Giraffe transporter	R 42.00

- iii. an estimate of the transport charges for game purchased at the Auction shall be paid to Ezemvelo KZN Wildlife on the date of sale. This estimate of cost will be based on the estimated distance and will be adjusted after delivery. The Buyer is requested to determine the distance from the sale to the appointed place of delivery prior to the sale. If payment is not made on the date of sale, the Buyer will be responsible for his own transport arrangements.
  - iv. transport for game purchased on catalogue shall be charged for from place of capture to destination. Buyers wishing to have catalogue animals boma trained are liable for transport costs from place of capture to the boma facility.
  - v. in the event of game dying while being conveyed in the Seller's vehicles during a delivery within the borders of South Africa, the Seller may, at its sole discretion, refund the costs of the dead game, against retention of the relevant carcass/es.
  - vi. the Buyer should inspect and count his purchases, sign and record any comment on the delivery note before off-loading will take place.
  - vii. should the Buyer have any claim whatsoever arising out of or in connection with the delivery, the Buyer shall
    - 1. notify the Seller thereof in writing within 5 (FIVE) business days of delivery, and
    - 2. notify the Seller in writing, on delivery of the game, by endorsing the relevant delivery note with details of the nature of claim, failing which the Buyer shall be deemed to have received delivery of the game set out in the relevant delivery note, in final settlement of the Seller's obligations to effect delivery, which shall thereupon be deemed to have been made free of any claim or other liability against the Board.
- e. Game dying after being released from the Seller's vehicles will neither be replaced, nor will the Buyer be refunded the cost of such dead game, unless the Seller in its' sole discretion should otherwise decide. In any event such a decision of the Seller shall be final.

- f. Requests for tranquillisation of game will be considered but tranquillisation is not guaranteed and will not alter the conditions of sale.
- g. Should the transport of animals involve travelling time in excess of 24 (TWENTY FOUR) hours, transportation of certain species shall, at the discretion of the Seller, be conditioned to confinement and boma trained in a manner and for the duration decided at the entire discretion of the Seller. This confinement and training shall be effected by the Seller at the Buyer's expense based on the boma and pen fees specified elsewhere herein.
  - i. Transport routes will be determined by the Seller at its own discretion in the interest of effective delivery.
  - ii. While the Seller will endeavour to assist where purchasers wish to share the cost of delivery of game purchased, this will be subject to the conditions that :-

the Seller, shall not be obliged to agree to such request.

- (a) full payment of estimated transport costs will be required in advance as if no split load will take place. The purchasers will be refunded any credit balances remaining after delivery if applicable.
- (b) the Seller shall not be liable for any loss if for any reason a split load cannot be effected.
- h. The Seller shall be entitled to take such steps as are necessary to ensure that the animals being transported are done so in safety. This shall include but not be restricted to tranquillisers, restraints, de-tipping of horns and the like.
- i. In the event that the arbitrator requires any upfront or intermediate payment, in respect of his fees or expenses or for any reason, same shall be payable by the Party raising the existence of the dispute.

## **7. LOADING AND UNLOADING OF GAME**

- a. If the Seller arranges transport and delivery and if unloading of game at their destination does not occur by reason of the failure by the Buyer to provide any necessary consent, permit or the like, or to comply adequately with any other requirement of the Seller, or refuses or fails to take delivery, the Buyer shall be liable for all transport and other costs relating to such delivery, notwithstanding that delivery and unloading does not actually take place.
- b. The Buyer and the Seller record that it is desirable that game should not be unloaded after sunset. In the event of the Seller's vehicles arriving after sunset and if the Buyer still requires the game to be unloaded, such unloading shall take place at the sole risk of the Buyer, the Buyer acknowledging the risks involved in such an after-dark operation, and the Buyer voluntarily accepts such risks and holds the Seller blameless for any deaths, injuries or losses to game, animals, persons or property which may occur, and the Buyer shall be solely responsible for any loss or damage arising from such unloading or any matter connected with such unloading.
- c. If a Buyer is unable to personally accept delivery of game at the place of delivery, he shall specify to the Seller in advance of delivery, the name of the person empowered by him to accept the delivery of the game at the point of delivery.

- d. The Seller shall not be responsible for any claim, loss or damage whatsoever arising from off-loading game on inadequately constructed off-loading ramps if such inadequacies have been brought to the attention of the Buyer prior to off-loading.

## **8. CANCELLATIONS AND/OR VARIATIONS PRIOR TO DELIVERY**

**In the event that overriding game conservation criteria so dictate, the Seller shall, notwithstanding confirmation of the sale, be entitled at any time prior to delivery to cancel the Sale or any portion of it and may split the sale if for any reason it finds it unable to effect delivery either in full or in part and in such event there shall be no right of recourse against the Seller by the Buyer or any other person, all of whom waive their claims against the Seller.**

## **9. PERMITS**

- a. Loading of game will only be allowed after all the permit and licence requirements, prescribed under KwaZulu-Natal's Nature Conservation Ordinance Number 15 of 1974, or any subsequent amending or substituting legislation, have been complied with by the Buyer.
- b. Before transportation commences the Buyer shall be obliged to satisfy the Seller that he has, in addition, complied with the requirements of any other nature conservation or veterinary authority as to the precautions to be taken in respect of the import, holding, maintenance and care of game upon his property.
- c. The onus of obtaining all of the necessary permits lies with the Buyer alone and in the case of animals bought on live auction permits must be produced within 48 hours after the Auction and in the case of catalogue animals permits must be produced at least three weeks before proposed date of capture.
- d. All prospective Buyers shall determine before the date of the Auction, whether or not the premises to which game is to be delivered, falls within the natural distribution area of the species concerned. Failure to obtain approval of the Seller for the premises, will result in the game not being loaded for delivery, and shall constitute a material breach of the Conditions of Sale by the Buyer.

## **10. LIABILITY AND INDEMNITY IN RESPECT OF GAME SUPPLIED**

The Seller shall not be responsible for any claim, loss or damage whatsoever arising from any failure by any Buyer to make proper provision for the holding, maintenance and care of game upon his property, and the Buyer hereby indemnifies the Seller and holds it harmless against any claim in this regard.

## **11. CLAIMS BY BUYER**

- a. Should the Buyer intend making any claim against the Seller for the death, loss or injury to any game, then such claim shall be supported by a veterinarian certificate, obtained at the instance and cost of the Buyer, which certificate shall detail the nature and type of injury, and shall specify the probable cause of death or injury and which certificate shall be furnished to the Seller within 30 (THIRTY) days of the date of the claim arising, failing which any claims or rights which the Buyer may have shall lapse. All costs incurred in obtaining such a certificate shall be borne by the Buyer.
- b. In the event that the Buyer intends claiming for the replacement of any game purchased following the death of such game, the Buyer will make available to

the Seller any and all horns on such game. In the event that the Seller decides to replace the game or is ordered to do so by any competent authority, the Buyer shall hand back to the Seller the horns of the animals replaced.

- c. No claims by the Buyer for replacement of game, will be considered by the Seller should such game not have been boma trained prior to the Auction and where such game are placed in a boma subsequent to their delivery to the Buyer.
- d. Where claims are made to have animals replaced for any reason whatsoever, and the Seller agrees to this, the Buyer shall be responsible for the transport costs and boma and pen fees where applicable.

## **12. OWNERSHIP AND SET OFF**

Notwithstanding the delivery of any game to the Buyer, ownership shall not pass until the Seller has received payment in full of any indebtedness of the Buyer to the Seller, both in respect of the purchase price of the game and transport costs.

## **13. DISPUTE RESOLUTION**

- i. Any dispute between the PARTIES (that is Purchaser, Seller, Ezemvelo KZN Wildlife, the Auctioneer or any or all of them) save for claims for payment of a liquidated sum of money, shall be submitted and resolved by way of the dispute resolution mechanism as set out below. Such claims for liquidated amounts may also be dealt with in that fashion, alternatively, by recourse to law, as the PARTY in whose favour the claims rests may determine.
- ii. All claims for damages which in any other respect relate to or arise from this agreement, including any interpretation or implementation thereof, shall be determined and decided by way of arbitration.
- iii. In the event of such a dispute arising, then the PARTY which raises the existence of the dispute shall record same in writing and at the same time put forward the name of a person to be utilized as arbitrator.
- iv. The other PARTY shall then within 10 (TEN) working days agree to the appointment of such arbitrator, alternatively indicate that it does not accept that person.
- v. In the event that the PARTIES do not agree the choice of arbitrator, that issue shall be resolved and determined by referral to the President of the KwaZulu-Natal Law Society, whom failing that institutions successor in title, whose decision shall be final.
- vi. The arbitrator shall be obliged to determine the dispute in such manner he deems fit, specifically:
  - a. he shall decide how to take statements of claim, alternatively pleadings, from each PARTY;
  - b. determine whether or not evidence shall be taken by way of affidavit or *viva voce*;
  - c. determine whether or not to allow legal representation (provided that he may not allow one party such representation and not the other);



- d. determine on what basis his fees and charges are to be paid, and make an award of costs on such scale (i.e. as between party and party, attorney and client or attorney and own client, as he may deem appropriate);
- e. award such damages or make such decisions as he shall in his discretion regard as appropriate; alternatively make such other order as he shall deem fit;
- f. generally, determine such time lines and per-hearing procedures as he shall in his discretion decide, with the object of bringing such dispute to a conclusion as speedily and inexpensively as is possible
- g. the decision of the arbitrator shall be final and binding upon the PARTIES, and may only be challenged on the grounds of fraud on the part of the arbitrator.

vii. The hearing of arbitration shall be Pietermaritzburg, KwaZulu-Natal.

#### **14. FOREIGN BUYERS**

- a. Foreign Buyers must make arrangements regarding permits and payments well in advance of the Auction.
- b. Foreign Buyers should avail themselves of the insurance facilities available at the sale as risk passes to such a Buyer at the fall of the hammer.
- c. The Auction and all matters connected with the Auction including these conditions are governed by and constructed in accordance with the laws of the Republic of South Africa and the Buyer consents to the jurisdiction of the South African courts.

#### **15. ENTRY OF SALE VENUE**

All persons, inclusive of Buyers, entering the sale venue do so at their own risk and may be exposing themselves to the risk or possibility of danger, harm or damage to their person or property arising from the nature of the Seller's activities, or undertakings, and each of them together with his heirs, executors, administrators or assigns, releases the Seller and its servants or agents from any duty of care towards him in connection therewith, and indemnifies and hold the Seller harmless from any liability whatsoever from any and all claims which otherwise may have accrued to them or their heirs, or dependants arising from their participation or association in the affairs or activities of the Auction, whether or not any such claim may arise through the negligence of any person or from any of the risks, danger or hazards occurring in the course of their association with the Seller.

#### **16. SELECTED ADDRESS**

Any notice to the Buyer shall be considered as validly served on the Buyer if delivered personally or 7 (SEVEN) days after having been posted by prepaid registered post addressed to the Buyer at his selected address given when he registers as a Buyer, this being the agreed *domicilium citandi executandi* and any summons or other legal process shall be considered as validly served on the Buyer if served at such *domicilium*. Any notice sent by telefax or by electronic mail to the Buyer shall be deemed to have been given to the Buyer on the date of dispatch.

## **17. GENERAL**

- a. The Buyer shall have no claim against the Seller for damage to or loss of any rhino or antelope horn which may occur during holding, on-loading, transportation or off-loading activities.
- b. In the case of rhino sold with a minimum anterior horn length of 22 (TWENTY TWO) inches or 70 (SEVENTY) points according to the Safari Club International rating, no negotiations regarding horn length will be entered into and the Seller's decision as to the length will be final and binding.
- c. In the event of rhino calving prior to delivery, ownership of both cow and calf shall revert to the Seller and the Buyer will be refunded the purchase price of the cow.

In such instances the risk of the game will be passed to the Buyers at the time of capture.

- d. Private Sellers offering game for sale at the Auction must undertake to have their game as well as their holding facilities inspected by the SPCA.
- e. Buyers who purchase game on catalogue auction and who require the game to be either pen or boma trained, will be responsible for transport costs from place of capture to the pens or bomas.

## **18. NOMINEE**

The purchaser is entitled to nominate a nominee in his/her place as purchaser upon the following terms:

18.1 He/She is fully aware of all the terms and conditions of these Conditions of Sale.

18.2 He/She is bound by the provisions of these Conditions of Sale as the purchaser.

18.3 The nomination must be in writing.