

AUCTION RULES AND TERMS AND CONDITIONS

EXXARO COAL (PROPRIETARY) LIMITED (“EXXARO” or “THE AUCTIONEER”)

This auction will be conducted within the framework of the rules and terms and conditions listed below:

- 1 All potential bidders (“Bidders”) need to accept these terms and conditions in order to participate in the auction of coal presented by Exxaro (“Auction”).
- 2 All information the Bidder provides to the Auctioneer shall be current, complete and accurate. Bidders are to ensure that all information provided is correct as to receive communication/auction information.
- 3 A Bidder will be suspended or permanently banned from the Site if such Bidder provide false information, such as a false name or fraudulent contact information.
- 4 Exxaro’s use of e-mail addresses is strictly limited to contact Bidders and Potential Bidders; any use of this private information is strictly prohibited. Exxaro confirms that this is in compliance with article 3 of the GDPR as well as the POI Act.
- 5 The Bidder agrees to not use any device, software or routine to interfere or attempt to interfere with the proper working of or any transaction being conducted on and during the Auction.
- 6 Access and use of any online Auction Site of Exxaro (collectively the “Site”) is subject to any and all specific terms and conditions of this Agreement and all applicable laws and regulations, including but not limited to copyright and trademark laws. By accessing this Site, you agree to accept, without limitation or qualification, all of the terms and conditions of this Agreement and to comply with all applicable laws, statutes, ordinances and regulations regarding your use of this Site. Legal action will be taken against anyone violating the terms and conditions of this Agreement or any other applicable law or regulation.
- 7 Exxaro reserves the right to periodically change the terms and conditions of this Agreement and it is the Bidders’ responsibility to periodically review any and all changes made to these terms and conditions prior to each use of this Site. By using this Site, you agree in advance to accept any such changes.
- 8 The Auction process will terminate on the termination date and time stipulated in the initial Auction notification.
- 9 A Bidder will only be allowed to bid in the Auction once it has accepted the terms and conditions and submitted the necessary information to Exxaro. Submission does not, however, mean that a bid has been accepted. A Bidder will be informed via an automated response once a bid has been accepted.
- 10 No late bidding will be accepted.
- 11 Problems with bids must be communicated via e-mail to the Auction administrator within an hour of receiving a bid confirmation.
- 12 The descriptions of item/lots appearing in the Auction and in advertising prior to the Auction are believed to be correct. Nevertheless, neither those descriptions nor any oral statements made by Exxaro concerning any item/lot shall be construed as a warranty either express or implied.
- 13 Exxaro in its sole discretion shall reserve the right to establish a reserve or minimum price on any item without having to announce, post or publish notice.
- 14 Exxaro in its sole discretion, reserves the right to refuse the bid of any person without providing any notice or reason thereof.
- 15 It may sometimes be necessary, to withdraw any or all item/lots from the sale after they are listed. Exxaro reserves the right to do so, at any time, before or during the Auction.
- 16 Should Exxaro be prevented from performing under this Agreement by an event constituting *vis majeure* or *force majeure*, then Exxaro shall notify the successful Bidder of such event and Exxaro shall be excused from its performance to the extent that it is unable to perform. If Exxaro is prevented from performing in totality, then Exxaro shall be excused from performance and shall re-pay to the successful Bidder any amount that the Bidder may have paid. To the extent that Exxaro is able to perform to a lesser extent, then the obligations of the successful Bidder shall be reduced to match Exxaro’s performance.
- 16 Exxaro reserves the right to resell any coal not paid for in full by the successful Bidder, within 3 (three) business days of the Auction’s closing date.
- 17 The coal becomes the full responsibility of Bidder at time of payment, and the Bidder assumes all risk of loss and damage to such coal until removed from Exxaro’s Mine or Depot (hereinafter the ‘Mine/Depot’). The date by which all coal must be removed by the Bidder from the Mine/Depot is posted on an auction-by-auction basis, on the specific auction page. After the final removal date, there will be a 1% (one percent) of total sale value per day, per item/lot storage fee charged to the Bidder. If coal is not removed within 5 (five) calendar days after the final removal date, the ownership of the coal will revert back Exxaro and Exxaro may dispose of or resell the item/lot at their discretion and keep any amounts paid by the Bidder as damages.
- 18 Bidders shall not be entitled to return coal for any reason, to Exxaro and/or the Mine/Depot.
- 19 The Bidder accepts responsibility for and agrees to indemnify, defend and hold harmless each of Exxaro’s employees, governing body, officers, owners, affiliates, subsidiaries, directors, agents and representatives from and against any and all claims, losses, damages, liabilities, judgments, fees, costs and expenses (including reasonable attorneys’ fees and expenses) related to, arising from or associated with Bidder’s, his agents or representatives, use of the Site, including but not limited to personal injuries or property damage incurred on the Mine/Depot or during removal and transport of the coal, and arising out of, based upon, or resulting from any breach or violation by Bidder of this Agreement or any use by Bidder of the Site or as a result of a dispute with another Bidder. Neither party will be entitled to any consequential damages.

- 20 This Agreement constitutes a binding agreement between the Bidder and Exxaro until terminated by Exxaro, which Exxaro may do at any time, without notice, in Exxaro's sole discretion. If a Bidder's dissatisfaction occurs with the Auction in any way, the Bidder's only recourse is to immediately discontinue use of the Auction Site. Exxaro reserves the right to terminate the Bidder's use of the Auction Site, and impose limits on certain features of the Auction Site or restrict Bidder's access to, or use of, part or the entire Site without notice or penalty.
- 21 Exxaro cannot, and will not, be held responsible for any interruption in service, errors, and/or omissions, caused by any means and does not guarantee continual, uninterrupted or error free service or use of the Site. The Bidder acknowledges that this Auction is conducted electronically and relies on hardware and software that may malfunction without warning. Exxaro, in its sole discretion, may void any sale, temporarily suspend bidding and re-sell any item/lots that were affected by any malfunction. The decision of Exxaro in these instances (or in instances related hereto) is final.
- 22 As a Bidder, placing a bid is a binding contract between you and Exxaro and the bid cannot be retracted. Once you place a bid, and if you win the bid, you will be obligated to buy the coal at the said price you indicated as your bid. Exxaro reserves the right to reject any and all bids, in its sole discretion.
- 23 As Bidder, you agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy the Site or the content contained herein without Exxaro's prior, express written permission. Bidders agree that they will not use any device, software or routine to interfere or attempt to interfere with the proper working of the Site or any activity being conducted on the Site. Bidders agree that they will not take any action that imposes an unreasonable or disproportionately large load on Exxaro's infrastructure. Bidders agree that they will not copy, reproduce, alter, modify, create derivative works, or publicly display any content from the Site without prior, express written permission of Exxaro.
- 24 No legal advice is intended or implied by anything contained within the Site. No obligation, liability, responsibility, accountability or burden is undertaken, assumed or otherwise imposed by maintaining the Site.
- 25 Any dispute or claim arising out of or relating to this Agreement shall be settled by binding arbitration in accordance with the arbitration rules of the Arbitration Foundation of Southern Africa. The arbitration shall be conducted in Pretoria, and judgment on the arbitration award may be made an order of court in any court having jurisdiction thereof. Exxaro may seek any interim or preliminary relief from a court of competent jurisdiction in South Africa necessary to protect the rights or property of Exxaro pending the completion of arbitration.
- 26 A Bidder and Exxaro are independent contractors, and no agency, partnership, joint venture, employee or franchiser-franchisee relationship is intended or created by this Agreement.
- 27 This Agreement and any disputes arising out of or related to the Site and/or the purchase of coal in terms of this Agreement, shall be governed by and construed and enforced in accordance with, the laws of the Republic of South Africa.
- 28 Exxaro's failure to act with respect to a breach by a Bidder or others does not waive the right to act with respect to subsequent or similar breaches.
- 29 **Payment Terms**
- 30.1 The final bid price that Exxaro accepts, constitutes the price, and all prices (which include prices that are bid at) exclude Value Added Tax ("VAT").
- 30.2 All coal taken from the Mine/Depot is subject strictly and solely to this Agreement. Any deviation there from, or any supplement there to, shall have no effect unless specifically confirmed in writing by Exxaro.
- 30.3 The parties specifically record and agree, that this Agreement shall govern the transaction envisaged herein, to the exclusion of any of the Bidder's own conditions of purchase.
- 30.4 The timeline for payment of the winning bid will be 24 (twenty four) hours after confirmation of successful bid. Exxaro needs to receive proof of payment within 24 (twenty four) hours thereafter and payment must reflect in Exxaro's bank account within 3 (three) calendar days after communication of the successful bid. The successful Bidder ("the Buyer") will be furnished an electronic receipt at the conclusion of the sale. Only once payment for the coal reflects in Exxaro's account, may the coal be collected from the Mine/Depot by the successful Bidder.
- 30.5 Payments are strictly cash-up front into Exxaro's nominated bank account. No interest will be payable to the Bidder as a result of any advance payment.
- 31 **Delivery of Coal**
- 31.1 Coal bought and paid for by the successful Bidder (in terms of this Agreement) shall be collected by the successful Bidder from the Mine/Depot, by prior arrangement.
- 32 **Specifications**
- 32.1 Specifications for the coal given by Exxaro reflect the typical anticipated qualities of the coal (on an air-dried basis) and may vary. A range may be given of qualities of coal to be supplied, which reflects a level of tolerance in Exxaro's discretion.
- 33 **Mass**
- 33.1 The mass of the coal as determined by the Mine/Depot weighbridge, shall be the mass used for invoicing and determining the amount owing to Exxaro and shall be final and binding on both parties.
- 34 **Mine or Depot**
- 34.1 The successful Bidder shall adhere to all policies, regulations and legislation applicable to the Mine/Depot, when it takes delivery of the coal.