

AuctionsPlus - Expert Determination Rules

1. Application of Expert Determination Rules

- 1.1 These Expert Determination Rules (the **Rules**) are subject to, and must be read in conjunction with, Schedules 2 and 3 of the AuctionsPlus User Agreement.
- 1.2 In these Rules:
- (a) **Costs** includes the fees and expenses of the Experts and costs for such things as room hire and transcript;
 - (b) **Dispute** means the disputed issues which are referred to expert determination;
 - (c) **Experts** means the person(s) who have accepted appointment to determine the Dispute in accordance with these Rules; and
 - (d) **Process** means expert determination of the Dispute in accordance with these Rules.
- 1.3 These Rules are subject to any law which governs expert determination in the place where the Process is held, and to any agreement between the parties in relation to the Process.
- 1.4 Otherwise, where the parties to a dispute have agreed to expert determination in accordance with these Rules, they are thereby bound to comply with these Rules unless:
- (a) any part thereof is held to be void or voidable, in which case that part shall be severed from the remainder of the agreement; or
 - (b) the parties agree in writing to modify the application of these Rules.

2. Agreement to be bound

- 2.1 The parties agree that the Experts are deemed to be experts in the subject matter of the Dispute.
- 2.2 Unless otherwise agreed in writing by the parties, the determination of the Dispute by the Experts shall be final and binding between the parties in respect of all matters other than matters of law or in the case of manifest error, fraud or bad faith.

3. Role of the Experts

- 3.1 The Experts shall determine the Dispute as experts in accordance with these Rules and according to law.
- 3.2 The parties agree that:

- (a) the Experts are not arbitrators of the matters in dispute and are deemed not to be acting in an arbitral capacity; and
 - (b) the Process is not an arbitration within the meaning of any statute.
- 3.3 The Experts shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the Dispute.
- 3.4 The Experts shall be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process. The expert in respect of a dispute regarding a Described Lot (as defined in the AuctionsPlus User Agreement) will be the AuctionsPlus CEO.
- 3.5 Any dispute arising between the parties in respect of any matter concerning these Rules or the Process (including the Experts' jurisdiction) shall be submitted to and determined by the Experts.

4. General duty of the parties

- 4.1 The parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the Process.
- 4.2 Without limiting the generality of the foregoing, the parties shall:
 - (a) be represented at any meeting convened by the Experts by a person or persons with authority to agree on procedural matters;
 - (b) comply without delay with any direction or ruling by the Experts as to procedural or evidentiary matters; and
 - (c) where appropriate, take without delay any necessary steps to obtain a decision of a Court on a preliminary question of jurisdiction or law.

5. Confidentiality

- 5.1 The Experts, the parties and all advisers and representatives of the parties shall:
 - (a) except as provided in paragraph 5.2 below, keep all information disclosed during the Process confidential; and
 - (b) sign confidentiality agreements in the terms of this section 5 of the Rules.
- 5.2 The obligation of confidentiality under sub-paragraph (a) of paragraph 5.1 above shall apply except:
 - (a) if disclosure is compelled by law;
 - (b) to the extent necessary to give effect to or to enforce any determination of the Expert.

6. Conduct of the process

- 6.1 Subject to any rule of law or equity or written agreement of the parties to the contrary, the Experts shall make such directions or rulings in relation to the Process as they see fit, including but not limited to:
- (a) identifying or clarifying the issues in dispute, by preparation of a joint statement of issues or otherwise;
 - (b) provision of submissions, documents and any other evidentiary material relied upon by the parties;
 - (c) provision of any further submissions and evidentiary material which the Experts consider appropriate; and
 - (d) meetings between the parties, their representatives and/or experts engaged by the parties, whether or not such meetings are attended by the Experts,
- including the times by which any such steps shall be taken.

7. The Experts' determination

- 7.1 As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties, the Experts shall determine the Dispute between the parties and notify such determination in writing to the parties.
- 7.2 Subject to any rule of law or equity or written agreement of the parties to the contrary, the Experts' determination shall contain a statement of reasons in such form as the Experts consider reasonably appropriate, having regard to the amount and complexity of the Dispute.
- 7.3 Subject to any rule of law or equity or written agreement of the parties to the contrary, the Experts' determination may include for the payment of interest on any monetary sum determined, in such amount as the Experts consider reasonable.
- 7.4 Where the Experts' determination contains:
- (a) a clerical mistake;
 - (b) an error arising from an accidental slip or omission;
 - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
 - (d) a defect of form,
- the Experts may correct the determination.

8. Waiver of right to object

8.1 Subject to any rule of law or equity or written agreement of the parties to the contrary, if a party to the Process takes part, or continues to take part, in the Process without making, within a reasonable time thereafter, any objection:

- (a) that the Experts lack substantive jurisdiction;
- (b) that the Process has been improperly conducted; or
- (c) that there has been any other irregularity affecting the Experts or the Process,

then that party shall be deemed to have waived its right to make such objection later, before a Court, unless it shows that, at the time it took part or continued to take part in the Process, it did not know and could not with reasonable diligence have discovered the grounds for the objection.

8.2 Subject to any statute or principle of common law or equity, or written agreement of the parties to the contrary, where the Experts rule that they have substantive jurisdiction and a party to the Process who could have questioned that ruling in a Court does not do so within any time fixed by the Experts (or if no time is fixed, within a reasonable time), then that party shall be deemed to have waived any right it may otherwise have had to later object to the Experts' substantive jurisdiction on any ground which was the subject of that ruling, and shall be deemed to have submitted to the Experts' jurisdiction.

9. Costs

9.1 Subject to any written agreement by the parties to the contrary, each party shall pay its own Costs of or incidental to the Process.

10. Subsequent proceedings

10.1 The Experts shall not, without the written consent of the parties, accept an appointment to act as arbitrator, or act as advocate or adviser to any party, in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.

10.2 The parties agree that:

- (a) the Experts will not be called upon to give evidence or produce documents in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute, by subpoena or otherwise;
- (b) with the exception of the Experts' determination, the Experts' papers will not be the subject of a subpoena to give evidence or produce documents in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.

11. Liability for acts or omissions

- 11.1 The parties agree that the Experts, AuctionsPlus and its officers and employees are not liable to any party for or in respect of any act or omission in the discharge or purported discharge of their respective functions under these Rules unless such act or omission is shown to have been fraudulent or in bad faith.