

AuctionsPlus - Mediation Rules

1. Application of Mediation Rules

- 1.1 These Mediation Rules (the **Rules**) are subject to, and must be read in conjunction with, Schedule 3 of the AuctionsPlus User Agreement.
- 1.2 Unless otherwise agreed by the parties, the parties are thereby bound to comply with these Rules unless any part thereof is held to be void or voidable, in which case that part shall be severed from the remainder of the agreement.
- 1.3 In these Rules:
- (a) **Costs** include the fees and expenses of a Mediator, and costs for such things as room hire;
 - (b) **Dispute** means the disputed issues which are referred to mediation; and
 - (c) **mediation** is a process in which parties to a dispute, with the assistance of a neutral third party (the **Mediator**), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The Mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

2. Confidentiality

- 2.1 The Mediator, the parties and all advisers and representatives of the parties shall:
- (a) except as provided in paragraph 2.2 below, keep all information disclosed during the mediation process confidential;
 - (b) not use any information disclosed during the mediation process for any purpose other than the mediation; and
 - (c) sign confidentiality agreements in the terms of this Rule.
- 2.2 The obligation of confidentiality under sub-paragraph 2.1(a) above shall apply except:
- (a) if disclosure is compelled by law;
 - (b) to the extent necessary to give effect to or to enforce any agreement to settle or resolve the whole or any part of the Dispute;
 - (c) where disclosure is only of the occurrence of the mediation (and not any communication during the mediation), and the occurrence of the mediation is

relevant to subsequent arbitral, adjudicative or judicial proceedings relating to the Dispute.

3. Role of the Mediator

- 3.1 The Mediator shall be independent of, and act fairly and impartially as between the parties. The Mediator may be a person who is an employee of AuctionsPlus.
- 3.2 The Mediator shall assist the parties to negotiate between themselves a mutually acceptable resolution of the Dispute, by:
- (a) helping the parties to identify and define the issues in dispute;
 - (b) implementing a procedure which is aimed at achieving resolution of the Dispute quickly, fairly and cost-effectively;
 - (c) where appropriate, suggesting particular dispute resolution techniques for individual issues aimed at narrowing the issues in dispute quickly, fairly and cost-effectively;
 - (d) acting as the facilitator of direct negotiations between the parties.
- 3.3 During the mediation process, the Mediator may convene such meetings between the parties (hereafter respectively called **Mediation Meetings**) as the Mediator considers appropriate, for the purpose of:
- (a) identifying and defining the issues in dispute; and
 - (b) resolving or narrowing the issues in dispute, on terms acceptable to the parties.
- 3.4 During the mediation process, the Mediator may, in his or her unfettered discretion, communicate and discuss the Dispute privately with any of the parties or their representatives or advisers. The Mediator shall preserve absolute secrecy of the content of any such communication, and shall not expressly or impliedly convey the content of such communication (or part thereof) unless specifically authorised to do so.

4. Role of the Parties

- 4.1 The parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the mediation.
- 4.2 Without limiting the generality of paragraph 4.1 above, each party shall:
- (a) be expected to participate bona fide in the Mediation process;
 - (b) comply without delay with any direction made on procedural matters;
 - (c) if not appearing in person:

- (i) be represented at any Mediation Meeting by a person or persons with authority to agree on procedural matters; and
- (ii) be represented at any Mediation Meeting by a person or persons with full and unfettered authority to settle the Dispute unless, prior to the Mediation Meeting, it has disclosed to the Mediator and each other party the nature of any limitation on that authority and the procedure required to obtain that party's approval to settle the Dispute.

5. Termination of the Mediation

- 5.1 Any party may terminate the mediation, by written notice to each other party and the Mediator.
- 5.2 The Mediator may terminate the mediation, by written notice to each of the parties, if the Mediator forms the opinion that the further conduct of the process will not be productive in achieving a resolution of the Dispute.

6. Costs

- 6.1 Unless otherwise agreed by the parties, each party shall pay its own Costs of or incidental to the mediation.

7. Subsequent proceedings

- 7.1 The parties agree that the following will be privileged and will not be disclosed or relied upon or 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:
 - (a) any view expressed, or admission or concession made, by or on behalf of a party during the Mediation;
 - (b) any view expressed, or suggestion made by the Mediator; and
 - (c) any document created for the purpose of the Mediation.

8. Liability for Acts or Omissions

- 8.1 The parties agree that the Mediator, 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.