

## SYDNEY CHOCOLATE BALL ONLINE AUCTION TERMS AND CONDITIONS

**Event:** Sydney Chocolate Ball Online hosted by FSHD Global Research Foundation Limited

**Event Location:** <https://www.sydneychocolateball.com>

**Event Date:** Start date: 3<sup>rd</sup> of April 2020  
End date: 31<sup>st</sup> May 2020

**Auction Items:** See Annexure "A"

1. These terms and conditions constitute the entire agreement and understanding between FSHD Global Research Foundation Limited (**ABN 79 128 037 614**) ('**FSHD Global**') and the bidder on everything connected with the online auction and subsequent sale of the online auction items. By registering to participate in this online action and/or submitting a bid, each bidder is deemed to have expressly accepted these terms and conditions and any variations made hereto. Auction: The Auction Items will be sold by the online auction platform Oktion, hosted by Digiground, open to Australian residents aged eighteen (18) years or over. Ineligible bids will be discounted.
2. **Bidding:** Bidding will open at 3:00 PM AEST DST Friday 3<sup>rd</sup> of April 2020 and close at 5.00 pm AEST on Sunday, 31 May 2020. All bids must be in Australian dollars. All bids will be taken to be inclusive of GST. A bid is an offer to purchase the Auction Item listed at the stated bid price. Once submitted, a bid is personal and binding and cannot be withdrawn. No bids will be accepted on an Item after closure of the auction. By making a bid, you warrant and represent that you have the legal right to enter into and complete the purchase, if you are the successful bidder. All bids are processed in the order they are received and FSHD does not accept responsibility for any late, delayed or misdirected bids as a result of technical disruptions or for any other reason.
3. **Conduct of the Auction:** Bidders may bid for more than one item in the Auction. Bidders shall make their intention to place a bid by following the instructions on the Oktion site and submitting their credit card details. Without any limitation, FSHD may within its sole and absolute discretion accept or reject any bid, change the open and close dates of the auction, advance the bidding, establish a reserve price with respect of the Auction Item, bid on behalf of a Bidder, withdraw an Auction Item from sale, offer the Auction Item for resale in the event of a dispute, require the successful bidder to pay forthwith the whole or part of any purchase price. In the event of a dispute, the auctioneer has absolute discretion to settle the dispute as sole arbitrator and its decision is final and binding.
4. **Items:** FSHD Global reserves its right to substitute any Auction Item described in Annexure A with an item of a similar description and/or standard, if for any reason the relevant Auction Item is not available or for any other substantial reason.
5. **Inspection:** The Auction Items are available for inspection via the Oktion website <https://www.sydneychocolateball.com> with all product details and images available for review prior to making a bid.

6. **Purchaser:** Auction Items offered for sale are subject to the reserve price being reached. The highest bidder on the close of the auction will be taken to be the successful bidder (**the Purchaser**) and will be taken to have entered into a binding contract for the purchase of the respective Auction Item on these terms and conditions, unless that item is subject to a reserve price that is not achieved. The Purchaser will be notified of the successful bid on 1 June 2020 and payment must be made in accordance with clause 7 of these terms and conditions. On the basis that cleared funds are received, the Purchaser shall be entitled to arrange shipping of the Auction Item as per the details for each specific prize.
7. **Purchase price:** The purchase price for each of the Auction Items will be the amount of the highest bid exceeding the reserve price on each respective Auction Item. A additional service fee of 3% will be included as an additional cost on top of the purchase price of the item.
8. **Payment:** Payment is due and payable at the conclusion of the Auction. Payment must be made via credit card. If payment is made by credit card, monies must be received in cleared funds within 3 days. FSHD Global does not accept liability for any payments not received, as a result of failures associated with any banking services or otherwise.
9. **No Refunds:** The Auction Item purchased by the Purchaser is non-refundable and non-exchangeable. Accordingly, refunds will not be given for cancellations for any of the Auction Items and are they not redeemable for cash.
10. **Passing of title and risk:** Title to the respective Auction Items remains with FSHD Global until payment for the respective item is received in cleared funds by FSHD. All risk in the Auction Item passes to the Purchaser following payment of the Auction Item in cleared funds.
11. **Insurance:** FSHD Global does not provide insurance cover for any of the Auction Items in favour of the Purchaser. The Purchaser shall arrange its own "all risks" insurance cover with effect immediately after the auction.
12. **Collection of the Auction Item:** The Auction item must be shipped within fourteen-(14) days after payment has been received in cleared funds and title to the Auction Item has been transferred to the Purchaser. The Purchaser must not request shipping/ collection of the Auction Item until such time as this has occurred.
13. **Handling and Packaging:** The Purchaser shall make its own arrangements at its own cost for the collection and transportation of the Auction Item from where it is located at the time payment is received. FSHD Global does not accept any liability or responsibility for the collection and transportation of the Auction Item to the Purchaser. Each prize stipulates a specific shipping method and the Purchaser must make arrangements in accordance with the Auction Item's specific shipping method.
14. **Remedies for failure to make payment or collect:** If the Purchaser ('**Original Purchaser**') fails to make payment in accordance with Clause 8 and/or collect the Auction Item within the specified timeframe within Clause 12, FSHD Global may within its sole and absolute discretion:
  - (a) transfer the Auction Item for external storage and recover from the Original Purchaser the daily cost of storage, insurance and transportation of the Auction Item; and
  - (b) may offer the Auction Item for sale to the next highest bidder at the closure of the Auction ('**Subsequent Purchaser**') until the Auction Item is sold, in which case FSHD Global may recover from the Original Purchaser the difference between the original purchase price that would have been payable for the Auction Item by the Original Purchaser and the subsequent purchase price paid for the Auction Item by the Subsequent Purchaser. These amounts will be recoverable by FSHD Global as a liquidated sum. The remedies contained within this Clause 14 are in addition to any other remedy FSHD Global may have either at common law or equity

15. **Representations:** The Bidder acknowledges and agrees that the Bidder has not relied upon any representations made by FSHD Global (including its officers, employees, agents affiliates and volunteers) and has undertaken its/their own independent enquiries and investigations into the Auction Items and in making the decision to place a bid to purchase the Auction Item(s).
16. **No Warranty:** All Auction Items offered in the Auction are listed and offered for sale on an "as is, where is" basis and no representations or warranties, either express or implied as to the merchantability, fitness for purpose, quality or condition are made by FSHD Global. No Guarantee: FSHD Global does not guarantee that the descriptions provided for the Auction Items are accurate and/or correct. FSHD Global shall not be responsible for any damage or loss caused due to a bidder by reason of a description of an Auction Item being inaccurate, incomplete or for the Auction Item being otherwise in any way different to the Bidder's expectation.
17. **Implied Terms:** To the extent permitted by law all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied are excluded.
18. **Limitation of Liability:** To the extent permitted by law, FSHD Global (including its officers, employees, agents affiliates and volunteers) excludes all liability (including negligence) for personal injury, or any loss or damage (including loss of opportunity), whether direct, indirect, special or consequential arising in any way out of or in connection with the Auction.
19. **Consequential loss:** To the extent permitted by law, FSHD Global excludes all liability for any indirect or consequential loss or damage (including, without limitation, loss of profits).
20. **Privacy:** All bid details remain the property of FSHD Global. Each bidder's personal information will be collected by FSHD Global for the purpose of conducting the Auction, which includes identifying and notifying the successful bidder. Without limiting the foregoing, FSHD Global may disclose the bidder's personal details to any person assisting in the Auction. Each bidder consents to use of the bidder's personal information for the purpose of sending direct marketing messages relating to FSHD Global's programs, initiatives, challenges and events. FSHD Global shall collect, use and handle each bidder's personal information in accordance with its Collection Statement and Privacy Policy. Bidders may request access to or correction of their personal information by writing to: [admin@fshdglobal.org](mailto:admin@fshdglobal.org). As no data transmission over the internet can be guaranteed as totally secure, FSHD does not warrant and cannot ensure the security of any information which is transmitted to it. Accordingly, any personal information transmitted to FSHD is transmitted at the bidder's own risk.
21. **Severability:** If any term or condition in these terms and conditions or the application of these terms and conditions to any persons or circumstance is or becomes illegal, invalid or unenforceable in any jurisdiction, it will be severed and none of the remaining terms or conditions or applications in any other jurisdiction will be affected.
22. **Assignment and Variation:** A bidder (including, without limitation, the Purchaser) may not assign or otherwise deal with its rights under these terms and conditions without FSHD Global's prior written consent. These terms and conditions may be varied by FSHD Global at any time by publishing revised terms on its website, [www.fshdglobal.org](http://www.fshdglobal.org). You are bound by any such variation and you are responsible for ensuring you are familiar with the latest version of these terms and conditions.
23. **Governing Law:** These terms and conditions are governed by the law of the State of New South Wales. The parties hereto submit to the jurisdiction of the Courts of that State and of any court in appeal there from.