

***Please note: These are general auction conditions of sale and may vary from time to time. It is the purchaser's responsibility to confirm the correct terms applicable to the subject property.***

**THIS SALE IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

**1. PROCEDURE:**

- 1.1 The property will be sold to the highest accepted bidder subject to confirmation by the Seller, which confirmation or refusal will be given without furnishing any reasons, within five (5) days from the date of sale ("the Confirmation period"). The Seller and or Auctioneer reserves his rights in terms of section 45(4) of the Consumer Protection Act, Act 68 of 2008.
- 1.2 For the purpose of calculating this period the day after the auction shall be taken into account as the first day of the period.
- 1.3 During the confirmation period the offer made by the Purchaser shall be irrevocable.
- 1.4 Each bid shall constitute an offer to purchase the property for the amount bid, which the Seller may accept or reject in his/her sole discretion.
- 1.5 The highest bidder (the "Purchaser") shall sign these Conditions of Sale immediately on the fall of the hammer.
- 1.6 The Seller and the Purchaser are bound to the terms of this agreement pending confirmation by the Seller and/or the Master of the High Court if applicable.
- 1.7 The Seller may at any time within the Confirmation period accept the highest offer, and need not wait until the full Confirmation period has expired.
- 1.8 In the event that the Seller fails to confirm the sale in the prescribed time, the parties confirm that the Confirmation period may be extended by the mutual consent of both parties and shall be reduced to writing and form an addendum to this contract.

## 2. **PURCHASE PRICE:**

The purchase price is to be paid as follows;

- 2.1. A cash deposit of eleven and a half percent (11.5%) of the purchase price upon signing of these Conditions of Sale and payable to the Auctioneer. Immediately upon acceptance of this agreement by the seller this deposit shall be deemed to be commission earned. The full deposit will be refunded to the purchaser without deduction or set-off should the seller not accept the offer within the prescribed confirmation period.
- 2.2. The Seller and the Purchaser agree that the Auctioneer shall be entitled, immediately upon signing acceptance hereof by the Seller, to allocate to himself from the deposit any amount that is due and payable to the Auctioneer by the Seller and that remains unpaid in respect of the total cost of advertising and conducting the sale of the property, as contemplated in clause 1 above:
  - 2.2.1. Provided that any amount so allocated to the Auctioneer shall immediately be refunded to the purchaser without deduction or set-off if this sale is lawfully cancelled by the purchaser.
  - 2.2.2. Provided further that any such allocation of the deposit to the Auctioneer shall be deemed to be part payment of the purchase price to the Seller.
  - 2.2.3. Provided further that if the Purchaser has not paid a deposit and unlawfully cancels the agreement, the Auctioneer shall be entitled to claim his commission and advertising costs from the Purchaser. The Purchaser hereby consents to payment of such commission and advertising costs, although it was payable by the Seller and further consents to costs being claimed against him for collection of commission and advertising costs at a scale as between Attorney and own client.
- 2.3. The purchase price is payable by registration of transfer in the name of the Purchaser for which the Purchaser will be obliged to furnish an approved Bank or Financial Institution guarantee within 30 days of confirmation of the sale, for the full balance of the purchase price, which guarantee will be payable to the Conveyancers on demand.
- 2.4. If the Purchaser should make payment of the full purchase price prior to registration of transfer, such payment will be invested by the Seller and the interest earned on such investment will accrue to the Seller as occupational rent paid by the Purchaser to the Seller.

3. **TRANSFER COSTS:**

The Purchaser shall be bound, on request, to pay:

- 3.1. Survey charges, if any, and costs of diagrams and stamps as well as VAT thereon, if necessary;
- 3.2. Transfer Duty
- 3.3. All costs pertaining to the giving and taking of transfer, including VAT thereon;
- 3.4. VAT on the purchase price, if applicable.

The Seller and the Purchaser, including the Auctioneer (if applicable) agree that in the event that the arrear rates and taxes, levies and or electricity or any other statutory liability in this regard, exceeds the purchaser price, this agreement shall become null and void and all monies paid by either the Purchaser or the Seller shall be refunded.

4. **COMMISSION AND COSTS:**

The Purchaser will be liable to pay the Auctioneers commission calculated at eleven and a half percent (11.5%) of the purchase price. This amount will be due and payable upon acceptance of the offer by the Seller and will deducted from the deposit as per clause 2.1 above. The parties acknowledge that the Auctioneer is the only and effective cause of this transaction and that the Auctioneer introduced them to one another.

5. **REGISTRATION OF TRANSFER:**

As soon as the Purchaser has paid or guaranteed the full purchase price together with all costs and disbursement as mentioned above the property will be transferred into the name of the Purchaser which transfer will be affected by the attorneys nominated by the Seller or alternatively the Auctioneer. The conveyancing attorneys ("the Conveyancers") being;

Company Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

## 6. **DOMICILIUM CITANDI ET EXECUTANDI**

- 6.1. The Purchaser hereby appoints the email address, postal address and Physical Street address wherever it appears in this agreement as the addresses where the purchaser shall receive any notice, legal notice or legal process emanating from this agreement.
- 6.2. The Seller hereby appoints the email address, postal address and Physical Street address wherever it appears in this agreement as the addresses where the seller shall receive any notice, legal notice or legal process emanating from this agreement.
- 6.3. Anyone of the parties may change their abovementioned appointed address by giving the other party seven (7) days written notice thereof prior to the change to a new address.

## 7. **BREACH:**

- 7.1. Should any party fail to comply with any of the terms and conditions as set out in this agreement and that defaulting party does not remedy such breach within a period of seven (5) business days after written notice has been given to the defaulting party at his chosen domicilium citandi et executandi, calling upon the defaulting party to remedy such breach, then the aggrieved party shall be entitled without prejudice to any other remedies available, to:
  - 7.1.1. Cancel the sale by way of written notice either per hand or by registered mail or by Email;
  - 7.1.2. Claim specific performance in terms of the agreement;
  - 7.1.3. Claim damages from the defaulting party.
- 7.2. If the sale is cancelled and the aggrieved party is the Seller, it is specifically agreed by the Purchaser that all amounts paid by the Purchaser as well as any interest accrued thereon, will be forfeited by the Purchaser as “rouwkoop” or as pre estimated liquid damages.
- 7.3. If the Purchaser fails to pay the full deposit as set out in paragraph 2.1, the Seller will be entitled to immediately without giving written notice to the Purchaser cancel the agreement and proceed to sell the property either on auction or private treaty.
- 7.4. The Seller may keep any amount paid by the purchaser as “rouwkoop” or as pre estimated liquidated damages.
- 7.5. It is specifically agreed by both the Seller and the Purchaser that the Auctioneers claim for commission shall be a first charge against any monies that may be payable to the Seller.

- 7.6. It is specifically agreed between the Seller and the Purchaser that if the agreement is cancelled by mutual consent or otherwise between the parties, the Auctioneers' commission shall none the less be due and payable to the Auctioneer, despite the fact that the agreement might have been cancelled.
- 7.7. If the Purchaser is late in making any payment in terms of this agreement, then the Purchaser shall become liable to pay the Seller interest on such unpaid amounts at a rate of one percent (1%) above the prime overdraft rate as charged from time to time by ABSA Bank, calculated pro rata from the date of breach until such time as the breach is remedied.

8. **MAGISTRATE'S COURT JURISDICTION:**

The parties hereto consent to the jurisdiction of the Magistrate's Court in terms of Section 45 read with Section 28 of the Magistrate's Court Act of 1944, as amended. Notwithstanding the foregoing, this shall not preclude either party from approaching the High Court of South Africa for any relief sought.

9. **AS IS:**

- 9.1. The property is sold as described in the Title Deed subject to the servitude's and conditions contained therein, any proceeding Title Deeds, leases or other real right. The Seller shall not be liable for any lack or error in the description and size of the property that might be manifested upon it being surveyed and shall not be liable for any encroachment on or by the property of any kind.
- 9.2. It is specifically recorded that the Purchaser acknowledges and understands that he/she is buying the property on auction, and that the provisions of Section 55(6) of the Consumer Protection Act, Act 68 of 2008 ("The Act") applies to this auction. It is recorded that neither the Auctioneer nor the Seller can guarantee the condition of the Property, do not make any representations to the Purchaser in respect of any aspect of the Property, and specifically agree that no latent or patent defects have been indicated or pointed out by the Auctioneer or the Seller to the Purchaser and that the Purchaser expressly agrees to accept the Property in the condition and chooses to accept the Property in the condition it lies by placing a bid. The Purchaser acknowledges that the provisions of Section 55 (1) to 55(5) of "the Act" are not applicable to this transaction.
- 9.3. The Purchaser acknowledges that he/she had reasonable opportunity to inspect the Property, its nature, condition, extent and locality prior to the auction, and chose to proceed with bidding on the Property. By bidding on the Property the Purchaser accepts the condition of the property.
- 9.4. Neither the Seller nor the Auctioneer nor the secure creditor, nor their agents made any representation to the Purchaser in respect of any aspect to induce the purchaser to conclude this agreement.

- 9.5. The Purchaser acknowledges that neither the Seller nor the Auctioneer shall be liable to provide any building plans or related certificates or to arrange the connection of the electricity and water services or any other services related to the property.

**10. ZERO RATE VAT TRANSACTION (if applicable):**

If the Seller is a VAT vendor and the property is sold as a going concern or part of an enterprise which is capable of separation then the Seller and the Purchaser specifically agree that:

- 10.1. The Property sold is an income earning enterprise and will still be an income earning enterprise on the date of transfer.
- 10.2. The Seller is a VAT Vendor as defined in the Value Added Tax Act 1991, and the Purchaser is also such a VAT vendor or will be such a VAT Vendor at the date of submission of a request for a transfer duty receipt to the South African Revenue Service and as at the date of registration of transfer.
- 10.3. This sale is therefore a Zero Rated Taxable supply in terms of Section 11(1)(e) of the Value Added Tax Act of 1991.
- 10.4. The South African Revenue Service rules that the sale does not qualify to be a zero rated VAT transaction, then the Purchaser shall be liable to pay value added tax at the standard rate calculated on the purchase price within five (5) business days of receipt of a written request from the seller or the conveyances.

**11. POSSESSION AND OCCUPATION:**

- 11.1. Possession and occupation of the property shall be given to the Purchaser on registration of the sale by the Seller, from which date onwards the risk of profit and loss will be on him. Should the Purchaser choose to take early occupation then the Purchaser must complete annexure "A".
- 11.2. The Seller will be liable to pay all arear rates, taxes and levies in respect of the Property up to date of registration of transfer. The Purchaser will be liable to pay all rates, taxes and levies in respect of the Property from date of registration of transfer. Any indication of rates, taxes and levies in respect of the Property given by the Auctioneer is only an approximation based on recent figures obtained from the local authority and accordingly no warranty is given in terms of actual figures.
- 11.3. The Purchaser will on his own cost do the necessary to obtain occupation of the Property.

- 11.4. No party shall effect any alterations, improvements or addition to the Property prior to the date of registration without the Seller's prior written consent and the Purchaser shall have no claim, whether enrichment or otherwise, against the Seller should he effect such alterations, improvements or additions, with or without consent and this clause shall remain of full force in spite of cancellation of this agreement.

## **12. CAPACITY OF PARTIES:**

Should the bidder act as a representative for a Company, Closed Corporation, Trust or any other entity formed or to be formed as Purchaser or on behalf of another person as Purchaser, such bidder would have been registered as a proxy buyer and would have supplied to the Seller or Auctioneer, proof of his proxy to bid as a representative. The person bidding will however be personally liable as Purchaser for the proper performance of all the terms and conditions of this agreement. If the proxy giver does not adopt and/or ratify the purchase within a period of two (2) days after date of confirmation, or if such entity is for any reason whatsoever not bound or cannot be bound as Purchaser under this agreement or his principal is not bound as Purchaser under this agreement as a result of any defect in his mandate or for any other reason whatsoever, furthermore upon adoption and ratification of this agreement by any entity as aforesaid, the said representative shall be the Purchaser and shall be liable as a surety in *solidum* and co-principal debtor to the Seller for the prompt and proper performance by the entity of each and every of its obligations arising out of the acceptance and ratification of this agreement.

## **13. COMPLIANCE CERTIFICATES**

- 13.1. The Purchaser confirms that there is no obligation on the Seller to provide him with an electrical, gas, water, entomologist, electric fence system certificate of compliance or occupation certificate or any other certificate that may be required. The Purchaser will on his own cost obtain any such certificates from date of possession or registration, whichever date is first.
- 13.2. The Seller shall allow the Purchaser's nominated electrician access to the Property to allow him to inspect the electrical installation and if necessary attend to remedial work to make the electrical installation compliant.
- 13.3. The Spatial Planning and Land Use Act, 2013 (SPLUMA) has regulated that each Municipality has to publish Municipal By-Laws to provide for implementation of the provisions of SPLUMA. The onus will be on the Purchaser to rectify either the zoning or the approval of the building plans at the relevant Local Municipality
- 13.4. Any costs incurred by the rectification of the zoning and/or approval of building plans and/or approval of additional building plans will be for the account of the Purchaser.

13.5. It is recorded that the Purchaser shall be responsible for payment of any prescribed fees to obtain a SPLUMA Certificate from the Local Municipality.

14. **SPECIAL CONDITIONS**

Any additional or special conditions shall be reduced to writing, signed by the Seller, the Purchaser and the Auctioneer and are to be included as an annexure to this agreement.

15. **PURCHASE PRICE**

15.1. The Purchaser binds himself hereby for due fulfilment of the above mentioned Conditions of Sale with which he is fully acquainted. The Purchaser hereby chose as his/her domicilium citandi et excecutandi as supplied herein.

15.2. The Purchaser, being the highest bidder for the Property at the auction, hereby offers to purchase the property from the Seller for the amount of

R\_\_\_\_\_

(\_\_\_\_\_ Rand)

15.3. Deposit being eleven comma five percent (11.5%) of the bid price:

R\_\_\_\_\_

(\_\_\_\_\_ Rand)