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Auctioneers / Professional Valuers / Appraiser for the Master of the High Court (Pretoria, South Africa)

TERMS AND CONDITIONS OF AUCTION: IMMOVABLE PROPERTY

1. INTERPRETATION

1.1 Any reference to –

- 1.1.1 The one gender shall include the other gender.
- 1.1.2 Natural persons shall include legal persons and vice versa.
- 1.1.3 The singular shall include the plural and vice versa.

1.2 In the event of this contract not arising from a public auction but as a private treaty, then all references to –

- 1.2.1 AUCTIONEER shall be deemed to refer to as the AGENT.
- 1.2.2 AUCTIONEER'S commission shall be deemed to refer to as agent's commission.
- 1.2.3 Bid shall be deemed to refer to purchase price.

1.3 And any other alteration shall be applicable mutatis mutandis.

2. RESERVE PRICE AND CONFIRMATION

2.1 The property will be sold with a reserve price, to the highest bidder (herein referred to as the PURCHASER) but subject to confirmation by the SELLER, which confirmation can be withheld by the SELLER without furnishing reasons therefore. The PURCHASER is unconditionally and irrevocably bound to his bid for 7 days, from and including date of signing hereof and the onus will rest upon the PURCHASER to establish whether his bid was confirmed, or not.

2.2 The SELLER reserves the right to extend the confirmation period within reason.

2.3 If this contract is not confirmed, it shall be regarded as *ab initio* null and void, and all payments made by the PURCHASER, including commission, will be refunded without delay.

2.4 On receipt of a higher offer prior to confirmation or registration (whichever occurs first), such offer should be made to the AUCTIONEER, subject to the same terms and conditions, but the original bidder at the auction shall have the right to equal such offers which offer will be preferent to any other offers.

2.5 The AUCTIONEER or his agent is entitled to bid up to the reserve price on behalf of the SELLER, but shall not be entitled to make a bid equal to or exceeding the reserve price.

3. SIGNATURE

- 3.1 The PURCHASER shall sign this agreement when called upon to do so by the AUCTIONEER
- 3.2 Should the PURCHASER be married in community of property or bid on behalf of a third party, he guarantees that the necessary power of attorney to legally bind the joint estate and/or the third party has been obtained and that the transaction shall be concluded in all its facets. The said power of attorney must be submitted on request.
- 3.3 The person signing this contract will nevertheless be held personally liable for the fulfillment of all the terms hereof, even though he acts on behalf of a principal or spouse.
- 3.4 If the BIDDER acts without the abovementioned power of attorney and the said remedies are not involved against the PURCHASER the BIDDER will be liable for Delictual damages.
- 3.5 Should the PURCHASER be a company, close corporation or trust, the person signing this agreement on behalf of such PURCHASER, by his signature hereto interposes and binds himself as surety for and co-principal debtor with the PURCHASER for the due and proper discharge of all its obligations arising from this agreement.

4. DISPUTES

- 4.1 In the event of a dispute arising in regard to a bid made, the AUCTIONEER will have the discretion to put the property up for auction again and his decision will be final. Should the AUCTIONEER and/or the SELLER commit any error in respect of the sale of the property, such error shall not be binding upon the parties and shall be rectified.
- 4.2 Should the PURCHASER fail to conclude the transaction in all its facets, the AUCTIONEER will be entitled to resell the property by auction or private treaty.
- 4.3 Should the AUCTIONEER have any reason to believe that a bidder is not able to pay the deposit or the purchase price, he is entitled to refuse a bid from such a bidder, or accept it provisionally, until he is satisfied that the bidder is able to pay aforesaid amount. Should a bid be rejected under these circumstances, the property can immediately be put up on auction again.

5. TAXES AND LEVIES

- 5.1 The PURCHASER shall be liable for payment of all duties, levies and taxes, calculated as from the date of possession and/or occupation (whichever occurs first), but shall not be held liable for any arrears.

6. CONVEYANCER

- 6.1 The SELLER shall appoint a conveyancer to effect of transfer, and the PURCHASER will be responsible for payment of all costs of transfer, which costs shall be payable upon demand.

7. LEASE

- 7.1 The property is sold with or without a lease agreement as stipulated in point number 12.

8. VOETSTOOTS

- 8.1 The property is sold VOETSTOOTS, and neither the AUCTIONEER nor the SELLER gives any guarantee as to the extent, patent or latent defects, the nature, quality or legality of any activities practised thereon, and will not be held liable for any damages arising from same. The property is sold subject to all conditions, servitudes, current or forthcoming land claims, legal or illegal occupants and/or expropriation applicable to the property.

8.2 The AUCTIONEER and/or SELLER is not obliged to point out any beacons or boundaries, and any description or information, whether by way of advertising, brochures or verbal communication is done in good faith and the PURCHASER acknowledges that he was not induced into this contract by any explicit or implied representations.

9. PURCHASE PRICE AND MEANS OF PAYMENT

9.1 The purchase price of the property is R _____
excluding VAT, and is payable by the PURCHASER as follows:-

9.2 10% of the full purchase price as a deposit, in cash or bank guaranteed cheque upon signature hereof or as requested by the AUCTIONEER, which deposit, after confirmation and deduction of auctioneer's commission, expenses and fees, will be paid over to the conveyancers trust account.

9.3 The PURCHASER shall be liable for payment of interest calculated at 1% per month on the balance of the purchase price from date of possession and/or occupation (whichever occurs first) to date of registration of transfer which interest shall be deemed as occupational rent. The SELLER may demand that interest be paid monthly in advance.

9.4 The balance of the purchase price shall be paid or secured by means of a guarantee acceptable to the SELLER, within 30 (thirty) days from date of confirmation, payable upon registration of transfer.

9.5 The PURCHASER shall be responsible for payment of bank costs.

10. AUCTIONEERS' COMMISSION

10.1 The parties hereby agree that the AUCTIONEER is the effective cause of this transaction and that he is entitled to auctioneers' commission at confirmation.

10.2 The PURCHASER will be liable for auctioneers' commission of 10% of the purchase price (exclusive of VAT), which is not included in the purchase price, payable simultaneously with the deposit.

10.3 The party responsible for non-compliance of this agreement will be responsible for payment of the total auctioneers' commission.

11. VALUE ADDED TAX / TRANSFER DUTIES

11.1 The PURCHASER shall upon registration of transfer be liable for payment of VAT which is not included in the purchase price, or Transfer Duties, whichever is applicable.

12. POSSESSION, OCCUPATION, INSURANCE AND OWNERSHIP

12.1 Possession and/or occupation will be given and taken subject to any existing lease agreements, leasing, tenancy or legal or illegal occupation, on date of confirmation or as agreed upon in writing between the parties, from which date the sole risk, profit or loss of the property shall rest upon the PURCHASER.

12.2 The PURCHASER shall be obliged to insure the property comprehensively as from date of possession and/or occupation (whichever occurs first) failing which, the SELLER may insure it on the PURCHASER'S expense.

13. NON COMPLIANCE AND / OR BREACH

13.1 Should the BIDDER fail to, or refuse to sign the conditions of sale, or to pay the deposit or purchase price on request of the AUCTIONEER as described above, the property can, at the AUCTIONEERS' discretion, be sold *de novo* by virtue of an auction or private treaty, at the BIDDERS risk, who will be

held responsible for any shortages and/or costs involved therein. Any increase in price will be to the benefit of the SELLER.

13.2 Should the PURCHASER violate any condition of this agreement and neglect to comply to a written notice from the SELLER or AUCTIONEER to rectify such breach within 7 (seven) days, the SELLER will be entitled to, without prejudice to any other rights:

13.2.1 Demand specific performance of the agreement with or without damages;

OR

13.2.2 Cancel the agreement, take possession of the property, evict all occupants from the property and claim damages which will include any damages or costs involved in the resale of the property, either by public auction or private treaty.

13.3 In the event of cancellation of this agreement the PURCHASER shall forfeit all monies paid, including commission paid in terms of this agreement to the SELLER and/or the AUCTIONEER as liquidated damages.

14. JURISDICTION AND DOMICILIA

14.1 The parties hereto agree to the jurisdiction of the Lower Court in respect of any lawsuit rising from this agreement, or at the discretion of the SELLER, to the jurisdiction of the Supreme Court of South Africa, Transvaal Provincial Division, and the parties choose the addresses as indicated herein as their domicilium citandi et executandi.

15. SUBMISSION OF CERTIFICATES

15.1 The SELLER confirms that he will, at his own cost, obtain an electrical installation certificate and / or the necessary certificates to the effect that the property, are free from timber destroying insects, (if required).

16. IMPROVEMENTS

16.1 Prior to registration of transfer the PURCHASER will not be entitled to sublet, or make any improvements and / or alterations to or on the property without the written consent of the SELLER. In the event of cancellation of this agreement, for whatever reason, the PURCHASER herewith waives any claim of any nature which he may have for necessary, useful or luxurious improvements and / or alterations on or to the property.

17. AMENDMENTS AND ADDITIONS

17.1 The terms and conditions of this agreement shall constitute the sole agreement between the parties concerned and no variation or amendment thereto shall be binding unless upon in writing and signed by the SELLER and PURCHASER.

18. WAIVER AND CONCESSIONS

18.1 Any waiver or concession made or allowed by the SELLER shall not constitute a waiver of his rights in terms of this agreement; and the SELLER shall at all times be entitled to enforce strict compliance hereof.

19. SPECIAL CONDITIONS

19.1 The property is sold with a reserved price.