



*Auctioneers, Valuers and Appraisers - Established 1964*

**Michael James Organisation**

**CAPE TOWN – JOHANNESBURG – PORT ELIZABETH**

## **PUBLIC AUCTION CONDITIONS OF SALE**

Conducted by: **MICHAEL JAMES ORGANISATION**

Auctioneer: **ANDREW JAMES**

Auctioneer contact details: **021 851 7007**

(the "Auctioneer") **63 VICTORIA STREET, SOMERSET WEST, 7130**

acting on instructions from and as agents for

**CORPORATE LIQUIDATORS (PTY) LTD**

**THE JOINT TRUSTEES: D M BOTHA, J ECKHOFF AND P T MAWIRE**

being the **TRUSTEE/LIQUIDATOR** of **INSOLVENT ESTATE C A VAN DER MERWE**

acting under Certificate of Appointment No . **C1150/2021** issued by the Master of the High Court

at **CAPE TOWN**

("the Seller")

upon which the Auctioneer, duly authorised by the Seller will sell the property described in the Schedule hereto by public auction which shall be conducted in accordance with the rules of auction set out hereunder. On completion of the auction the successful bidder shall immediately furnish the Auctioneer with the details required to complete these conditions and Schedules, initial each page of the document, and annexures and Schedule, and sign where provided at the foot of the annexure/s. The conditions of sale set out herein, in the annexure/s and Schedules shall then become the sole and exclusive record of the terms and conditions of the sale of the property by the Seller to the Purchaser.

# SCHEDULE TO AUCTION CONDITIONS OF SALE

## PARTIES

The parties to this agreement are: **D M BOTHA, J ECKHOFF AND P T MAWIRE**

TRUSTEE(S) / LIQUIDATOR(S) in his/their capacities as THE TRUSTEE(S) / LIQUIDATOR(S) IN THE INSOLVENT ESTATE(S) / COMPANY OR CLOSE CORPORATION (CC) in liquidation of:

### (Hereinafter referred to as the insolvent (s) )

Name of Insolvent / Company or CC in liquidation:	<b>INSOLVENT ESTATE C A VAN DER MERWE</b>
Domicilium citandi et executandi of Trustee:	<b>CORPORATE LIQUIDATORS (PTY) LTD</b>
<ul style="list-style-type: none"> <li>• Physical address:</li> <li>• Postal address:</li> <li>• Tel of Trustee / Liquidator:</li> <li>• Fax: E-mail:</li> </ul>	<p><b>1114 PRETORIUS STREET, HATFIELD, PRETORIA</b></p> <p><b>P O BOX 28675, SUNNYSIDE, 0132</b></p> <p><b>086 111 1939</b></p> <p><b>deon@cl-insol.co.za</b></p>

## **AND**

### FIRST PURCHASER (also to be completed by "Signatory" – clause 19)

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

ID no: \_\_\_\_\_

Work address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Physical home address: \_\_\_\_\_  
(domicilium citandi)

Tel. (work): \_\_\_\_\_ (home) \_\_\_\_\_ Cell: \_\_\_\_\_

Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Marital Status: Married / unmarried / divorced / widow / widower

Married at: \_\_\_\_\_

Married: In community / out of community (with / without the application of the Accrual System) / marriage

contracted outside of South Africa

**SECOND PURCHASER** (also to be completed by "Signatory" – clause 19)

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

ID no: \_\_\_\_\_

Work address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Physical home address: \_\_\_\_\_  
(domicilium citandi)

Tel. (work): \_\_\_\_\_ (home) \_\_\_\_\_ Cell: \_\_\_\_\_

Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Marital Status: Married / unmarried / divorced / widow / widower

Married at: \_\_\_\_\_

Married: In community / out of community (with / without the application of the Accrual System) / marriage contracted  
outside of South Africa.***(the "Purchaser")***

Should the Purchaser have been married outside of the Republic of South Africa or should the marriage be governed by the laws of another country, the Purchaser hereby warrants that his/her spouse will assist him/her as far as needs be, and should the spouse fail to assist for any reason, the Purchaser shall be in breach.

If the parties are married In Community of Property both the above Sections are to be completed and the Agreements signed by both parties.

***If the Purchaser is a juristic person, also complete the following:***

Name: \_\_\_\_\_ Registration no. \_\_\_\_\_

Registered address: \_\_\_\_\_

Physical address: \_\_\_\_\_  
(domicilium citandi)

Tel. \_\_\_\_\_ Cell: \_\_\_\_\_

Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Postal address: \_\_\_\_\_

(herein represented by \_\_\_\_\_ being duly authorized hereto)

***(the "Purchaser")***

(hereinafter referred to as "the parties")

1. **Purchase Price (exclusive of V.A.T)**

The Purchase price amounts to: R \_\_\_\_\_

2. **Going concerns (This part of the Schedule is applicable if the property is being sold as part of a going concern)**

2.1 The following are the additional conditions of sale (in addition to those contained elsewhere in the Schedule and Conditions of Sale) applicable to the sale by the Seller to the Purchaser of the property at the price, all of whom/which are defined in the document to which this document is annexed.

2.2 The business:

The Insolvent conducts the following enterprise upon the property :-

\_\_\_\_\_  
("the business")

utilising the following assets:-

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.3 Going concern sale

2.3.1 The purchase price includes the price of the business which the Seller sells to the Purchaser together with the property as going concern as contemplated by the Value Added Tax Act No 89 of 1991.

2.3.2 The VAT registration numbers of the parties are :-

the Insolvent: \_\_\_\_\_

the Purchaser: \_\_\_\_\_

2.4 The parties record that as at the date of sale, the property and the business constitute an income earning enterprise which shall be an income earning enterprise as at the date of transfer of the property to the Purchaser. The parties have entered into this agreement in contemplation of the transaction being zero rated for VAT purposes. Should, however, VAT be attracted to this transaction, it shall be paid by the Purchaser to whom the Seller shall furnish a valid VAT invoice.

2.5 The parties record that as at the date of sale, the property and the business constitute an income earning enterprise which will continue as such to the date of transfer of the property to the Purchaser and that all the necessary assets for the continuation of the enterprise (as far as possible) will be delivered to the Purchaser in terms of this agreement.

2.6 The Seller shall do all things necessary to deliver the business to the Purchaser simultaneously with delivery of the property.

3. Conveyancer; Firm and Contact details \_\_\_\_\_

# AGREEMENT OF SALE BY PUBLIC AUCTION INCORPORATING SCHEDULE

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The Seller hereby sells to the Purchaser who hereby purchases the property as defined in the Schedule on the following terms and conditions as read with the Schedule which is hereby incorporated and which the Purchaser warrants he has read and understood:

## 1. PROPERTY

### The Property is as follows:

Erf/Holding/Farm/Unit:	<b>ERF 3675, PAARL</b>
Size:	<b>831 SQUARE METRES IN EXTENT</b>
Number of Title Deed:	<b>T13467/2014</b>
Street address:	<b>12 KLEIN RESERVOIR STREET, HOOG EN DROOG, PAARL</b>
Secured Creditor:	<b>NEDBANK LIMITED</b>
Bond Account number:	<b>8002289984401</b>

## 2. PURCHASE PRICE AND CONFIRMATION

2.1 The purchase price as stipulated in the Schedule (to which V.A.T. shall be added if the sale is Vatable) is payable by the Purchaser to the Seller as follows:

2.1.1. A Deposit for the benefit of the Seller:

2.1.1.1 20% (twenty percent) of the purchase price if the purchase price is less than or equal to R 100 000.00 (One Hundred Thousand Rand);

2.1.1.2 15% (fifteen percent) of the purchase price if the purchase price is more than R 100 000.00 (One Hundred Thousand Rand) and less than or equal to R 200 000.00 (Two Hundred Thousand);

2.1.1.3 10% (ten percent) of purchase price if the purchase price is more than R 200 000.00 (Two Hundred Thousand Rand);

payable in cash or by bank guaranteed cheque, on the fall of the hammer and simultaneously with the signing of these conditions of sale, to the Auctioneer and the balance, to be secured by an **acceptable bank guarantee** in favour of the Seller that must be furnished **within 30 days** of date of confirmation,

payable upon date of registration of transfer.

- 2.1.1.4 The Purchaser irrevocably consents to the Seller utilising the 10% deposit, or a portion thereof, to settle any outstanding rates and taxes in respect of the immovable property.
- 2.2 The validity of the agreement is not subject to the furnishing of the guarantee and should the Purchaser fail to furnish such guarantee in the prescribed time, the Purchaser shall be in breach.
- 2.3 The sale is subject to the Seller confirming his acceptance of the sale to the Auctioneer and Purchaser in writing within the period ending at midnight **14 days** after the date of auction (hereinafter styled "confirmation period"). For the purpose of calculating this period, the day of the auction shall be taken into account as the first day of the period.
- 2.4 The Auctioneer shall forthwith give the Purchaser notice of confirmation of the sale. During the confirmation period, the offer made by the Purchaser shall be irrevocable.
- 2.5 The Auctioneer shall be entitled to receive offers on the property during the confirmation period which offers shall be deemed to have been made on precisely the same terms and conditions as are contained in these conditions of sale.
- 2.6 The Purchaser shall have the opportunity to match any such offer within 24 hours of such offer being communicated to him by the Auctioneer or Seller (by telephone or otherwise).
- 2.7 If the Auctioneer, in his discretion, believes that it is necessary to extend the confirmation period for the purpose of informing the Purchaser of the increased offer and receiving the Purchaser's response, the confirmation period may be extended by the Auctioneer by no more than 48 hours with the consent of the Seller.
- 2.8 The deposit shall be held by the Auctioneer in an interest bearing account for the benefit of the insolvent until date of confirmation and until the deposit is finally paid over by the Auctioneer to the Seller.
- 2.9 The agreement is further subject to the condition that the Seller and / or Master of the High Court must grant the required consent, if applicable. Should the consent of the Master of the High Court or any court be required before transfer of the property or any portion thereof can be registered in the name of the Purchaser, this agreement is subject to such consent being obtained and it shall fall away and be regarded as pro non scripto if such consent cannot be obtained. Neither the secured creditor, nor the Seller, nor the Auctioneer nor the estate shall be liable for any damages suffered by an unsuccessful Purchaser should the required consent be refused or withheld for any reason whatsoever.

- 2.10 It is placed on record that the secured creditor is not the owner of the property and even though the secured creditor might have approved the sale, the Seller may still in his unfettered discretion, without having to furnish any reasons, refuse the offer and accept another.
- 2.11 Should the suspensive conditions not be complied with through no fault of the Purchaser, this agreement shall lapse and become of no further force and effect. Should the Purchaser have taken occupation the Purchaser shall then on demand by the Seller vacate the property and shall remain liable to pay the occupational interest until the date the Purchaser vacates. The Purchaser shall return the property in the same condition it was in as on date of confirmation. The clauses of this agreement dealing with the Purchaser's responsibilities in respect of occupation, payment of occupational interest, the return of the property in the same condition and the Seller's remedies for breach will however remain of full force and effect until such time as the property has been vacated and the Purchaser has complied with the remaining valid terms of the agreement. The terms of the agreement shall be severable and those parts of the agreement pertaining only to the sale of the property shall be severable from the rest of the agreement and shall remain of full force and effect. The void part of the agreement shall lapse and the deposit, paid by the Purchaser, shall be refunded without interest, but should the Purchaser fail to comply with the terms that remain valid, the deposit shall be reduced accordingly and the Purchaser shall remain liable should there be a shortfall. The remedies as stipulated in the clause dealing with breach shall in this case, without prejudice to any other remedy, be *mutatis mutandis* available to the Seller.

### **3. OCCUPATION, SERVICES, RISK AND ALTERATIONS**

- 3.1 Occupation, possession, risk profit and loss shall pass to the Purchaser upon the date of confirmation of sale. Without limiting the generality of the above statement, it is specifically recorded that the Purchaser shall be liable for all rates, taxes, levies and other imposts on the Property from occupation date.
- 3.2 No party shall effect any alterations, improvements or additions 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 or voidness of this agreement.
- 3.3 The Purchaser shall not before date of registration sublet the Property or allow anyone else to occupy it.

Occupation will be given to the Purchaser on the date of confirmation, subject to clause 7.2 below or to the parties agreeing in writing on an alternative date of occupation provided that the purchaser:

- has paid the deposit specified in clause 2.1.1 above;
- has furnished the Seller's conveyancers with proof that the guarantees for payment, for not less than the amount specified in clause 2, has been approved;
- has signed the transfer and bond documents and paid the transfer and bond costs; and
- is not in breach of any term or condition of this agreement.

Should the Property be occupied by any unauthorised third party/parties on the date of registration of transfer, the Purchaser shall be responsible to lawfully attend to such occupants at the Purchaser's own cost (with due consideration of the Prevention of Illegal Eviction from & unlawful Occupation of Land Act 19 of 1998 and any other relevant legislation). The Seller shall not be obliged to commence, nor conclude, any eviction applications in respect of such unauthorised occupants. The Purchaser fully understands and appreciates the responsibility placed on him in this regard, any potential risks, as well as the exclusion of liability on the part of the Seller in this regard.

The Seller does not warrant that the Purchaser will obtain vacant occupation and possession of the Property, and the Purchaser purchases the Property subject to any existing lease or right of occupation held by any other party. It is recorded that the Purchaser shall bear the cost of evicting any occupier who may be in unlawful occupation of the Property.

In case of cancellation of this agreement, the Purchaser must evacuate the premises (if the Purchaser already occupies the property) and the Seller will be entitled to keep all amounts paid in respect of this agreement (as advanced calculated liquidated damages) claimed or in the alternative to keep such amounts until the Seller's damages has been calculated and the mentioned amounts and his calculated damages is brought into debt calculation.

- 3.4 Should the Purchaser fail to hand back all the keys that were on site on date of confirmation on demand for any reason on termination of his right to occupy, he shall be liable for the costs to gain access and to have all keys and locks replaced.

#### 4. INTEREST

- 4.1 The **Purchaser shall pay Interest to the Seller from the date of confirmation of the sale** by the Seller, irrespective of whether the Purchaser commences occupation until date of registration of transfer, payable monthly in advance on or before the first business day of each month and is payable to the Seller at the address as stipulated in the Schedule.
- 4.2 The monthly interest shall be **0.7%** of the purchase price.

- 4.3 Arrear payments shall bear interest at the prevailing prime overdraft rates of Nedbank Ltd from time to time, calculated daily from date it became due up to and until date of payment.

## 5. CLEARANCE CERTIFICATES

### **Electrical Certificate of Compliance**

The Purchaser agrees that there is no obligation on the Seller to furnish an electrical certificate of compliance issued under the regulations in terms of the Occupational Health and Safety Act, 85 of 1993. The Purchaser shall, at his own cost, obtain such electrical certificate of compliance.

The Purchaser undertakes that where repairs are required in order for such certificate to be issued, the Purchaser shall at his own cost, employ the services of a certified professional to effect such repairs and provide the clearance certificate to the Seller's conveyancer for the purpose of transfer of the property into the name of the purchaser.

The Seller shall have no liability whatsoever should it be found that the electrical wiring, installations and connections are faulty in the buildings on the Property.

In the event of the Purchaser failing to provide the Seller's conveyancer with the required certificate of compliance or clearance certificate in order for the transfer to be effected, this agreement shall be rendered null and void. In this event any amounts paid to the seller's conveyancer on account of the purchase price and deposit, shall be refunded to him together with any interest earned thereon.

### **Entomologist Clearance Certificate**

The Purchaser agrees that there is no obligation on the Seller to furnish an entomologist clearance certificate to the effect that the timber in the buildings on the Property is free from infestation by wood-boring insects. The Purchaser shall, at his own cost, obtain such entomologist clearance certificate.

The Purchaser undertakes that where repairs are required in order for such certificate to be issued, the Purchaser shall at his own cost, employ the services of a certified professional to effect such repairs and provide the clearance certificate to the Seller's conveyancer for the purpose of transfer of the property into the name of the purchaser.

The Seller shall have no liability whatsoever should it be found that insects infest the timber in the buildings on the Property.

In the event of the Purchaser failing to provide the Seller's conveyancer with the required certificate of compliance or clearance certificate in order for the transfer to be effected, this agreement shall be rendered null and void. In this event any amounts paid to the seller's conveyancer on account of the purchase price and deposit, shall be refunded to him together with any interest earned thereon.

### **Water Compliance Certificate**

The Purchaser agrees to furnish the seller's conveyancer with a water compliance certificate to the effect that the water installation conforms to the National Building Regulations and Municipal by-laws, that there are no defects, that the water meter registers and that there is no discharge of storm water into the sewer system. The Purchaser shall, at his own cost, obtain such water compliance certificate.

The Purchaser undertakes that where repairs are required in order for such certificate to be issued, the Purchaser shall at his own cost, employ the services of a certified professional to effect such repairs and provide the clearance certificate to the Seller's conveyancer for the purpose of transfer of the property into the name of the purchaser.

The Seller shall have no liability whatsoever should it be found that the water pipes, installations and connections are faulty in the buildings on the Property.

In the event of the Purchaser failing to provide the Seller's conveyancer with the required certificate of compliance or clearance certificate in order for the transfer to be effected, this agreement shall be rendered null and void. In this event any amounts paid to the seller's conveyancer on account of the purchase price and deposit, shall be refunded to him together with any interest earned thereon.

### **Gas Certificate of Conformity**

The Purchaser agrees that there is no obligation on the Seller to furnish a Gas certificate of conformity issued under the Pressure Equipment Regulation (PER) in terms of section 43 of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993). The Purchaser shall, at his own cost, obtain such certificate of conformity.

The Purchaser undertakes that where repairs are required in order for such certificate to be issued, the Purchaser shall at his own cost, employ the services of a certified professional to effect such repairs and provide the clearance certificate to the Seller's conveyancer for the purpose of transfer of the property into the name of the purchaser.

The Seller shall have no liability whatsoever should it be found that the gas piping, installations and connections are faulty in the buildings on the Property.

In the event of the Purchaser failing to provide the Seller's conveyancer with the required certificate of compliance or clearance certificate in order for the transfer to be effected, this agreement shall be rendered null and void. In this event any amounts paid to the seller's conveyancer on account of the purchase price and deposit, shall be refunded to him together with any interest earned thereon.

## **6. VOETSTOOTS**

- 6.1 The property is sold as described in the title deed subject to the servitudes and conditions contained therein, any preceding title deeds, leases or other real rights. 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.
- 6.2 The property is sold voetstoots as it is and the Seller does not afford any guarantees or warranties in respect of the buildings or any improvements on the property, including all building materials, irrespective of whether the defect, damage, error or shortcoming is latent, hidden, visible, structural or otherwise nor that it is fit for the purpose for which it was built or bought, irrespective of whether it is covered by the voetstoots clause at common law or not and the Seller shall not be liable for such defect, costs and damages. This clause shall be interpreted to favour the Seller should there be a dispute regarding the voetstoots clause.
- 6.3 The Seller shall not be required to indicate to the Purchaser the position of any beacon or surveyor beacon or border of the property and the Seller shall not be liable for the costs of determining same.
- 6.4 The Purchaser declares himself to be perfectly acquainted with the nature, zoning, extent, beacons, boundaries, location, servitudes, leases and title deed conditions of the property.
- 6.5 The Purchaser shall have no right of retention over the property arising from any cause whatsoever.
- 6.6 Neither the Seller, nor the Auctioneer, nor the secured creditor, nor their agents made any representations to the Purchaser in respect of any aspect to induce the Purchaser to conclude this agreement.

## **7 TRANSFER AND TRANSFER COSTS**

- 7.1 Attorneys appointed by Seller shall attend to the registration of the transfer of the Property into the name of the Purchaser. The Purchaser shall be liable for and shall pay to the Attorneys all the costs of transfer, transfer duty or VAT, whichever is applicable.
- 7.2 The Seller shall be responsible for all charges and costs relating to the Property, including rates and taxes, to the date of registration of transfer of the property into the name of the purchaser or to the date of occupation by the Purchaser. For the purposes of giving transfer of the property to the Purchaser, and in order to obtain the requisite clearance certificate in respect of the property, the Purchaser acknowledges that he/she/it shall be liable for, and make payment on demand to the Seller's attorneys of, all amounts that the Seller's attorneys may in their sole discretion determine to be the Purchaser's pro-rata liability for the rates, as well as for any other charges, levied against the property.
- 7.3 Transfer of the Property shall be passed into the name of the Purchaser as soon as reasonably possible, after the costs mentioned in this clause and the balance of the Purchase price has been paid to the Seller's attorneys.
- 7.4 The Seller shall after transfer furnish notice to the local authority terminating any consumer agreements in respect of the supply of water, electricity or other services to the property. The Seller shall under no circumstances be liable for any loss or damage whatsoever arising as a result of it terminating any consumer supply agreements after transfer.
- 7.5 The Purchaser shall forthwith after date of transfer, substitute the deposits and/or guarantees in respect of the property paid to the local authority by the Seller, if any. The Purchaser shall notify the Seller that such substitutes have been provided to the local authority, and the Seller shall be responsible for obtaining the return of any guarantees or refunds of any deposits from the local authority.

## **8 AUCTIONEER'S COMMISSION**

- 8.1 The Seller shall pay the Auctioneer's commission (if any due in respect of this sale), with VAT (if applicable), after signature of this Agreement
- 8.2 The Auctioneer's commission shall be **6% (six percent)** of the purchase price plus V.A.T.
- 8.3 Should any party be in breach of the agreement the defaulting party shall be liable for payment of the Auctioneer's commission on demand.

- 8.4 The parties acknowledge that the Auctioneer is the only and effective cause of this transaction and that the Auctioneer introduced them to one another.
- 8.5 On signing of this agreement the Auctioneer hereby accepts all obligations and benefits bestowed upon him in terms of this agreement.

## 9. BREACH OF CONTRACT

9.2 Should the Purchaser fail to comply with any term of this agreement the Seller, without prejudice to any right or remedy he might have in terms of this agreement or at common law, may do the following:

9.2.1 By any of the means stipulated in the clause relating to "NOTICES", address a notice to the Purchaser at his **domicilium citandi**, notifying him of his breach and requesting him to remedy same within 7 (SEVEN) days.

9.2.2 Cancel this agreement without further notice:

9.2.2.1 upon which the Purchaser will forfeit all monies paid by him in respect of this agreement as the reasonable pre-estimated liquidated damages without prejudice to any of the Seller's other rights in terms of this agreement to claim for damages suffered including special damages irrespective of whether such damages were contemplated by the parties at date of conclusion of the agreement, and the Seller may recover from the Purchaser such damages as the Seller has suffered and in this regard the Seller shall be entitled to re-sell the property and to retain the aforesaid payments made by the Purchaser and any interest accrued thereon until such time as the Seller's damages have been determined and to apply the said payments and accrued interest towards the settlement of or reduction of such damages

9.2.2.2 and retake possession and occupation of the property

9.2.2.3 and the Seller may declare all monies paid to the Seller, whether held in trust or otherwise and any interest accrued thereon, to be forfeited to the Seller as "rouwkoop" (the Purchaser hereby authorising all persons holding such monies in trust to pay them to the Seller on demand);

or

9.2.3 Claim immediate payment of the whole balance outstanding and strict compliance with all the terms of the agreement and damages, if applicable.

9.3 Should the Purchaser be in breach of the agreement, the Purchaser shall be liable to the Auctioneer for payment of the full amount of the commission and shall be liable to the conveyancer for all fees for work in

respect of the transfer of the registration of the property and the registration of any bonds and the Seller may in summary manner issue summons against such a party for payment of the due amount.

9.4 Should any amount be due by the Purchaser in terms of this agreement, whether liquid, liquidated or unliquidated, a certificate issued by the Seller, stating the amount due, shall be prima facie proof of the Purchaser's indebtedness.

## **10. AMENDMENT**

This written document constitutes the whole of the agreement between the parties and no amendment, variation, deletion or addition to this agreement or any agreement to cancel, including this clause, shall be valid unless reduced to writing and signed by all parties.

## **11. WAIVER**

Notwithstanding anything to the contrary in this agreement whether express or tacit, no lenience, indulgence or extension of time by the Seller in respect of any matter will under any circumstances be deemed a waiver of the Seller's rights or waiver of any term of this agreement, including this clause, and the Seller shall at all times be entitled to strict compliance of every term of this agreement.

## **12. DOMICILIUM**

The parties agree that their addresses as stipulated in the Schedule shall be their chosen **domicilii citandi et executandi** for the purposes of all notices and legal processes. The domicile address may be changed by giving the other party 7 (SEVEN) days' notice prior to the new address becoming the new effective domicile address. The new domicile address must also include a physical address and may not be only a P.O. Box address or post restante, in the absence of which the old domicile address will remain of force.

## **13. MAGISTRATE'S COURT JURISDICTION**

The parties hereby consent to the jurisdiction of the Magistrate's Court in terms of Section 28 of the Magistrate's Court Act, 1944, as amended, irrespective of the issue or dispute. The Seller may, however in his sole discretion institute legal proceedings in any other competent court.

## **14. VACATING OF THE PROPERTY**

The Purchaser and any other person occupying the property upon date of cancellation of this agreement or it becoming void or voidable for any reason whatsoever, shall be obliged to immediately vacate the property upon written request to the Purchaser's domicilium citandi. Any right of occupation is a direct consequence

of this agreement and shall in no manner be interpreted as an agreement of lease.

## **15. LEGAL COSTS**

Should any dispute resulting from this agreement cause the non-defaulting party, Auctioneer or conveyancer to incur legal expenses, such defaulting party shall be liable for payment of such costs on attorney client scale including tracing costs, costs of storage, transportation costs, auctioning costs and commission.

## **16. NOTICES**

16.1 All notices shall be in writing and served at the other party's domicilium citandi address in any of the following manners:

16.1.1 By registered mail: the party receiving same shall be deemed to have received the notice within 7 days after the Post Office's stamp;

16.1.2 By hand: a dated acknowledgement of receipt shall serve as proof of receipt;

16.1.3 By fax: the fax slip shall be proof of receipt;

16.1.4 By sheriff: the return being proof.

## **17 CAPACITY OF PARTIES**

17.1 In the event of the party signing as Purchaser acting as Trustee for a Company/Close Corporation formed or to be formed, or a trust formed, then that signatory binds himself/herself in his/her personal capacity as co-principal debtor for all the obligations herein created and shall be responsible to the Seller as if he/she was the Purchaser in terms of this deed of sale.

17.2 In the event of the Company/Close Corporation not being incorporated within a reasonable time then the signatory hereto as Purchaser shall be treated in his/her personal capacity as Purchaser and shall be liable for all the obligations herein contained as if he/she were the actual Purchaser.

17.3 Notwithstanding the foregoing, the signatory hereto shall be responsible in his/her personal capacity if:

17.3.1 the Company/Close Corporation to be formed is not incorporated/registered prior to the date on which

the guarantees were to have been delivered.;

- 17.3.2 the Company/Close Corporation to be incorporated does not ratify this contract;
- 17.3.3 the Company/Close Corporation, despite ratification, fails to comply strictly with the terms of this agreement;
- 17.4 In the event of the signatory purchasing on behalf of a Trust and the Trust is not registered, all the above obligations shall apply to the signatory in his/her personal capacity.
- 17.5 In the event of there being more than one Purchaser reflected on this agreement, such Purchasers shall be jointly and severally liable in *solidum* for the due and proper performance of all the parties' obligations in terms of this agreement and the parties hereto waive their rights under the exception de duobusvel pluribus reisdebendi.
- 17.6 Should it transpire that the Power of Attorney in terms of which any Purchaser signs this agreement is for any reason invalid, then the signatory shall be liable in his/her personal capacity for all the terms and conditions created in this agreement.
- 17.7 The highest bidder shall, immediately after the sale, sign these conditions and if the Purchaser purchases on behalf of a principal, he/she/it shall divulge the name of such principal upon signature hereof. The Seller however, shall sign the conditions only upon confirmation of the sale.

## **18. PAYMENTS**

All payments made by the Purchaser in terms of this agreement shall be made during business hours and shall be free of banking commission, any retention and set-off. The Purchaser shall obtain a valid receipt for any payment made and shall produce same on request.

## **19. REGULATORY COMPLIANCE**

*The auctioneer hereby warrants that it shall strictly comply with all relevant laws and regulations applicable to this agreement and to the auction process, including but not limited to the Consumer Protection Act 68 of 2008, and the regulations passed in respect of said statute.*

SIGNED by the SELLER at \_\_\_\_\_ on \_\_\_\_\_ (date)

WITNESSES:

- 1. \_\_\_\_\_  
\_\_\_\_\_ FOR THE SELLER
- 2. \_\_\_\_\_

SIGNED by the PURCHASER at \_\_\_\_\_ on \_\_\_\_\_ (date)

(PERSONAL CAPACITY)

WITNESSES:

- 1. \_\_\_\_\_
- 1. \_\_\_\_\_  
First Purchaser (Purchaser)
- 2. \_\_\_\_\_
- 2. \_\_\_\_\_  
Second Purchaser (Purchaser)

SIGNED by the PURCHASER at \_\_\_\_\_ on \_\_\_\_\_ (date)

(AS SIGNATORY ON BEHALF OF)

WITNESSES:

- 1. \_\_\_\_\_  
\_\_\_\_\_ SIGNATORY  
Being duly authorized
- 2. \_\_\_\_\_

SIGNED by the AUCTIONEER at \_\_\_\_\_ on \_\_\_\_\_ (date)

WITNESSES:

- 1. \_\_\_\_\_  
\_\_\_\_\_ AUCTIONEER
- 2. \_\_\_\_\_