



STANDARD AGREEMENT
AND CONDITIONS OF SALE IN
RESPECT OF IMMOVABLE PROPERTY



It is time

(The Sales Contract between the Seller and the Purchaser)

STANDARD AGREEMENT AND CONDITIONS OF SALE IN RESPECT OF IMMOVABLE PROPERTY IN WHICH:

MARIETJIE KEET AUCTIONEERS

Close Corporation with Registration Number 2003/033343/23, VAT registration number 4670209651, 226 Lawley Street, Waterkloof, Pretoria, Gauteng Province, PO Box 13668, Hatfield 0028, South Africa, contact number +27 82 453 3092, e-mail: mk@marietjieketauctioneers.co.za, website: www.marietjieketauctioneers.co.za

(hereinafter called the "Auctioneer")

on behalf of and on instruction by the Owner/duly authorised Agent/Seller (hereinafter called the "Seller"), sells by public auction the under-mentioned property (hereinafter called the "Property") known as:

Erf _____

Unit _____

Portion _____

Holding _____

(better known as _____)

Measuring: ± _____ m² / hectares

Held by Deed of Transfer: T _____

in favour of: _____

Subject to the following conditions:

1

RESERVE PRICE AND CONFIRMATION

Reserve Auction: The Property will be sold with reserve, to the highest bidder (hereinafter called 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 until 18h00 on the 2nd (SECOND) business day after the day of the auction (the "acceptance period"), or such later date and time as the Seller and the Purchaser may agree upon in writing, and the onus will rest upon the Purchaser to establish whether the Seller has accepted or not.

2

If acceptance is not confirmed by the Seller with the Auctioneer within the acceptance period of two business days from date of auction, this contract shall be regarded as *ab initio* null and void, and all payments made by the Purchaser, including commission, will be refunded without delay.

3

On receipt of a higher offer prior to confirmation, 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 offer which offer will be preferent to any other offers including pre-auction offers.

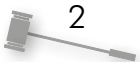
4

The Auctioneer or its agent shall be entitled to bid on behalf of the Seller up to the reserve price, but shall not be entitled to make a bid equal to or exceeding the reserve price.

5

PROPERTY DESCRIPTION

- 5.1 Any description or information, whether by way of advertising, brochures or verbal communication, is done in good faith. An advertisement is considered an invitation to make an offer and is a mere declaration of intention to hold an auction at which bids will be received.
- 5.2 Should the Property be erroneously described herein, or should the area of the Property be found to differ from that stated in the current or any prior title deed, the parties hereby agree to the rectification of the Property description above to conform to the description of the Property as set out in current or prior deeds. The Seller shall not be liable for any shortfall nor shall he/she be entitled to claim additional compensation for any excess consequent upon any such erroneous citation of the extent of the Property.



- 5.3 In the event that the Property is sold together with contents, then such contents shall be inventoried by the Seller and the Purchaser, or their duly authorised agents, and such inventory shall be attached hereto and initialled by the parties, and which list shall then be binding on the parties.
- 5.4 At the advertised time and prior to the bidding the Auctioneer or its agents may announce terms and conditions which, once announced, are deemed to supersede all previously published terms and conditions and will bind the Purchaser. The announcements will bind the Purchaser even if he or she did not hear or understand the announcement, or was not present at the time of the announcement and such terms and conditions were not brought to his or her individual attention. The Auctioneer has the right to correct any error or mistake made in advertisements, brochures and announcements after it has been brought to his/her attention.

6

PROPERTY INSPECTION

The property is sold "as is" (voetstoots). The Purchaser acknowledges his/her right in terms of the Consumer Protection Act, No. 68 of 2008 to inspect the Property and/or goods and hereby confirms that a thorough inspection took place prior to his/her offer/the bidding process. The Auctioneer or Seller is not obliged to point out any beacons or boundaries.

7

SIGNATURE

- 7.1 The Purchaser shall sign this agreement when called upon to do so by the Auctioneer. Should the Purchaser be married in community of property or bid on behalf of a third party, he/she 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. The person signing this contract will nevertheless be held personally liable for the fulfilment of all the terms hereof, even though he/she acts on behalf of a principal or spouse.
- 7.2 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 him/herself as surety for and co-principal debtor with the Purchaser for the due and proper discharge of all obligations arising from this agreement.
- 7.3 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.
- 7.4 The Purchaser acknowledges that he/she was not induced into this contract by any explicit or implied representations.

8

DISPUTES AT THE LIVE AUCTION

- 8.1 In the event of a dispute arising in regards to a bid made, the Auctioneer will have the discretion to put the Property up for auction again and his/her 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 as soon as the correct information has been brought to their attention.
- 8.2 Should the Purchaser fail to conclude the transaction in all facets, the Auctioneer may resell the Property by auction or private treaty.

9

Should the Auctioneer have any reason to believe that, during a live auction, 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 the aforesaid amount. Should a bid be rejected under these circumstances, the Property can immediately be put up for auction again.

10

TRANSFER DUTIES, LEVIES AND MUNICIPAL RATES AND TAXES

The **Purchaser** shall be liable for payment of all duties, levies and municipal rates and taxes, calculated as from the date of registration, but shall not be held liable for any arrears.

11

TRANSFER OF THE PROPERTY

The **Seller** shall appoint the transferring attorneys (see clause 24 of this contract for details of the Conveyancer). Transfer shall be effected by the transferring attorneys after receipt of all payments due in terms hereof and after the Purchaser has paid all costs of transfer including transfer duty or VAT (if applicable) and all other such expenses as may be required and/or incidental to complete transfer of the Property into the name of the Purchaser, including the Auctioneer's commission. The Purchaser undertakes to sign all transfer documents and pay the aforesaid transfer costs including transfer duty or VAT and all other expenses on demand. Should this transaction attract VAT, then such VAT shall be borne by the Purchaser and payable on demand.

EXISTING TENANCIES

- 12.1 The Property is sold subject to all existing tenancies, if applicable. The **Seller** must (i) supply the Purchaser with a copy of the rental agreement before the date of acceptance, and (ii) hand the original rental agreement to the Purchaser on the date of acceptance, or within 7 (SEVEN) days from the date of acceptance.
- 12.2 On or after the date of acceptance, but before the date of registration, neither the Seller nor the Purchaser shall be entitled to give notice to any existing tenant of the Property without first obtaining prior written consent from the other party.

CONSUMER PROTECTION ACT, ACT 68 OF 2008

The parties acknowledge Sections 45 (2) to (4) of the Consumer Protection Act, Act 68 of 2008 ("Act") which stipulate:

"Auctions. Section 45 (2) When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction. (3) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted. (4) Notice must be given in advance that a sale by auction is subject to – (a) a reserved or upset price; or (b) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction."

Section 55 (1) of the Act states that the cooling off period does not apply to goods bought on auction: "Consumer's rights to safe, good quality goods 55. (1) This section does not apply to goods bought at an auction, as contemplated in section 45."

The Property is sold subject to all conditions, servitudes, forthcoming land claims, legal or illegal occupants and/or expropriation applicable to the Property.

TOTAL AMOUNT PAYABLE BY PURCHASER:

The total amount payable by the Purchaser amounts to: R _____

(in words) _____

calculated as follows:

14.1 NETT PURCHASE PRICE AND MEANS OF PAYMENT:

The nett purchase price of the Property is R _____

(in words) _____

plus Value Added Tax (VAT) (if applicable), and is payable by the Purchaser as follows:

- 14.1.1 the purchase price shall be paid in cash by the Purchaser or secured to the satisfaction of the conveyancing attorney by a written Guarantee from a Registered Financial Institution, payable free of exchange, which payment in cash or guarantee shall be paid/delivered by the Purchaser to the conveyancing attorney **within 45 (FORTY-FIVE) days after the acceptance date;**
- 14.1.2 being made in cash, the funds in clause 14.1.1 will be held in an interest bearing trust account by the Conveyancer in terms of Section 78(2A) of the Attorneys Act pending registration of transfer of the Property into the name of the Purchaser, interest to accrue for the benefit of the Purchaser; or being secured by way of bank guarantees, such guarantees shall be drawn in such amounts and in favour of such beneficiaries as specified by the Conveyancer and shall be payable in full and free of exchange against registration of the Property into the name of the Purchaser.

PLUS:

14.2 AUCTIONEER'S COMMISSION

- 14.2.1 The **Purchaser** shall be liable for and pay, in addition to the amounts mentioned in terms of clause 14.1, Auctioneer's commission calculated at **10% (TEN PERCENT)** of the purchase price, plus VAT, which amounts to

R _____

(in words) _____,

which commission shall be deemed to be earned and shall be payable by the Purchaser to the Auctioneer immediately on the fall of the hammer. Said commission is payable as a first charge against any deposit payable in terms of this agreement.

- 14.2.2 Payment of the Auctioneer's commission should be made into the trust account of the Auctioneer's Attorneys: **GROBLER ATTORNEYS**, Account name: Grobler Attorneys Trust, Bank: Nedbank, Account number: 1631 126 202 and Branch code: 198765. Contact details: 082 827 5596 and email: susan@groblerattorneys.co.za. The Purchaser's surname and unique buyers' card number will serve as reference number.



- 14.3.2 Should this agreement be cancelled as a result of breach or non-performance by the Purchaser or any of his obligations in terms hereof, the Auctioneer shall be entitled to claim such commission directly from the Purchaser, and the Purchaser's deposit paid into the trust account of the Conveyancer shall be released to the Auctioneer immediately in reduction of such commission.
- 14.3.3 Should this agreement be cancelled or not be proceeded with as a result of mutual agreement between the Seller and the Purchaser, then both the Seller and the Purchaser shall be liable for such commission which shall immediately be due and payable to the Auctioneer.
- 14.3.4 The Seller and/or the Purchaser will have no claim whatsoever against the Auctioneer arising from the failure of the Seller or the Purchaser to perform any of its obligations arising out of this agreement and shall have no claim against the Auctioneer for any alleged failure by the Auctioneer to comply with the provisions of the National Credit Act, 2005.

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15.1 VALUE ADDED TAX

- 15.1.1 The Seller is/is not a VAT Vendor (delete which is not applicable).
- 15.1.2 The purchase price is exclusive of Value Added Tax (VAT). In the event of VAT being payable on the purchase price, the Seller shall issue a VAT invoice for the purchase price plus VAT to the Purchaser by no later than date of registration of transfer. Such VAT shall be paid by the Purchaser to the transferring attorneys immediately on demand thereof.

15.2 SALE AS A GOING CONCERN (FOR VAT PURPOSES) (delete if not applicable)

- 15.2.1 As at the signature date, the Seller and the Purchase warrant that they are, or will as at date of transfer, be registered vendors as that term is defined in terms of the Value Added Tax Act, 89 of 1991, as amended ("the Act") for value added tax purposes.
- 15.2.2 The Property is sold together with all commercial leases in place over it and the transaction constitutes an indivisible transaction.
- 15.2.3 It is recorded for the purposes of Section 11(1)(e) of the Act that: (i) the Seller and the Purchaser are both registered VAT vendors; (ii) the enterprise is capable of separate operation and is being sold as a going concern and as an income earning activity as at the transfer date; (iii) the sale accordingly falls within the ambit of Section 11(1)(e) of the Act and therefore Value Added Tax is payable at the rate of zero percent.
- 15.2.4 Should the South African Revenue Services rule that VAT is payable in respect of the sale of the Property at a rate exceeding zero percent, the Purchaser shall pay such VAT over to the Conveyancer on demand. Should the South African Revenue Services rule that the sale contemplated in this agreement does not qualify as a zero rated transaction in terms of Section 11(1)(e) of the Value Added Tax Act 1991, as amended, and transfer duty is payable in the sale of the Property, the purchaser shall pay such transfer duty to the Conveyancer on demand.

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POSSESSION AND OCCUPATION

- 16.1 Possession will be given and taken on date of registration 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.
- 16.2 Should the Purchaser take occupation before date of registration, the Purchaser shall be liable for payment of occupational rent calculated at 1% per month on the purchase price from date of occupation to date of registration of transfer, which payment shall be deemed as occupational rent. The Seller may demand that the occupational rent be paid monthly in advance. The Purchaser will pay the occupational rent directly to the Seller.

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INSURANCE AND IMPROVEMENTS

- 17.1 The Seller shall be obliged to insure the Property up to the date of registration.
- 17.2 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.

18

NON-COMPLIANCE AND/OR BREACH OF CONTRACT

- 18.1 Should the Bidder fail to, or refuse to sign the conditions of sale on request of the Auctioneer as described above; or fail to pay or to secure the purchase price by guarantees, the Property can, at the Auctioneer's discretion, be sold *de novo* by virtue of an auction or private treaty, at the Bidder's 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.

18.2 Should the Purchaser violate any condition of this agreement and neglect to comply with a written notice from the Seller or Auctioneer to rectify such breach within 7 (SEVEN) days, the Seller will be entitled, without prejudice to any other rights, to:

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

18.2.2 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.

18.3 In the event of cancellation of this agreement by the Purchaser, 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.

18.4 In the event of cancellation of this agreement by the Seller, the Seller shall pay the Auctioneers commission as stipulated in clause 14.2.

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ARBITRATION

If any dispute arises between the Seller and the Purchaser in terms of this agreement, or damages following breach thereof, the parties agree that such dispute must be decided by the Arbitration Tribunal ("the Tribunal") established by the Estate Agency Affairs Board (South Africa). The Constitution and Procedural Rules of the Tribunal (a copy of which can be obtained from the Estate Agency Affairs Board) form part of this agreement.

Both the Seller and the Purchaser agree that:

19.1 an Arbitrator shall be appointed (requested by one or both parties involved) by the Estate Agency Affairs Board (South Africa);

19.2 the Arbitrator will determine the place, date and time of arbitration which arbitration will be executed within a reasonable period from date of request;

19.3 the parties will be represented by themselves during the arbitration period;

19.4 the award of the Arbitrator will be final and binding on all parties;

19.5 the cost of the Arbitrator will be according to costs determined by the Estate Agency Affairs Board where the claimant and defendant will pay the account (50% claimant/50% defendant) and each party will be responsible for their own costs including accommodation and other fees until the award is completed;

19.6 if the grievant party has to apply for a court order, the other party agrees to pay all costs thereof;

19.7 cancellation of this contract does not cancel the validity of the arbitration;

19.8 their addresses as provided herein are their *domicilium citandi et executandi*.

20

ELECTRICAL CERTIFICATE OF COMPLIANCE

The **Seller** shall obtain, at his expense, a certificate of Compliance (not issued more than six months prior to the date hereof) in accordance with the regulations under the Occupational Health and Safety Act 1993: Electrical installation Regulations (Government Notice R242 dated 6th March 2009). The Auctioneer is not responsible for obtaining the certificate on behalf of the Seller.

21

BODY CORPORATE/HOME OWNERS ASSOCIATION

The sale shall be subject to the rules of the body corporate/home owners association, if applicable, which the Purchaser declares to be fully acquainted with.

22

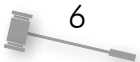
BUILDING PLANS

In the case of any existing buildings erected on the Property, the **Seller** is obliged to hand approved building plans thereof to the Purchaser before date of registration. The Auctioneer is not responsible for obtaining the building plans on behalf of any of the parties.

23

AMENDMENTS AND ADDITIONS

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 agreed upon in writing and signed by the Seller and Purchaser. Any variation concerning the Auctioneer and/or Auctioneer's commission, will be co-signed by the Auctioneer.



THE PARTIES SIGNING THIS DOCUMENT CONFIRM THAT THEY HAVE READ AND UNDERSTOOD ALL THE TERMS AND CONDITIONS CONTAINED HEREIN AND AGREE THAT THEY ARE BOUND THERETO.

PURCHASER

1st Purchaser:

Name: _____

Identity number: _____

Single: _____ ; Married **WITHIN** community of property: _____ ; Married **OUT OF** community of property: _____

Income tax number: _____

Residential address: _____

Postal address: _____

Cell: _____ Telephone: _____

E-mail: _____

2nd Purchaser:

Name: _____

Identity number: _____

Single: _____ ; Married **WITHIN** community of property: _____ ; Married **OUT OF** community of property: _____

Income tax number: _____

Residential address: _____

Postal address: _____

Cell: _____ Telephone: _____

E-mail: _____

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 20____

WITNESS

PURCHASER 1 (duly authorised)

WITNESS

PURCHASER 2

SELLER

1st Seller:

Name: _____

Identity number: _____

Single: _____ ; Married **WITHIN** community of property: _____ ; Married **OUT OF** community of property: _____

Income tax number: _____

Residential address: _____



Postal address: _____

Cell: _____ Telephone: _____

E-mail: _____

2nd Seller:

Name: _____

Identity number: _____

Single: _____ ; Married **WITHIN** community of property: _____ ; Married **OUT OF** community of property: _____

Income tax number: _____

Residential address: _____

Postal address: _____

Cell: _____ Telephone: _____

E-mail: _____

Existing Bond Holder: _____

Account number of bond: _____

Conveyancer as per Clause 11: _____

Contact number: _____ ; E-mail: _____

Body Corporate / Home Owners Association (if applicable): _____

Contact number: _____ ; E-mail: _____

THIS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 20____

WITNESS

SELLER 1 (acceptance and confirmation)

WITNESS

SELLER 2

THE CONDITIONS CONTAINED IN THIS AGREEMENT ARE ACCEPTED BY THE AUCTIONEER:

Marietjie Keet Auctioneers


Version 12/2013





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