



TIRHANI

AUCTIONEERS

AGREEMENT AND CONDITIONS OF SALE

IN RESPECT OF IMMOVABLE PROPERTY

TIRHANI AUCTIONEERS GAUTENG CC

1 Centex Close, Corner Katherine Street, Eastgate Ext 4, Sandton, 2090

P.O. Box 2591, Rivonia, 2128

(the "AUCTIONEER")

duly instructed by

("the SELLER")

hereby offer for sale by public auction the immovable PROPERTY known as:

Property Details:

Title Deed No:

Extent:

("the PROPERTY")

Subject to the following conditions:

1. INTERPRETATION AND INTRODUCTION

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.

1.1.4 References to the Executor, Trustee or Liquidator shall include the Provisional Trustee or Provisional Liquidator.

1.2 In the event of this contract not arising from a public auction but as private treaty, then all references to this Conditions of Sale shall adopt equivalent to a Deed of Sale considering the following attributes:

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; and

all the other clauses shall be applicable as if incorporated in the agreement.

1.3 If these Conditions of Sale should arise from a public auction, it will incorporate the Rule of Auction which are available at www.tirhani.co.za as well as at the offices of Tirhani Auctioneers Gauteng CC: 1 Centex Close, Corner Katherine Street, Eastgate Ext 4, Sandton.

2. RESERVE PRICE AND CONFIRMATION

2.1 The property will be sold to the highest bidder (herein referred to as the **PURCHASER**) but subject to confirmation by the **SELLER**, which confirmation may be given or refused by the **SELLER** without furnishing reasons therefore. This document constitutes an Offer to Purchase by the **PURCHASER**, and the **PURCHASER** is unconditionally and irrevocably bound to this Offer for a period of **7 CALENDAR DAYS** (the calculation of which excludes the date of signature hereof by the **PURCHASER**) and the Offer is open for Acceptance by the **SELLER** at any time during this period. 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 null and void and be of no force and effect, and all payments made by the **PURCHASER**, including commission, will be refunded without delay.

2.4 During the confirmation period above, the **AUCTIONEER** may continue to market the property in the normal course of business as he may deem fit. He may receive and take in higher Offers to

Purchase from prospective **PURCHASERS**. Any such higher offer should be made to the **AUCTIONEER**, subject to the same terms and conditions as the Offer to Purchase on the auction. After confirmation of the acceptability of the highest offer so received the original bidder at the auction shall have the right to equal such offer, which offer will be preferent to any other offers.

- 2.5 The **AUCTIONEER** shall advise the **PURCHASER** of the highest acceptable offer as contemplated above. The **PURCHASER** shall the option to, within a period of 24 (twenty hours) after being notified (excluding weekends and public holidays), to increase his offer in writing in terms of this agreement to an amount equal to the Purchase Price of such higher acceptable offer. If the **PURCHASER** elects to exercise this right, the **PURCHASER** shall amend his original Offer to Purchase or complete and sign a new Offer to Purchase reflecting such high offer and shall supplement the deposit and the auctioneer's commission required by Paragraph 9.2 below accordingly.
- 2.6 In the event of this agreement requiring the consent of the Master of the High Court in terms of any law or the consent of the Local Authority/Municipality to pass transfer, then this agreement is subject to such consent being obtained in writing as soon as possible and in the normal course of the conveyancing process.
- 2.7 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 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 available 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 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 may immediately be put up on auction again.

5. RATES, LEVIES & TAXES

- 5.1 The **BUYER** shall be liable for payment of all duties, rates, levies and taxes, calculated as from the **date of possession and/or occupation** (whichever occurs first), but shall be held liable for any arrears.
- 5.2 The **SELLER** shall, be responsible for the payment of ALL ARREARS including municipal rates, taxes, municipal services accounts and levies (if applicable) in respect of the property. The **SELLER** shall make payment of the aforesaid to the **CONVEYANCER** upon request.

6. CONVEYANCER

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

7. LEASES & VACANCY OCCUPATION

- 7.1 The property is sold free of any lease agreements.
- 7.2 Vacant occupation is **GUARANTEED**.
- 7.3 Possession and/or occupation will be given and taken subject to without any existing lease agreements, leasing, tenancy or legal or illegal occupation, on date of confirmation, registration of transfer 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.

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 improvements, or the legality of any activities practiced 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 and evidenced in the existing Title Deed or the specific 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 representation.
- 8.3 It is agreed by the **PURCHASER** that neither the **SELLER** nor the **AUCTIONEER** purport to be experts with regards to defects in immovable property, and consequently that their failure to specifically point out a specific defect cannot be seen as any form of misrepresentation.
- 8.4 The **PURCHASER** acknowledges that the subject property sold herewith is not a newly constructed building and that the condition of the property may not be the same as that of such newly constructed building. Consequently, certain patent and latent defects may have developed, particularly but not limited to the condition of the roof and roof trusses, ceilings, electrical, plumbing and sewerage reticulation, walls, windows and skylight fittings, floors, fixtures and fittings, gates, pool and pond electrical components, garden installations and all other similar appurtenances.
- 8.5 **BIDDERS** should refrain from either bidding at the auction or making an offer for the property if they have not familiarised themselves with all clauses of this Conditions of Sale and the condition and status of the property, and neither the **SELLER** nor the **AUCTIONEER** accepts any liability towards the **PURCHASER** in this regard. It is therefore acknowledged that if a **BIDDER** becomes the **PURCHASER** in this agreement he/she has not been induced or influenced to enter into this agreement by any warranties or representations or statements made, or information given by either the **SELLER(S)** or the **AUCTIONEER**.

9. PURCHASE PRICE AND MEANS OF PAYMENT

9.1 The Purchase price of the property is R.....
(.....
.....)

Excluding VAT (if applicable) and is payable by the **PURCHASER** as follows: -

Date:

The buyer's 10% commission is R.....

(.....
.....)

Including VAT and is payable by the **PURCHASER** as follows: -

Date:

9.2 **10% (Ten percent)** of the full purchase price as a deposit to the **AUCTIONEER**, in bank guaranteed cheque or electronic transfer upon signature hereof by the **PURCHASER** or as requested by the **AUCTIONEER**. The **SELLER(S)** and the **PURCHASER** authorizes the **AUCTIONEER**, upon Acceptance of this Offer by the **SELLER(S)**, to pay the remainder of the deposit after deduction of expenses and fees, to conveyancer's trust account for the benefit of the Seller.

9.3 The **PURCHASER** shall be liable for payment of occupational interest calculated at **1% (one percent)** 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 and shall be payable 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 **SELLER(S)** and the **PURCHASER** hereby irrevocably instruct and authorize the Conveyancer to invest any amounts received by the Conveyancer in an Interest-bearing account in terms of Section 78(2A) of the Attorneys Act, 1979 (Act 53 of 1979) for the benefit of **SELLER**.

9.6 The **PURCHASER** shall be responsible for payment of Bank costs.

10. AUCTIONEERS' COMMISSION

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

10.2 The **BUYER** will be liable for auctioneers' commission of **10% (ten percent)** of the purchase price (exclusive of VAT), which is not included in the purchase price, payable simultaneously with the deposit and shall be in addition to the said 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 demand 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 REGISTRATION OF TRANSFER** provided that guarantees as provided for in paragraph 9.4 have been delivered (or 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 by virtue of a new 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 by fax or by hand or by prepaid registered post from the **SELLER** or **AUCTIONEER** or the Seller's Conveyancer 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 ADDRESS FOR DELIVERY DOCUMENTS

- 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 North Gauteng High Court Pretoria or South Gauteng High Court Johannesburg, and the parties choose the addresses as indicated herein as their *domicilium citandi et executandi* (address where they will receive all letters and processes) for the purpose of delivery of all notices and documents.

15. SUBMISSION OF CERTIFICATES

- 15.1 The **PURCHASER** confirms that he will, at his own cost, obtain an electrical installation certificate and/or the necessary certificates to the effect that the buildings on the property are free from timber destroying insects, or gas or any other certificates of whatsoever nature that may be 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 what ever 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. FINANCIAL INTELLIGENCE CENTRE ACT ("FICA")

17.1 It is acknowledged that the Conveyancer is designated as an "accountable institution" in terms of FICA.

17.2 Both the **SELLER(S)** and the **PURCHASER** agree to comply with all the FICA requirements of the **AUCTIONEER** and the Conveyancer and to supply the **AUCTIONEER** and the Conveyancer with all their respective FICA requirements within three days after demand therefore is made.

17.3 The **SELLER(S)** and the **PURCHASER** acknowledge that FICA prohibits the Conveyancer to invest and administer any deposits or any other monies paid in terms of this agreement, unless the **SELLER(S)** and the **PURCHASER** have provided the documentation and information as required by FICA legislation.

17.4 It is hereby agreed by both the **SELLER(S)** and the **PURCHASER** that neither the **AUCTIONEER** nor the Conveyancer shall be liable for any loss or damage suffered by either of them, as a result of either the **SELLER(S)** or the **PURCHASER** failing to comply with the provisions of this Clause 17.

18. MATRIMONIAL PROPERTY ACT

18.1 To the extent that it is necessary, the **PURCHASER** hereby warrants that all written consents as required by the Matrimonial Property Act, No. 88 of 1984 in respect of this agreement or any matters arising therefrom or in terms hereof have been duly given as required.

19. AMENDMENTS AND ADDITIONS

19.1 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 agreed upon in writing and signed by the **SELLER** and **PURCHASER**

20. WAIVER AND CONCESSIONS

20.1 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.

21. SPECIAL CONDITIONS

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THUS, DONE AND SIGNED ON THE DATES AND AT THE PLACES AS STATED BELOW:

PURCHASER:

NAME/ ENTITY:

.....

IDENTITY NO/ ENTITY REGISTRATION NO:

.....

PHYSICAL ADDRESS:

.....

.....

CONTACT DETAILS: (W)

(C)

(H)

(FAX)

(E-MAIL)

.....
AS WITNESS

.....
PURCHASER

.....
DATE

.....
PLACE

MARITAL STATUS OF PURCHASER:

** Delete which is not applicable

Status: ** Unmarried / Married / Divorced

If Married: ** In community / Ante nuptial contract

IF MARRIED IN COMMUNITY OF PROPERTY, THEN:

FULL NAME OF SPOUSE:

.....

IDENTITY NO:

.....

.....
AS WITNESS

.....
PURCHASER SPOUSE

.....
DATE

.....
PLACE

SURETYSHIP

I/We, the undersigned, do hereby bind myself / ourselves jointly and severally as surety/ties in solidum and co-principal debtor/s with the PURCHASER and the bidder who have signed this Agreement of Sale, for the due performance by the PURCHASER and such bidder, for all his obligations in terms of this Agreement of Sale, and I/We do hereby specifically waive all benefits of the legal exceptions known as beneficia ordinis seu excussionis et divisionis, in other words the benefit of division and excussion, the meaning and effect of which I/We are fully acquainted with.

My/Our liability in terms hereof shall not affected, prejudiced or vitiated by any concession or accommodation which may be made by the SELLER or his successor in title to the said PURCHASER or bidder, and I/We are not entitled to receive any prior notice in this regard.

Signed at on this day of

Surety Name 1:

Address:

Signature:

Witness Signature:

Auctioneer Signature:

Signed at on this day of

Surety Name 2:

Address:

Signature:

Witness Signature:

Auctioneer Signature:

SELLER:

NAME/ ENTITY:

IDENTITY NO/ ENTITY REGISTRATION NO:

PHYSICAL ADDRESS:

.....

CONTACT DETAILS: (W)

(E-MAIL)

.....

AS WITNESS

.....

ACCEPTANCE & CONFIRMATION (SELLER)

Signed at on this day of

AUCTIONEER:

NAME/ ENTITY: TIRHANI AUCTIONEERS GAUTENG CC

ENTITY REGISTRATION NO: 2007/002487/07

PHYSICAL ADDRESS: 1 Centex Close, Corner Katherine Street, Eastgate Ext 4, Sandton

CONTACT: (t) 011 608 2280 (f) 086 554 7417

.....

AS WITNESS

.....

AUCTIONEER

Signed at on this day of