

GREENLIGHT AUCTIONS

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CONDITIONS OF SALE OF IMMOVABLE PROPERTY

1. Rules and Procedure of Auction

- 1.1 The sale shall be subject to the control of the Auctioneer who shall have a sole right to regulate the advance in the bidding. Every bid shall constitute an Offer to Purchase the property for sale at the amount bid.
- 1.2 The highest bidder at any sale shall be the person indicated by the Auctioneer by the fall of the hammer or by such other means as he may select. In the event of a dispute arising between the Auctioneer and a bidder, or between any two or more bidders, the Auctioneer shall have the right to declare the sale to be of no force or effect and to resell the property in question.
- 1.3 Unless otherwise expressly stated by the Auctioneer, every sale shall be a sale with reserve and no sale shall be concluded until communication by the Seller or by the Auctioneer on his behalf of the Seller's acceptance of the highest bid. In the case of a sale without reserve, a sale shall be concluded immediately upon the acceptance by the auctioneer of the highest bid.
- 1.4 The Auctioneer may refuse any bid without being obliged to give any reason for such refusal, neither will the Auctioneer be obliged to accept the highest bid, and he may likewise not proceed with the sale of any property, at any time prior to the conclusion of a sale thereof, in which event he shall not be liable in damages, from any cause whatsoever, to any person by reason of the sale not being proceeded with, whether it has been advertised to take place on a specific date or not.
- 1.5 Should the Auctioneer commit any error in conducting the sale, such error shall not be considered binding, either upon the Seller, the Purchaser or the Auctioneer. The Auctioneer shall be entitled in his sole discretion to correct the error, if possible, without any recourse against the Seller, the Purchaser or the Auctioneer.
- 1.6 The Auctioneer shall resolve any dispute which may arise between bidders and the Auctioneer's decision shall be final and binding on the parties. The Auctioneer may in his sole discretion reject any bid without being obliged to give any reason.
- 1.7 No bid may be withdrawn prior to the expiry of the confirmation period, during which time the offer shall be open for acceptance by the Seller.

- 1.8 The highest bidder ("the Purchaser") shall sign the Conditions of Sale immediately on the fall of the hammer.
- 1.9 Should the Purchaser neglect or refuse to sign the Conditions of Sale on request by the Auctioneer, or fail forthwith to provide the security required, the Seller may, at his option, again sell the property at the expense and risk of the Purchaser who shall be liable for any loss thereby occasioned. The Purchaser shall in that event not benefit from any profit.
- 1.10 The bidder's offer shall be open for acceptance by the Seller until 17h00 on the 7th calendar day after the auction ("the confirmation period")
- 1.11 Either the Seller or the Auctioneer may accept the bidder's offer at any time prior to the expiry of the confirmation period ("acceptance date").
- 1.12 Should the Seller reject the Purchaser's offer, the Auctioneer will repay to the Purchaser any deposit and commission paid by it.
- 1.13 In the event of the sale requiring the consent of any statutory authority or any court of law or any resolution, then this sale is subject to such consent or resolution which shall be obtained as expeditiously as possible.
- 1.14 The sale, if applicable, shall be subject to the rules of the body corporate/homeowners association which the Purchaser declares to be fully acquainted with.

2. **SALE**

- 2.1 The Seller hereby sells the Property to the Purchaser, *voetstoots* and in the condition it lies as at date of signature, subject to all conditions and servitudes mentioned or referred to in current or prior Title Deeds of the property. The Seller shall not be liable for any defects in the Property, whether latent or patent or otherwise. The Purchaser shall be deemed to have examined the current Title Deed and satisfied himself as to the conditions contained therein as at date of signing of this Agreement by him.
- 2.3 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 the current or prior title deeds. The Seller shall not be liable for any shortfall nor shall he be entitled to claim additional compensation for any excess consequent upon any such erroneous citation of the extent of the Property.
- 2.4 The Purchaser acknowledges that no representations or warranties regarding the Property shall be of any force or effect unless expressly stated in this Agreement.

2.5 The Property is sold with all fixtures and fittings of a permanent nature in or attached to the Property, which the Seller warrants are fully paid for and owned solely by the Seller as at date of sale.

3. **PURCHASE PRICE**

3.1 The purchase price of the Property ("the Purchase Price"), plus Value Added Tax (VAT) (if applicable), is payable by the Purchaser as follows:

3.1.1 a deposit equal to 5% (five percent) of the Purchase Price on date of signature of this Agreement into the Auctioneer's trust account, to be invested in an interest bearing trust account on behalf of the Purchaser until date of registration of transfer;

3.1.2 the balance of the Purchase Price, shall be paid in cash or by way of a bankers/financial institution guarantee acceptable to the Seller/Auctioneer, which payment in cash or guarantee shall be paid/delivered within 21 (twenty one) days from date of acceptance of the sale by the Seller and/or Auctioneer, provided that in the event of the balance of the Purchase Price:

3.1.2.1 being made in cash, the funds 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

3.1.2.2 being secured by way of bank guarantees, such guarantees shall drawn in such amounts and in favour of such beneficiaries as specified by the Conveyancer and shall be expressed to be payable in full and free of exchange against registration of the Property into the name of the Purchaser.

4. **AUCTIONEER'S COMMISSION**

The Purchaser shall be liable for the Auctioneers commission calculated at 3,5% (three comma five percent) of the Purchase Price, plus VAT, which commission shall be deemed to be earned and shall be payable by the Purchaser to the Auctioneer on the fall of the hammer. Said commission is payable as a first charge against any deposit payable in terms of this Agreement. Should this Agreement be cancelled as a result of breach or non-performance by the Purchaser of 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 shall be released to the Auctioneer immediately in reduction of such commission. Should this Agreement be cancelled or not be proceeded with as a result of a breach or non-compliance by the Seller of any of its obligations in terms hereof, or by mutual agreement between the Seller and the

Purchaser, then the Seller shall be liable for such commission which shall be immediately due and payable to the Auctioneer.

5. **POSSESSION & OCCUPATION**

- 5.1 Possession and Occupation of the Property, subject to existing tenancies, shall be given and taken on the date of registration of transfer from which date all risks and benefits of ownership in respect of the Property shall vest in the Purchaser.
- 5.2 Should the Purchaser take possession of the Property prior to registration of transfer, he shall pay occupational interest calculated at 15% (FIFTEEN PER CENTUM) per annum on the purchase price and capitalised monthly from date of possession to date of registration of transfer, both dates included, without deduction or set off, which amount shall be payable not later than 5 (FIVE) days before the anticipated date of transfer.

6. **NOMINEE PURCHASER**

The Purchaser shall be entitled, by notice in writing to the Seller, to nominate a nominee in his place as Purchaser, upon the following terms and conditions:

- 6.1 the aforesaid notice shall be delivered to the Seller by not later than the close of business on the acceptance date;
- 6.2 the notice shall set out the name and address of the nominee;
- 6.3 the notice shall be accompanied by the nominee's written acceptance that he is fully aware of all the terms and conditions of this agreement and that he is bound by the provisions hereof as the Purchaser;
- 6.4 should the Purchaser nominate a nominee, then –
- 6.4.1 all reference to the Purchaser in this agreement shall be deemed to be a reference to the nominee; and
- 6.4.2 the Purchaser (that is, the nominator) by his signature hereto hereby binds himself as surety for and co-principal debtor with such nominee for all the obligations of the nominee as Purchaser, to and in favour of the Seller, renouncing the benefits of division and excussion, the meaning whereof the Purchaser acknowledges to know and understand.

7. **SALE AS A GOING CONCERN (delete if not applicable)**

- 7.1 As at the signature date, the Seller and the Purchaser 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.

- 7.2 The Property is sold together with all leases in place and the transaction constitutes an indivisible transaction.
- 7.3 It is recorded for the purposes of Section 11(1)(e) of the Act that:
 - 7.3.1 the Seller and the Purchaser are both registered VAT vendors;
 - 7.3.2 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;
 - 7.3.3 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.
- 7.4 Should the South African Revenue Service 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.
- 7.5 Should the South African Revenue Service 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 Act, and transfer duty is payable on the sale of the Property, the Purchaser shall pay such transfer duty to the Conveyancer on demand.

8. **TRANSFER/LEGAL COSTS**

- 8.1 Transfer shall be effected by the Seller's Conveyancer after receipt of all payments due in terms hereof and after the Purchaser has paid all the costs of transfer including transfer duty or VAT (if any) 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.
- 8.2 Should this transaction attract VAT then such VAT shall be borne by the Purchaser and payable on demand.

9. **BREACH**

Should the Purchaser fail to pay the deposit or the balance of the purchase price or fail to furnish the guarantee/s referred to herein within the period mentioned herein, or should it fail to comply with any of the other terms and conditions of this Agreement, the Seller shall be entitled, without prejudice to all other rights in law and without notice:-

9.1 to cancel this Agreement and thereupon:-

9.1.1 to re-sell the Property either by public auction or private sale at the risk and expense of the Purchaser; and

9.1.2 to retain all amounts paid by the Purchaser, after payment of the Auctioneer's commission, as *rouwkoop*, or by way of a penalty or as liquidated damages, or as a payment in respect of the prejudice agreed upon as being suffered by the Seller as a result of the Purchaser's breach aforementioned;

OR

9.1.3 to recover such damages as the Seller may be able to prove the Seller has sustained, in which event the Seller shall be entitled to retain all payments made by the Purchaser until the actual amount of damages has been determined by a Court, and thereupon set-off such damages against the aforementioned payments and to claim the balance from the Purchaser;

OR

9.2 to enforce specific performance of the terms hereof including the full payment of the purchase price owing at the date of the Purchaser's breach aforementioned, and to additionally recover all damages suffered consequent upon the Purchaser's breach.

10. **DELAY IN EFFECTING TRANSFER**

Should there be any delay in effecting transfer due to the fault of the Purchaser, the Purchaser shall pay to the Seller additional interest on the purchase price at the rate of 11% (eleven per centum), per annum for the entire period of delay, which amount shall be paid, or otherwise secured to the reasonable satisfaction of the Seller, by the Purchaser prior to lodgment of the transfer documents in the Deeds Registry for registration. This provision shall not prejudice the rights of the Seller under Clause 9 hereof.

11. **JOINT AND SEVERABILITY**

Should there be more than one Purchaser or more than one Seller, the Purchasers or Sellers, as the case may be, shall be liable jointly and severally *in solidum* for the payment of all monies hereunder and for the carrying out of all the terms of this Agreement.

12. **ACCEPTANCE**

Signature of this Agreement by the Purchaser shall be deemed to constitute an offer by the Purchaser to the Seller to enter into this Agreement, which offer shall not be capable for revocation or withdrawal by the Purchaser during the confirmation period as defined in clause 1.10 above. This Agreement shall only be binding on the Seller when duly signed by it or the Auctioneer until which time no obligation or liability on the part of the Seller shall be deemed to exist.

13. **COMPANY/CLOSE CORPORATION PURCHASERS**

13.1 Should the Purchaser sign this Agreement as trustee or agent for a company to be formed, the signatory shall be deemed to be personally liable in terms of this Agreement should the company not be so formed, obtain a certificate to commence business and ratify and adopt this Agreement within 30 (thirty) days of the date of signature hereof. The Purchaser by his signature hereto binds himself as surety for and co-principal debtor with the company under renunciation of the benefits of excussion and division after the incorporation and ratification of such company, for the full, due and timeous performance of such company of all its obligations under this Agreement.

13.2 Should the Purchaser be a registered company, the signatory and the Purchaser hereby warrant in favour of the Seller that all the directors and shareholders of such company will bind themselves jointly and severally as sureties for and co-principal debtors with the Purchaser to the Seller for the due and punctual performance by the Purchaser of all its obligations in terms of this Agreement, and that they will execute on demand a deed of Suretyship in such form as may be required by the Seller or the Auctioneer on the Seller's behalf.

13.3 In the event of the Purchaser being a Close Corporation, the above conditions shall apply *mutatis mutandis* to the Corporation and its Members.

13.4 In the event of the Purchaser being a Trust, the conditions contained in 13.2 shall apply *mutatis mutandis* to the Trust and its trustees.

14. **"SOLD" BOARD**

The parties agree that the Auctioneers may display a "Sold" board on the boundary of the Property for a period of 3 (three) months from date of signature of this Agreement by the parties.

15. **CONSENTS IN TERMS OF MATRIMONIAL PROPERTY ACT**

- 15.1 Insofar as any party is a natural person, the parties warrant that all written consents required by the Matrimonial Property Act 88 of 1984 in respect of this Agreement or any matters arising there from or in terms hereof have and will be given.
- 15.2 Should a party be married outside the Republic of South Africa or should the marriage be governed by laws of a foreign country, such party warrants that his/her spouse will assist him/her as far as is necessary. In the event of any party's spouse failing to assist him/her for any reason whatsoever, such party shall be deemed to be in material breach of the terms and conditions of this Agreement.

16. **ELECTRICAL CERTIFICATE OF COMPLIANCE**

- 16.1 In accordance with the Occupational Health and Safety Act 1993: Electrical Installation Regulations (Government Notice R242 dated 6th March 2009), the Seller shall at its own cost furnish the Purchaser, prior to lodgement, with a valid certificate of compliance (accompanied by a test report) in respect of the electrical installation at the Property issued by a registered person as contemplated by the said regulations.
- 16.2 The Seller warrants that the said certificate was not issued more than 2 years prior to the date hereof and that there have been no additions or alterations to the electrical installation at the Property since the issue of said certificate.
- 16.3 If the Seller fails to provide the certificate timeously, the Purchaser may appoint an accredited electrician to provide the said certificate and he may thereafter deduct the reasonable cost of acquiring such certificate from the purchase price of the Property.
- 16.4 Any defect found in the wiring of the buildings on the Property will be repaired by the Seller (failing which, by the Purchaser for the account of the Seller prior to lodgement, and such reasonable costs incurred by the Purchaser may be deducted from the purchase price).

17. **BEACONS**

The Seller shall not be required to indicate to the Purchaser the position of the beacons or pegs upon the Property.

18. **BEETLE REPORT**

- 18.1 In the case of a residential property, if requested by the Purchaser in writing within 30 (thirty) days of signature hereof, the Seller shall at his expense have the

buildings on the property inspected by a government approved entomologist within a period of 60 (sixty) days from the date of receipt of such request.

18.2 If it is discovered that there is or has been any infestation by timber destroying or boring insects, the Seller shall have the buildings treated and rendered free from such apparent infestation at the Seller's cost.

18.3 The Seller shall prior to the transfer of the Property into the name of the Purchaser, furnish the Purchaser and/or the Conveyancer with a certificate from the entomologist to the effect that:-

18.3.1 all buildings on the Property have been inspected for infestation by white ants, cryptotermes brevis or other timber destroying or boring insects; and

18.3.2 the buildings are apparently free from infestation.

19. **TAX ACKNOWLEDGEMENTS BY THE PARTIES**

The Seller and the Purchaser warrant that their tax affairs (income tax and/or VAT) with SARS are up to date and will not cause an impediment or delay to the transfer of the Property.

20. **LEGAL COSTS**

Should the Purchaser commit any breach of this Agreement and should the Auctioneer and/or the Seller in an attempt to have such breach rectified, seek legal advice and/or instruct attorneys to take legal action, the Purchaser shall be liable for all legal costs arising therefrom, including attorney and client costs and any collection charges.

21. **NON-RESIDENT WITHHOLDING TAX**

21.1.1 The parties acknowledge that in terms of Section 35A of the Income Tax Act ("the Tax Act"), the Purchaser is statutorily obligated to withhold a portion of the purchase price from the Seller, if the Seller is not a resident of the Republic of South Africa ("a Resident"), and to pay such withheld amount over to SARS. In light of this:

21.1.2 The Seller hereby warrants the it is / is not (delete as applicable) a Resident;

21.1.3 The Seller hereby indemnifies and holds the Purchaser and the Conveyancer harmless against any and all claim arising against either of them as a consequence of their having acted on the Seller's aforesaid warranty of residency, and hereby waives any claims or right of recourse against the Purchaser and/or the Conveyancer pursuant thereto;

21.1.3 Insofar as the Seller warrants that he is a Resident, the Conveyancer may require the Seller to provide a SARS directive within 30 days confirming such residential status, failing which it shall be deemed that the Seller is a non-Resident, and the provisions of clause 21.1.4 shall then apply;

21.1.4 Should the Seller be a non-Resident, or be deemed as such as per clause 21.1.3, then:

21.1.4.1 the Seller and the Purchaser hereby irrevocably instruct the Conveyancer to withhold the prescribed percentage of the purchase price and to remit such funds to SARS within the prescribed number of days of withholding of such funds, in accordance with Section 35A of the Tax Act;

21.1.4.2 the Purchaser shall sign all such documentation as required by the Tax Act for submission with such remittance;

21.1.4.3 notwithstanding the provisions of clause 21.1.4.1, the Seller shall be entitled to obtain a directive from SARS and deliver it to the Conveyancer at any time prior to registration of transfer, in which event the Conveyancer shall act and pay out in accordance with such directive.

22. **DISCLAIMER**

Insofar as Greenlight Auctions (Pty) Ltd or any of its affiliated companies, agents and/or representatives and/or the Auctioneer (hereinafter collectively referred to as "Greenlight") may have made any oral or written representation/s in any notice, correspondence, pamphlets, catalogues, mandates, agreements of sale or other documents or material, other than those contained herein, the bidder and/or Purchaser and/or Seller of any Property which is to be sold by way of auction or private treaty or otherwise, acknowledge and accept that such representation/s have been made in good faith, and while Greenlight has used its best endeavours to ensure the accuracy thereof, it remains the duty/responsibility of the parties to satisfy themselves that the representation/s are in fact correct. No party shall have any claim against Greenlight of whatsoever nature or howsoever arising herefrom and the parties accordingly indemnify and hold Greenlight harmless against any claims, actions, proceedings, costs and/or expenses of whatsoever nature which may have risen or arise or incurred by such party from this Agreement.

23. **DOMICILIA**

23.1 The parties choose their respective *domicilia citandi et executandi* for all purposes under this agreement whether in respect of Court process, notices or other documents of communications of whatsoever nature, at the addresses recorded hereunder.

23.2 All notices to be given in terms of this agreement will be given in writing. A notice to either party which is sent by registered post in a correctly addressed envelope to the

address specified for it in clause 23.1 shall be deemed to have been received (unless the contrary is proved) within 5 (five) days from the date it was posted, or which is delivered to the party by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

- 23.3 Each notice by telefax to a party at the telefax number specified for it in clause 23.1 shall be deemed to have been received within two hours of transmission if it is transmitted during normal business hours of the receiving party or within two hours of the beginning of the next business day after it is transmitted, if it is transmitted outside those business hours.
- 23.4 Any notice sent by e-mail shall be deemed to be valid notice in terms of this agreement. A notice sent by e-mail to an e-mail address referred to under clause 23.1 shall be deemed to have been validly delivered and received by the other party on the date of transmission of such e-mail notification, provided that delivery of the e-mail is successful, which it shall be deemed to be in the event that such e-mail is not returned to the sender by the system as undelivered.
- 23.5 Notwithstanding anything to the contrary in this clause 23, a written notice or other communication actually received by either party shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

24. **GENERAL CLAUSES**

- 24.1 This Agreement of Sale constitutes the whole agreement between the parties and no representation of warranty between the parties other than those recorded herein shall be binding upon the parties.
- 24.2 No extension of time, waiver, indulgence or suspension of any of the provisions of this Agreement which any party hereto may give shall be binding unless recorded in a written document signed by such party.
- 24.3 No variation or alteration or cancellation of this Agreement or any of the terms hereof, shall be of any force or effect, unless in writing and signed by the parties hereto.
- 24.4 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.