

CONDITIONS OF SALE

UPON which Messrs,

FROBISHER TRADING 58 CC t/a ROBIN MILLS GROUP

in their capacity as Auctioneers, will sell on account of the Estate of the Late

ID No: _____

Estate No. _____

the following property:-

Registration Division _____

Province of _____

In extent _____ m²

to

Identity Number / Co No. _____

(hereinafter referred to as “ the Purchaser”)

1.
AUCTION

- 1.1. The Property shall, subject to confirmation as hereinafter provided, be sold to the highest bidder.
- 1.2. If any dispute arises about any bid, the property may in the discretion of the Auctioneer whose decision as to the final bidder shall under all circumstances prevail, again be put up for auction.
- 1.3. If the Auctioneer makes any mistake in conducting the auction, such mistake shall not be binding upon either party but shall be rectified.

2.
PURCHASE PRICE

The purchase price of the property, being the sum of R_____

(_____)

shall be paid as follows:-

EITHER: –

- 2.1. the whole amount in cash or by bank guaranteed cheque shall be paid on the day of the auction.

OR

- 2.2. A 10% deposit of R_____ (_____)
- _____)

shall be paid in cash or by bank guaranteed cheque on the day of the auction and the balance of the purchase price, amounting to R_____ (_____)

_____)

shall be paid on registration of the transfer of the property into the name of the PURCHASER. The PURCHASER shall secure payment of the balance by furnishing, within 30 (thirty) days of confirmation of the sale as hereinafter provided, one or more guarantees from a recognised financial institution acceptable to the SELLER. If in terms of the agreement any interest is payable by the PURCHASER, then the guarantees shall provide for the payment of that interest.

* Insert here any alternative / amending / amplifying provisions regarding payment.

2.3. * _____

2.4 All payments shall be made to **ROBIN MILLS GROUP** or at such other place of payment as the SELLER may direct and the recipient of a payment shall hold it in trust:

2.5 The amounts so received by the recipient named above shall be paid to the Seller's conveyance _____
_____ to be held in a trust account. The net interest, if any, earned on such amounts shall accrue for the benefit of the purchaser provided, however, that should the agreement be cancelled in terms of sub-clause 10 hereof the net interest shall be dealt with in the same manner as the amounts on which it was earned.

3. **COSTS**

3.1. The PURCHASER shall pay all costs attendant upon registering transfer into the PURCHASER's name including transfer duty, stamp duty (if any), survey charges (if any), the costs of obtaining a clearance certificate and all charges incidental to obtaining the consent of the Master of the High Court to the sale. Transfer of the property shall be effected by conveyancers of the SELLER'S choice, to which conveyancers all costs of transfer shall be paid by the PURCHASER upon request made by or on behalf of the SELLER. It is recorded that transfer duty is payable to the South African Revenue Services within the period stipulated in the Transfer Duty Act, failing which a penalty will be incurred. Any amount payable in respect of such penalty shall be borne by the PURCHASER.

* insert "PURCHASER" or "SELLER"

3.2. The * __PURCHASER_____ shall pay the Auctioneer's commission in terms of the tariff in force on the date of the auction and such commission shall be paid upon registration of transfer of the property into the PURCHASER's name. The PURCHASER hereby warrants that the effective cause of his introduction to the property and of the purchasing thereof is the conduct of the auction by the Auctioneer and the PURCHASER hereby indemnifies and holds the SELLER free and harmless from and against any claim which may be made by any person in respect of commission arising out of the sale of the property where such person claims to have actually introduced the PURCHASER to the property and/or to the SELLER in connection with the transaction herein set forth.

4.

SALE SUBJECT TO CONFIRMATION BY EXECUTOR AND MASTER OF THE HIGH COURT

The sale is subject to confirmation by the Executor and the Master of the High Court concerned, but until such confirmation the PURCHASER shall be bound by the terms hereof and shall not be entitled to withdraw here from.

Application shall be made by the Seller for confirmation by the Master as soon as practicable possible after the date of signature of this deed by both parties thereto. Upon such confirmation, the sale shall become finally binding upon the parties. Should, however, the sale not be confirmed it shall be null and void and of no force or effect whatsoever and any moneys paid or deposited by the PURCHASER (other than moneys, if any, which are in terms of these conditions to accrue to the SELLER notwithstanding such cancellation) shall be refunded to the PURCHASER. Such cancellation shall not give rise to any claim, whether for compensation or otherwise, by the PURCHASER.

5.

VOETSTOOTS

The property is sold “voetstoots” without any warranty (in respect of the measurement of the property or otherwise) express or implied and the SELLER shall not be liable for any defects, latent or patent, and the property is sold subject to the conditions of title under which it is held by the SELLER and to any existing servitudes, leases and tenancies. The SELLER shall not be obliged to point out the boundaries of the property or to locate the beacons. Should the area of the land be found not to correspond with that stated in the title deed, the SELLER shall not be liable for any shortfall, neither shall he be entitled to claim compensation for any surplus. If the property has been erroneously described herein, such mistake or error shall not be binding on the SELLER but the description of the property as set out in the SELLER'S title deed shall apply and in such event the parties agree to the rectification hereof to conform to their intention.

6.

OCCUPATION AND RISK

6.1 Occupation of the property shall be given to the PURCHASER on **date of Registration of transfer into the name of the Purchaser** but, from the date of confirmation of the sale by the executor/seller , the property shall be at the risk of the PURCHASER. As from the date of occupation all rates and taxes shall be payable by the PURCHASER who shall refund to the SELLER all rates and taxes paid by the SELLER relative to any period after the date of occupation.

6.2 With effect from the date of acceptance by the seller of the purchaser's offer or bid, the SELLER shall insure the property or keep it insured, as the case may be, for the full replacement value thereof and, in so far as buildings are concerned, against the additional risks normally covered by a property owner's policy with an insurance company of the SELLER's choice. Notwithstanding the fact that from the date of acceptance by the Seller, the property shall be at the risk of the PURCHASER the SELLER shall, with the concurrence of the insurance company concerned, effect and keep in force the policies. The SELLER shall, as and when premiums fall due, punctually pay the same and the PURCHASER shall refund such payments to the SELLER promptly thereafter through its appointed conveyancers. The PURCHASER shall be responsible for the premiums for the period from the date of confirmation of the sale by the executor until transfer of the property is given to the PURCHASER following upon his paying the full purchase price and interest in terms of this deed and fulfilling all the conditions thereof. The SELLER shall, in his absolute discretion, have the right and be entitled to adjust, settle, compromise or submit to arbitration all claims, payments, disputes and matters arising from such insurance, to institute action in respect thereof and to grant receipts for payments made and to exercise all such rights without reference to the PURCHASER and without requiring the PURCHASER's signature. The SELLER is further authorised to receive and to give full acquittances for all moneys due under and by virtue of any and all such policies and any such moneys shall, at the choice and in the discretion of the SELLER, be wholly or partially employed either in partial or full payment of moneys due hereunder or for the restoration under such conditions as the SELLER may determine of that which has been damaged or destroyed by such perils in respect of which insurance was effected. To the extent that this might be necessary or appropriate the PURCHASER by his signature hereto appoints the SELLER irrevocably and in *rem suam* to be his agent for the purposes of this sub-clause.

6.3 If occupation is given to the PURCHASER before the registration of transfer -

6.3.1. The PURCHASER shall not be entitled to make any alterations to the property before transfer without the prior written consent of the SELLER, which consent the SELLER shall be entitled to refuse in his sole and absolute discretion.

6.3.2. And should the agreement be cancelled for any reason whatsoever the PURCHASER shall not by reason of the provisions of this deed be entitled to remain in possession or occupation of the property beyond the date upon which such cancellation is notified to him and he shall on receipt of notice from the SELLER so to do, quit and

vacate the property forthwith, failing which the SELLER, without prejudice to any other rights in law and without notice, shall be entitled to institute action in any Court of competent jurisdiction for the ejection from the premises of the PURCHASER and any other persons who claim any right of occupation through the PURCHASER.

6.3.3. The PURCHASER shall not, without the written consent of the SELLER first being obtained, fell, cut or remove any tress or crops nor shall he do anything which in any way reduces the value of the property before the full purchase price is paid.

6.4 If the date of occupation does not coincide with the date of registration of transfer, the party enjoying occupation of the PROPERTY while it is registered in the name of the other party shall in consideration of such occupation and for the period of such occupation, pay to the other party occupational interest of **12% (twelve per centum)** per month. All occupational interest shall be payable monthly in advance, provided that the PURCHASER shall be entitled to a refund of a proportionate share of the payment in respect of the month in which the PROPERTY is registered into his name and calculated from the date of such registration.

7. **NO REPRESENTATIONS BY SELLER**

The PURCHASER acknowledges that no statements or representations have been made, either orally or in writing, by or on behalf of the SELLER to induce the sale except as contained in this agreement. The PURCHASER shall have no rights whatsoever as against the SELLER arising out of any representations concerning the sale unless the representations are contained and recorded in this document or in a supplementary written agreement as envisaged in clause 8 below.

8. **WHOLE AGREEMENT**

This agreement constitutes the whole agreement between the parties. Any agreement between the PURCHASER and the SELLER to cancel, add to or amend these Conditions of Sale (otherwise than by way of a duly authenticated variation recorded hereon) shall not be binding and shall be of no force or effect unless reduced to writing and signed by the parties hereto each before a witness.

9.

SELL, ASSIGN, MAKE OVER

The PURCHASER shall not be entitled to sell, assign or make over the PURCHASER's rights under these conditions of sale without the prior written consent of the SELLER.

10.

BREACH

If the PURCHASER fails to make any payment due under any of the provisions of this agreement or fails to provide any guarantee which he is obliged to furnish under any of the provisions of this agreement or is in breach of any of the other terms and conditions of this agreement and fails to make that payment or remedy that default within 14 (fourteen) days of written notice from the SELLER sent by registered post calling upon him to do so, the SELLER shall be entitled without prejudice to any other remedies which it may have in law and without notice –

10.1. to cancel the Agreement of Sale and retain all amounts paid by the PURCHASER prior thereto as *rouwkoop* or by way of penalty or as liquidated damages, or

10.2 to recover, in lieu of the amount provided for in sub-clause 10.1. above, such damages as the SELLER may be able to prove it has sustained, in which event the SELLER shall be entitled to have the deposit and payments hereinbefore referred to retained in trust until the actual amount of damages has been determined either by a Court or by agreement between the parties and thereupon set off such damages against the aforesaid amount in trust, or

10.3. to enforce performance of the terms hereof including full payment of the full balance of the purchase price owing at the date of the PURCHASER's breach aforementioned.

If the SELLER elects to institute action, including the taking of a judgement against the PURCHASER, for the balance of the purchase price, or any moneys which may be owing, it shall not thereby be debarred from cancelling this agreement if the judgement is not satisfied within 45 (forty-five) days of its being granted and thereupon the provisions of sub-clauses 10.1 and 10.2 above shall apply.

The PURCHASER shall not be entitled to recover from the SELLER compensation for any improvements which the PURCHASER may have effected to the PROPERTY prior to the cancellation of the sale.

11.

DOMICILIUM CITANDI ET EXECUTANDI

The parties hereby choose *domicilium citandi et executandi* for the delivery of all notices or processes arising herefrom at the following addresses:-

(a) The SELLER at **STANDARD EXECUTORS AND TRUSTEES,
7TH FLOOR, STANDARD BANK CENTRE,
HEERENGRACHT,
CAPE TOWN**

(b) The PURCHASER at _____

_____.

(Not Box Numbers)

and any notice addressed as aforesaid shall be deemed to have been received by the addressee on the second day after posting by prepaid registered post.

12.

JURISDICTION

For the purpose of resolving any dispute which may exist or occur between the parties hereto, the parties consent to the jurisdiction of the magistrate's court for the district of (_____) being a court otherwise competent and with jurisdiction over the person of the parties in that each of them either resides, carries on business, or is employed within its area of jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to [section 45](#) of the Magistrates' Courts Act [32 of 1944](#) or any amendment thereof provided that the Seller shall have the right at his sole option and discretion to institute proceedings in any other competent court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the magistrate's court.

13.

NON WAIVER BY SELLER

Notwithstanding any express or implied provisions of this agreement to the contrary, any latitude or extension of time which may be allowed by the SELLER to the PURCHASER in respect of any payment provided for herein or any matter or thing which the PURCHASER is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver

of the SELLER's right, at any time and without notice, to require strict and punctual compliance with each and every provision or term hereof.

14.

ELECTRICAL COMPLIANCE CERTIFICATE; BEETLE: COMPLIANCE CERTIFICATE and PLUMBING: COMPLIANCE CERTIFICATE

The PURCHASER shall obtain at his cost the required certificate of compliance in terms of the Occupational Health and Safety Act 85 of 1993, as amended, and furnish the said certificate of compliance to the SELLER within 14 days after fulfilment of all suspensive conditions. All costs incidental to obtaining such certificate, including the cost of repairs to any electrical installation, shall be fully at the sole cost of the PURCHASER.

15.

AGENT / TRUSTEE FOR COMPANY/CLOSE CORPORATION

If the PURCHASER acts as either trustee for a company about to be formed or as an agent for any principal, and such company is not formed or alternatively, having been formed, fails to ratify this agreement or the PURCHASER's principal fails to ratify this agreement or contends that he is not bound by any acts on his behalf by his agent then notwithstanding any declaration by the PURCHASER as to the fact that he was acting as trustee or agent he shall be deemed to have entered into this agreement personally and he shall be bound to fulfil and perform all the obligations of a PURCHASER hereunder. If any company for whom the PURCHASER was acting as trustee is incorporated and it or any principal of the PURCHASER does adopt and ratify this agreement then the PURCHASER by his signature hereto shall be deemed to have interposed and bound himself as surety for and co-principal debtor with that company or person for the due payment, fulfilment and performance by that person of all the PURCHASER's obligations contained herein. If the PURCHASER is a registered company, then the signatory to this document on behalf of such company by virtue of his signature hereto binds himself as surety and co-principal debtor jointly and severally with the company for fulfilment of all the terms and conditions of this agreement.

16.

WARRANTY BY SELLER

The property is sold with the following appurtenance which the SELLER warrants are fully paid for and are owned solely and exclusively by the SELLER all of which items have been inspected by the PURCHASER and are purchased "voetstoots" as these stand without any warranty express or implied:

* The appurtenances, if any, to be described in this clause are only those items which, by virtue of their nature, may be regarded as having acceded to the fixed property. (Any other movable items should be dealt with in an entirely separate contract)

The purchase price of the property as stated in clause 2 covers also the consideration for the appurtenances described in this clause and the provisions of these conditions shall apply *mutatis mutandis* to the sale of these items which sale shall not be capable of enforcement independently of the sale of the property itself.

17.

SIGNATURE BY PURCHASER

The PURCHASER shall, immediately after the auction, sign these conditions of sale upon being requested by the SELLER or the Auctioneer to do so and if he has bought in any representative capacity then he shall state the name and address of his principal and exhibit his written authority. If no such written authority be exhibited, the bidder in his personal capacity shall be regarded as the purchaser.

18.

ACKNOWLEDGEMENT BY PURCHASER

The PURCHASER acknowledges that, notwithstanding the fact that the auctioneer may not have read out these conditions of sale prior to the auction, the PURCHASER is fully aware of all these conditions which he/she knows and understands and that by his/her signature hereto, has become bound by these conditions.

19.

MISCELLANEOUS

19.1 Paragraph headings of this agreement are used for ease of reference only and shall not be used in the interpretation of this agreement

19.2 Unless inconsistent with the context, an expression which denotes any one gender includes the other gender, a natural person includes an artificial person and vice versa and the singular includes the plural and vice versa

19.3 When any number of days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last day

19.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

THUS DONE and SIGNED by the AUCTIONEER at _____

on this the _____ day of _____ 20 _____

WITNESSES

1 _____

AUCTIONEER

2 _____

THUS DONE and SIGNED by the PURCHASER at _____

on this the _____ day of _____ 20 _____

WITNESSES

1 _____

PURCHASER

2 _____

SPOUSE

THUS DONE and SIGNED by the SELLER at _____

on this the _____ day of _____ 20 _____

WITNESSES

1 _____

SELLER

2 _____

DETAILS OF PURCHASER

The Purchaser's full names are _____

His / Her Identity Number is _____

His / Her date of birth is _____

His / Her address is _____

His / Her telephone number is: _____

His / Her email address: _____

His / Her Fax Number _____

His / Her Income Tax Number: _____

He / She is married IN / OUT of Community of Property: _____

If IN Community of Property:

Spouse's Full Names: _____

His / Her Identity Number _____

His / Her Tax Income Tax Number: _____

ANNEXURE TO CONDITIONS OF SALE

NOMINEE

The Purchaser shall have the right to appoint a nominee as purchaser in his stead (hereinafter referred to as

“the Nominee”) subject to the following terms and Conditions: -

1. The Purchaser shall give written notice to the Seller’s attorneys of his appointment of the Nominee, such notice to set forth the name, legal status and address of the Nominee and to bear an acceptance of such nomination signed by the Nominee on the same day as the date of the auction sale, failing which his right to appoint a nominee shall lapse.

2. In the event of a Nominee being appointed as aforesaid:
 - 2.1 Any transaction, responsibility or obligation that may have existed between the Seller and the Purchaser in respect of the purchase of the property shall be dissolved and any amounts paid by the Purchaser to the Seller in terms hereof shall be deemed to have been refunded and to have been paid by the Nominee who shall reimburse the Purchaser accordingly; and

 - 2.2 The Purchaser binds himself as surety for and co-principal debtor with the Nominee for the due performance of all the Nominee’s obligations in terms of this agreement.

Date: _____

TO WHOM IT MAY CONCERN

I, _____,
hereby nominate

ID. NO. _____

ADDRESS: _____

as Purchaser in terms of the Conditions of Sale of

Signed at _____ on this _____ day of _____
_____ 20__.

ID NO. _____

I, _____,
hereby accept the

nomination as Transferee of the property known as

and acknowledge myself to be bound by the terms and conditions of the
Conditions of Sale signed by

Signed at _____ on this _____ day of _____
_____ 20__.

NOMINEE

ID NO. _____