

# AUCTION CONDITIONS OF SALE

## MEMORANDUM OF TERMS AND CONDITIONS WHEREUPON:

### DETAILS OF AUCTIONEER:

Name: FROBISHER TRADING 58 CC t/a ROBIN MILLS GROUP
Address: UNIT 3 PISCES PARK, 55 CAPRICORN BOULEVARD NORTH, CAPRICORN PARK MUIZENBERG
Code: 7945
Phone number: 021 702 0761

(Hereinafter referred to as "the auctioneer")

Will sell by public auction on behalf of their principal

### DETAILS OF THE SELLER

Full names of executor: _____ in his/her capacity as nominee of ABSA TRUST LTD
In their capacity as executors in the Estate late: ID No: Estate number:
In terms of a Letter of Executorship dated:
Address: P O BOX 1032, SANLAMHOF 7532
Telephone number:
Contact person:

(Hereinafter referred to as "the Seller")

On \_\_\_\_\_ at \_\_\_\_\_  
At \_\_\_\_\_

### DETAILS OF THE PROPERTY

Description as per title deed:
Held in terms of Titled Deed number:
Physical address:

together with all improvements thereon.  
(Hereinafter referred to as "the Property")

#### 1. HIGHEST ACCEPTED BIDDER SHALL BE THE PURCHASER

The highest accepted bidder will be considered the purchaser. In the event of a dispute arising between any two or more bidders, the auctioneer shall have the right to indicate the purchaser or to declare the sale to be of no force or effect and to resell the property and the auctioneer's decision in this regard shall be final and binding on all parties. If the auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. The purchaser shall as soon as possible after the sale, and immediately upon being requested to do so by the auctioneer, sign these conditions.

#### 2. PAYMENT OF PURCHASE PRICE

The purchaser shall pay a deposit of ten percent (10%) of the purchase price in cash to the auctioneer on the day of the sale. The balance of the purchase price shall be payable in cash upon registration of transfer into the name of the Purchaser and for which balance a bank guarantee, approved by the Seller, shall be given to the auctioneer within **THIRTY (30)** days after the date of the sale and which guarantee shall be

payable free of exchange at the Seller's address as set out in the introduction to this agreement, or at the Seller's nominee, against registration of the property into the name of the Purchaser. The Purchaser acknowledges and agrees that no interest will be payable on the deposit.

**3. DATE OF POSSESSION AND OCCUPATION AND COMPENSATION FOR EARLY OCCUPATION**

- 3.1 Possession of the property will be given to the Purchaser and the Purchaser shall be obliged to take possession thereof

**ON THE DATE OF REGISTRATION OF THE TRANSFER OF THE PROPERTY INTO THE NAME OF THE PURCHASER**

From date of Acceptance of the Conditions of Sale the Purchaser shall be liable for all municipal rates and taxes and/or fees including levies and/or fees payable in terms of the Act, payable on the property, and from which date the property shall be the sole risk, profit or loss of the Purchaser. Should the Seller have made any payment of such a nature for a period after the date of possession, he shall be entitled to a refund thereof on a pro rata basis.

- 3.2 If transfer is not registered into the name of the Purchaser before date of possession, or, if the parties agree on a date of occupation other than the date of possession stipulated in 3.1 above, then the Purchaser shall be obliged and bound to pay the Seller, or his nominee, compensation for occupation of the property at the rate of **12% (TWELVE PER CENTUM) PER ANNUM** or any part thereof, for which the Purchaser has been in occupation of the property before the date of transfer. The said amount shall be payable monthly in advance before or on the first day of each month until the date of transfer or until the date of vacation of the property, should the sale be cancelled. The said amount shall be payable at the address of the Seller as set out in the introduction to this agreement, or at the Seller's nominee. If the property is occupied by the Purchaser and the sale is cancelled for whatever reason, the Purchaser shall vacate the property immediately and return vacant occupation and possession to the Seller.
- 3.3 The conditions of clause 3.2, in so far as it relates to the payment of occupational rent, shall apply *mutatis mutandis* if the Seller occupies the property after the date of registration of the property into the name of the Purchaser.

**4. INSURANCE**

The Purchaser shall, from the date of acceptance of this Conditions of Sale, be obliged to comprehensively insure the property for the full replacement value thereof with an insurance company nominated by the Seller and to maintain such insurance up to the date of transfer of the property into the name of the Purchaser. The Purchaser shall ensure that the Seller's interest in the property is noted and shall, if requested to do so by the Seller, give proof of such insurance to the Seller. Should the Purchaser fail to comply with the provisions of this clause, the Seller shall be entitled to immediately and without notice to the Purchaser, insure the property as aforesaid and to recover the costs so incurred from the Purchaser.

**5. VOETSTOOTS**

The property is sold voetstoots and neither the Seller nor the Auctioneer shall be liable for any defects, patent, latent or otherwise in the property, nor for any damage occasioned to or suffered by the Purchaser by reason of such defect. The Purchaser admits having inspected the property to his satisfaction and that no guarantees or warranties of any nature were made by the Seller or the auctioneer regarding the condition or quality of the property or any of the improvements thereon or accessories thereof. The property is further sold as represented by the title deeds. Neither the Seller nor the auctioneer shall be liable for any deficiency that may be found to exist and renounces all excess. Neither the Seller nor the auctioneer shall be under any obligation to point out any beacons in respect of the property. The property is also sold subject to all existing servitudes and conditions specified in the title deed.

**6. EXISTING TENANTS**

The property is sold subject to the rights and interests of the existing tenant(s) or lessee(s), if any, and the onus will be on the Purchaser to arrange with the tenant(s) or lessee(s) for the vacation of the property after it has been registered into his name, if applicable. The Seller will, however, refund to the Purchaser any rentals received by him on respect of any period after the date of registration of transfer

**7. CAPACITY OF PURCHASER**

Should this agreement be signed on behalf of any company, close corporation or trust to be formed or incorporated, or on behalf of any other person or legal persona, the person signing this agreement shall be personally liable as Purchaser for the due performance of all the terms and conditions of this agreement, should, in the case of a company or close corporation to be formed, such close corporation or company not be formed, or should the said company, close corporation or trust not adopt and ratify unconditionally the terms and conditions of this agreement within **30 (THIRTY)** days from the date of signature hereof by both parties, or should his principal, as a result of any defect in his mandate, not be bound as Purchaser in terms of this agreement. Furthermore, upon adoption and ratification of this agreement by the said company, close corporation or trust, such signatory shall be liable *ipso facto* as surety and principal debtor *in solidum* with the company, close corporation or trust for the due performance by such company, close corporation or trust of all its obligations arising out of this agreement and out of their acceptance and ratification as aforesaid.

**8. DOMICILIUM AND NOTICES**

The Purchaser chooses as his/her *domicilium citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature the physical address as set out below, provided that, as of the date of occupation of the property by the purchaser, the purchaser's address for the aforesaid purposes shall be the physical address of the property. All notices dispatched to the Purchaser's *domicilium citandi et executandi* by registered post shall be deemed to have been received **5 (FIVE)** days after posting or on the same day if delivered by hand.

All notices intended for the Seller shall be delivered to him at the physical address as set out above, which address he selects as his *domicilium citandi et executandi*, and any such notices shall be deemed to have been duly delivered to the Seller 5 (five) days from date of posting or on the same date, if delivered by hand.

**9. JURISDICTION**

The Purchaser hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over his/her person in respect of all legal proceedings connected with this agreement, notwithstanding that the amount of the matter in dispute exceeds the Court's jurisdiction. Notwithstanding the foregoing, the Seller is entitled to institute proceedings against the Purchaser in the division of the High Court having jurisdiction in the matter.

**10. BREACH**

In the event of the Purchaser breaching any of the provisions of this Agreement of Sale and failing to rectify such breach within 7 (seven) days of demand having been sent to him to rectify such breach, then the Seller shall be entitled, without prejudice to any other rights which the Seller may have in Law, to cancel this sale forthwith and to recover from the Purchaser any damages suffered by the Seller or to demand specific performance from the Purchaser. The Seller shall be entitled to retain the deposit as a genuine estimate of liquidated damages, subject to the rights of the Purchaser to contests such damages in terms of the Conventional Penalties Act 15 of 1962, as amended. The Purchaser shall vacate the property immediately upon any such cancellation of the sale and shall restore vacant possession to the Seller without compensation.

Notwithstanding the foregoing, in the event In the event of the Purchaser breaching any of the provisions of clause 2 of this Agreement the Seller shall be entitled, immediately and without notice and without prejudice to any other rights which the Seller may have in Law, to cancel this sale forthwith and to recover from the Purchaser any damages suffered by the Seller, in which event the Purchaser shall vacate the property

immediately upon any such cancellation of the sale and shall restore vacant possession to the Seller without compensation. The Seller will also keep the deposit amount as *Rouwkoop* and liquidated damages.

## 11. TRANSFER COSTS

11.1 The registration of transfer of the property into the name of the Purchaser shall be effected by

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The **Purchaser** shall be liable for all transfer costs, transfer duty, stamp duties, as well as the cost of this Deed of Sale as well as all costs and taxes, including value-added tax, if applicable, of the transfer of the property into the name of the Purchaser by the conveyancers of the Seller. Such costs shall be paid by the Purchaser to the Seller's conveyancers within **14 (FOURTEEN)** days from being requested to do so and the conveyance shall only commence after such costs have been paid and the guarantee and deposit referred to in clause 2 have been paid and delivered by the Purchaser and after all the suspensive conditions have been fulfilled.

11.2 Should the Receiver of Revenue regard the sale of the property as a taxable supply, the purchase price shall not include value added tax, and the Purchaser shall pay the value added tax calculated in terms of the Value Added Tax Act, 89 of 1991 on the same date as the date upon which the purchase price is payable in terms of this agreement and same arrangements regarding security for the payment of the purchase price, as are set out in clause 2 above, shall apply *mutatis mutandis* to the payment of value added tax.

## 12. AUCTIONEER'S COMMISSION

**Auctioneer's commission at the rate of 8.55% of the Purchase Price, including of value added tax, shall be paid by the Purchaser.** The auctioneer's commission shall only be payable should the suspensive conditions referred to in clause 14 be fulfilled.

## 13. ENTIRE CONTRACT

The parties agree that this Deed of Sale constitutes the entire contract between them and that there are no other conditions, stipulations, warranties or representations whatsoever made, other than such as may be included herein and signed by the parties hereto.

## 14. SUSPENSIVE CONDITIONS

The parties agree that this Deed of Sale is subject to the following suspensive conditions:

### 14.1 Master and beneficiaries' consent

Insofar as may be required in law this sale and the terms and conditions hereof are subject to all necessary consents being obtained from the Master of the High Court or the beneficiaries in the estate referred to in the introduction to this agreement, or both, as the case may be. Should such consent not be obtained, or should the Master of the High Court decline for any reason to furnish a certificate in terms of section 42(2) of the Administration of Estates Act 66 of 1965, then this agreement shall lapse and be null and void. The Purchaser shall pending such consents, be irrevocably bound by the conditions of this agreement.

14.2 The confirmation and acceptance of this agreement by the Seller **within a period of (TWENTY ONE) 21 working days as from the date on which the Purchaser signs these Conditions of Sale**, during which time the Purchaser is irrevocably bound by the conditions of this agreement.

## 15. SELLER'S FIDUCIARY CAPACITY

The Purchaser acknowledges that he is aware of the fact that the Seller acts in his fiduciary capacity as executor of a deceased estate and that the sale shall take place in accordance with his powers and authority in his capacity as such.

## 16. ITEMS PART OF PROPERTY

The parties agree that the following movable items, which the Seller warrants are fully paid for, are owned solely and exclusively by the Seller, are part of the property hereby sold:

List items here: delete this clause and renumber if not applicable

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**17. ELECTRICITY: CERTIFICATE OF COMPLIANCE**

The PURCHASER shall provide the SELLER at his own cost, on or before the date of occupation mentioned above, or the date of registration, obtain a certificate of compliance in accordance with the provisions of Government Regulation 2920 of 1992 issued in terms of the Machinery and Occupational Safety Act 6 of 1983 by an accredited person registered with the Electrical Contracting Board of South Africa, in a form acceptable to the supplier of electricity, certifying that the electrical installation on the property is in accordance with SABS 0142. Should the aforesaid person report that there is a fault or defect in the electrical installation, the PURCHASER shall be obliged, at his own cost, within 21 (TWENTY ONE) days of receipt of such report and recommendations, to contract with an electrical contractor or any other person to correct the faults or defects and to issue the certificate of compliance.

The Seller undertakes to effect no alteration of whatever nature to the electrical installation in the property hereby sold after the date of issue of the certificate.

**18. BEETLE INFESTATION**

The PURCHASER shall at his own expense, arrange for the accessible sections of the beams and woodwork of the buildings on the property to be inspected by an accredited person for infestation by the *Hylotrupes Bajulus* and *Oxypleurus Nodueri* beetles, and for the replacement and/or treatment of any infested wood as recommended by such accredited person, and the SELLER shall have no obligations whatsoever in this regards.

**19. PLUMBING: CERTIFICATE OF COMPLIANCE**

The PURCHASER shall at his own expense, arrange for the Plumbing Certificate by an accredited person, and for the replacement or repairs of any defects thereof as recommended by such accredited person, and the SELLER shall have no obligations whatsoever in this regard.

**20. MULTIPLE PURCHASERS**

If there is more than one Purchaser, each and every Purchaser accepts that his liability in terms hereof shall be *in solidum* and that the Seller shall at all times be entitled to exercise any of his rights in terms hereof against any one or more of the Purchasers, at the Seller's discretion.

**21. SPECIAL CONDITIONS**

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## AUCTIONEER'S CERTIFICATE

I, the undersigned, PETER ROBIN MILLS do hereby certify that the above-mentioned property was sold this \_\_\_\_\_, subject to the above-mentioned conditions, to:

### DETAILS OF THE PURCHASER

***(natural persons)***

Full names + spouse, if married: \_\_\_\_\_

Identity number + spouse, if married: \_\_\_\_\_

Marital status: in/out of community of property

Physical address: \_\_\_\_\_

Code: \_\_\_\_\_

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

Code: \_\_\_\_\_

Telephone number:

(b) \_\_\_\_\_ (h) \_\_\_\_\_ (cell) \_\_\_\_\_

***(NOTE: if there is more than one Purchaser, repeat table in respect of each Purchaser)***

***(company or close corporation)***

Name of company or close corporation: \_\_\_\_\_

Registration number: \_\_\_\_\_

Herein represented by: (full names of representative)

Duly authorised in terms of resolution dated: \_\_\_\_\_

In his/their capacity/ies as: \_\_\_\_\_

Physical address: \_\_\_\_\_

Code: \_\_\_\_\_

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

Code: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Contact person: \_\_\_\_\_

***(trust)***

full names of trustees:

1. \_\_\_\_\_

identity number: \_\_\_\_\_

2. \_\_\_\_\_

identity number: \_\_\_\_\_

3. \_\_\_\_\_

identity number: \_\_\_\_\_

In their capacities as the trustees of the \_\_\_\_\_ ***(name of trust)***

Trust number: \_\_\_\_\_

In terms of letter of authority dated: \_\_\_\_\_

Physical address: \_\_\_\_\_

Code: \_\_\_\_\_

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

Code: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Contact person: \_\_\_\_\_

(Hereinafter referred to as "the Purchaser")

***NOTE: if there is more than one Purchaser, replace with the following:***

(Hereinafter jointly referred to as "the Purchaser")

and that the purchase price is R \_\_\_\_\_

( \_\_\_\_\_ )

SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ OF \_\_\_\_\_ 2014

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
AUCTIONEER

**PURCHASER'S CERTIFICATE**

**(NATURAL PERSON)**

I/we, the undersigned,

\_\_\_\_\_ (full name of purchaser/s)

do hereby certify that the above-mentioned property was purchased by me/us subject to the above-mentioned conditions and that the purchase price is

R \_\_\_\_\_

(\_\_\_\_\_)

and that my/our name/s, date of birth and address/es are as stated above and for purposes of this sale transaction I/we choose as my/our *domicilium citandi et executandi* my/our physical address/es as stated above.

**(COMPANY/CLOSE CORPORATION/TRUST)**

I/we, in my/our capacity/ies as \_\_\_\_\_ and \_\_\_\_\_ of

\_\_\_\_\_ (full name of purchaser)  
(hereinafter referred to as "the purchaser")

and duly authorised thereto, do hereby certify that the above-mentioned property was purchased by the purchaser subject to the above-mentioned conditions and that the purchase price is

R \_\_\_\_\_

(\_\_\_\_\_ RAND)

And that the name, registration number and address of the purchaser are as set out above and for purposes of this sale transaction I/we hereby choose as *domicilium citandi et executandi* the purchaser's physical address as set out above.

SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_  
PURCHASER

2. \_\_\_\_\_

\_\_\_\_\_  
PURCHASER



**CONFIRMATION AND ACCEPTANCE BY SELLER**

I, the undersigned,

\_\_\_\_\_  
(full names of executor)

in my capacity as executor in the Estate late M.J LE ROUX

\_\_\_\_\_  
do hereby confirm the foregoing conditions of sale and hereby accept the offer to purchase.

SIGNED AT \_\_\_\_\_ ON \_\_\_\_\_ OF \_\_\_\_\_ 2014

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**SELLER**  
In my capacity as executor of the  
Estate Late \_\_\_\_\_

## 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. \_\_\_\_\_