



Auctioneers, Valuers and Appraisers - Established 1964

Michael James Organisation

CAPE TOWN – JOHANNESBURG – PORT ELIZABETH

RULES OF AUCTION

AND

CONDITIONS OF SALE FOR IMMOVABLE PROPERTY

DATE OF AUCTION	
TIME OF AUCTION	
PLACE OF AUCTION	

Upon which **Michael James Umgalelo Auctioneers (Pty) Ltd**

Of

63 Victoria Street, Somerset West, 7130
(021 851 7007 / 041 487 3957)

and acting on behalf of:

CLOETE MURRAY

AND

MMAKOTI MARGARET MALOWA

In their capacities as Joint Trustee (s) in the matter of Insolvent Estate

JACOB HENDRIK HERMANN & JORINDA HERMANN

MASTER'S REFERENCE NUMBER: M169/2018

intend to offer for sale by Public Auction certain property being:-

18 SWEMMER STREET, PARADISE BEACH EXT. 2, PARADYSSTRAND

ERF NUMBER	1323, PARADYSSTRAND
PROVINCE	EASTERN CAPE
MEASURING	725 SQUARE METERS IN EXTENT
TITLE DEED NUMBER	T97022/2005CTN



**CONDITIONS OF SALE OF IMMOVABLE PROPERTY
(FNB HOME LOANS INSOLVENT ESTATE AUCTIONS)**

whereby

(the "AUCTIONEER")

duly instructed by

In their capacities as liquidators in the Insolvent estate of

MASTER'S REFERENCE: _____

("the SELLER")

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

DESCRIPTION: _____

SITUATE AT: _____

TITLE DEED NO: _____

IN EXTENT: _____ SQUARE METRES/HECTARES

("the PROPERTY")

1. INTERPRETATION

1.1 Any reference to:

1.1.1 One gender includes the other gender.

1.1.2 Natural persons include juristic persons and *vice versa*.

1.1.3 Singular includes the plural and *vice versa*.

1.2 And any other references shall *mutatis mutandis* apply.

2 PROCEDURE

2.1 The AUCTIONEER has the sole right to regulate the bidding procedure and in the event of any dispute between the bidders the decision of the AUCTIONEER shall be final and binding.

2.2 Subject to the provisions of clause 3.3, the PROPERTY shall be sold to the highest bidder and every bid shall constitute an offer to purchase the property for the amount of the bid and no bid may be withdrawn prior to the expiry of the confirmation period during which the bid will be open for acceptance by the SELLER.

2.3 Should the AUCTIONEER commit any error he shall be entitled to correct such error.

3 SIGNATURE, ACCEPTANCE AND CONFIRMATION

3.1 These conditions shall be signed by the highest bidder (the PURCHASER) on request by the AUCTIONEER.

3.2 If this offer is concluded with more than one PURCHASER, the liability of such PURCHASERS shall be joint and several *in solidum*.

3.3 The PURCHASER'S offer shall be open for acceptance by the SELLER for a period of **21 (twenty one) days** after date of the auction, and may be accepted by the SELLER at any time prior to the expiry of the mentioned confirmation period ("DATE OF ACCEPTANCE"). Acceptance of the offer will be confirmed by the AUCTIONEER to the PURCHASER.

3.4 The SELLER reserves the right to decline the PURCHASER'S offer. The SELLER shall have no obligation to accept the offer and shall not be obliged to furnish a reason for the rejecting of an offer. If the SELLER rejects the PURCHASER'S offer, the SELLER shall be entitled to accept any other offer that may be received in respect of the PROPERTY.

4 PURCHASE PRICE

The PURCHASE PRICE, exclusive of Value Added Tax (VAT) if applicable, will be payable by the PURCHASER as follows:

4.1 A cash deposit of 10% (ten *per centum*) of the PURCHASE PRICE to the AUCTIONEER immediately on the fall of the hammer, which the PURCHASER hereby authorises the AUCTIONEER to pay over to the SELLER; and

4.2 The balance of the purchase price shall be paid upon registration of transfer of the PROPERTY in the name of the PURCHASER, and pending registration of transfer, shall be secured by means of a suitable guarantee issued by a Financial Institution acceptable to the SELLER. The said guarantee shall be delivered to the conveyancer appointed in terms of clause 7 ("CONVEYANCER") within 30 (thirty) days from the DATE OF ACCEPTANCE, which guarantee shall be payable free of exchange.

4.3 The PURCHASER hereby instructs and authorises the CONVEYANCER to invest, in terms of Section 78 (2A) of the Attorneys Act No. 53 of 1979 (as amended), any monies paid by him or on his behalf in terms of this Offer (Agreement), in an interest-bearing account, interest so accrued for the benefit of the insolvent estate.

The PURCHASER acknowledges that he is aware that the CONVEYANCER will only be in a position to give effect to this mandate once he, the PURCHASER, has furnished the CONVEYANCER with documents, to be requested by the CONVEYANCER, in terms of the Financial Intelligence Centre Act, 2001.

The deposit shall be non-refundable, except in the instance where the sale is not accepted by the SELLER in which event all monies paid by the PURCHASER to the SELLER in terms hereof shall be refunded to the PURCHASER.

5. COSTS OF TRANSFER

5.1 The PURCHASER shall be liable, in addition to the Purchase Price, for all costs of registration of Transfer of the PROPERTY including but not limited to: (if applicable) transfer duty, revenue stamps, mortgage loan costs, attorneys' fees, deeds office registration fees, such proportion of the assessment rates levied by the Local Authority as may be due, or such proportion of charges and levies as may be due to a Home Owners Association or Body Corporate, which amounts shall be paid immediately upon demand by the CONVEYANCER, to the CONVEYANCER, and the conveyancing shall only commence after such costs have been paid by the PURCHASER.

5.2 The PURCHASER shall furthermore, in addition to the PURCHASE PRICE, be responsible for the payment of Value Added Tax (VAT) should the above insolvent be a registered VAT vendor, regardless of whether he was aware of this fact on date of signature hereof by himself. The PURCHASER shall make payment of the aforesaid VAT to the SELLER upon registration of the PROPERTY in the name of the PURCHASER.

5.3 The PURCHASER shall furthermore, in addition to the PURCHASE PRICE, be responsible for the payment of ALL outstanding and arrear rates, taxes and levies (if applicable) on the PROPERTY. The PURCHASER shall make payment of the aforesaid to the CONVEYANCER upon request.

6 INTEREST

6.1 The PURCHASER will pay interest on the balance of the purchase price from DATE OF ACCEPTANCE to date of registration of transfer calculated at the greater of 11% (eleven *per centum*) per annum, or the maximum rate

permitted by law, both days inclusive. The interest will be payable monthly in advance before or on the first day of each and every month, the first payment to be made on the first day of the month following the DATE OF ACCEPTANCE. Payment of the interest will be effected to the CONVEYANCER

7 TRANSFER

Transfer shall be effected by a Conveyancer appointed by the SELLER.

8 POSSESSION

- 8.1 Possession of the PROPERTY will be given to the PURCHASER and the PURCHASER shall be obliged to take possession thereof, on DATE OF ACCEPTANCE from which date, in addition to the provisions of paragraph 5.3, the PURCHASER shall be liable for all municipal rates, taxes, consumption charges, insurance premiums and/or fees and levies 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 *pro rata* to the period of prepayment.
- 8.2 The PURCHASER shall not be entitled to make any alterations or additions to the PROPERTY before the date of registration of transfer. The PURCHASER shall be obliged, in the event of the cancellation or lapse of this agreement, to forthwith vacate the PROPERTY and restore it to the SELLER in the same condition as when the PURCHASER took possession. The PURCHASER will have no claims whatsoever against the SELLER arising out of any alterations or additions made to the PROPERTY by the PURCHASER.
- 8.3 If the PROPERTY is leased, this Agreement is entered into and subject to the rights of the tenant under any existing Lease Agreement, statutory provisions or the Common Law,

8.4 The PURCHASER agrees that the SELLER does not make any warranties or representations, whether express or implied, regarding vacant occupation and possession. The SELLER does not guarantee vacant occupation of the PROPERTY. Should any eviction orders be required to be effected the Purchaser undertakes to obtain an eviction at his own cost.

9 VOETSTOOTS

9.1 The PROPERTY is purchased and sold Voetstoots and the SELLER shall not 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 express or implied representations, guarantees or warranties of any nature were made or given by the SELLER or his AGENT regarding the condition, quality or any other characteristics of the PROPERTY or any of the improvements thereon or accessories thereof. The Purchaser confirms that he/she has effected the necessary inquiries with the local authority regarding compliance or non compliance of the improvements located on the property in respect of any statutory requirements.

9.2 The PROPERTY is sold as described in the existing title deed or deeds thereof and subject to all conditions and servitudes (if any) attaching thereto or mentioned or referred to in the said title deed(s) or prior deed(s). The SELLER shall not be liable for any deficiency in extent, which may be revealed on any re-survey, nor shall the SELLER benefit by any surplus in extent.

9.3 The SELLER shall not be required to indicate to the PURCHASER the position of the beacons or pegs upon the PROPERTY and/or boundaries thereof, nor shall the SELLER be liable for the costs of locating same.

10 NOMINEE

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:

- 10.1 the aforesaid notice shall be handed to the SELLER by no later than close of business on the DATE OF ACCEPTANCE;
- 10.2 the notice shall set out the name and address of the nominee so nominated as PURCHASER:
- 10.3 the notice shall be accompanied by the nominee's written acknowledgement:
- 10.3.1 that it is fully aware of all the terms and conditions of this agreement as if fully set out in such written acknowledgement; and
- 10.3.2 that it is bound by the provisions of this agreement as the PURCHASER;
- 10.4 Should the PURCHASER nominate a nominee in terms of this clause, then:
- 10.4.1 all references to the PURCHASER in this agreement shall be deemed to be a reference to its nominee; and
- 10.4.2 the PURCHASER by his signature hereto, hereby interposes and binds himself as surety and co-principal debtor *in solidum*, for and on behalf of all the obligations of the aforesaid nominee as PURCHASER, to and in favour of the SELLER, for all the PURCHASER'S obligations under this agreement, including damages, and renounces the benefits of division and excussion.

11 DOMICILIUM

- 11.1 The PURCHASER selects as his/her *domicilium citandi et executandi* for all purposes hereunder the address set out in "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" attached hereto.

Any notice dispatched to the PURCHASER by prepaid registered post or facsimile to the party's said *domicilium citandi et executandi* shall be deemed to have been received by such a party 7 (SEVEN) days from date of dispatch thereof.

12 PROHIBITION

The PURCHASER shall not, prior to the date of registration of the transfer, be entitled to sell the PROPERTY or to cede, assign or make over his rights in terms hereof, or to give notice of cancellation of an existing lease, without the prior written consent of the SELLER.

13 JURISDICTION

13.1 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 or any other court with jurisdiction or a court otherwise competent with jurisdiction over the person of the parties in that each of them 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' Court 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.

13.2 In the event of the SELLER instructing its Attorneys to institute any proceedings against the PURCHASER for payment of the purchase price, interest and other monies due by the PURCHASER hereunder or for the performance by the PURCHASER of any of the terms and conditions herein, then the PURCHASER agrees that he shall be liable for and shall pay any such legal costs on the scale as between the Attorney and Own Client.

14. BREACH

In the event of the PURCHASER being in breach of any of the terms or conditions contained herein, and remain in default for 7 (seven) days after dispatch of a written notice by registered post or by facsimile or by e-mail, requiring him to remedy such breach, the SELLER shall be entitled to, and without prejudice to any other rights available at law:

- 14.1 claim immediate payment of any amount due by the PURCHASER; and/or
- 14.2 declare the full balance of the purchase price and interest payable forthwith and claim recovery thereof; and/or
- 14.3 cancel the agreement without any further notice, and retain all amounts paid by the PURCHASER as "Rouwkoop" and the PURCHASER hereby authorises any third party holding such monies to pay the same to the SELLER, and/or
- 14.4 terminate this agreement and claim damages from the PURCHASER, which damages shall include, but not be limited to, the costs and expenses of advertising and selling the PROPERTY to a third party.

15. AUCTIONEER'S COMMISSION

- 15.1 Commission calculated at 4% (four *per centum*) of the purchase price plus VAT (if applicable), in the amount of R _____ will only be earned by the AUCTIONEER and be payable by the SELLER to the AUCTIONEER against successful registration of transfer of the PROPERTY into the name of the PURCHASER, and the CONVEYANCER is hereby authorized to effect such payment out of the funds that become available to the SELLER upon registration of transfer. It is further recorded that no bridging of auctioneer's commission and/or any part thereof, shall be permitted.

15.2 For the avoidance of doubt, clause 15.1 *supra* constitutes a condition precedent that has to be complied with before any entitlement whatsoever to auctioneer's commission arises. As such, and in the event that the sale is void and/or invalid and/or cancelled by either the purchaser and/or the seller, the auctioneer shall not be entitled to any commission whatsoever.

16. VARIATION

This agreement constitutes the whole and only agreement between the SELLER and the PURCHASER and no alteration or variation of this agreement shall be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorised agents.

Any representations, warranties or undertakings made or given by the SELLER or its agents other than those contained herein shall be of no force or effect whatsoever.

17. PERSONAL SURETYSHIP JOINT AND SEVERAL LIABILITY ON BEHALF OF PURCHASER

The representative of the PURCHASER, by his signature hereto, hereby interposes and binds himself in favour of the SELLER, jointly and severally as surety for and co-principal debtor *in solidum* with the PURCHASER for the due and timeous performance by it of all its obligations as PURCHASER in terms of this Agreement and hereby renounces the benefits and excussion of and division.

If this Agreement is concluded with more than one PURCHASER, the liability of such PURCHASER to the SELLER shall be joint and several *in solidum*.

18. MARITAL STATUS OF PURCHASER

The PURCHASER warrants that his marital status is as set forth in the "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" annexed

hereto and, further that the information contained in such schedule is true and correct in each and every respect.

19. WAIVER

Notwithstanding any express or implied provisions of this Offer to the contrary, any latitude or extension of time which may be allowed by the SELLER in respect of any matter or thing that 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 rights at any time, and without notice, to require strict and punctual compliance with each and every provision or term hereof.

20. CERTIFICATES TO BE OBTAINED

The PURCHASER shall at his own cost obtain:

- 20.1 A certificate of compliance with Government Regulations No. 2920/1992 to the effect that the electrical installation on the property complies with SABS 0142, or is reasonably safe.
- 20.2 A certificate to the effect that the improvements on the property are free from infestation by timber destroying insects, if specifically required by a financial institution.
- 20.3 A certificate of the occupation of the property (if applicable).
- 20.4 Or any such certificate as may be required by law and applicable to the subject property.

21. SPECIAL CONDITION

This offer will be especially subject to the consent by the Master of the High Court in terms of the provisions of the Administration of Estates Act, Act 66 of 1965 and the Intestate Succession Act, Act 81 of 1978.

22. FIRST RIGHT OF REFUSAL

22.1 If the SELLER does not accept the PURCHASER's offer during the CONFIRMATION PERIOD because it has received a higher offer from a third party, the PURCHASER shall be entitled to increase the PURCHASER's offer during the CONFIRMATION PERIOD in order to match the third party's offer.

22.2 Any further offers being made within the confirmation period must be made in writing and only to _____ Auctioneers before _____ on _____ and will be subject to these Conditions.

22.3 Every such offer shall be submitted to the highest bidder, who will have the first right to equal the offer.

THE PROPERTY WAS PUT UP FOR SALE BY PUBLIC AUCTION ON THE _____ DAY OF _____

and sold by the rise for the amount of R _____ (_____)

(EXCLUDING VALUE ADDED TAX)

TO:

MR/MRS/MS _____

(hereinafter referred to as the "PURCHASER")

Refer to "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" for full details of purchaser.

OR

TO:

COMPANY/CLOSE CORPORATION/TRUST/OTHER: _____

(hereinafter referred to as the "PURCHASER")

ENTITY REGISTRATION NO: _____

REGISTERED ADDRESS: _____

TELEPHONE DETAILS: Business: _____
Fax: _____
Email: _____
Cell: _____

as chosen *domicilium citandi et executandi*
herein represented by _____
Identity Number: _____

who hereby warrants that he is duly authorised by resolution of the members/directors of the entity to act on its behalf, and who hereby binds himself as surety and co-principal debtor in solidum for and on behalf of the PURCHASER to and in favour of the SELLER and the AUCTIONEER under the terms and conditions contained in this Offer, and who further binds himself to due performance hereunder and for all amounts that may be due under this Offer, including damages, arising from whatever cause, and waive the benefits of division and excussion.

SIGNED AT _____ ON THE _____ DAY OF _____

AS WITNESSES:

1. _____
_____ **PURCHASER**

2. _____
_____ **CONSENTING SPOUSE**

AUCTIONEER (duly authorised)

ACCEPTANCE AND CONFIRMATION

Accepted by me this _____ DAY OF _____

AS WITNESSES:

1. _____

SELLER

2. _____

SELLER
SELLER'S ADDRESS

INFORMATION FOR CONVEYANCER AND ADMINISTRATION

PURCHASER SPOUSE / CO-PURCHASER

SURNAME _____

FIRST NAMES _____

MARITAL STATUS _____

(State whether Unmarried, Married in Community of PROPERTY, Married by Antenuptial Contract, Married in a country other than South Africa)

DATE OF MARRIAGE _____

COUNTRY OF MARRIAGE _____

IDENTITY NUMBER _____

TELEPHONE NUMBER (H) _____

(W) _____

(FAX) _____

(CELL) _____

EMAIL ADDRESS _____

POSTAL ADDRESS _____

FUTURE ADDRESS _____

INCOME TAX NUMBERS _____
