

# STONEHENGE AUCTIONS

## AUCTION SALE AGREEMENT

**AUCTION SALE AGREEMENT**

between

**STONEHENGE AUCTIONS PROPRIETARY LIMITED**

[ ]

and

[ ]

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Sample

## SALE AGREEMENT

between

### STONEHENGE AUCTIONS PROPRIETARY LIMITED

[     ]

and

[     ]

## 1 INTERPRETATION

In this agreement and its annexures -

- 1.1 clause headings shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention an expression which denotes -
  - 1.2.1 any gender includes the other gender;
  - 1.2.2 a natural person includes an artificial person and vice versa;
  - 1.2.3 the singular includes the plural and vice versa;
- 1.3 the following expressions shall bear the following meanings and related expressions bear corresponding meanings -
  - 1.3.1 “acceptance date” – the date upon which the seller accepts the offer as contemplated in clause 2.3;

- 1.3.2 “agent” – Stonehenge Auctions Proprietary Limited (registration number 2014/128383/07);
- 1.3.3 “agent’s bank account” – the undermentioned bank account -
- |                |   |     |
|----------------|---|-----|
| Account holder | - | [ ] |
| Bank           | - | [ ] |
| Branch         |   | [ ] |
| Branch code    | - | [ ] |
| Account number | - | [ ] |
| Reference      | - | [ ] |
- 1.3.4 "agreement" - this agreement and its annexures;
- 1.3.5 "attorneys" - \_\_\_\_\_;
- 1.3.6 “auction” – the auction at which the property is auctioned;
- 1.3.7 “auction date” – [ ];
- 1.3.8 “expert” – an independent chartered accountant in the RSA agreed by the parties within seven business days after any of the parties requires the identity of such chartered accountant to be agreed (and failing agreement as aforesaid during the aforesaid seven business day period, the expert shall be an independent chartered accountant in the RSA, nominated by the president of the South African Institute of Chartered Accountants (or its successor) for such purpose);
- 1.3.9 “guarantee due date” – the thirtieth day after the acceptance date;
- 1.3.10 “parties” - collectively the seller, the purchaser and the agent and any reference to “party” shall be deemed to be a reference to any one of them as the context may require;
- 1.3.11 “prime rate” - the rate publicly quoted by The Standard Bank of South Africa Limited, from time to time, as being its prime rate (expressed as a nominal annual compounded monthly in arrear rate), calculated on a

365 day a year factor, irrespective as to whether or not the year is a leap year and prima facie proven, in the event of there being a dispute in relation thereto, by certificate by any manager of the aforesaid bank (whose appointment, qualification or authority need not be proven);

1.3.12 "property" – \_\_\_\_\_;

1.3.13 "purchaser" - \_\_\_\_\_;

1.3.14 "RSA" - Republic of South Africa;

1.3.15 "seller" - \_\_\_\_\_;

1.3.16 "seller's bank account" – the undermentioned bank account -

Account holder	-	_____
Bank	-	_____
Branch		_____
Branch code	-	_____
Account number	-	_____
Reference	-	_____

or such other bank account as the seller may from time to time, in writing, direct;

1.3.17 "transfer costs" - all costs and other duties payable in connection with the transfer of the property into the name of the purchaser including transfer duty and/or VAT, as the case may be;

1.3.18 "transfer date" - the date upon which the property is registered in the name of the purchaser in the relevant deeds office;

1.3.19 "VAT" - value added tax as defined in the VAT Act;

1.3.20 "VAT Act" - the Value Added Tax Act, Act 89 of 1991;

- 1.3.21 “warranties” - the warranties given by the seller to the purchaser in terms of clause 14 and otherwise in terms of this agreement;
- 1.4 where any term is defined within the context of any particular clause, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 1.5 any reference to any law, proclamation, ordinance, Act, regulation or other enactment having the force of law (“law”) is to such law as at the signature date and as amended, re-enacted or substituted from time to time thereafter;
- 1.6 should any provision contained in a definition be a substantive provision conferring any right or imposing any obligation on any party, then notwithstanding that it is only in the interpretation clause effect shall be given to it as if it were a substantive provision in this agreement;
- 1.7 when any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day;
- 1.8 the use of a specific example (whether or not after the word “including” or “such as”) shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s. Accordingly, without limiting the generality of the foregoing, wherever the words “includes” or “including” are used in this agreement, the words “without limitation” shall be deemed to follow them;
- 1.9 the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply;
- 1.10 all of the annexures, if any, hereto are deemed to be incorporated herein and shall have the same force and effect as if they were contained in the body of this agreement;

- 1.11 words and/or expressions defined in this agreement shall bear the same meanings when used in any annexures, if any, hereto;
- 1.12 a reference to any statutory body or court shall be construed as a reference to that statutory body or court as at the signature date and as substituted from time to time thereafter by successor statutory bodies or courts, as the case may be;
- 1.13 unless specifically provided to the contrary, all amounts referred to in this agreement are exclusive of VAT;
- 1.14 a reference to any legal principle, doctrine or process under South African law shall include a reference to the equivalent or analogous principle, doctrine or process in any other jurisdiction in which the provisions of this agreement may apply or to the laws of which a party may be or become subject;
- 1.15 the expiration or termination of this agreement shall not affect such of its provisions as expressly provide that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination;
- 1.16 a reference to –
- 1.16.1 “business day” shall be construed as being any day other than a Saturday, Sunday or public holiday in the RSA;
- 1.16.2 “business hours” shall be construed as being the hours between 08h30 and 17h00 on any business day;
- 1.16.3 day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 1.17 any written agreement shall be a reference to that agreement as amended, substituted or replaced from time to time in accordance with its terms;

1.18 any communication which is required to be “in writing” in terms of this agreement shall mean legible writing in English and includes, save for the non-variation clause contemplated in clause 28.3, a communication which is written or produced by any substitute for writing or which is partly written or partly so produced, and shall include printing, typewriting, lithography, facsimile and electronic mail and any form of electronic communication contemplated in the Electronic Communications and Transactions Act, Act 25 of 2002.

## 2 OFFER TO PURCHASE

2.1 Upon the fall of the hammer, the purchaser, being the highest bidder for the property at the auction, hereby offers (“the offer”) to purchase the property from the seller for a purchase price of R[ ] (plus VAT if applicable) (“the purchase price”), and on the terms and conditions contained in this agreement.

2.2 The offer shall remain open and available for acceptance by the seller or by the agent (on the seller’s behalf) for five business days after the auction date (hereinafter referred to as “the offer period”). The purchaser and the agent acknowledge and agree that this provision is inserted and intended for the benefit of the seller.

2.3 The purchaser’s offer shall be deemed to be accepted by the seller, should the seller or the agent (on the seller’s behalf), as the case may be, within the offer period, sign this agreement in the space provided for the signature by the seller, in which event the offer shall become a binding sale agreement between the seller and the purchaser.

2.4 The purchaser shall not be entitled to withdraw or revoke the offer within the offer period.

2.5 Should the seller or the agent (on the sellers behalf) -

2.5.1 reject the purchaser’s offer within the offer period; or

2.5.2 fail to accept the offer within the offer period in the manner contemplated in clause 2.3,

then the offer shall lapse and be of no further force or effect and the agent shall repay to the purchaser any deposit (excluding any interest thereon) paid to the agent as well as any commission paid to the agent in terms of this agreement.

### 3 PAYMENT OF PURCHASE PRICE

3.1 The purchase price of the property shall be paid as follows –

3.1.1 a deposit (hereinafter referred to as "the deposit") in an amount equivalent to 5% of the purchase price, in cash, shall be paid by the purchaser to the agent on the auction date. All interest thereon shall accrue to the estate agent's fidelity fund and shall not accrue for the benefit of the purchaser. Should the seller or the agent on behalf of the seller (i) fail to accept the offer within the offer period; or (ii) reject the purchaser's offer within the offer period, the agent shall refund the purchaser the deposit (excluding any interest thereon) within [ ] days after the expiry of the offer period. Should the seller accept the purchaser's offer in accordance with the provisions of clause 2, the agent shall, as soon as possible after the acceptance date, pay the deposit into the attorneys' trust account who shall invest the deposit as contemplated in clause 3.2;

3.1.2 the balance of the purchase price shall be payable by the purchaser to the seller, in cash, on the transfer date and shall either -

3.1.2.1 be secured by the delivery to the attorneys of a guarantee(s) issued by a registered bank or financial institution, which guarantee(s) shall be in a form directed and approved by the attorneys and which guarantee(s) shall be expressed to be payable free of exchange by electronic transfer in favour of the seller or the seller's nominee on registration of transfer of the property into the name of the purchaser. The aforesaid guarantee(s) shall be delivered by the purchaser to the

attorneys, on the seller's behalf, on or before the guarantee due date; or

3.1.2.2 as an alternative to delivering the guarantee(s), as envisaged in clause 3.1.2.1 the purchaser shall be entitled to pay to the attorneys the balance of the purchase price, in cash, on or before the guarantee due date, who shall invest the balance of the purchase price as contemplated in clause 3.2.

3.2 The seller and the purchaser by their respective signatures hereto hereby irrevocably authorise and instruct the attorneys to invest the deposit and the balance of the purchase price (as contemplated in clause 3.1.2.2), if applicable, with a registered bank or financial institution in terms of Section 78(2A) of the Attorneys Act, in a special savings account, on call, on the purchaser's behalf pending transfer, when the said sum shall be paid to the seller's order. The said account will be in the name of the attorneys with a reference to the abovementioned section of the Attorneys Act, but will be identified with the purchaser's name. Any interest earned on such account shall be for the benefit of the purchaser. The purchaser acknowledges and agrees that until such time as it has signed the attorneys' "instruction and authority to invest trust moneys" form as well as complied with all relevant Financial Intelligence Centre Act (FICA) requirements, the attorneys shall not be, by virtue of the attorneys' policy and FICA permitted to invest the deposit and/or balance of the purchase price (if applicable) on the purchaser's behalf, as referred to above.

3.3 All payments made by the purchaser in terms of this agreement shall be appropriated as a first charge to payment of the agent's commission, as contemplated in clause 4, when due, then interest and thereafter to the payment of any other amounts due in terms hereof.

3.4 All amounts payable by the purchaser to the agent and/or the attorneys and/or the seller in terms of this agreement shall be paid free of set off, exchange, withholding or any other deduction of any nature whatever by way of electronic funds transfer into the relevant bank accounts, at the risk of the purchaser.

#### 4 AGENT'S COMMISSION

- 4.1 The purchaser shall be liable for payment to the agent of agent's commission in the sum of [ ]% [**CLIENT TO ADVISE**] of the purchase price, plus VAT thereon ("the commission").
- 4.2 The purchaser undertakes and agrees that it is liable to pay the commission in addition to the purchase price, which commission, shall be deemed to be earned and payable to the agent, subject to clause 4.3, on the auction date into the agent's bank account.
- 4.3 Should the seller fail or refuse to accept the offer as contemplated in clause 2, the commission shall be refunded to the purchaser as contemplated in clause 2.5.

#### 5 VALUE ADDED TAX, IF APPLICABLE

- 5.1 The seller and the purchaser agree that if -
- 5.1.1 the property is -
- 5.1.1.1 an enterprise capable of separate operation; and
- 5.1.1.2 being sold as a going concern, within the meaning of section 11(1)(e)(i) of the VAT Act;
- 5.1.2 the aforesaid enterprise will constitute an income earning activity, within the meaning of section 11(1)(e)(i)(aa) of the VAT Act on the date of transfer thereof to the purchaser; and
- 5.1.3 the assets necessary to carry on the enterprise are being disposed of by the seller to the purchaser,

the sale of the property as contained herein shall fall within the ambit of section 11(1)(e) of the VAT Act and therefore the purchase price for the supply is inclusive of VAT at the rate of zero percent.

- 5.2 Should clause 5.1 be applicable then the seller and the purchaser are accordingly of the view that VAT is payable on the sale and purchase contemplated in this agreement at the rate of 0%. Notwithstanding the foregoing, should VAT, for whatever reason, be levied on such sale and purchase at a rate higher than 0% such VAT shall be paid by the purchaser against delivery to it by the seller of an original tax invoice in respect thereof.
- 5.3 Should clause 5.1 be applicable, the –
- 5.3.1 seller warrants to the purchaser that, as at the time of supply of the enterprise to the purchaser (as defined in section 9(1) of the VAT Act) it shall be registered as a VAT vendor, as defined in the VAT Act; and
- 5.3.2 purchaser warrants to the seller that, as at the time of supply of the enterprise to the purchaser (as defined in section 9(1) of the VAT Act) it shall be registered as a VAT vendor, as defined in the VAT Act.
- 5.4 For purposes of this clause 5 “enterprise” shall mean the letting enterprise carried on as a going concern by the seller on the property consisting of the property and all right, title and interest in and to the lease/s concluded with tenants in respect of the property as well as all obligations in respect thereof.

## 6 **ACKNOWLEDGEMENT BY THE PURCHASER**

The purchaser acknowledges that -

- 6.1 it has inspected the property and has acquainted itself with the nature, condition, extent and locality of the property;
- 6.2 it will have no claim against the seller for any deficiency in the size of the property which may be revealed on any re-survey nor shall the seller benefit from any possible excess;
- 6.3 save for the warranties, the property is sold subject to all conditions and servitudes mentioned or referred to in the title deed/s of the property and/or which may exist in regard to the property and to the extent and in the condition

such as it now stands, voetstoets, and the seller shall not be liable for any defects whether latent or otherwise in the building/s and/or any other improvements on the property nor for any damages suffered by the purchaser by reason of such defects;

6.4 the seller shall not be responsible to point out any survey beacons or boundaries of the property to the purchaser;

6.5 the property is sold subject to the current town planning scheme and the current general plan and conditions of establishment of the township in which the property is situate.

## 7 **TRANSFER OF OWNERSHIP AND POSSESSION OF THE PROPERTY**

7.1 Transfer of the property into the name of the purchaser shall be effected by the attorneys.

7.2 The purchaser shall be responsible for the payment of the transfer costs which shall be paid to the attorneys within three days of demand therefor.

7.3 The parties undertake to sign all such documents and do all such things as may be necessary to effect transfer of the property into the name of the purchaser on demand by the attorneys.

7.4 Possession and ownership of the property shall pass to the purchaser on the transfer date, from which date all benefit of and risk in the property shall pass to the purchaser which shall thereafter -

7.4.1 be liable for all rates and taxes and other expenses, levies and charges relating to the property including, in particular but without limiting the generality of the foregoing, expenses and charges arising out of any lease applicable to the property;

7.4.2 be entitled to the rent and other income arising from the property.

7.5 The purchaser shall refund to the seller all rates and taxes paid by the seller for any period post the transfer date. **[CLIENT TO ADVISE WHETHER**

**PURCHASER SHALL BE OBLIGED TO REFUND THE SELLER ALL AMOUNTS PAID POST THE TRANSFER DATE AS SUGGESTED BY DARRYL OR WHETHER THE SELLER'S ONLY RECOURSE FOR ANY AMOUNTS PAID POST THE TRANSFER DATE SHALL LIE SOLELY AGAINST THE LOCAL AUTHORITY AS SUGGESTED BY STEVEN]**

7.6 Transfer of the property shall be effected by the attorneys within a reasonable time after the purchase price, transfer costs, rates and taxes and any other costs payable have been secured or paid by the party liable therefor as well as after the parties have signed the relevant transfer documents.

## **8 OCCUPATION**

8.1 Occupation of the property shall be given to and taken by the purchaser on the transfer date, unless the seller and the purchaser have agreed otherwise in writing.

8.2 Should any lease/s exist over the property as at the transfer date, the purchaser shall be bound by the terms and conditions of such lease/s.

## **9 ADJUSTMENT ACCOUNT**

9.1 Should the property be sold as a going concern, as contemplated in clause 5, the seller undertakes to procure that within thirty days after the transfer date it will prepare an adjustment account relating to the enterprise as contemplated in clause 5 which account shall reflect the following –

9.1.1 as a credit to the seller, all pre-payments which may have been made by or on behalf of the seller in relation to any period subsequent to the transfer date (plus VAT) in respect of levies, rates and taxes, insurances, licences, municipal charges and matters of a like nature;

9.1.2 as a credit to the purchaser, all accrued but unpaid expenses, as at the transfer date, in respect of levies, rates and taxes, insurances, licences, municipal charges and matters of a like nature and any deposit held in respect of the lease/s in place over the property at the transfer date;

- 9.1.3 the *pro rata* apportionment of rentals received in respect of the month during which the transfer date occurs.
- 9.2 A copy of the adjustment account shall be delivered by the seller to the purchaser within fourteen days of such account having been prepared.
- 9.3 If the purchaser is dissatisfied with the adjustment account, the purchaser shall deliver in writing, within seven days from receipt of the adjustment account, a complete statement of its objection to the adjustment account. The seller's auditors or a chartered accountant appointed by the seller will, within ten days from date of receipt by the seller of the purchaser's written objections aforementioned, cause the adjustment account to be audited. Should the purchaser's objections to the adjustment account be upheld by the seller's auditors or the seller's appointed chartered accountant (whichever is applicable), then the seller shall bear the costs of the auditing of the adjustment account and vice versa. Should the purchaser or the seller dispute the seller's auditor's or appointed chartered accountant's (whichever is applicable) findings then such dispute shall be referred to the expert. The parties shall use their best endeavours to procure that the expert resolves any dispute within a period of thirty days after such dispute has been referred to the expert. The costs incurred with the expert shall be borne by the unsuccessful party.
- 9.4 Within ten days after delivery of the adjustment account or the finalisation of the auditing of the adjustment account (whichever is the later), the seller will pay to the purchaser, or the purchaser will pay to the seller, as the case may be, the net debit or, as the case may be, the net credit as reflected in the adjustment account.
- 9.5 Payment of any amounts due by any party to the other in terms of the adjustment account shall not constitute part of the purchase price of the property and shall be effected separately from the payment of the purchase price of the property.

## 10 SELLER RESIDENCY AND WITHHOLDING TAX

- 10.1 The parties are aware of the purchaser's obligation to withhold part of the purchase price from the seller, if the seller is a non-resident of the RSA, and pay such portion to SARS in terms of section 35A of the Income Tax Act, Act 58 of 1962 (hereinafter referred to as the "Income Tax Act").
- 10.2 The seller warrants that he **is / is not [DELETE WHICHEVER IS NOT APPLICABLE]** a resident of the RSA.
- 10.3 The seller hereby indemnifies and holds harmless the agent and the attorneys from any claim arising as a result of either of them having acted on information supplied by the seller, and the seller hereby waives all right of recourse he may have against the attorneys and/or agent in respect of any action or omission made by either of them in terms of the Income Tax Act.
- 10.4 The agent or attorneys may, in their discretion, be entitled by written notice to call upon the seller to obtain a directive from SARS within thirty days of such notice, in respect of the seller's residential status. Should the seller fail to comply with the provisions of this clause 10.4, then the provisions of clause 10.5 shall apply.
- 10.5 Should SARS furnish a directive in which the seller is declared to be a non-resident for income tax purposes, the purchaser hereby irrevocably instructs the attorneys upon the transfer date to withhold the prescribed percentage in terms of the Income Tax Act of the purchase price and to pay such amount to SARS within fourteen days of the transfer date.
- 10.6 Notwithstanding the provision of clause 10.5, the seller shall be entitled to obtain a directive from SARS in respect of the non-withholding or a reduced withholding of tax, which directive shall be delivered to the attorneys within twenty one days of the acceptance date, failing which the seller shall be bound by such withholding percentage as determined by the Income Tax Act.

## 11 **ELECTRICAL COMPLIANCE CERTIFICATE**

The parties are aware that in terms of the Occupational Health and Safety Act, Act 85 of 1993, as amended, and in terms of the regulations promulgated thereunder if there is a change of ownership of premises on which an electrical installation exists, the user shall have a valid certificate of compliance for such installation. The seller hereby agrees that it shall, at its sole cost and expense, obtain the issue of a valid certificate of compliance (“the electrical certificate”) and provide a copy of same to the attorneys prior to the transfer date. All costs incurred in obtaining electrical certificate, including without limitation costs of any repairs or replacements required in order for the electrical certificate to be issued, shall, be paid by the seller.

## 12 **ELECTRIC FENCING**

If applicable, the seller shall at its cost, deliver to the purchaser an Electric Fence System Certificate of Compliance as required in terms of the Electric Machinery Regulations of 2011 (issued under the Occupational Health and Safety Act, Act No 85 of 1993) in respect of the electric fence system on the property, if any, prior to the transfer date. Such certificate shall be issued by a registered electric fence installer in accordance with the provisions of Regulations 12(4) and 13(1) of the Electrical Machinery Regulations of 2011 and confirm that the electric fence system is deemed to be reasonably safe when properly used. Should corrective work be required prior to the issue of the said certificate, the work shall be carried out at the expense of the seller.

## 13 **CERTIFICATE OF CONFORMITY FOR GAS APPLIANCES**

- 13.1 If applicable, the seller shall, prior to the transfer date furnish the purchaser with a valid certificate of conformity applicable to all gas appliances or system on the property as prescribed in Regulation 17(3) of the Occupational Health and Safety Act.
- 13.2 The certificate will be issued by an authorised person registered as such with the Liquefied Petroleum Gas Safety Association of Southern Africa (LPGAS).
- 13.3 All expenses incurred in meeting the criteria for the issue of such certificate, including the certificate itself, shall be borne by the seller. The seller

furthermore warrants to the purchaser that no addition or alteration to the gas installations on the property shall be effected once the said certificate has been issued. Upon the seller furnishing the purchaser with the said certificate of conformity, the purchaser shall have no claim whatsoever against the seller and no further liability in this regard shall rest upon the seller.

#### 14 WARRANTIES AND UNDERTAKINGS

- 14.1 The seller gives the purchaser the warranties on the basis that each of the warranties shall be deemed to be material and have induced the purchaser to enter into this agreement.
- 14.2 Each warranty shall be a separate warranty and in no way limited or restricted by reference to or inference from the terms of any other warranty.
- 14.3 Each warranty is given as at the acceptance date and as at the transfer date.
- 14.4 If the property comprises more than one immovable property the warranties hereby given shall apply separately to each of such immovable property.
- 14.5 The seller warrants to the purchaser that, to the best of the seller's knowledge and belief -
- 14.5.1 the seller is the owner of and has the absolute right to sell the property to the purchaser in accordance with the provisions of this agreement;
- 14.5.2 no agreements have been entered into by the seller whereby any restrictive conditions or servitudes or other real rights attach to the property or in terms of which any person is entitled to obtain any real rights to the property;
- 14.5.3 the property is not subject to any servitude or condition of title which does not appear in the current title deed thereof;
- 14.5.4 no notice has been received by the seller of the intention of any authority to expropriate the property or any portion thereof nor is the

seller aware of any intention to expropriate the property or any portion thereof by any such authority.

14.5.5 no legal action has been instituted against the seller and the seller has no knowledge of any contemplated legal action in terms whereof the property may be attached and/or transfer thereof may be interdicted;

14.5.6 no application is required to be made to the Competition Authorities for the approval of this transaction in terms of the Competition Act, Act 89 of 1998.

## 15 TAX AFFAIRS

Both parties, by their signature hereto, warrant that their tax affairs with the South African Revenue Services (hereinafter referred to as "SARS") are in order and up to date or, in the event of this not being the case, that agreement will be reached between SARS and the relevant party, and the necessary arrangements with SARS will be made prior to the attorneys being ready to submit the necessary documentation for the necessary transfer duty exemption or transfer duty receipt (whichever is applicable) and that, accordingly, there will be no delay in the transfer process of the property arising from matters that are required to be attended to by the parties relating to SARS.

## 16 SECTION 112 SHAREHOLDERS RESOLUTION

To the extent that sections 112 and 115 of the Companies Act, Act 71 of 2008 (hereinafter referred to as "the Act"), are applicable to the sale of the property, the seller shall procure as soon as possible after the acceptance date that its shareholders pass and register a special resolution in accordance with section 112 of the Act, read together with section 115 of the Act, in order to comply with the relevant provisions of the Act.

## 17 INSOLVENCY ACT PUBLICATION

17.1 The parties agree that notice of the transaction which is the subject of this agreement will not be published as contemplated in section 34 of the Insolvency Act, Act 24 of 1936 ("the Insolvency Act").

17.2 The seller and the purchaser undertake to each other that immediately either of them becomes aware of any proceedings instituted by any party who purports to have any claim against the seller as at the transfer date which, if unsatisfied, may result in the disposal of the property in terms of this agreement being void as against the unsatisfied creditors concerned in terms of section 34(3) of the Insolvency Act it will immediately notify to the other party in writing.

## 18 **EMPLOYEES**

The seller warrants to the purchaser that, in relation to the property and/or any business conducted thereon, the seller does not employ any persons as at the signature date and will not as at the transfer date employ any persons and as such the employment of no employees shall transfer to the purchaser pursuant to section 197 of the Labour Relations Act, Act 66 of 1995.

## 19 **COMPANY TO BE FORMED**

Should the person (in this clause 19 referred to as "the promoter") who signs this agreement for the purchaser do so acting on behalf of a company to be formed, then the following provisions shall apply -

19.1 the promoter undertakes to take such steps as are necessary to procure that (i) the company contemplated in this clause 19 ("the company") is incorporated by not later than fifteen days after the acceptance date; and (ii) the company's board of directors ratify this agreement in its entirety within fifteen days of the company's incorporation;

19.2 subject to clause 19.1, should the company be formed and the board of the company ratify this agreement in its entirety within fifteen days of the company's incorporation, then despite such ratification the seller shall not be bound by such ratification unless the promoter delivers, within the aforementioned period of fifteen days, to the seller a copy (certified by a director of the company) of the resolution of the board of directors of the company ratifying this agreement;

19.3 should the company not be incorporated within the period envisaged in clause 19.1 and/or fail to ratify this agreement as envisaged in clauses 19.1, then the promoter shall be personally bound by and liable for all the obligations imposed on, and entitled to all of the rights vested in, the company in terms of this agreement; and

19.4 until such time as the company becomes the purchaser in terms hereof, the seller shall be entitled to regard the promoter as the purchaser and shall be entitled to exercise all or any of the seller's rights in terms of this agreement against the promoter personally.

## 20 COMPANIES, CLOSE CORPORATIONS, ASSOCIATIONS OR TRUSTS

**Should the purchaser be a company, close corporation, association or trust (hereinafter referred to as "the principal"), then the person signing this agreement on behalf of such principal (hereinafter referred to as "the representative"), by his signature hereto, hereby binds himself as surety and co-principal debtor with the principal for the due and proper discharge of the obligations of the principal arising out of this agreement.**

## 21 JOINT AND SEVERAL LIABILITY

Notwithstanding anything to the contrary contained herein, where there is more than one purchaser, each of the purchasers shall be jointly and severally liable for the fulfilment by all of the purchaser's obligations in terms of this agreement.

## 22 APPLICABLE LAW AND JURISDICTION

22.1 This agreement (including its validity, existence and implementation, the interpretation and application of its provisions, the respective rights and obligations of the parties in terms of and arising out of the conclusion, breach and termination of the provisions of this agreement), shall be interpreted and governed in all respects by the laws of the RSA.

22.2 Save as otherwise provided herein, the parties hereby consent to the non-exclusive jurisdiction of the relevant High Court of South Africa in which jurisdiction the property is situate in respect of any action or legal proceedings

which may arise out of or in connection with this agreement, its interpretation, validity or determination hereof.

## 23 ARBITRATION

23.1 Save as otherwise provided herein, should any dispute arise between the parties in connection with -

23.1.1 the formation or existence of;

23.1.2 the implementation of;

23.1.3 the interpretation or application of the provisions of;

23.1.4 the parties' respective undertakings, rights and obligations in terms of or arising out of the conclusion, breach or termination of;

23.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;

23.1.6 any documents furnished by the parties pursuant to the provisions of,

this agreement or which relates in any way to any matter affecting the interests of the parties in terms of this agreement, such dispute shall, unless resolved between the parties to the dispute, be referred to and be determined by arbitration in terms of the Commercial Rules for arbitration of the Arbitration Foundation of Southern Africa ("AFSA").

23.2 Any party to this agreement may demand that a dispute be determined in terms of this clause 23 by written notice given to the other parties.

23.3 This clause 23 shall not preclude any party from obtaining interim relief by way of motion proceedings on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

- 23.4 The parties hereby consent to the arbitration being dealt with in terms of the Commercial Rules of AFSA.
- 23.5 The arbitrator shall be, if the matter in dispute is principally -
- 23.5.1 a legal matter, a practising advocate (of at least fifteen years' experience) or a practising attorney (of at least fifteen years' standing) or a retired judge;
- 23.5.2 an accounting matter, a practising chartered accountant of Gauteng of at least fifteen years' standing;
- 23.5.3 any other matter, any independent person,  
agreed upon between the parties to the dispute.
- 23.6 Should the parties to the dispute fail to agree as to whether the dispute is principally a legal, accounting or other matter within seven days after the arbitration is demanded, the matter shall be deemed to be a legal matter.
- 23.7 The parties shall attempt to agree on the identity of the arbitrator.
- 23.8 Failing agreement between the parties on the identity of the arbitrator within seven days after the arbitration is demanded, then, AFSA's Secretariat shall appoint the arbitrator. Such appointment is to be made from a list of six nominees three of whom are to be nominated by each of the parties to be submitted jointly by the parties without identifying which of the parties nominated a particular nominee on such list.
- 23.9 The arbitration shall take place in Gauteng or in such other place as is agreed to by the parties. Only the parties and their representatives (including legal representatives) will be entitled to attend the arbitration hearing.
- 23.10 The award of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court referred to in clause 23.11 at the instance of any of the parties to the dispute. The parties agree that as

between them the final arbitral award (subject to a right of appeal) will have the effect of a court order.

- 23.11 The parties hereby consent to the non exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg in respect of the proceedings referred to in clause 23.3 and/or clause 23.10.
- 23.12 Any final arbitral award (excluding interlocutory awards) will be subject to an automatic right of appeal to an arbitration tribunal. The appeal arbitration tribunal will consist of three retired judges of the High Court of South Africa or the Supreme Court of Appeal of South Africa to be appointed as follows -
- 23.12.1 each of the parties will appoint an appeal arbitrator;
- 23.12.2 failing agreement between the parties within seven days on the third appeal arbitrator, such arbitrator is to be nominated by the two arbitrators nominated by the parties. Such appointment is to be made from a list of six nominees (three to be nominated by each of the parties) to be submitted jointly by each of the parties without identifying which of the parties nominated a particular nominee on such list.
- 23.13 Save as otherwise provided herein, the appeal is to be administered and governed in accordance with the appeal rules contained in AFSA's Commercial Rules for arbitration.
- 23.14 The parties agree to keep the arbitration including the subject-matter of the arbitration (and any appeal) and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of a court order to be made in terms of clause 23.10.
- 23.15 The provisions of this clause 23 -
- 23.15.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

23.15.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

23.16 The parties agree that the written demand by any party in terms of clause 23.2 that the dispute be submitted to arbitration, is deemed to be a legal process for the purpose of interruption of extinctive prescription in terms of the Prescription Act, Act 68 of 1969.

## 24 BREACH

24.1 Save as otherwise provided in this agreement, should the -

24.1.1 seller commit a breach of any provision of this agreement and fail to remedy such breach within seven days after receiving written notice from the purchaser requiring the seller to remedy such breach, then the purchaser shall be entitled, without prejudice to its other rights in law, and save as otherwise provided herein to cancel this agreement or to claim immediate specific performance of all of the seller's obligations whether or not due for performance, in either event without prejudice to the purchaser's right to claim damages; or

24.1.2 purchaser commit a breach of any provision of this agreement and fail to remedy such breach within seven days after receiving written notice from the seller requiring the purchaser to remedy such breach, then the seller shall be entitled, without prejudice to the seller's other rights in terms hereof or in law, to (i) cancel this agreement and to retain all monies paid on account of the purchase price to the seller and/or the attorneys as rouwkoop or penalty or as liquidated damages in respect of the prejudice suffered by the seller; or (ii) cancel this agreement and to claim and recover from the purchaser all damages and loss sustained by the seller as a consequence of such cancellation and the parties hereby irrevocably authorise the attorneys to retain all amounts paid by the purchaser to the attorneys on account of the purchase price pending determination of the quantum of the seller's claim; or (iii) claim immediate specific performance of all of the purchaser's obligations whether or not due for performance, without prejudice to the seller's right to claim damages.

24.2 All costs, charges and expenses of whatsoever nature which may be incurred by any party in enforcing its rights in terms hereof including, without limitation, legal costs on the scale as between attorney and own client and collection commission, irrespective of whether any action has been instituted shall be recoverable from the party against which such rights are successfully enforced.

24.3 In the event that this agreement is cancelled, the attorneys shall be entitled to recover any wasted costs incurred from the defaulting party.

## 25 OVERDUE INTEREST

25.1 Any amount falling due for payment by any party to any other -

25.1.1 in terms of or pursuant to this agreement, shall bear interest at the prime rate calculated from the due date for payment thereof to the date of payment (both dates included);

25.1.2 by way of damages, shall bear interest at the prime rate calculated from the date upon which those damages are sustained.

25.2 The interest referred to in clause 22.1 shall be compounded monthly in arrear from the end of the month during which such interest is first calculated.

## 26 DOMICILIUM AND NOTICES

26.1 The parties choose domicilium citandi et executandi for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement, as follows -

26.1.1	seller	-	[            ] <b>[PARTIES TO ADVISE]</b> [            ]
			Marked for the attention of [            ]
	facsimile	-	(011) [            ]
	email	-	[            ]

26.1.2 purchaser - [ ] **[PARTIES TO ADVISE]**  
[ ]

Marked for the attention of [ ]

facsimile - (011) [ ]  
email - [ ]

26.1.3 agent - [ ] **[PARTIES TO ADVISE]**  
[ ]

Marked for the attention of [ ]

facsimile - (011) [ ]  
email - [ ]

26.2 Each of the parties shall be entitled from time to time, by written notice to the others, to vary its domicile to any other physical address within the RSA and/or its facsimile number.

26.3 Any notice given and any payment made by any party to any other which is -

26.3.1 delivered by hand during the normal business hours of the addressee at the addressee's domicile for the time being shall be presumed to have been received by the addressee at the time of delivery;

26.3.2 posted by prepaid registered post from an address within the RSA to the addressee at the addressee's domicile for the time being shall be presumed to have been received by the addressee on the tenth day after the date of posting.

26.4 Any notice given by any party to any other which is transmitted by facsimile copy to the addressee at the addressee's facsimile number for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the first business day after the successful transmission thereof.

26.5 Notwithstanding anything to the contrary contained in this clause 23, written notice or other communication actually received by a party shall be adequate

written notice or communication to it notwithstanding that the notice was not sent or delivered to its chosen address or telefacsimile number.

## 27 COUNTERPARTS

This agreement -

- 27.1 may be executed in separate counterparts none of which need contain the signature of all the parties, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement;
- 27.2 shall be valid and binding upon all the parties hereto, notwithstanding that one or more of the parties may have signed a copy thereof and whether or not such copy contain the signature of any other party.

## 28 GENERAL

- 28.1 This document constitutes the sole record of the agreement between the parties in relation to the subject matter hereof.
- 28.2 No party shall be bound by any representation, warranty, promise or the like not recorded herein.
- 28.3 No addition to, variation, or agreed cancellation of this agreement shall be of any force or effect unless recorded in a written document and signed by or on behalf of the parties. For the purposes of this clause 28.3, a “written document” shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act, Act 25 of 2002, and “signed” shall mean a signature executed by hand with a pen and without any electronic process or intervention.
- 28.4 No indulgence which any party (“the grantor”) may grant to any other (“the grantee”) shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

- 28.5 Save as otherwise provided in this agreement, the seller shall not be entitled to cede any of its rights or delegate any of its obligations in terms of this agreement to any other party, without the prior written consent of the agent.
- 28.6 Notwithstanding anything to the contrary contained in this agreement, the agent shall be entitled to cede any of its rights or delegate any of its obligations in terms of this agreement to any other party, without the prior written consent of the seller.
- 28.7 The parties shall at all times act in good faith towards each other and shall not bring any of the other parties into disrepute.
- 28.8 Each of the parties undertakes at all times to do all such things, perform all such acts and take all such steps and to procure the doing of all such things, within its power and control, as may be open to and is necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.
- 28.9 All provisions of this agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this agreement shall remain of full force and effect. The parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

## 29 COSTS

Each of the parties shall pay the costs incurred by it in connection with the negotiation, drafting, preparation and execution of this agreement.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2015  
for Stonehenge Auctions Proprietary Limited

\_\_\_\_\_  
who warrants that he is duly authorised hereto

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2015

\_\_\_\_\_  
[ ]

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2015

\_\_\_\_\_  
[ ]

