

**SALE BY PUBLIC AUCTION**  
SALE AGREEMENT

**CONDITIONS OF SALE**

**1 SALE BY PUBLIC AUCTION**

- 1.1 The sale shall be by the rise, subject to the terms and conditions contained in the conditions of sale. The Seller reserves the right to decline to sell to the highest or any bidder.
- 1.2 The Auctioneer shall have the right to refuse or accept any bid. If any dispute arises between bidders or between any bidder and the Auctioneer, the decision of the Auctioneer shall be final and binding.
- 1.3 If the Auctioneer makes any mistake, it shall not be binding, but shall, if practicable, be rectified as soon as possible and the Auctioneer shall not on any grounds whatsoever (whether contractual, delictual or otherwise) be responsible therefor or for any loss or damage suffered as a result thereof, or for the fulfilment of these conditions of sale.

**2 INTERPRETATION**

- 2.1.1 In these conditions of sale and in the schedule and any annexes thereto -
- 2.1.2 clause headings are for convenience and are not to be used in their interpretation;
- 2.1.3 unless the context indicates a contrary intention an expression which denotes -
- 2.1.3.1 any gender includes the other genders;
- 2.1.3.2 a natural person includes a juristic person and *vice versa*;
- 2.1.3.3 the singular includes the plural and *vice versa*.

- 2.2 In these conditions of sale, unless the context indicates a contrary intention, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings -
- 2.2.1 **"Auctioneer"** means **IKAPA EXPRESS AUCTIONEERS(PTY)LTD per Johan Kotze**
- 2.2.2 **"property"** means the property specified in the schedule, together with all improvements thereon;
- 2.2.3 **"purchase price"** means the purchase price, exclusive of any value-added tax, (if applicable) at which the property is sold;
- 2.2.4 **"Purchaser"** means the Purchaser specified in the schedule;
- 2.2.5 **"schedule"** means the schedule to the conditions of sale;
- 2.2.6 **"Seller"** means **DRAKENSTEIN MUNICIPALITY**
- 2.3 Any substantive provision conferring rights or imposing obligations on any party in the interpretation clause shall be given effect to as if it were a substantive provision in the body of the agreement.
- 2.4 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this agreement.
- 2.5 The terms "holding company" and "subsidiary" shall bear the meanings assigned to them in the Companies Act, 1973 (Act No 61 of 1973).
- 2.6 Reference to months or years shall be construed as calendar months or years.

- 2.7 No provision herein shall be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have structured or drafted such provision.
- 2.8 The *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 2.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day.
- 2.10 A reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or re-enacted from time to time.
- 2.11 This agreement incorporates the annexes which annexes shall have the same force and effect as if set out in the body of this agreement. In this agreement the word "**agreement**" refers to this agreement and the words "**clause**" or "**clauses**" and "**annexe**" or "**annexes**" refer to clauses of and annexes to this agreement.
- 2.12 Unless specifically otherwise provided, all amounts in this agreement are exclusive of value-added tax as contemplated in the Value-Added Tax Act, 1991 (Act No 89 of 1991).

### **3 SALE**

The property is sold subject to all the conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the property and to all such other conditions and servitudes as may exist in regard thereto, including the provisions of any applicable town planning scheme.

### **4 VOETSTOOTS SALE**

- 4.1 The property is sold *voetstoots* as it stands and in the condition in which it now is. The Seller has no claim in respect of any excess over the measurements appearing in the title deeds, nor is the Seller answerable in damages or otherwise to the Purchaser should the area of the property be less than such measurements.
- 4.2 The Purchaser acknowledges having inspected the property.

- 4.3 The Seller is not obliged to point out any pegs or beacons relating to the property nor is the Seller responsible for the cost of locating them.
- 4.4 The Seller is not responsible for obtaining any certificate or other evidence that the property is free from infestation by woodborers, termites, white ants, or any other timber destroying or boring insects, and should any such certificate or other evidence be required by the Purchaser it is the responsibility of the Purchaser to obtain such certificate or other evidence at the Purchaser's cost.
- 4.5 It is recorded that the Seller is not in possession of a certificate of compliance as contemplated in the Regulations deemed to be promulgated in terms of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), in respect of the electrical installation on the property. The Purchaser acknowledges that the Purchaser is obliged to be in possession of a certificate of compliance by not later than the date of transfer of the property into the name of the Purchaser, and it is the responsibility of the Purchaser to obtain such certificate at the Purchaser's cost.

## **5 PURCHASE PRICE**

The purchase price of the property together with any value-added tax, is payable by the Purchaser as follows -

- 5.1 an amount equal to 10% (Ten per cent) of the purchase price shall be paid to the Auctioneer upon signature of these conditions of sale by the Purchaser and held in trust until the date of registration of transfer of the property into the name of the Purchaser;
- 5.2 the balance of the purchase price together with any value-added tax, shall be payable against registration of transfer of the property into the name of the Purchaser. As security for the payment of such amount, including value-added tax, the Purchaser will within 30 (Thirty) days after the date of the auction, furnish the Seller's conveyancers with a bank guarantee or guarantees as required and approved of by the Seller or the Seller's conveyancers, payable to the Seller or the Seller's nominee upon registration of transfer at such place or places as the Seller stipulates.
- 5.3 On acceptance of an offer by the seller, the deposit then becomes NON – Refundable.

- 5.4 The property sale is subject to written confirmation by the seller within one calendar month of the sale .
- 5.5 Should the offer not be accepted by the seller, the deposit shall be refunded.

## **6 POSSESSION AND RISK**

Possession of the property will be given to the Purchaser on registration of transfer. As from the date of possession the property will be at the sole risk, loss or profit of the Purchaser, and the Purchaser will from such date be entitled to the rentals (if any) and be liable for all rates, taxes and other charges in respect of the property. If the Seller has paid any such charge or charges for any period subsequent to the date of possession, the Purchaser will refund to the Seller the charge or charges so paid, and the Purchaser will likewise be entitled to a refund from the Seller of the rentals (if any) collected prior to the date of possession in respect of any period subsequent to the date of possession.

## **7 TRANSFER AND COSTS**

- 7.1 Transfer of the property will be given to the Purchaser within a reasonable time after the Purchaser has paid the costs and charges referred to in clause 7.2 and has otherwise complied with the provisions of the conditions of sale and suspensive conditions. Transfer will be effected by the Seller's conveyancers.
- 7.2 The Purchaser will on demand from the Seller's conveyancers -
- 7.2.1 pay all costs and charges of and incidental to the transfer of the property, including transfer duty, if applicable;
- 7.2.2 sign all documents required to be signed by the Seller's conveyancers in order that transfer may be effected.
- 7.3 The Purchaser shall not sell or otherwise dispose of the property, nor cede any right or assign any obligation under the conditions of sale prior to the registration of transfer.

## **8 OCCUPATION AND OCCUPATIONAL RENTAL**

- 8.1 Occupation of the property will be given to the Purchaser on the date of registration of transfer.
- 8.2 In the event that occupation and/possession is granted by the seller to the purchaser prior to the date of registration of transfer, the Purchaser will pay to the Seller, or the Seller's nominee, interest on the full purchase price at the rate of 10% (Ten per cent) *per annum*, payable monthly in advance, from the date of possession to the date of registration of transfer of the property into the name of the Purchaser, both days inclusive.

## **9 OBLIGATIONS OF THE PURCHASER**

With effect from the date of possession should possession/occupation be granted by the Seller to The Purchaser -

- 9.1 the Purchaser will keep all buildings, fences and other improvements on the property in good order, repair and condition to the satisfaction of the Seller, and should the Purchaser fail to do so, the Seller will be entitled to have effected any repairs the Seller deems necessary to maintain the property in good order, repair and condition, and to recover the cost thereof from the Purchaser on demand, without prejudice to any other rights the Seller may have;
- 9.2 the Purchaser will not make any alterations or additions to any buildings or improvements on the property before transfer without the Seller's prior written consent, and will submit to the Seller for prior approval plans of any proposed buildings, alterations or improvements. It is a condition of any approval the Seller may give in respect of such plans that the Purchaser procures, before building operations are commenced, a waiver by the contractor of any lien to which such contractor might otherwise become entitled;
- 9.3 the Seller or the Seller's duly authorised agent is entitled to inspect the property at all reasonable times; and
- 9.4 the Purchaser will be obliged to vacate the property upon termination of the conditions of sale for any reason whatsoever, it being agreed that no tenancy is created by any prior possession or occupation.

## **10 INSURANCE OF IMPROVEMENTS**

- 10.1 With effect up to the date of registration of transfer, or to the date of occupation or possession, the property shall be kept insured by the Seller with an insurance company nominated by the Seller against loss or damage by fire, storm and such other risks as the Seller may specify in writing from time to time.
- 10.2 The policy of such insurance shall cover the respective interests of the parties and all costs and premiums from the date of possession shall be paid by the Purchaser. The Purchaser shall refund to the Seller on demand a *pro rata* share of any costs and premiums paid by the Seller in advance for any period after the date of possession, should possession or occupation be given by the seller to the purchaser prior to registration of transfer and shall thereafter keep and maintain such policy in force and shall on demand produce to the Seller proof of the due and timeous payment of all premiums.
- 10.3 The Seller shall be entitled to make payment of any amounts due by the Purchaser in terms of this clause and to recover all such payments made from the Purchaser on demand.

## **11 AGENT'S COMMISSION**

- 11.1 Subject to the provisions of clause 12.2, the Purchaser shall be liable for payment of the Auctioneer's commission equal to 3 % VAT INC of the purchase price, together with value-added tax thereon, and shall affect payment of such commission forthwith upon conclusion of the auction whereupon these conditions of Sale are to be signed in full and initialled on all appropriate pages by the Purchaser, Auctioneer and witnesses.
- 11.2 The Auctioneer may appropriate the payment in respect of Auctioneers Commission immediately upon receipt of the Sellers notification of acceptance of the Purchasers offer (hereinafter referred to as the "effective date").
- 11.3 Should the offer not be accepted by the seller, the commission shall be refunded to the purchaser.
- 11.4 The commission payable by the Purchaser shall not form part of the financial offer to the Seller.

## **12 BREACH**

Should the Purchaser commit a breach of the conditions of sale, the Seller is entitled to give the Purchaser notice in writing calling upon the Purchaser to remedy the breach. Should the Purchaser fail to comply with such notice within 7 (Seven) days of receipt of such notice, then without prejudice to any other rights the Seller may have in law, the Seller is entitled -

12.1 to cancel the conditions of sale comprising this agreement and thereupon -

12.1.1 to retain the deposit paid in terms of clause 5.1, either as *rouwkoop* or by way of a penalty or as agreed liquidated damages, or as a payment in respect of the prejudice agreed as suffered by the Seller as a result of the Purchaser's breach; or

12.1.2 to recover such damages as the Seller may be able to prove the Seller has sustained in lieu of the amount contemplated in clause 12.1.1, in which event the Seller will be entitled to retain any deposit in trust until the actual amount of damages has been determined by a court, and thereupon set off such damages against the amount in trust; or

12.2 to enforce performance in terms of the conditions of sale, including payment of the full balance of the purchase price owing at the date of the Purchaser's breach, without prejudice to any right the Seller may have to claim damages from the Purchaser.

## **13 VALUE-ADDED TAX ACT, 1991 (ACT No 89 of 1991) (where applicable)**

It is recorded that if the Seller is a vendor and that the sale of the property in terms of this agreement constitutes a taxable supply as contemplated in the Value-Added Tax Act, and that value-added tax is payable in respect thereof.

13.1 The purchase price of the property is exclusive of value-added tax and the Purchaser shall pay such value-added tax as may be payable to the Seller on registration of transfer of the property into the name of the Purchaser.

13.2 As security for the payment of such value-added tax, the Purchaser shall within the time period specified in clause 5.2, furnish the seller's conveyancers with a bank guarantee in accordance with the provisions of clause 5.2, which apply *mutatis mutandis*.



## **14 NOTICES AND DOMICILIUM**

- 14.1 The parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this agreement, their respective addresses set out in the schedule, provided that a party may from time to time change any address to any other physical address, postal address or telefax address within the Republic of South Africa by written notice to the other party to that effect. Such change of address will be effective 7 (Seven) days after receipt of notice of the change of *domicilium*.
- 14.2 All notices to be given in terms of this agreement will be in writing and -
- 14.2.1 if delivered by hand during normal business hours, be rebuttably presumed to have been received on the date of delivery;
- 14.2.2 if sent by prepaid registered post from within the Republic of South Africa be rebuttably presumed to have been received within 7 (Seven) business days of posting;
- 14.2.3 if sent by telefax before 16h30 on a business day be rebuttably presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after 16h30 or on a day which is not a business day will rebuttably be presumed to have been received on the following business day.
- 14.3 Notwithstanding the above, any notice actually received by the party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause.

## **15 GENERAL**

- 15.1 This agreement constitutes the whole of the agreement between the parties hereto relating to the matters dealt with in this agreement and save to the extent otherwise provided herein no undertaking, representation, term or condition relating to the subject matter of this agreement not incorporated in this agreement shall be binding on any of the parties.

- 15.2 No variation, addition, deletion, or agreed cancellation will be of any force or effect unless in writing and signed by or on behalf of the parties hereto.
- 15.3 No waiver of any of the terms and conditions of this agreement will be binding or effectual for any purpose unless in writing and signed by or on behalf of the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 15.4 Save as otherwise herein provided, neither this agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred without the prior written consent of the other parties.
- 15.5 Any consent or approval required to be given by any party in terms of this agreement will, unless specifically otherwise stated, not be unreasonably withheld.
- 15.6 This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts. The parties undertake to take whatever steps may be necessary to ensure that all counterparts are duly signed by all of them without delay.

## **16 SUSPENSIVE CONDITION**

- 16.1 The sale is subject to the following suspensive conditions, namely that –
- 16.1.1 If the sale requires the consent of the Master of the High Court of South Africa, such consent is obtained within a reasonable time;
- 16.1.2 the sale is confirmed by the Seller within one calender month of the date of the auction.

- 16.1.3 Compliance with the additional suspensive conditions as per paragraph 10 of the attached conditions of sale marked "Annexure B".
- 16.2 Should the aforesaid suspensive conditions not be fulfilled within the period specified above then, the Seller may extend the confirmation period due to circumstances beyond his control.

## **17 PURCHASER AS TRUSTEE**

- 17.1 In the event that the property is sold to a person acting in the capacity of trustee for a juristic person to be formed and incorporated for the purpose of purchasing the property, should such juristic person to be formed not be registered and thereafter ratify and adopt this agreement, within 7 (Seven) days after the date of signature of the auction, then the Trustee will be and become the Purchaser of the property, and will be bound and obliged to comply with all the terms and conditions contained in the conditions of sale and imposed on the Purchaser.
- 17.2 In the event of the Purchaser ratifying and adopting this agreement, the Trustee binds and obliges itself as surety and co-principal debtor *in solidum* for all the obligations of the Purchaser in terms of the conditions of sale, and hereby renounces the benefits of excussion and division, the meaning of which the Trustee declares itself to be fully acquainted with.

## **18 TRUSTEE AS SURETY**

In the event of the Purchaser ratifying and adopting this agreement, the Trustee binds and obliges himself as surety and co-principal debtor *in solidum* for all the obligations of the Purchaser in terms of this agreement, and hereby renounces the benefits of excussion and division, the meaning of which the Trustee declares himself to be fully acquainted with.

## **19 AUTHORITY AND LEGAL CAPACITY (*where applicable*)**

- 19.1 In the event that the property is sold to any person who acts or purports to act in a representative capacity, other than that of Trustee as contemplated in clause 16.2, such person shall forthwith upon conclusion of the auction disclose the identity of the principal that he represents and thereupon furnish documentary evidence to the satisfaction of the Auctioneer, or the Seller, as the case may be, of the capacity of the principal to purchase the property and such person's authority to represent and bind the principal concerned.

Should the property be sold to a person contemplated in clause 19.1 and should such person fail to comply with the requirements of clause 19.1, such person will be and become the Purchaser of the property in his personal capacity, and be bound and obliged to comply with all the terms and conditions contained in the conditions of sale and imposed on the Purchaser.

## **20 SIGNATURE OF CONDITIONS OF SALE**

- 20.1 The Purchaser shall forthwith upon conclusion of the auction sign the conditions of sale and provide all such information as may be specified in the schedule.
- 20.2 If the Purchaser fails, for whatever, reason to sign the conditions of sale or furnish any information as aforesaid, the Auctioneer or the Seller, as the case may be, will be entitled but not obliged immediately to declare the sale cancelled without prejudice to any of the Seller's rights, and again to put the property up for auction.

**SCHEDULE**

The conditions of sale, having first been read out aloud in full and a copy thereof prominently displayed at the auction venue, the property described as –

**ERF 11277 ENSLIN STREET PAARL AND THE RELEVANT PORTION OF THE HIGH LEVEL ROAD**

and situated at -	PAARL
was put up for sale by public auction At	PAARL
On	25 JANUARY 2018
And sold for ( <i>purchase price</i> )	R_____
Purchase price in words	_____
Deposit 10% of Purchase Price	_____
Commission 3% of Purchase price	_____
VAT thereon at 14%	_____
Total Received	_____
To ( <i>full name of Purchaser</i> )	_____
On ( <i>date of auction</i> )	_____
Identity / Registration Number	_____
Of ( <i>physical address</i> )	_____
Postal Address	_____
Telefax Address	_____
Telephone Numbers	_____
	_____
Signature of Purchaser	_____
	The Purchaser, or the Purchaser's duly authorised representative, warranting his authority
Signature of Auctioneer	_____

The Auctioneer, or the Auctioneer's duly authorised representative, warranting his authority

Signature of Witnesses

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

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

### SCHEDULE

#### Particulars of Purchaser

Full Name: \_\_\_\_\_

Identity Number \_\_\_\_\_

Spouses Name: \_\_\_\_\_

Identity Number: \_\_\_\_\_

How Married: \_\_\_\_\_

Residential Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Postal address; \_\_\_\_\_

Telephone No: (B) \_\_\_\_\_

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

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

Email address: \_\_\_\_\_

Other Details:

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**CONFIRMATION BY SELLER**

Name of Seller

**DRAKENSTEIN MUNISIPALITY**

Of (*physical address*)

CIVIC CENTRE BERGRIVIER BOULEVARD  
PAARL

Postal Address

P.O BOX 1. PAARL\_7646

Telefax Address

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Telephone Numbers

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Signature of Seller

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The Seller, or the Seller's duly authorised  
representative, warranting his authority

Signature of witnesses

1. 

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2. 

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Date of confirmation by Seller

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**ANNEXURES TO AGREEMENT**

**A-LOCALITY PLAN OF SUBJECT PROPERTY**

**B-CONDITIONS DRAKENSTEIN MUNICIPALITY**

**C-CONDITIONS AS PER PROPOSED ALIENATION OF ERF 11277**