

12 Johan Road,
Honeydew, 2040
Tel: 010 125 0322
Vat. No. 4310228319



P. O. Box 3126
Honeydew, 2040
info@barcoauctioneers.co.za
danika@barcoauctioneers.co.za

TERMS AND CONDITIONS OF SALE OF IMMOVABLE PROPERTY (PRIVATE TREATY)

PARTIES

The parties to this agreement are:

Mr/Ms: _____
ID: _____
Company: _____

in his/her capacity as THE TRUSTEES in the INSOLVENT ESTATE/ LIQUIDATION of:

I/E: _____
Master Ref No: _____

("Hereinafter referred to as the "**Seller**")

Full Name & Surname: _____
ID: _____
OR

Company: _____
Reg.No.: _____

("Hereinafter referred to as the "**Buyer**")

AND

Auctioneer Wesley Barnard
Company: BARCO Auctioneers (Pty) Ltd
Fidelity Fund Certificate Registration: 202505021000050

("Hereinafter referred to as the "**Agent**")

intends to and hereby offers for sale to prospective Purchasers the following property more fully described as:

1) PROPERTY DESCRIPTION:

Erf Description	_____
Address	_____
Suburb and City	_____
Co-ordinates	_____
Title Deed No.	_____
Registered area	_____
Municipality	_____
Province	_____

("the **Property**")

2) CONFIRMATION DATE:

The confirmation date shall be the date on which the Seller signs this agreement and all the necessary consents have been obtained to approve the sale.

3) PURCHASE PRICE (exclusive of V.A.T)

The Purchase price amounts to R _____ () *initial* _____

The Purchas price is payable as follows:

- a) The full amount in cash on date of confirmation
OR
- b) A Deposit of 10% of the purchase price payable on date of confirmation and the balance to be secured by an acceptable bank guarantee that must be furnished within 30 days of date of confirmation and payable upon date of registration of transfer.

4) OCCUPATION

- 4.1 The date of occupation for purposes of this agreement, is the date of registration of transfer of the property into the purchaser's name.
- 4.2 This date therefore does not refer to the actual date of the Purchaser moving into the property or receiving the keys hereto. The Seller cannot give any warranty or guarantee that the Purchaser will obtain vacant occupation of the property on that date, and the Purchaser shall have no claim of whatsoever nature against the Seller or its Agent, should vacant occupation not be obtained on the said date or at all.

4.3 The Seller will within reason assist the Purchaser at the Purchaser's expense, as may be reasonably necessary and/or required by law, to assist the Purchaser in obtaining vacant occupation of the property, but without the Seller obtaining any liability to pay for or effect any eviction itself, or obtaining any liability in respect of an unsuccessful eviction, or in respect of any damages suffered whatsoever by the Purchaser as a result hereof.

4.4 If the property is leased, this agreement is entered into subject to the right of the tenants under any existing lease agreement or law, as well as under the Rental Housing Act if applicable and from the date of occupation, the Purchaser accepts all pre-existing obligations and liabilities arising from any lease agreement with any tenants, notwithstanding any omission by either the Seller or Auctioneer to point out such obligations or liabilities.

4.5 The Seller does not guarantee vacant occupation of the Property.

5) AGENTS COMMISSION

The following party shall be liable to pay the Agent's Commission:

PURCHASER FALSE
SELLER TRUE

Amount of Agent's Commission: (5% of purchase price + VAT) R _____
()

6) CONVEYANCER:

Mr/Ms: _____
Company: _____
Contact No.: _____

7) COMMENCEMENT DATE

This agreement shall commence on date of confirmation.

**AGREEMENT OF SALE BY
PRIVATE TREATY INCORPORATING SCHEDULE**

The Seller hereby sells to the Purchaser who hereby purchases the property as defined in the Schedule on the following terms and conditions as read with the Schedule which is hereby incorporated and which the Purchaser warrants he has read and understood:

1) PROPERTY

The Property is as defined in the Schedule.

2) PURCHASE PRICE

- 2.1 The purchase price is payable by the Purchaser to the Seller as stipulated in the Schedule.
- 2.2 The deposit, if any, shall be paid by the Purchaser to the Seller's Agent in accordance with the Schedule and be held by the Agents in an interest bearing account for the benefit of the estate. Should the Purchaser not require any financing, the full purchase price will be payable within the period as stipulated in the Schedule to the Conveyancer to be invested for the benefit of the Purchaser in an interest bearing account.
- 2.3 Should the Purchaser need to obtain financing, the balance of the purchase price shall be secured by a guarantee acceptable to the Seller and in favour of the Seller (the guarantee shall be furnished by the Purchaser within the period as stipulated in the Schedule) payable free of bank commission upon registration, The agreement is not subject to the condition that the said guarantee be delivered within the time specified in the Schedule and failure by the Purchaser to furnish the guarantee shall constitute breach of contract.
- 2.4 The agreement is further subject to the conditions that the Seller and / or Master of the High Court must grant the required consent, if applicable. Should the consent of the Master of the High Court or any court be required before transfer of the property or any portion thereof can be registered in the name of the Purchaser, this agreement is subject to such consent being obtained and it shall fall away and be regarded as pro non scripto if such consent cannot be obtained. Neither secure creditor, nor the Seller, nor the Agent nor the estate shall be liable for any damages suffered by an unsuccessful Purchaser should the required consent be refused or withheld for any reason whatsoever.
- 2.5 It is placed on record that the secure creditor is not the owner of the property and even though the secure creditor might have approved the sale, the Seller may still in his unfettered discretion, without having to furnish any reasons, refuse the offer and accept another.
- 2.6 Should the suspensive conditions not be complied with through no fault of the Purchaser, this agreement shall lapse and become of no further force and effect. Should the Purchaser have taken occupation, the Purchaser shall then on demand by the Seller vacate the property and shall remain liable to pay the occupational rent until the date the Purchaser vacates. The Purchaser shall return the property in the same condition it was in as on date of confirmation. The clauses of this agreement dealing with the Purchaser's responsibilities in respect of occupation, payments of occupational rent, the return of the property in the same condition and the Seller's remedies for breach will however remain of full force and effect until such time as the property has been vacated and the Purchaser has complied with the remaining valid terms of the agreement. The terms of the agreement shall be severable and those parts of the agreement pertaining only to the sale of the property shall be severable from the rest of the agreement and shall remain of full force and effect. The void part of the agreement shall lapse and the deposit, paid by the Purchaser, shall be refunded without interest, but should the Purchaser fail to comply with the terms that remain valid, the deposit shall be reduced accordingly and the Purchaser shall remain liable should there be a shortfall. The remedies as stipulated in the clause dealing with breach shall in this case, without prejudice to any other remedy, be mutatis mutandis available to the Seller.

2.7 The Parties, including the AGENT (if applicable) agree that in the event the arrear rates and taxes, levies and or electricity or any other statutory liability in this regard exceeds the purchase price, this agreement shall become null and void and all monies paid by any PARTY shall be refunded.

initial

3) OCCUPATION, SERVICES, RISK AND ALTERATIONS

3.1 Possession of the property shall pass to the Purchaser upon date of registration of transfer.

3.2 Occupation, possession, risk, profit and loss shall pass to the Purchaser upon the date of registration of sale.

3.3 No party shall effect any alterations, improvements or additions to the property prior to the date of registration without the Seller's proper written consent and the Purchaser shall have no claim, whether enrichment or otherwise, against the Seller should he effect such alterations, improvements or additions, with or without consent and this clause shall remain of full force in spite of cancellation or voidness of this agreement.

3.4 The Purchaser shall not before date of registration sublet the Property or allow any one else to occupy it.

3.5 The Seller shall on date of registration terminate the agreement with the local authority for the rendering of services and the supply of water and electricity and the Purchaser shall at his own expense re-apply for such services.

3.6 The Seller does not warrant and affords no guarantee that he will be able to give occupation to the Purchaser.

3.7 Should the Purchaser fail to hand back all the keys that were on site on date of registration on demand for any reason on termination of his right to occupy, he shall be liable for the costs to gain access and to have all keys and locks replaced.

4) OCCUPATIONAL RENT

4.1 Should the Purchaser want to take occupation, the rent will be payable monthly in advance on or before the first business day each month and is payable to the Seller.

4.2 The monthly occupational rent shall be 1% (ONE) of the purchase price.

4.3 Arrear occupational rent shall bear interest at the prevailing prime rates from time to time, calculated daily from date it becomes due up to and until date of payment.

5) ENTOMOLOGIST's CERTIFICATE

- 5.1 The Seller shall not be liable for any damages, loss or inconvenience caused by any creature to the property irrespective of when the damages was caused and shall not be liable for the extermination of such creatures.
- 5.2 Should an entomologist's Certificate be called for by anyone, the Purchaser shall at his own expense obtain such certificate and the Seller shall not be liable for any costs incurred to render the property fit to obtain such a certificate.

6) VOETSTOOTS

- 6.1 The property is sold as described in the title deed subject to the servitudes and conditions contained therein, any preceding title deeds, leases or other real rights. The Seller shall not be liable for any lack or error in the description and size of the property that might be manifested upon it being surveyed and shall not be liable for any encroachment on or by the property of any kind.
- 6.2 The property is sold voetstoots as it is and the Seller does not afford any guarantees or warranties in respect of the buildings or any improvements on the property, including all building materials, irrespective of whether the defect, damage, error or shortcoming is latent, hidden, visible, structural or otherwise nor that it is fit for the purpose for which it was build or bought, irrespective of whether it is covered by the voetstoots clause at common law or not and the Seller shall not be liable for such defect, costs and damages. The clause shall be interpreted to favour the Seller should there be a dispute regarding the voetstoots clause.
- 6.3 The Seller shall not be required to indicate to the Purchaser the position of any beacon or surveyor beacon or border of the property and the Seller shall not be liable for the cost of determining same.
- 6.4 The Purchaser declares himself to be perfectly acquainted with the nature, zoning, extent, beacons, boundaries, location, servitudes, leases and title deed conditions of the property.
- 6.5 The Purchaser shall have no right of retention over the property arising from any cause whatsoever.
- 6.6 Neither the Seller, nor the Agent, nor the secured creditor, nor their agents made any representations to the Purchaser in respect of any aspect to induce the Purchaser to conclude this agreement.

7) ELECTRICAL COMPLIANCE AND INSTALLATION CERTIFICATE

The Purchaser shall prior to date of transfer obtain at his own expense a Certificate of Compliance in terms of the Regulations promulgated in terms of Act 6 of 1983, or any other substituting legislation. Should the electrical installation be fault, the Purchaser shall at his own expense have the electrical installation required at once and obtain the said Certificate.

8) REGISTRATION OF TRANSFER

Transfer of the property shall be effected by the Seller's conveyancers, as stipulated in the Schedule and shall be effected within a reasonable period after compliance with the terms of the agreement.

9) TRANSFER COSTS

The Purchaser shall be liable for payment of all costs of registration of transfer of the property including, but not limited to the following: transfer duty and or VAT; revenue stamps/ costs relating to the implementation of the agreement; mortgage loan costs (if applicable); attorneys fees, cost and expenses for conducting the transfer; deeds office fees and (arrear rates and taxes, sectional title levies and home owners association levies - as from date of confirmation until date of registration of transfer) payable on demand to the conveyancers. Should the above insolvent(s) be a registered V.A.T. vendor, the Purchaser shall in addition to the purchase price pay Value Added Tax on the purchase price, even though the Purchaser might have been unaware of this fact at the date of conclusion of this agreement. All the above costs shall be in addition to the purchase price and for the account of the Purchaser.

10) AGENT'S COMMISSION

- 10.1 The party as stipulated in the Schedule shall pay the Agent's commission (if any due in respect of this sale), with VAT (if applicable).
- 10.2 Should any party be in breach of the agreement the defaulting party shall be liable for payment of the Agent's commission on demand.
- 10.3 The parties acknowledge that the Agent is the only and effective cause of this transaction and that they were introduced to one another by the agent.
- 10.4 On signing of this agreement, the Agent hereby accepts all obligations and benefits bestowed upon him in terms of this agreement.

11) BREACH OF CONTRACT

- 11.1 Should the Purchaser fail to comply with any term of this agreement, the Seller, without prejudice to any right or remedy he might have in terms of this agreement or at common law, may do the following:
 - 11.1.1 By any of the means stipulated in the clause relating to "NOTICES", address a notice to the Purchaser at his domicilium citandi, notifying him of his breach and requesting him to remedy same within 7 (SEVEN) days.
 - 11.1.2 Cancel this agreement without further notice:
 - a) upon which the Purchaser will forfeit all monies paid by him in respect of this agreement as the reasonable pre-estimated liquidated damages without prejudice to any of the Seller's other rights in terms of this agreement to claim for damages suffered including special damages irrespective of whether such damages were contemplated by the parties at date of conclusion of the agreement,

and the Seller may recover from the Purchaser such damages as the Seller has suffered and in this regard the Seller shall be entitled to re-sell the property and to retain the aforesaid payments made by the Purchaser and any interest accrued thereon until such time as the Seller's damages have been determined and to apply the said payments and accrued interest towards the settlement of or reduction of such damages.

- b) and retake possession and occupation of the property
- c) and the seller may declare all monies paid to the Seller, where held in trust or otherwise and any interest accrued thereon, to be forfeited to the Seller as "rouwkoop" (the Purchaser hereby authorising all persons holding such monies in trust to pay them to the Seller on demand);

OR

- 11.1.3 Claim immediate payment of the whole balance outstanding and strict compliance with all terms of the agreement and damages, if applicable.
- 11.2 Should the Purchaser be in breach of the agreement the Purchaser shall be liable to the Agent for payment of the full amount of the commission and shall be liable to the conveyancer for all fees for work in respect of the transfer of the registration of the property and the registration of any bonds and the Seller may in summary manner issue summons against such a party for payment of the due amount.
- 11.3 Should any amount be due by the Purchaser in terms of this agreement, whether liquid, liquidated or unliquidated, a certificate issued by the Seller, stating the amount due, shall be *prima facie* proof of the Purchaser's indebtedness.

12) AMENDMENT

This written document constitutes the whole of the agreement between the parties and no amendment, variation, deletion or addition to this agreement or any agreement to cancel, including this clause, shall be valid unless reduced to writing and signed by all parties.

13) WAIVER

Notwithstanding anything to the contrary in this agreement whether express or tacit, no lenience, indulgence or extension of time by the Seller in respect of any matter will under any circumstances be deemed a waiver of the Seller's rights or waiver of any term of this agreement, including this clause, and the Seller shall at all times be entitled to strict compliance of every term of this agreement.

14) DOMICILIUM

The parties agree that their addresses as stipulated in the Schedule shall be their chosen domicili *Citandi et Executandi* for the purposes of all notices and legal processes. The domicile address may be changed by giving the other party 7 (SEVEN) days' notice prior to the new address becoming the new effective domicile address. The new domicile address must also include a physical address and may not be only a P.O. Box address or post restante, in the absence of which the old domicile address will remain of force.

15) MAGISTRATE'S COURT JURISDICTION

The parties hereby consent to the jurisdiction of the Magistrate's Court in terms of Section 28 of the Magistrate's Court Act, 1944, as amended, irrespective of the issue or dispute. The Seller may however in his sole discretion institute legal proceedings in any other competent court.

16) VACATING OF THE PROPERTY

The Purchaser and any other person occupying the property upon date of cancellation of this agreement or it becoming void or voidable for any reason whatsoever, shall be obligated to immediately vacate the property upon written request to the Purchaser's domicilium citandi. Any right of occupation is a direct consequence of this agreement and shall in no manner be interpreted as an agreement of lease.

17) LEGAL COSTS

Should any dispute resulting from this agreement cause the non defaulting party, Agent or conveyancer to incur legal expenses, such defaulting party shall be liable for payment of such costs on attorney client scale including tracing costs, costs of storage, transportation costs, auctioning costs and commission.

18) NOTICE

All notices shall be in writing and served at the other party's domicilium citandi address in any of the following manners:

- 18.1 By registered mail: the party receiving same shall be deemed to have received the notice within 7 days after the Post Office's stamp;
- 18.2 By hand: a dated acknowledgement of receipt shall serve as proof of receipt;
- 18.3 By fax; the fax slip shall be proof of receipt;
- 18.4 By sheriff: the return being proof.

19) CAPACITY OF PARTIES

19.1

Should a person (herein after styled "Signatory") sign this agreement on behalf of the Purchaser, the Purchaser, whether in existence yet or not, must within 14 (FOURTEEN) days of confirmation ratify the sale and should the Purchaser fail to do so or at any time breach any terms of this agreement, it shall be deemed that such Signatory signed this agreement in his personal capacity as Purchaser and personally contracted in his own name, and bought the property and the Signatory shall in his personal capacity be liable in terms of this agreement.

19.2 Should any Purchaser to this agreement be a company, close corporation, trust or other legal persona, the Signatory hereto guarantees that such entity has been registered according to statute or has been created at common law and is competent to act, that the acquisition of the property is in accordance with that entity's statute, articles, memorandum, rules or other documents authorizing it and that the Signatory is at law competent to sign this agreement on behalf of such entity. Should the Signatory breach the foregoing or should the entity no comply with the terms of the agreement the signatory shall be personally liable as Purchaser in terms of this agreement.

19.3 Should the signatory sign the agreement in his personal capacity but with a right to nominate a Purchaser whether a natural or juristic person:

- a) The Signatory shall remain liable personally as Purchaser unless the nominee has within 7 (SEVEN) days after confirmation notified the Seller that the nominee undertakes to be bound by this agreement;
- b) The Signatory and nominee shall be liable for additional transfer duty, VAT and transfer costs.

19.4 The parties and any person signing this agreement do hereby renounce the following legal exceptions, the meaning of which they declare themselves to be perfectly acquainted with: Beneficium exception excusacionis et divisionis, beneficium exceptio de duabus vel pluribus reis debendi, errore calculi, revision of accounts, exceptio non numeratae pecunia.

20) PAYMENTS

All payments made by the Purchaser in terms of this agreement shall be made during business hours and shall be free of banking commission, any retention and set-ff. The Purchaser shall obtain a valid receipt for any payments made shall produce same on request.

21) THE PURCHASER IS REFERRED TO SECTION 29A OF THE ALIENATION OF LAND ACT OF 1981, ACT NO 68 OF 1981 CONTAINING THE FOLLOWING PROVISIONS:

21.1 The Purchaser may within 5 days after date of signing of this agreement by him or his duly authorised agent revoke or terminate this agreement by written notice delivered to the Seller or Agent within the said period. In determining the period of 5 days the following days should be excluded: the date upon which the Purchaser signed the agreement, any Saturday, Sunday and public holiday.

21.2 The written notice is valid if signed by the Purchaser or his agent authorized thereto in writing, if it identifies this agreement, states that it is terminated or revoked and that it is unconditional.

21.3 Should the Purchaser revoke or terminate the agreement every party that received any money in terms of the agreement from the Purchaser, shall refund such money to the Purchaser within 10 (TEN) days after delivery of the said notice to the Seller or agent.

21.4 The Seller cannot waive his rights in terms of this clause.

21.5 Should the Purchaser sign a further agreement (Second agreement) for the Purchase of another peace of land within 5 (FIVE) days before exercising his right to revoke or cancel this agreement, it shall be deemed that he has exercised this right to revoke or cancel this agreement by signing the second agreement and must upon signing of the second agreement forthwith inform the Seller or Agent in writing of his revocation or termination of the earlier agreement. (***Failure by the Purchaser to forthwith inform the Seller of revocation or termination of this agreement, is a criminal offence and on conviction liable to a fine or imprisonment for a period not exceeding one year or to both such fines and imprisonment and the Seller may in addition exercise any civil remedy against the Purchaser due to his failure***)

21.6 The Purchaser shall have no right of revocation or termination as referred to in Section 29A in the following instances; if:

- a) The purchase price exceeds R250 000;
- b) The Purchaser be a trust or a person other than a natural person (Example: Company, Close corporation, etc.)
- c) The Purchaser and Seller has previously entered into an agreement of sale in resect of the same land and materially the same terms;
- d) The Purchaser has nominated another person to acquire the rights and obligations of the Purchaser in terms of the agreement;
- e) The Purchaser acquire the property by the exercising of an option which remains open to acceptance for a period of 5 days calculated mutatis mutandis as described above.

22) ACKNOWLEDGEMENT OF CONDITION AND LATENT DEFECTS

- 22.1 Use of Property - The Purchaser acknowledges that the property forming the subject of this agreement is not a newly constructed dwelling and has been previously occupied. The Purchaser accepts that signs of normal wear and tear may be present.
- 22.2 Inspection and Acceptance - The Purchaser confirms that they have personally inspected the property, or had the opportunity to do so, and accepts the property in its current condition.
- 22.3 Latent and Patent Defects - The Purchaser acknowledges awareness of the possibility of latent defects not visible upon reasonable inspection and accepts the risk of such defects, unless the Seller was aware of such defects and failed to disclose them fraudulently.
- 22.4 Voetstoots Sale - The property is sold "Voetstoots" (As is), with all defects, whether patent or latent, subject to applicable registration including the Consumer Protection Act and the Property Practitioners Act, where applicable.

22.5 Disclosure of known defects - The Seller confirms that all known defects, including but not limited to structural, electrical, plumbing, or damp related issues, have been disclosed to the Purchaser. A Signed defects disclosure form is annexed hereto as part of this agreement. (If applicable)

SIGNED at _____ on this the _____ day of _____ 202____

As witnesses:

1. _____ **PURCHASER**
2. _____ Duly authorised

Signature of Purchaser's Spouse
(if applicable)

SIGN HONEYDEW on this the _____ day of _____ 202____

As witnesses:

1. _____ **AUCTIONEER**
2. _____ Duly authorised and who accepts all
benefits hereby conferred

SIGNED at _____ on this the _____ day of _____ 202____

As witnesses:

1. _____ **SELLER**
2. _____ who warrants authority to sign this
agreement

**Schedule 1
SURETYSHIP**

I/we, the undersigned _____ do hereby bind myself / ourselves jointly and severally as Surety / is for and co-principal debtor / s in solididum with the Purchaser:
_____ (as defined in the Terms and Conditions of Sale to which this suretyship is attached) to and in favour of the Seller :

INSOLVENT ESTATE / LIQUIDATION / ESTATE LATE: _____ (delete whichever is not applicable)

_____ (as defined)

for the due and punctual payment and performance by the Purchaser of all obligations assumed in terms of the Terms and Conditions of Sale with which I/we acknowledge myself / our understanding thereof as well as my / our understanding of the renunciation.

Surety No. 1

Signature of Spouse
(if applicable)

SURETY NO. 1 Signature

Place of Signature _____
Date of Signature _____

Consent of Spouse (if applicable)

Full Name _____
Marital status _____
Street address _____

Postal address _____

As witnesses:

1. _____
2. _____

Name _____
Occupation _____
Name _____
Occupation _____

Surety No. 2

Signature of Spouse
(if applicable)

SURETY NO. 2 Signature

Place of Signature _____
Date of Signature _____

Consent of Spouse (if applicable)

Full Name _____

Marital status _____

Street address _____

Postal address _____

As witnesses:

1. _____

Name _____
Occupation _____

2. _____

Name _____
Occupation _____

SIGNED at _____ on this the _____ day of _____ 2024

As witnesses:

1. _____

_____ **SELLER**

2. _____

who warrants authority to sign this
agreement

**PURCHASER's FULL DETAILS
PRIVATE PERSON**

COMPANY

REGISTERED NAME :	<hr/>		
TRADE AS :	<hr/>		
REGISTRATION NUMBER:	<hr/>		
VAT NUMBER :	<hr/>		
INCOME TAX NUMBER :	<hr/>		
DIRECTORS :	(1) FULL NAMES: <hr/> ID: <hr/> CELL: <hr/> EMAIL: <hr/> (2) FULL NAMES: <hr/> ID: <hr/> CELL: <hr/> EMAIL: <hr/> (3) FULL NAMES: <hr/> ID: <hr/> CELL: <hr/> EMAIL: <hr/>		