

## GENERAL CONDITIONS OF SALE

### 1. PARTIES

1.1 The Parties to this agreement are:

1.1.1 **the Seller** (as referred to in the Particulars of Sale); and

1.1.2 **the Buyer** (as referred to in the Agreement of Sale).

1.2 The Parties agree as set out below.

### 2. INTERPRETATION AND DEFINITIONS

2.1 In this agreement, unless clearly inconsistent with or otherwise indicated by the context:

2.1.1 “**Agent**” means the Agent (as referred to in the Particulars of Sale);

2.1.2 “**Agreement**” means the general conditions set out in this document, the Agreement of Sale and the Particulars of Sale, and all appendices thereto;

2.1.2.1 “**Agreement of Sale**” means the documented titled “agreement of sale” found in the Data Room;

2.1.3 “**Business Day**” means any day which is not a Saturday, a Sunday or official Public Holiday in the Republic of South Africa and “day” shall mean an ordinary calendar day in the Republic of South Africa;

2.1.4 “**Buyer**” means the buyer as referred to in the Agreement of Sale;

2.1.5 “**Companies Act**” shall mean the Companies Act, 2008, as amended from time to time;

2.1.6 “**Competition Act**” means the Competition Act, No. 89 of 1998, as amended;

2.1.7 “**Completion Date**” means the day on which the last of the suspensive conditions, if any, to which this Agreement may be subject, is fulfilled;

2.1.8 “**Conveyancers**” means the conveyancers appointed by the Seller, being the conveyancers referred to in the Particulars of Sale;

2.1.9 “**Data Room**” means the electronic, virtual data room containing the documentation pertaining to the Enterprise, together with title and all other documentation;

2.1.10 “**Deposit**” means the deposit amount as recorded in the Particulars of Sale and Agreement of Sale;

- 2.1.11            **“Effective Date”** means the Completion Date, unless the Parties otherwise agree mutually in writing;
- 2.1.12            **“the Enterprise”** means the commercial concern which the Seller operates comprising the under mentioned asset/s:
- 2.1.12.1                  the Property; and
- 2.1.12.2                  all the Seller's right, title and interest in and to the Leases and to the revenues relating to the Property, if any,
- but excluding all liabilities up to the Effective Date;
- 2.1.12.3            **“Financial Institution”** means any one of the following registered financial institutions:
- 2.1.12.3.1                  ABSA Bank Limited;
- 2.1.12.3.2                  First Rand Bank Limited;
- 2.1.12.3.3                  Nedcor Bank Limited;
- 2.1.12.3.4                  Standard Bank of South Africa Limited;
- 2.1.12.3.5                  Investec Bank Limited; or
- 2.1.12.3.6                  any other financial institution that is acceptable to the Seller;
- 2.1.13            **“Guarantee Due Date ”** shall mean a date within 30 (thirty) days after the Effective Date, should this Agreement be subject to a guarantee;
- 2.1.14            **“Leases”** means the current lease agreements entered into between the Seller and tenants to be delivered to the Buyer as part of the due diligence pack, if any;
- 2.1.15            **“Particulars of Sale”** means the document titled “particulars of sale” found in the Data Room;
- 2.1.16            **“Parties”** means the Seller and the Buyer and “Party” shall mean any one of them as the context may indicate;
- 2.1.17            **“Property”** means the immovable property referred to in the Particulars of Sale, owned and registered in the name of the Seller, with all structures erected on the Property;
- 2.1.18            **“Purchase Price”** means the purchase price to be paid for the acquisition of the Enterprise as specified in the Agreement of Sale and clause 4 below;

- 2.1.19 "Rates" means assessment rates, refuse fees, sewerage fees, basic water fees and basic electricity fees and any other expenses payable in respect of the Property to any competent authority;
- 2.1.20 "Seller" means the seller as referred to in the Particulars of Sale;
- 2.1.21 "Signature Date" means the date of signature of this Agreement by the last Party to sign it;
- 2.1.22 "Transfer" means registration of transfer of the Property as referred to in this Agreement, into the name of the Buyer;
- 2.1.23 "Transfer Date" means the date of registration of transfer of ownership of the Property in the relevant deeds registry into the name of the Buyer;
- 2.1.24 "VAT" means Value-Added Tax levied in terms of the VAT Act;
- 2.1.25 "VAT Act" means the Value-Added Tax Act, No. 89 of 1991, as amended from time to time.
- 2.2 In this Agreement:
- 2.2.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.2.2 an expression which denotes:
- 2.2.3 any gender includes the other genders;
- 2.2.4 a natural person includes a juristic person and vice versa;
- 2.2.5 the singular includes the plural and vice versa; and
- 2.2.6 a Party includes a reference to that Party's successors in title and assigns allowed at law.
- 2.3 Any reference in this Agreement to:
- 2.3.1 "business hours" if referred to in this Agreement shall be construed as being the hours between 08h00 and 16h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
- 2.3.2 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "Business Day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.3.3 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or

- any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 2.3.4 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 2.3.5 "writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.
- 2.4 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.5 The words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on a Party have the same meaning.
- 2.6 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.7 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.
- 2.8 Unless otherwise provided, defined terms appearing in this Agreement in upper case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.9 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Sale Date and as amended or substituted from time to time.
- 2.10 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 day that is not a Business Day, the next succeeding Business Day.
- 2.11 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately following Business Day.
- 2.12 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time at the place where the obligation or act is required to be performed) on that day.

- 2.13 Schedules and appendices to this Agreement form an integral part of this Agreement. Words and expressions defined in this Agreement bear (unless otherwise stated) corresponding meanings in such schedules and appendices.
- 2.14 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.15 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.16 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.17 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a Party to this Agreement;
- 2.18 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.19 Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.20 In this Agreement the words "clause" or "clauses" refer to clauses of this Agreement.

### 3. **SALE**

#### 3.1 **Sale of Property only**

- 3.1.1 In the event that the transaction concerns only the sale of the Property (the Property being vacant and not subject to any Leases), the Seller sells to the Buyer, who purchases the Property with effect from the Transfer Date, from which date all risk and benefit attaching to the Property shall vest in the Buyer; and
- 3.1.2 Possession and control of the Enterprise will be given to the Buyer on the Transfer Date from which date it will be at the sole risk, loss or profit of the Buyer.

#### 3.2 **Sale of Enterprise**

- 3.2.1 In the event that the transaction concerns the sale of the Enterprise, the Seller sells to the Buyer who purchases the Enterprise with effect from the Transfer Date, as a going concern, from which date all risk and benefit attaching to the Enterprise shall vest in the Buyer.

- 3.2.2 Possession and control of the Enterprise will be given to the Buyer on the Transfer Date from which date it will be at the sole risk, loss or profit of the Buyer.
- 3.2.3 The subject matter of this transaction is the Enterprise conducted by the Seller inclusive of all its constituent parts, as an indivisible transaction.
- 3.2.4 The Enterprise is sold free of any liabilities and debts whatsoever up to the Transfer Date and the Seller to that end shall be liable for and pay all the liabilities and debts and fulfil all obligations of the Enterprise up to the Transfer Date, and hereby indemnifies the Buyer in respect of all liabilities, debts, and obligations of the Enterprise, the cause of action of which arose prior to the Transfer Date.

#### 4. **PURCHASE PRICE AND PAYMENT**

- 4.1 The Purchase Price payable by the Buyer to the Seller in consideration for the sale contemplated in clause 3 shall be the amount referred to in the Agreement of Sale.
- 4.2 The Purchase Price is payable by the Buyer to the Seller in cash on the Transfer Date and shall be discharged in the manner set out in clause 5 below.

#### 5. **TERMS OF PAYMENT**

- 5.1 The Purchase Price shall be paid or secured as follows:
- 5.1.1 The Deposit (if applicable) shall be paid to the Seller's Conveyancers to be held in trust and invested in an interest-bearing account for the benefit of the Buyer. The Deposit shall be paid within the time period as indicated in the Agreement of Sale or the fulfilment of suspensive conditions (if applicable).
- 5.1.2 The Purchase Price shall be secured by a cash deposit or an acceptable bank guarantee in the customary form utilised by the relevant bank which issues such guarantee in favour of the Seller, payable at **Johannesburg** on registration of transfer of the Property into the name of the Buyer as certified by the Conveyancers. The Parties record that the sale as set out herein is subject to the grant of a loan to the Buyer to provide for all or part of the Purchase Price, as stipulated in Annexure A hereto.
- 5.1.3 The aforesaid guarantee shall be furnished by the Buyer to the Conveyancer on the Guarantee Due Date.

#### 6. **VALUE ADDED TAX**

- 6.1 In the event that the transaction concerns the sale of the Enterprise (including both of clauses 2.1.12.1 and 2.1.12.2), the Parties warrant to one another that they are (or will as at the Transfer Date be) both registered vendors within the meaning of the VAT Act.
- 6.2 The Parties record and agree that:

- 6.2.1 the Enterprise is capable of separate operation;
  - 6.2.2 the Enterprise is disposed of as a going concern;
  - 6.2.3 the Enterprise will remain active and operating until its transfer to the Buyer;
  - 6.2.4 the Enterprise will be an income earning activity on the date of its transfer to the Buyer;
  - 6.2.5 all the assets which are necessary for carrying on the Enterprise are disposed of by the Seller to the Buyer;
  - 6.2.6 by reason of the provisions of section 11(1)(e) of the VAT Act this transaction is subject to the payment of VAT at a rate of 0% (zero percent); and
  - 6.2.7 the Purchase Price includes VAT at a rate of 0% (zero percent).
- 6.3 If, notwithstanding the provisions of 6.2, VAT is or becomes payable by the Seller in respect of this transaction at a rate other than 0% (zero percent) then the Buyer shall pay to the Seller an amount equal to the VAT so payable forthwith on demand against delivery by the Seller to the Buyer of the documentation required in terms of the VAT Act to permit the Buyer to claim a deduction in respect of such VAT in terms of section 16(3) of the VAT Act.

## 7. OCCUPATION

- 7.1 The Parties shall record that the improvements on the Property are let to tenants, if any, as set out in the schedule of leases to be included in the due diligence information.
- 7.2 Occupation shall therefore be given to the Buyer on the Transfer Date but subject to the rights of existing tenants.

## 8. POSSESSION

- 8.1 Possession of the Enterprise including the Property shall be given by the Seller to and be taken by the Buyer on the Transfer Date from which date and save as otherwise provided for in this Agreement:
  - 8.1.1 all the benefit of and risk of ownership of the Property shall pass to the Buyer;
  - 8.1.2 the Buyer shall be liable for all Rates and other imposts levied on the Property.

## 9. WARRANTIES

- 9.1 The Seller warrants as at the Signature Date and the Transfer Date that:
  - 9.1.1 it is the registered owner of the Property and will have the absolute right to dispose thereof in accordance with the terms of this Agreement;
  - 9.1.2 no other party or parties have purchased the Property or has/have any option to do so or a right of first refusal in respect thereof;

9.2 Save for the warranties provided in clause 9.1 above, the Property is sold subject to all conditions of title and registered servitudes and furthermore subject to the provisions of the relevant town planning scheme.

9.3 The Seller is not obliged to point out any pegs or beacons relating to the Property nor is it responsible for the cost of locating them.

## 10. TRANSFER

10.1 Transfer shall be effected by the Conveyancers:

10.1.1 as soon as possible after the Effective Date;

10.1.2 at the cost of the Buyer who shall be responsible for all costs of and incidental to the transfer including all VAT, if applicable, and other transfer costs; and

10.1.3 after the Parties have complied with their obligations in terms of this Agreement.

10.2 The Seller and the Buyer hereby undertake in favour of each other within 5 (five) Business Days after being required by the Conveyancers to do so, to complete and/or sign all documents necessary to effect transfer of the Property into the name of the Buyer.

10.3 The conveyancing fees, for which the Buyer shall be liable, shall be those set out in the guide line tariff issued by the Law Society of South Africa.

## 11. DEFECTS

11.1 To the Seller's knowledge and belief, the Property is free from defects, other than such defects disclosed by the Seller to the Buyer in terms of clause 11.2.

11.2 The Seller acknowledges and agrees that in relation to the physical condition of the Property, it shall –

11.2.1 disclose in writing to the Buyer any defects in the Property known to the Seller that may materially affect the value of the Property and that cannot be discovered by a reasonable inspection by an ordinary prudent Buyer;

11.2.2 complete and provide to the Buyer in writing, a list of any such defects of which it is aware;

11.2.3 deliver the Property to the Buyer in substantially the same general condition as it was on the date of signature of the Agreement, ordinary wear and tear excepted.

## 12. ADJUSTMENT ACCOUNT

12.1 The Seller shall prepare an Adjustment Account in respect of the Enterprise sold as at the Transfer Date and deliver such Adjustment Account to the Seller by no later than 90 (ninety) days after the Transfer Date.



- 12.2 Payment of any monies due to any Party in terms of the Adjustment Account shall not constitute part of the Purchase Price of the Enterprise sold and shall be effected separately from the payment of such Purchase Price.
- 12.3 The Adjustment Account shall reflect:
- 12.3.1 as at the Transfer Date, as credits to the Seller:
- 12.3.1.1 all charges for Rates, including levies and duties on charges for electricity and water, pre-paid for any period after the Transfer Date in respect of the Property;
- 12.3.1.2 the amounts of any levies, insurance premiums and any other charges of a like nature, including special levies pre-paid for any period after the Transfer Date in respect of the Property;
- 12.3.1.3 all rental and other amounts received by the Buyer applicable to any period before the Transfer Date;
- 12.3.2 as at the Transfer Date, as debits to the Seller:
- 12.3.2.1 all charges for Rates, including levies and duties on charges for electricity and water for any period before the Transfer Date, not paid as at that date in respect of the Property;
- 12.3.2.2 the amount of any levies, insurance premiums and any other charges, including special levies, for any period before the Transfer Date not paid at that date in respect of the Property;
- 12.3.2.3 all deposits held by the Seller and all rentals paid to the Seller in respect of any period after the Transfer Date.
- 12.3.3 as at the Transfer Date, as debits to the Buyer:
- 12.3.3.1 all charges for Rates, including levies and duties on charges for electricity and water, pre-paid by the Seller in respect of the Property for which the Buyer enjoys a benefit after the Transfer Date;
- 12.3.3.2 the amounts of any levies, insurance premiums and any other charges of a like nature, including special levies for any period after the Transfer Date, pre-paid by the Seller in respect of the Property for which the Buyer enjoys a benefit after the Transfer Date;
- 12.3.3.3 all rental and other amounts received by the Buyer applicable to any period before the Transfer Date;
- 12.3.3.4 as at the Transfer Date, as credits to the Buyer, the amounts referred to in clause 12.3.2.

12.4 Any amount payable by any Party to another Party in terms of the Adjustment Account, shall be paid within 7 (seven) days of the date of receipt of the Adjustment Account.

12.5 If the Parties are unable to reach agreement regarding the calculation of the amount to be paid by either Party to the other in terms of the Adjustment Account, then either Party may by notice in writing to the other refer the dispute to an independent auditor agreed upon between the Parties, or failing agreement, appointed by the Chairperson for the time being of the South African Institute of Chartered Accountants, who shall make a determination as soon as possible after such referral and whose determination (including any order as to costs) shall be final and binding (in the absence of manifest error) on the Parties.

### 13. DELIVERY OF ENTERPRISE AND LEASES

13.1 The Buyer acknowledges that the Property and the improvements thereon may be occupied by tenants in terms of the Leases which, if any, shall be included in the due diligence pack, and shall be located in the Data Room. The Buyer acknowledges that it has considered the Leases in accordance with clause 2 of Annexure A.

13.2 The Seller hereby cedes its rights and assigns its obligations in terms of the Leases to the Buyer with effect from the Transfer Date, which the Buyer hereby accepts.

13.3 The Enterprise (including the Leases, if any) shall be delivered to the Buyer with effect from the Transfer Date.

13.4 The Buyer agrees and undertakes forthwith within 14 (fourteen) days after the Transfer Date to enter into the relevant service contracts with the local authority and any other supplier of services to the Property and to pay the requisite deposits and otherwise comply with the provisions of the agreements required by such entities to enable the Seller to apply for and obtain the requisite refunds in respect of payments which extend beyond the Transfer Date.

13.5 The Conveyancers are hereby authorised to apply to the local authority for a refund of any rates, taxes and other outgoings paid by the Seller for any period after the Transfer Date.

### 14. COMMISSION

14.1 The Seller and Buyer acknowledge that the Agent was the effective cause of this sale, and as such is entitled to agent's commission at a percentage of the Purchase Price (excluding VAT) plus VAT on such commission, which commission percentage is referred to in the Particulars of Sale.

14.2 The Seller shall pay the aforesaid agent's commission and such commission shall be deemed to have been earned on signature of this Agreement and fulfilment of any suspensive conditions as set out in Annexure D, or upon cancellation of this Agreement, but shall be payable to the Agent on the Transfer Date, or cancellation of this Agreement, as the case may be.

14.3 The Seller, by its signature hereto, hereby specifically and irrevocably instructs the Conveyancers to make payment of the agent's commission as contemplated by clause 14.2 above, as a first charge against the proceeds of the sale.

14.4 Notwithstanding the provisions of clause 14.2 or any other provision in this Agreement, should this Agreement be cancelled by the Seller as a result of default or breach of the terms of this Agreement by the Buyer, the Buyer shall be liable for the agent's commission arising out of this Agreement.

15. **FINANCIAL INTELLIGENCE CENTRE ACT, NO 38 OF 2001 ("FICA")**

15.1 The Buyer shall within 7 (seven) days of the Effective Date furnish the Seller and the Conveyancers with such of the information and documentation as the Seller, the Agent and the Conveyancers may require for FICA purposes.

16. **INSOLVENCY NOTICES**

16.1 The Parties record that they have dispensed with the publishing of the advertisement referred to in Section 34 of the Insolvency Act, No 24 of 1936 (as amended).

16.2 Should, as a result of such advertisement not being published in terms of that Act, any creditor or other person object to the transfer of the Property and the Leases (if any) or institute proceedings against the Seller or claim any monies due by the Seller, then the Seller shall pay the creditor, on demand, all amounts due.

16.3 The Seller hereby indemnifies the Buyer against any loss or damage which the Buyer may suffer as a result of the advertisement not being published.

16.4 Notwithstanding the foregoing, the Parties record that:

16.4.1 the Seller is not a "trader" within the meaning of Section 34 of the Insolvency Act; and accordingly this transaction:

16.4.1.1 is not subject to the provisions of Section 34 of the Insolvency Act; and

16.4.1.2 does not require to be advertised in accordance with the provisions of Section 34 of the Insolvency Act.

17. **EMPLOYEES**

Section 197(2) of the Labour Relations Act 66 of 1995 ("**the LRA**") shall be applicable in relation to any employees of the Seller employed at the Property ("**the Employees**"). Accordingly the Purchaser will automatically be substituted as the new employer in the place and stead of the Seller as the old employer, in respect of all contracts of employment in existence, if any, as at the

Condition Fulfilment Date between the Seller and the Employees in respect of the Business (a list of whom shall be provided in the Data Room).

## 18. DOMICILIUM AND DELIVERY OF NOTICES

- 18.1 The Buyer and the Seller hereby respectively choose domicilium citandi et executandi for all purposes as set out in the Agreement of Sale.
- 18.2 Any notice given in terms of this Agreement shall be in writing and shall:
- 18.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 18.2.2 if sent by e-mail, on the next Business Day following the date of a correctly addressed e-mail.
- 18.3 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such party.

## 19. NO WAIVER

Any latitude which may be allowed by one Party to the other in respect of any obligation of the other Party to this Agreement, shall not in any circumstances be deemed to be a waiver of the Parties rights at any time and without notice, to require strict compliance with its terms and conditions.

## 20. BREACH

- 20.1 In the event of either Party failing to comply with any of the material provisions of this Agreement promptly and on due date and remaining in default for a period of 7 (seven) days after receipt by it of a written notice calling upon it to remedy its breach, the Party suffering under the breach shall have the right or option either:
- 20.1.1 to demand specific performance of this Agreement and to take such action as may be necessary in order to implement and fulfil its rights in terms hereof and to recover any damage which it may suffer as a result of the defaulting Party's breach of contract;
- 20.1.2 forthwith to cancel this Agreement and claim such damages as the Party suffering the default may have suffered as a result of the other Party's breach of contract.
- 20.2 A breach of this Agreement shall be deemed to be material if:
- 20.2.1 it is incapable of being remedied by payment, goes to the root of this Agreement, and the defaulting Party fails to remedy it within 7 (seven) days of receipt of written demand from the other Party: or

- 20.2.2 it is capable of being remedied by payment, goes to the root of this Agreement, and the Defaulting Party fails to remedy the breach or make the payment in question within 7 (seven days of receipt of written demand from the other Party.
- 20.3 In the event that it is the Buyer which is in breach of this Agreement, and in the event that the sale is cancelled by the Seller, then in that event, without prejudice to any other rights the Seller may have, the Seller shall have the election:
- 20.3.1 to require that the deposit, together with accrued interest, be forfeited to it as rouwkoop or as a genuine pre-estimate of liquidated damages or as a penalty in which event the Conveyancers are hereby authorised to release the deposit together with the accrued interest to the Seller; or
- 20.3.2 to require that the deposit continue to be held in trust until such time as the Seller's damages have been determined by agreement or by a court of competent jurisdiction in which event such damages shall be set off against such deposit and the conveyancers are hereby authorised to account to the Parties for any amount which may be due to either party as a result.

## 21. COMPLIANCE CERTIFICATES

- 21.1 The electrical installation of the Property hereby sold is to be inspected and tested by an accredited electrician, who shall furnish the Buyer with a fresh Certificate of Compliance with regard to the said electrical installation. The cost of inspection and any work required to be done to the electrical installation before the Certificate of Compliance can be issued, shall be effected at the expense of the Seller.
- 21.2 Insofar as it is a requirement of the abovementioned legislation that any electric fence which may surround the property be inspected and tested by an accredited person as defined in the relevant regulations, the Seller shall bear the cost of any inspection and any work required to be done to the electrical fence before any certificate can be issued at the Seller's cost and expense.
- 21.3 The Seller shall not be obliged to obtain an Entomologist's Certificate, unless otherwise agreed in writing.

## 22. CONFIDENTIALITY

Unless otherwise agreed, the Parties shall at all times during and after the continuance of this Agreement, hold confidential and not disclose to any third Party, the terms of this Agreement, any confidential information, reports or documents received by it pursuant to, or in the course of the negotiations leading to this Agreement and any calculations, conclusion or determinations thereon, nor any of the terms and conditions of this Agreement, except as required by law. The Parties shall, however, be permitted to disclose confidential information to their auditors, consultants, professional advisors or cessionary/ies under obligation of confidentiality.

23. **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the parties other than those set out herein are binding on the parties.

24. **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

25. **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

26. **JURISDICTION**

The Parties hereby irrevocably and unconditionally submit to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that division) in regard to all matters arising from this Agreement.

27. **COSTS**

Each Party shall be liable for its own costs of and incidental to the preparation, negotiation and conclusion of this Agreement.

28. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the Signature Date of the Party last signing one of the counterparts.

29. **OFFER AND ACCEPTANCE**

This Agreement, when signed by the first party to sign it, constitutes an offer to the other party which must be accepted by not later than **5 (five) days**, failing which it shall lapse and become null and void and of no force or effect.

## **ANNEXURE A – SUSPENSIVE CONDITIONS**

### **1. RESOLUTION**

Should this sale result in the Seller disposing of the whole or greater part of its assets, then receipt of written approval of the shareholders of the Seller in general meeting as a special resolution shall be obtained in terms of Section 112 of the Companies Act, consenting to the disposal by the Seller of the Property in accordance with the terms of this Agreement within 14 (fourteen) days from the Signature Date. Proof of the passing of such resolution shall be furnished to the Buyer in the form of a resolution of shareholders, duly certified by the Chairman/Secretary of the Company as being a true copy of the resolution which was passed at the general meeting held for this purpose as soon as reasonably possible after such meeting has been held.

### **2. DUE DILIGENCE**

- 2.1 The Buyer shall be entitled to conduct and complete a due diligence investigation in respect of all matters affecting the Property including title deed conditions, zoning as also the building itself. To this end, the Seller agrees and undertakes to make available to the Buyer all documents and other information in the Seller's possession relating to the Property which the Buyer may reasonably require for this purpose. The Seller agrees to render reasonable assistance in this regard. A detailed due diligence document checklist will be sent to the Seller on the 1 (one) business day after the Signature Date, who shall endeavour to timeously ensure the relevant documentation is delivered to the Buyer.
- 2.2 The Buyer shall issue a notice of satisfaction in writing to the Seller to reach the Seller within 30 (thirty) business days of the Signature Date. Should the due diligence not result in a notice of satisfaction, this agreement shall be null and void and of no force or effect.

### **3. FINANCE**

The Buyer obtaining finance sufficient for its requirements upon terms and conditions acceptable to it. The Buyer shall issue a written notice of such by the Guarantee Due Date.

### **4. COMPETITION APPROVAL**

- 4.1 This Agreement shall be of no force or effect unless, and if applicable, the requisite approval of the Competition Authority concerned is obtained (or is deemed to have been obtained) in accordance with the provisions of Section 14 or 14A (as the case may be) of the Competition Act, within 45 (forty five) Business Days of the Signature Date.

- 4.2 If by virtue of the provisions of Section 13A of the Competition Act the approval of any of the Competition Authorities is required for the implementation of this Agreement then:
- 4.2.1 the Seller shall within 21 (twenty one) Business Days after the Signature Date notify the Competition Authority concerned in accordance with the provisions of Section 13A of the Competition Act of the conclusion of this Agreement;
- 4.2.2 the Buyer shall forthwith upon being requested to do so provide the Seller with all information reasonably required by the Seller for purposes of notifying the Competition Authority concerned as contemplated in clause 4.2.1 above and shall generally give the Seller every assistance that may be reasonably required by it for that purpose;
- 4.2.3 all filing fees and other amounts payable to the Competition Authorities or to the practitioner attending to the filing arising from or in connection with the conclusion of this Agreement and/or any notice to be given to the Competition Authorities in accordance with the provisions of clause 4.2.1 above shall be borne and paid by the Buyer on demand.
- 4.3 Notwithstanding the provisions of this clause 4, both Parties shall be entitled to seek independent advice as to whether this transaction is notifiable or not. In the event that the advice given to each of the two Parties is unanimous in that no notification is necessary, the Parties shall be entitled to elect not to notify. If, however, such independent advice is not unanimous, notification shall be necessary.
5. The Seller and the Buyer may, in writing, prior to the expiry of the time periods stated above, extend the time periods for the fulfilment of the suspensive conditions by such further periods as they may agree, in writing.
6. The suspensive conditions referred to in clauses 1, 2 and 3 above are statutory in nature and may not be waived or relaxed.
7. The Parties shall use all reasonable endeavours to procure the timeous fulfilment of the suspensive conditions.
8. Should the suspensive conditions not be fulfilled within the time periods stated herein or such extended period as may be reasonably agreed by the parties, as stated in clause 6, then this agreement shall cease to be of any force or effect and the parties will be restored to their status quo ante.