

2. DEFINITIONS AND INTERPRETATION

2.1. In this Agreement, if applicable and unless the context indicates a contrary intention, the words and expressions recorded below shall bear the meanings assigned to them, cognate expressions bear corresponding meanings, and the provisions of Clauses 2.1.1 to 2.8 shall apply in the interpretation of this Agreement:

2.1.1. "Additional Claim Schedule" shall mean each additional claim schedule containing information relating to any Additional Payment to be made in relation to the sale of the Claim to the Discounter;

2.1.2. "Additional Payment" shall mean any additional amount paid by the Discounter to the Property Practitioner in respect of the Claim as set out in any Additional Claim Schedule executed by the Parties prior to the Registration Date;

2.1.3. "Agreement" shall mean these Terms and Conditions together with the Claim Schedule as signed inter alia by the Property Practitioner, Property Agency and Discounter;

2.1.4. "Claim" shall mean the Property Practitioner's legal rights to claim payment of the Property Practitioner's Commission upon the registration of the transfer of the Property into the name of the Purchaser;

2.1.5. "Claim Schedule" shall mean the schedule of information relating to the sale of the Property Practitioner's Claim to the Discounter, which has been signed by the Property Practitioner and Discounter and which forms part of and is subject to these Terms and Conditions;

2.1.6. "Conveyancer" shall mean the person, firm or entity appointed to attend to the registration of the transfer of the Property pursuant to the Sale Agreement in the appropriate Deeds Registry as set out in the Claim Schedule and/or Additional Claim Schedule;

2.1.7. "The Discounter" shall mean Bridgeworks Capital (Proprietary) Limited, Registration Number: 2023/672650/07 of 71 4th Street, Houghton Estate, JHB, South Africa;

2.1.8. "Discounting Fee" shall mean the fee payable by the Property Practitioner to the Discounter as calculated and determined in accordance with and as set out in the Claim Schedule and/or Additional Claim Schedule;

2.1.9. "Initial Payment" shall mean the initial amount payable by the Discounter to the Property Practitioner (as part of the Purchase Price) as set out in the Claim Schedule;

2.1.10. "Interest Rate" shall mean the maximum rate of interest permissible from time to time in terms of the National Credit Act 2005 and any regulations or notices promulgated in terms thereof;

2.1.11. "The Property" shall mean the immovable property as described in the Sale Agreement and the Claim Schedule;

2.1.12. "Property Agency" shall mean the party referred to as such in the Claim Schedule;

2.1.13. "Property Practitioner's Commission" shall mean the commission amount payable to the Property Practitioner (Incl VAT, if applicable) as set out in the Claim Schedule;

2.1.14. "Property Practitioner" shall mean the party referred to as such in the Claim Schedule who is entitled to be paid the Property Practitioner's Commission and who is selling the Claim to the Discounter;

2.1.15. "Purchaser" shall mean the purchaser of the Property as described in the Sale Agreement;

2.1.16. "Purchase Price" shall mean the amount payable by the Discounter to the Property Practitioner as determined in accordance with the terms of this Agreement, for the Claim, as set out in the Claim Schedule and/or Additional Claim Schedule;

2.1.17. "Registration Date" shall mean the date on which transfer of the Property from the Seller to the Purchaser is registered in the appropriate Deeds Registry;

2.1.18. "Sale Agreement" shall mean the written agreement of sale in respect of the Property concluded between the Seller and the Purchaser through the Property Agency and/or Property Practitioner thereby giving rise to the Claim;

2.1.19. "Seller" shall mean the seller of the Property as described in the Sale Agreement;

- 2.1.20. "Settlement Date" shall mean the date on which the Discounting Fee is paid in full to the Discounter in terms of this Agreement;
- 2.1.21. "Signature Date" shall mean the latest date the Claim Schedule is signed by the parties thereto; and
- 2.1.22. "Termination Date" shall mean the date on which the Discounter terminates this Agreement in terms of Clauses 3.5 and/or 3.6.
- 2.2. Clause headings are for convenience only and are not to be used in its interpretation.
- 2.3. An expression, which denotes any gender, includes the other genders, a natural person includes a juristic person and vice versa, and the singular includes the plural and vice versa.
- 2.4. Any substantive provision, conferring rights or imposing obligations on a party and appearing in any of the definitions in this Clause 1 or elsewhere in this Agreement, will be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.5. Words and expressions defined in any clause will, 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.
- 2.6. This Agreement incorporates the Claim Schedule, which Claim Schedule will have the same force and effect as if set out in the body of this Agreement.
- 2.7. Signature of the Claim Schedule by the Property Practitioner shall constitute an offer by the Property Practitioner to the Discounter for the purchase of the Property Practitioner's Claim and signature of the Claim Schedule by the Discounter shall constitute the Discounter's acceptance of the offer, whereupon a valid and binding agreement for the sale and cession of the Claim, subject to these Terms and Conditions, shall be deemed to have come into effect.
- 2.8. By Signing the Claim Schedule, the Property Practitioner consents to the Discounter performing any credit enquiries and/or searches that the Discounter may deem necessary in order to assess its risk.

3. TERMS AND CONDITIONS

3.1. SALE AND CESSION

- 3.1.1. The Property Practitioner hereby sells the Claim to the Discounter and the Discounter hereby purchases such Claim upon and subject to the terms and conditions recorded in this Agreement.
- 3.1.2. Upon the execution of the Claim Schedule by the Property Practitioner and the Discounter, the Property Practitioner cedes, transfers and makes over to the Discounter, any right, title and interest in and to the Claim and the Discounter accepts such cession upon the terms and conditions recorded herein.
- 3.1.3. The Property Practitioner is responsible for ensuring that the Seller and/or Property Agency provide written authorization and instructions to the Conveyancer to pay the Property Practitioner's Commission to the Discounter. Furthermore, the Property Practitioner shall ensure that the Conveyancer provides the Discounter with a written undertaking, in an acceptable form, in which the Conveyancer irrevocably undertakes to paying the Discounter the specified amount on the Registration Date.

3.2. ASSUMPTION OF OBLIGATIONS AND OWNERSHIP AND RIGHT OF THE DISCOUNTER TO CANCEL THIS AGREEMENT

- 3.2.1. Notwithstanding anything to the contrary contained in this Agreement and for the avoidance of doubt, the Discounter does not assume the obligations of the Property Practitioner under the Sale Agreement, or otherwise in relation to the Property, all of which remain with the Property Practitioner.
- 3.2.2. Ownership in and to the Claim shall pass to the Discounter upon payment by the Discounter of the Initial Payment as set out in the Claim Schedule and the cession and transfer shall thereupon be of full force and effect without any further act of delivery being required.

3.3.3. Notwithstanding anything to the contrary contained herein, the Discounter shall be entitled, upon written notice to the Property Practitioner, to cancel this Agreement at any time after the Signature Date but prior to payment having been made by it to the Property Practitioner in terms of Clause 3.3, if the Discounter, in its sole discretion, for any reason considers it necessary or desirable that it should do so in order to protect its interests.

3.3. PAYMENT OF THE PURCHASE PRICE

3.3.1. The Discounter shall pay the Initial Payment and/or Additional Payment as set out in the Claim Schedule and/or Additional Claim Schedule to the Property Practitioner within 2 (Two) business days after:

3.3.1.1. acceptance of the Property Practitioner's offer in respect of the Claim as set out in the Claim Schedule and/or Additional Claim Schedule; and

3.3.1.2. receipt of the written undertaking from the Conveyancer together with such other security or documentation as the Discounter may reasonably require.

3.3.2. The Purchase Price shall be reduced by an amount equal to the Discounting Fee as at the Settlement Date.

3.3.3. If on the Registration Date or date of termination of this Agreement, as the case may be, the Purchase Price has been reduced, as contemplated in Clause 0, by an amount calculated to be greater than the difference between the Purchase Price and the Initial Payment and/or Additional Payment, resulting in an overpayment of the Purchase Price by the Discounter, then the Property Practitioner shall repay the amount of such overpayment to the Discounter upon written demand, together with interest thereon at the Interest Rate, calculated from the date of the demand to the date of payment.

3.4. WARRANTIES

The Property Practitioner warrants, represents and undertakes to the Discounter as follows:

3.4.1. the Sale Agreement is valid and enforceable in all respects and in particular:

3.4.1.1. was completed in every respect before signature;

3.4.1.2. was completed within the ambit of the provisions of the Alienation of Land Act No. 68 of 1981, as amended, insofar as it may be applicable, as well as any regulations published thereunder; and

3.4.1.3. all suspensive and/or resolute conditions as contemplated in the Sale Agreement have either been fulfilled or waived (as the case may be);

3.4.2. the Property Agency has, as at the date hereof, fully and timeously discharged all its obligations as a property practitioner in terms of the Sale Agreement and shall continue hereafter to do so;

3.4.3. the Property and all structures thereon, which constitutes the subject matter of the Sale Agreement, is fit for the purpose intended and is not subject to any patent or latent defects known to the Property Practitioner and not disclosed to the Purchaser;

3.4.4. the Property Practitioner is owed the Property Practitioner's Commission and is not obliged to split or share the Property Practitioner's Commission with any third party and save as expressly provided for in the Sale Agreement, no commission or other amount is or shall be due to any Property Practitioner or other person as a result of the conclusion of the Sale Agreement;

3.4.5. all documents relevant to the Sale Agreement have been delivered to the Discounter;

3.4.6. the Property Practitioner is not aware of any fact, matter or circumstance pertaining to the Seller or the Property, which might prevent the Property from being transferred to the Purchaser in accordance with the Sale Agreement or which might cause the Registration Date to be delayed by more than 90 (Ninety) days after the Signature Date and shall forthwith notify the Discounter in writing in the event of the Sale Agreement being cancelled, or if any dispute arises between the parties thereto, or any reason exists as to why the registration of the transfer may not proceed within the 90 (Ninety) day period referred to above;

- 3.4.7. the Property Practitioner's Commission will be due, owing, and payable to the Property Practitioner upon the registration of the transfer of the Property into the name of the Purchaser;
- 3.4.8. the Discounter shall not be required to do anything (other than comply with this Agreement) or to pay any amount in order to procure the transfer of the Property to the Purchaser;
- 3.4.9. the Sale Agreement or any part thereof will not be amended or altered in any way prior to the Registration Date, without the prior written approval of the Discounter;
- 3.4.10. the Property is not subject to any interdict, caveat of whatsoever nature or attachment in terms of a Warrant of Execution or any similar Court process;
- 3.4.11. the Claim or any part thereof is not subject to a prior cession, pledge or similar encumbrance;
- 3.4.12. the Property Practitioner is not insolvent, nor to the best of his knowledge, have any steps been taken or threatened for the liquidation or sequestration of the Property Practitioner's estate, whether provisional or final or for the placing of the Property Practitioner under judicial management;
- 3.4.13. the Property Practitioner has no overdue income tax or VAT owed to the South African Revenue Services;
- 3.4.14. the Property Practitioner has accurately disclosed to the Discounter all facts and information relating to the Sale Agreement, the Property, the Seller and the Purchaser which may be relevant to a purchaser of the Claim and the information set out in the Claim Schedule is true and correct; and
- 3.4.15. the Property Practitioner acknowledges that the Discounter has entered into this Agreement in reliance of the warranties set out in this clause, all of which are material, and that if any of the warranties are or become, to any extent, inaccurate or breached, the Property Practitioner will have committed a fraud against the Discounter.

3.5. TERMINATION

- 3.5.1. The Discounter may summarily terminate this Agreement without payment of compensation or other damages caused to the Property Practitioner solely by such termination, by giving notice in writing to the Property Practitioner if any one or more of the following events occurs or which the Discounter reasonably anticipates is likely to occur for any reason:
- 3.5.1.1. the Property Practitioner commits a breach of any of its obligations under this Agreement; or
- 3.5.1.2. any warranty, representation or undertaking given herein is to any extent inaccurate or has been breached; or
- 3.5.1.3. the Purchaser is not properly fulfilling his obligations in terms of the Sale Agreement; or
- 3.5.1.4. the Purchaser has repudiated liability in terms of the Sale Agreement; or
- 3.5.1.5. the Sale Agreement has not become or will cease to be of force or effect, whether by cancellation or otherwise; or
- 3.5.1.6. the Registration Date does not occur for any reason whatsoever within a period of 90 (Ninety) days after the Signature Date; or
- 3.5.1.7. the Property Practitioner's Commission is not or will not be paid to the Discounter within 2 (Two) days of the date upon Registration Date for any reason; or
- 3.5.1.8. the Discounter's rights or ability to enforce its rights in terms of this Agreement will be prejudiced for any reason; or
- 3.5.1.9. the Purchaser will not or will not be able to pay or procure the payment of the Purchase Price of the Property on the date upon which transfer of the Property is registered in the name of the Purchaser; or
- 3.5.1.10. the Property Practitioner will or will not be able to pay any amount which might become payable by the Property Practitioner to the Discounter in terms of this Agreement; or
- 3.5.1.11. this Agreement is, or becomes, either wholly or in part, unenforceable or is declared to be invalid, for any reason.

3.6. CONSEQUENCES OF TERMINATION

3.6.1. If this Agreement is cancelled for any reason whatsoever then:

3.6.1.1. all rights acquired by the Discounter in terms of the cession referred to in Clause 3.1 of this Agreement shall be deemed to have been ceded and transferred back to the Property Practitioner upon and against compliance by the Property Practitioner with Clause 3.6.1.2 and all other outstanding obligations in terms of this Agreement; and

3.6.1.2. the Property Practitioner shall refund to the Discounter in full any amount or amounts paid by the Discounter to the Property Practitioner or any other person on its behalf in respect of the Purchase Price, together with the Discounting Fee (calculated up to and including the Termination Date and interest thereon at the Interest Rate, calculated from the Termination Date to the date of such refund by the Property Practitioner.

3.6.2. On termination of this Agreement by the Discounter pursuant to Clause 3.6.1, the Discounter shall be entitled (without prejudice to any other rights or remedies it may have) to recover from the Property Practitioner the amount of all damages and loss suffered by the Discounter as a result (directly or indirectly) of the Property Practitioner's failure, together with all sums previously paid to the Property Practitioner under or in connection with this Agreement and as security for the payment of such damages and losses, the Property Practitioner hereby cedes, assigns and transfers to the Discounter all the Property Practitioner's right, title and interest in and to all Property Practitioner's commissions due and to become due to the Property Practitioner from any other sale transaction or howsoever arising and whether presently existing or in the future arising.

3.7. INDEMNITY AND PAYMENTS

3.7.1. Without prejudice to any of the rights of the Discounter at law or in terms of any other provision of this Agreement, the Property Practitioner indemnifies the Discounter against all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which the Discounter may suffer or incur (whether arising from contract, delict, a failure to comply with any law or otherwise) as a result of or in connection with this Agreement or the termination thereof.

3.7.2. Any amount presently or in future payable by the Property Practitioner to the Discounter shall be paid immediately upon demand by the Discounter therefore, in cash and without set-off or deduction of any nature whatever and at such address as the Discounter may have stipulated for this purpose by notice.

3.7.3. Any amount falling due for payment by the Property Practitioner to the Discounter in connection with this Agreement and not being paid, shall bear interest at the Interest Rate, calculated from the due date for payment thereof or, in the case of amounts due by way of indemnity or damage (whether liquidated or not) from the date upon which the relevant indemnified loss or damage is sustained.

3.8. RENUNCIATION OF BENEFITS

3.8.1. The Property Practitioner renounces the benefits of all legal exceptions whatsoever which could be taken to any action by the Discounter in terms of or arising out of this Agreement. Without detracting from the generality of the foregoing, the Property Practitioner expressly renounces the benefit of the exceptions non numerate pecuniae, excussion, division and de duobus vel pluribus reis debendi, insofar as each may be appropriate, and acknowledges to be fully acquainted with the contents of these exceptions and the effect of the renunciation thereof.

3.9. PROOF OF AMOUNT OWING AND RATES

3.9.1. A certificate issued under the hand of any director of the Discounter whose status need not be proved, shall be prima facie proof of the facts stated therein in regard to any applicable Interest Rate and amount owing by the Property Practitioner for the purpose of obtaining the grant of judgement, summary judgement and provisional sentence by any competent Court.

3.9.2. In the event of the Property Practitioner disputing the content of the certificate, the onus shall be on the Property Practitioner to disprove the content of the certificate.

3.10. JURISDICTION

3.10.1. The Property Practitioner hereby consents to the jurisdiction of the Magistrates Court having jurisdiction over its person in respect of all legal proceedings related to this Agreement, notwithstanding that the value of the matter in dispute might exceed the jurisdiction of the Magistrates Court.

3.10.2. Notwithstanding the foregoing, the Discounter is entitled to institute action in the High Court having jurisdiction.

3.11. DOMICILIUM (LEGAL NOTICE ADDRESS)

3.11.1. The Parties choose as their address at which all notices and legal process may be served, the addresses as set out in the Claim Schedule and/or Additional Claim Schedule above (domicilium citandi et executandi).

3.11.2. Any notice given by one of the Parties to the other (the addressee) which is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium citandi et executandi shall be presumed, until the contrary is proved, to have been received by the addressee on the 5th (Fifth) day after the date of posting and if delivered by hand on the date of delivery and if sent via email or fax shall be presumed to have been re-ceived on the first working day following dispatch thereof.

3.11.3. Any notice sent and received by the recipient party shall be deemed to be a valid service of such notice despite the fact that such notice was not served on the recipients domicilium or in accordance with this Agreement.

3.12. GENERAL

3.12.1. This Agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. The Discounter shall not be bound by any express, tacit, or implied term, representation, warranty, promise or the like not recorded herein.

3.12.2. This Agreement supersedes and replaces all prior commitments, undertakings, or representations, whether oral or written between the Parties in respect of the subject matter hereof.

3.12.3. No addition to, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the Parties.

3.12.4. No indulgence or extension of time which either Party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

3.12.5. Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator, or trustee of either party shall be bound by this Agreement.

3.12.6. It is specifically recorded and agreed that:

3.12.6.1. either Party may sign this Agreement by way of an "electronic signature" as defined in the Electronic Communications and Transactions Act No 25 of 2002 ("ECTA");

3.12.6.2. such signature need not be an "advanced electronic signature" as defined by ECTA; and

3.12.6.3. having regard to the circumstances prevailing as at the Signature Date, such method of signature is considered as appropriate and binding by the Parties.

3.13. SEVERABILITY

3.13.1. 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 pro-vision if they were aware of such unenforceability at the time of execution hereof.

3.14. PROTECTION OF PERSONAL INFORMATION



3.14.1. The Parties record and agree that they will at all times uphold and comply with the spirit and intention of the provisions of the Protection of Personal Information Act No. 4 of 2013 ("POPI Act") and any regulations promulgated pursuant thereto in dealing with any personal information connected to this agreement and the transaction envisaged herein.

3.14.2. From time to time the obligations and/or rights of the Discounter may require the disclosure and/or processing of certain Personal Information which could conflict with the obligations in the POPI Act, and which the Seller hereby agrees and consents to.

3.14.3. The Parties recognise that a conflict of laws can arise and undertake to comply insofar as it is reasonably possible with the provisions of both the above Act in connection with this Agreement.

