

# **M**ingo Civil Law Notary Office/Notariskantoor

## DEFINITIONS AUCTION CONDITIONS:

For the purposes of these conditions, the following shall be understood by:

1. **AUCTION:**  
the foreclosure sale of Registered Properties in public, before Marlène Françoise Mingo, LL.M, civil law notary in Sint Maarten, her successor, substitute, or the one temporarily running her office (also to be named: the civil law notary hereinafter) on instructions of a mortgagee or a judgment creditor or an execution creditor by virtue of judicial order.
2. **REGISTERED PROPERTY:**  
the real estate being auctioned or the restricted right to a Registered Property to be auctioned, which right can be transferred independently. The term Registered Property shall also include the movable objects referred to in Article 3:254, paragraph 1, of the Civil Code of Sint Maarten (formerly known as the Civil Code of the Netherlands Antilles, hereinafter referred to as "CC"), which will be auctioned by virtue of the pledge set forth in it and the clause referred to in it, together with the real estate.
3. **SELLER:**  
the one(s) who gave instructions for the auction and who is/are authorized to give these instructions by virtue of any right. The name "Seller" shall not alter the position from which he/she derives his authority to auction.
4. **BID:**  
any amount recognized as such, offered by an interested party at the auction, either a sale to the highest bidder or a Dutch auction.
5. **BIDDER:**  
the one making a bid at the auction, irrespective of whether this is a sale to the highest bidder or a Dutch auction.
6. **THE ONE MAKING THE OPENING BID:**  
the one who made the highest bid recognized as such in the opening bid.
7. **OPENING BID:**  
the highest bid made in the opening bid and recognized as such by the auctioneer.
8. **RESERVE PRICE:**  
the minimum amount for which the Registered Property is auctioned.
9. **SUCCESSFUL BID:**  
the amount at which the property is bought at a Dutch auction.
10. **ADJUDICATION:**  
the statement of Seller on account of which, as a result of the auction, the purchase agreement between Seller and Buyer is realized.

11. INSTRUMENT OF MANDATE/ACT OF COMMAND:  
the notarial deed by which the bidder names his mandator(s)/principal(s).
12. BUYER:  
the one to whom the adjudication is made, unless he has stated in an instrument of mandate to have made a bid for one (1) or more other parties, in which case the others shall be deemed the Buyer.
13. PURCHASE PRICE:  
the bid for which the adjudication is made.
14. TRANSFER:  
the legal act necessary to cause Buyer to become the owner of or party entitled to the Registered Property.
15. DELIVERY:  
surrendering the ownership of the Registered Property to Buyer.
16. SPECIAL AUCTION CONDITIONS:  
the conditions valid in addition to, supplementary to, or deviating from these general auction conditions, set forth in the deed of auction conditions or in the record of the auction.
17. RECORD OF AWARD:  
a set of notarial deeds consisting of the individual deed of special conditions, if any, the record(s) of opening bid and Dutch auction, the deed of adjudication, if any, and the instrument of mandate, if any.
18. NOTARIAL CERTIFICATE OF PAYMENT:  
the notarial deed in which the notary certifies that the purchase price has been received or in which Seller grants discharge for the purchase price.

#### DESCRIPTION REGISTERED PROPERTY

##### Article 1

1. Seller is obligated to describe the Registered Property in the special auction conditions in the manner customary in legal transactions, if possible while stating or referring to these specifics that also determine the substance of the ownership or the right, respectively, as offered at the auction.
2. The description of a restricted right shall also contain at least the statement of or reference to:
  - the deed of creation and deeds of amendment or supplement, if any, recorded later in the public registers;
  - the general conditions declared to be applicable to this right, if any;
  - the prevailing designated use of the right under civil law;
  - the prevailing compensation due, whether or not periodically, on account of this right, and the possibility of review hereof, if any; and
  - the duration of this right and the possibility of premature termination and renewal, if any.

3. The description of a condominium shall also contain at least the statement of or reference to:
  - the applicable property division regulations; and
  - the contribution due, whether or not periodically, stated by the Board of the Owners' Association.

## ORGANIZATION OF THE AUCTION

### Article 2

1. The organization, preparation, and entire execution of the auction shall be in the hands of the civil law notary.
2. The civil law notary shall announce the auction and the auction conditions.
3. The civil law notary shall notify the interested parties, if requested, before the bidding starts, the best she can of the taxes, expenses, and charges for Buyer's account.
4. The civil law notary is authorized during the session, also without stating reasons:
  - not to recognize a bid as such;
  - to preclude one (1) or more interested parties from the auction;
  - at the opening bid, to resume the auction at the bid before last, to proceed to Dutch auction again, to cancel or interrupt the auction;
  - to take other measures necessary in the notary's opinion.
5. The civil law notary shall determine whether such a mistake was made when the bid was made that, in the notary's opinion, the bidder cannot be held to his/her bid.
6. The notary's opinion on anything occurring during the auction and the interpretation or application of the auction conditions during the session shall be decisive - by way of binding ruling.
7. The parties involved in the auction shall elect domicile at the offices of the civil law notary for anything related to the auction.
8. If private bids are made to the civil law notary in accordance with the law, the civil law notary shall promptly send a copy of the document showing this bid to Seller and the owner of or the party entitled to the Registered Property.

## AUCTION METHOD

### Article 3

1. The auction shall take place in two (2) phases:
  - the first, the opening bid, by sale to the highest bidder;
  - the second by Dutch auction (decreasing bids).

This is done successively in one (1) session, unless the special auction conditions deviate from it. If statutory provisions prevailing at the time of the auction or the legal precedents prevailing at that time permit it, the above may be deviated from in this manner that the auction could only take place by sale to the highest bidder, and this with due observance of the provisions in Article 23.
2. Bidding by sale to the highest bidder shall take place openly in a clearly visible manner. Whether or not an opening bid is used shall be exclusively at Seller's discretion.

3. Bidding by Dutch auction shall take place orally by calling the word "mine" when the amount is called by the auctioneer.
4. If several persons make the highest bid simultaneously, supplementary sale to the highest bidder shall promptly take place between them. If aforementioned persons do not bid in this supplementary auction, the highest bidder shall be designated by lot in the session before the civil law notary.
5. The highest bid shall be the amount of the bid by Dutch auction. The bid by Dutch auction shall be higher than the opening bid. If no Dutch auction takes place, the opening bid shall count as the highest bid.
6. If Seller auctions several Registered Properties, he/she may offer them either individually or in one (1) or more combinations in this Dutch auction, provided that the intention to do so has been announced at the start of the Dutch auction phase at the latest.

## BID

### Article 4

1. Each bid shall be unconditional, irrevocable, and without any reservation.
2. If several persons jointly make a bid or buy jointly, they shall be jointly and severally bound with regard to the obligations they are under by virtue of the auction.
3. A bid shall no longer be in force as soon as:
  - a higher bid has been made, unless that bid is rejected during the session before the record of the auction is made up;
  - it has been established that no adjudication is made; or
  - the auction is cancelled.

However, the highest opening bid shall remain in force until the end of the deliberation, unless an adjudication is made to another person earlier, or it has been established that no adjudication is made. The same shall also apply to the highest bids on lots in case of an auction of combinations.

## BIDDING FOR A THIRD PARTY

### Article 5

1. The one who makes a bid at the auction shall be deemed to be the bidder, also if he/she states not to have made the bid for himself, unless the civil law notary decides otherwise.
2. Each bidder shall have the right, also without explicitly having reserved this right, to state in accordance with the provision in paragraph 3 hereinafter that he/she has made the bid on behalf of one (1) or more third parties, which third party/parties shall be named "represented party" hereinafter.
3. This statement shall be made by the bidder to the civil law notary before payment of the purchase price, but six (6) days after adjudication at the latest, and shall be confirmed by the represented party in writing. This statement and confirmation shall be evidenced by the record of the auction or by an instrument of mandate to be drawn up by the civil law notary, on account of which the represented party acquires the rights and obligations by virtue of the auction, as if he has made the bid himself, without prejudice to the provision

in paragraph 4 hereinafter.

4. In addition to the represented party, the bidder shall be jointly and severally bound for compliance with Buyer's obligations by virtue of the auction. If the bidder, in the event that the represented party is in default, pays the purchase price entirely for his/her account, he/she shall be deemed to have concluded the purchase agreement for himself/herself, in which case the transfer of the Registered Property shall be made to him/her, and he/she shall be granted discharge. All this shall be evidenced by the notarial certificate of payment. This paragraph shall not affect the rights the bidder can exercise towards the represented party, if any.
5. The provisions in the preceding paragraphs shall also be valid for the person who declares to bid as authorized party or body of a legal entity with the power of representation, unless it concerns a public corporate body and the one who has made the bid declares and proves to the civil law notary during the session to act on behalf of this body, in which case this body shall be deemed the bidder.

#### SEVERAL SELLERS

##### Article 6

1. If the auction takes place on instructions of several Sellers, they shall jointly be deemed one (1) Seller. They shall be jointly and severally bound with regard to the obligations originating from the auction and the instructions for the auction.
2. The instructions for the auction, which shall be given in writing, shall show who of the Sellers is authorized on behalf of the others to make all decisions related to the auction, including that of whether or not to assign and cancel.

#### OPENING BID PREMIUM

##### Article 7

1. The one making the opening bid shall be entitled to an opening bid premium in the amount of one percent (1%) of his/her opening bid in the event that the Special Auction Conditions stipulate that explicitly.
2. The civil law notary shall pay the one (1) making the opening bid the opening bid premium as soon as this can be paid from the moneys deposited with the civil law notary, unless the one (1) making the opening bid is the Buyer, in which case the opening bid premium shall be set off against the purchase price.

#### ADJUDICATION, DELIBERATION, NON-ADJUDICATION, CANCELLATION

##### Article 8

1. The purchase agreement in pursuance of the auction shall be realized by the adjudication. The adjudication shall also include the agreement to transfer under property law subject to the suspensive condition that the Buyer has met all his/her payment obligations. The transfer shall be realized by recording the record of adjudication in the Land Registry, while the notarial certificate of payment also has to be submitted.
2. Seller shall have the right to adjudicate or to deliberate on whether or not to adjudicate.

The term of deliberation shall end on the second businessday following the Dutch auction or so much earlier as Seller might have adjudicated. Seller is authorized to extend the term of deliberation once, by five (5) business days at the most.

3. After the highest bid has been made public, Seller shall declare whether he/she adjudicates and to whom, whether he uses the right of deliberation or that he/she does not adjudicate. This statement shall be inserted in the record of the auction.
4. The adjudication after deliberation shall be evidenced by the record, or from a notarial deed that has to be executed on the day the term of deliberation ends, and which deed has to show what bidder the adjudication is made to.
5. If Seller has not expressed himself/herself within the term of deliberation on whether or not to assign, he/she shall be deemed not to have adjudicated.
6. In case of auction in combination, Seller may make an adjudication to bidders for lots, even if the bid for the combination of these lots is higher.
7. The auction may always be cancelled without stating reasons, as long as no adjudication has been made.

## TAXES AND COSTS

### Article 9

1. In as far as due, the following shall be charged to Buyer:
  - the transfer tax;
  - the fee for Buyer's account in conformity with the auction rates;
  - the opening bid premium, if any;
  - the costs of the instrument of mandate/Act of Command; the cost of the deed of adjudication and discharge;
  - the Land Registry (Kadaster) fee and the costs of Land Registry investigation (title search);
  - the costs of cancellation of the mortgage and attachment registrations;
  - the costs of revenue stamps and disbursements;
  - the costs of the process server, advertisements, and posters; the auctioneer's fee and rent of the auction-room;
  - the costs of execution, if any, for the preparation and organization of the auction, in as far as not already set forth above;
  - the costs of vacating;
  - the outstanding property charges, including property tax and (if applicable) ground rent;
  - the costs and charges pursuant to the special auction conditions.
2. In as far as due, the following shall be charged to Seller, deducted from the proceeds of the auction pursuant to Article 13, paragraph 3:
  - the fee(s) for Seller's account in conformity with the auction rates;
  - the opening bid premium, if any;
  - the costs related to the execution, if any, for the preparation and organization of

- the auction, in as far as not already set forth above;
  - the costs and charges pursuant to the special auction conditions.
3. The taxes, costs and charges referred to in paragraph 1 of this Article shall never constitute part of the bid made, but shall be due in addition to it.
  4. The property tax and other levies related to the Registered Property, both those overdue and those related to the current year, shall be for Buyer's account as stipulated in Article 9, paragraph 1, unless otherwise stipulated by Seller in the special auction conditions.

## TIME OF PAYMENT

### Article 10

1. The amount Buyer owes shall be paid within the following terms:
  - a. the transfer tax and the costs in Article 9, paragraph 1, and the amounts as referred to in Article 9, paragraph 4: two (2) business days after the adjudication at the latest;
  - b. the deposit pursuant to Article 12, paragraph 1: two (2) business days after the record of the auction at the latest;
  - c. the purchase price: six (6) weeks after the adjudication at the latest or another date that has been contained in the special auction conditions for this purpose, and this while setting off the deposit referred to above, letter b.
2. If it is established that the auction does not take place or Seller does not proceed to adjudication, the costs to be paid by Seller, such as execution costs and opening bid premium as referred to in Article 9 paragraph 2, shall be paid as soon as possible, but ten (10) businessdays after the record of the auction at the latest.
3. If the amount of the sum to be paid at the moment it becomes payable has not been fixed as yet, an amount to be estimated for this purpose by the civil law notary shall be paid as further setoff.
4. As soon as Buyer fails to meet any payment obligation, this shall be default in the sense of Article 22, and he shall pay the statutory interest in respect of the amount due as of that moment, without any notice of default being required.

## PAYMENT METHOD, DISCHARGE

### Article 11

1. Anything owed by Buyer and Seller with regard to the auction, including the purchase price, shall be deposited with the civil law notary in the manner and in the currency to be indicated by the civil law notary.
2. Buyer's right to suspend payment or apply setoff shall be explicitly precluded in as far as the law permits it, except setoff against the deposit paid and not used, or against the opening bid premium owed to Buyer, if any.
3. As soon as Buyer has met all his payment obligations by virtue of the auction, this shall be evidenced by a notarial certificate of payment.

## DEPOSIT

### Article 12

1. Buyer shall pay the civil law notary a deposit in the amount of ten percent (10%) of the purchase price, which shall serve for recovery of what Buyer owes by virtue of the auction. No interest shall be paid in respect of the deposit.
2. The civil law notary shall pay back the deposit to Buyer if the purchase agreement has been dissolved for another reason than attributable shortcoming of Buyer, unless Seller and Buyer have agreed otherwise.
3. If Buyer fails to meet his/her obligations, or if it has not been established whether he/she is in default, the civil law notary shall keep the deposit Buyer has paid in her custody - without prejudice to identical payment instructions of Seller and Buyer - until it is established pursuant to a decision of the competent Court that has become final and conclusive, or another binding ruling, to whom payment is to be made. A decision that has become final and conclusive shall also be understood to be a default judgment served on the residence of defendant, against which no objection was filed within six (6) weeks after the date of this service. The civil law notary shall deduct the taxes and costs for Buyer's account pursuant to Article 9 from this deposit, in as far as due and not paid as yet.
4. Buyer may also meet his/her obligation to pay a deposit by giving the civil law notary a letter of guarantee for the same amount, which letter shall:
  - a. be unconditional and valid until at least one (1) month after the ultimate date fixed for the payment of the purchase price;
  - b. be issued by a bank or organization that is under supervision by virtue of the State/Country Ordinance Supervision Credit System or the State/Country Ordinance Supervision Insurance Industry;
  - c. contain the clause that the bank or organization in question will pay the civil law notary the amount of the guarantee upon the notary's demand.If the amount of the guarantee has not been paid and Buyer has no more payment obligations, the civil law notary shall notify the bank or organization that the guarantee can be cancelled.
5. The provisions concerning the deposit with regard to Buyer shall also apply to the one who has made the bid for him/her pursuant to Article 5, and for the one making the opening bid, provided that for the latter the amount of the deposit is calculated in respect of the opening bid. This deposit shall be cancelled and reversed as soon as the obligations of the one making the opening bid or the bidder by virtue of the auction have ended.
6. If Buyer or the one making the opening bid or the one bidding at a Dutch auction fails to meet his/her obligation to pay a deposit in time, or fails to issue a letter of guarantee, this shall be default to which the provisions in Article 22 are applicable, provided that notice of default shall not be required.

## ALLOCATION PAYMENTS

### Article 13

1. The payments made to the civil law notary by or on behalf of Buyer, shall serve as payment of what Buyer owes, notably in the sequence:
  - a. transfer tax and other costs and charges pursuant to Article 9, paragraph 1;
  - b. interest, penalty and compensation;
  - c. the purchase price;
2. If the payment by virtue of Article 10, paragraph 1, letter a, includes an amount for transfertax that appears not to be due, this amount shall not be paid back to Buyer, but be deemed a deposit pursuant to Article 12 or as a supplement to it.
3. The net proceeds of the auction shall be the purchase price, reduced by the amounts referred to in Article 9, paragraph 2, as well as, if applicable, the amounts referred to in Article 9, paragraph 4.

#### INFORMATION OBLIGATION

##### Article 14

1. The bidder and Buyer are obligated to identify themselves to the civil law notary and to provide any information necessary to be able to verify whether the financial obligations in pursuance of the auction can be met.

By making a bid, they shall give the civil law notary permission to make inquiries, where necessary. The civil law notary shall have the right but not the obligation to make inquiries in this matter.
2. The bidder and Buyer are obligated to immediately and at first request of the civil law notary surrender a proof of their solvency by means of a letter of guarantee that is in conformity with the demands stipulated in article 12 paragraph 4, for a total amount of the bid increased with the taxes and costs mentioned in article 9 paragraph 1. By surrendering that letter of guarantee the Buyer has also complied with his obligations as stated in article 12.
3. Failing to surrender the letter of guarantee mentioned in paragraph 2 will consequently mean that the bidder and Buyer qualify as non-solvent reason why the notary will not recognize the bidder and Buyer's bid as such, unless Seller immediately declares that the bid will be recognized.

#### SPECIAL CHARGES, RESTRICTIONS, AND EXCLUSIONS

##### Article 15

1. Seller shall not vouch for the Registered Property being transferred free from special charges and restrictions, also including restricted rights, easements, and qualitative obligations. Buyer shall not invoke that the Registered Property is encumbered with a charge or restriction it should not have been encumbered with, or that it fails to correspond with the agreement, unless Seller knew this. Nor shall Seller vouch for absence of material defects to or in the Registered Property, also including soil pollution, if any. Buyer shall accept the special charges and restrictions set forth in the special auction conditions.
2. In as far as the law permits it, the civil law notary and Seller shall preclude any liability.

3. In as far as the law permits it, the civil law notary and Seller shall not grant any indemnity.

#### DESCRIPTION OF THE OBLIGATION TO TRANSFER

##### Article 16

1. Seller is obligated to transfer to Buyer the ownership or - if the Registered Property concerns another right - this right.
2. If the measurement or size of the Registered Property stated by Seller is not correct, neither party shall derive any right from it. An exception can be made to this with regard to Buyer if Seller has not made the statement in respect hereof in good faith.
3. If the Registered Property has been rented out or leased, the rights and obligations from the rent or long lease shall pass to Buyer in as far as the law prescribes it.
4. Movable objects that are present in or at the Registered Property and that do not fall under the description referred to in Article 3:254 CC shall not be included in the sale or transfer, unless explicitly set forth otherwise in the special auction conditions.
5. If the Registered Property concerns another right than ownership, the provisions in this Article shall apply in as far as the conditions of this right are not different.

#### TRANSFER

##### Article 17

1. As soon as the condition of full payment attached to the adjudication has been met, the transfer of the Registered Property can be completed as described in paragraphs 2 and 3. both Buyer and Seller can realize this unilaterally.
2. The transfer of the Registered Property shall take place by recording the individual deed of special auction conditions, if any, the record(s) of the auction, the deed of adjudication, if any, the instrument of mandate, if any, and the notarial certificate of payment in the Land Registry. Without aforementioned notarial certificate of payment, the other deeds mentioned are not meant or suitable to be recorded in the public registers, and consequently cannot realize the transfer.
3. After the transfer, dissolution of the purchase agreement cannot be claimed anymore. In the opinion of Seller and Buyer in this foreclosure sale, this clause shall be a key stipulation as referred to in Article 6:231 CC, without which the agreement would not have been concluded.
4. The civil law notary shall dispose of the purchase price received by him/her in the manner as the law prescribes to the civil law notary in Article 3:270 CC or in Article 551 of the Code of Civil Procedure of Sint Maarten.
5. Seller is not obligated to any assistance in cancelling registrations of cancelled mortgages, attachments, and restricted rights referred to in Article 3:273, paragraphs 2 and 3 CC, except in as far as it concerns registrations of cancelled restricted rights created in favor of Seller himself/herself.

#### RISK AND INSURANCE:

##### Article 18

1. The Registered Property shall be for Buyer's risk as of the adjudication.
2. Buyer is obligated from the moment he bears the risk until the moment of payment of the purchase price to see to it that the structures belonging to the Registered Property are insured with a solid insurance company against the reconstruction value on conditions customary with solid insurance companies. This obligation shall not apply in as far as Buyer can prove that this insurance is not possible in reason, or Buyer is a government agency that does not insure its structures. If desired, Buyer shall surrender the insurance policy and receipt of payment of premium. Seller is authorized to make inquiries with the insurance company. If Buyer fails to meet his/her obligation to insure or to provide information on this point, Seller is authorized to take out the insurance in the name of and for account of Buyer.
3. As security for the payment of the purchase price and of what he/she owes in addition, Buyer shall transfer his/her rights originating from aforementioned contract of insurance to Seller. Seller shall have the right, and in as far as necessary he/she shall be granted power of attorney by Buyer, to cause the transfer referred to in the preceding sentence of this Article to be served on the insurance company. The policy relating to aforementioned contract of insurance shall remain in the hands of Seller until that time.

DELIVERY:

Article 19

1. Delivery of the Registered Property shall take place, unless stipulated otherwise in the special auction conditions, on the day the purchase price is to be paid, provided that Buyer has paid the purchase price and any other amounts he/she owes with regard to the auction.
2. If the delivery takes place before the purchase price has been paid, based on the special auction conditions or another agreement, Buyer shall pay the statutory interest in respect of the purchase price as of the day of delivery up to and including the day of payment. If subsequently Buyer fails to meet his/her payment obligations, his/her right of use shall end immediately and he/she shall promptly make the Registered Property available to Seller in the original condition, empty and vacated. The obligation to pay statutory interest shall end at the end of the day on which the Registered Property is available to Seller again in aforementioned condition, without prejudice to the provision in Article 10, paragraph 4.
3. In as far as possible, Seller shall give Buyer the opportunity to inspect the Registered Property before the delivery.
4. The Registered Property shall be delivered in the actual condition it is in at the moment of the delivery. If the Registered Property is destroyed, damaged in whole or in part, or devaluates after the assignment, this cannot be invoked against Seller, irrespective of the cause.
5. The presence of occupants and/or users at the time of delivery of the Registered Property shall be for Buyer's account and risk.

## VACATION

### Article 20

1. If the Registered Property is used by the owner and his/her family, and is consequently not delivered free from use, Buyer can realize vacation by virtue of the first authenticated copy/copies of the deed(s) needed for this purpose, if necessary with the assistance of the police. This shall not apply if delivery takes place not free from occupants and/or users based on the special auction conditions.
2. It shall be inserted in the Special Auction Conditions which of the following (parts of) paragraphs are applicable:
  - a. Buyer shall accept the Property Sold in the condition it appears to be in at the time of the actual transfer, and furthermore with continuation of the present lease agreements;
  - b. Buyer shall accept the Property Sold in the condition it appears to be in at the time of the actual transfer, and for the rest Seller has no knowledge of lease agreements related to the Property Sold;
  - c. If Buyer accepts the Property Sold in whole or in part with continuation of the present lease or hire-purchase agreements, Seller does not vouch for it that the payment installments not due as yet at the time of the actual transfer have not been or will not be disposed of.
  - d. If Buyer accepts the Property Sold in whole or in part with continuation of the present lease or hire-purchase agreements, Seller does not vouch for it that as of the conclusion of the purchase, existing lease or hire-purchase agreements are not amended, the Registered Property is not rented out in whole or in part, sold by a hire-purchase agreement, or surrendered in use in any other way.
  - e. Exercising the power set forth in Article 3:264 CC shall be left to Buyer. Exercising the power shall take place for Buyer's account and risk.
  - f. If the Registered Property is in use and is not transferred free from use, it shall be up to Buyer to vacate the Property Sold for his account. Seller does not vouch for Buyer's power to vacate.
3. In the event of a foreclosure sale by a judgment creditor, the latter shall invoke nullity of the agreements of lease or long lease concluded after the attachment.

## CONSEQUENCES OF DEFECTS AT THE TIME OF DELIVERY

### Article 21

Given the provisions in Articles 18, paragraph 1, and 19, paragraph 4, the consequences in the event of defects at the time of delivery that are not the result of attributable shortcoming of Seller shall be fully for Buyer's account.

## NON-COMPLIANCE

### Article 22

1. If the purchase agreement is not complied with or not in time, other than by shortcoming attributable to one of the parties, the defaulting party shall be liable for any damage

- originating from it for the other party, together with interest and expenses, irrespective of the fact whether the defaulting party is in default in the sense of the next paragraph.
2. If one of the parties fails to meet one or more of his obligations for three (3) days after having been given notice of default by process server's writ or certified letter, this party shall be in default and the other party shall have the option:
    - a. to claim compliance with the purchase agreement if this can be demanded from the defaulting party in reason, in which case, after the lapse of aforementioned term of three (3) days, the defaulting party shall owe an immediately payable penalty of a permillage of three (3 0/00) of the purchase price with a minimum of in any case one thousand dollars, United States Currency (US\$ 1,000.00) for each day after that until the day of compliance, or
    - b. to dissolve the purchase agreement, provided that Buyer can only request dissolution by judicial intervention. In the event of dissolution, the defaulting party shall forfeit towards the other party an immediately payable penalty of fifteen percent (15%) of the purchase price.
  3. If Seller fails to comply, Buyer shall only have the right referred to in paragraph 2, letter b, if the defect is of such a nature and scope that Buyer can make it plausible that he/she would not have bought if he/she had been familiar with this defect. If not, Buyer shall only be entitled to compensation for the devaluation and other damage caused by the defect. If parties have a difference of opinion as to the provision in this paragraph 3, the ruling of three (3) experts who are appointed in the manner as set forth in paragraph 5 shall be decisive.
  4. If Seller, after having declared the purchase agreement dissolved, proceeds to a new auction within six (6) months on the same conditions as the original auction, Seller's loss shall be fixed at the negative difference between the purchase price of the original auction and that of the new auction, augmented by interest and expenses. If at the new auction the purchase price is higher than that of the original auction, the Buyer in default shall not benefit from these excess proceeds.
  5. In all other cases than sale in a new auction pursuant to the provision in paragraph 4, the loss suffered by Seller shall be fixed by three experts who are appointed by the Judge in the Court of First Instance in whose jurisdiction the Registered Property is located. After either party has invoked this provision against the other party in writing, the other party shall have the opportunity for one (1) month to opt for settlement of the dispute by the Judge competent according to the law.
  6. Penalties paid or due shall be deducted from compensation due, together with interest and expenses.

## PRESCRIPTIVE LAW

### Article 23

The auction conditions shall only apply in as far as the law does not prescribe a different regulation imperatively.

## FINAL PROVISIONS

### Article 24

1. Buyer shall not receive a first authenticated copy, or transcript or excerpt, until he/she has met all his/her obligations originating from the auction.
2. Anyone shall be deemed to be a person with a direct interest in the sense of Article 48 of the State Ordinance Notarial Office with regard to the content of the deed determining the content of the auction conditions.
3. Any supplements to or deviations from these conditions shall appear from the special auction conditions. In case of conflict between these general conditions and the special auction conditions, the latter shall prevail.
4. Seller, Buyer and bidder shall elect domicile, also for acts of judicial execution, at the offices of the civil law notary, unless the record of the auction states otherwise.
5. The laws of Sint Maarten shall be applicable to these general conditions of auction.