

6. INTERPRETATION

The term “Applicant” shall refer the person recorded in clause 1.1.1 of the application form submitted to Combined Capital Solutions (Pty) Ltd (“CCS”), unless the application indicates that discounting is required also by the person recorded in clause 1.1.2, in which event the term includes that person. “Conveyancer” will include the firm of attorneys recorded in clause 1.3 or the person(s) giving the undertaking accompanied by the discounting application and agreement or both of them or their successor(s). Days are calculated by including the first and the last days in the calculation. All references to days are calendar days. References to clauses may be references to clauses in these standard terms and conditions or to clauses in the application and agreement submitted to CCS, depending on the context. These terms and conditions forms part of the application and agreement and must be read in conjunction therewith.

7. DISCOUNTING

The Applicant is entitled to estate agents’ commission or a share therein (“the Commission”) as a result of an agreement (“the Transaction”) for the sale of the property described in clause 1.1.4 (“the Property”), but has not yet received the Commission. Because the Applicant requires a portion of the Commission due to it from the Transaction prior to the registration of the Transaction in the relevant Deeds Office, and in exchange for the amount stipulated in clause 1.1.5 (“the Consideration”), the Applicant hereby sells and cedes its claim (“the Commission Claim”) to CCS, subject to the further provisions of this agreement. In the event that the ceded claim is subject to a prior ranking cession(s), then the cession contained in this clause shall be deemed a cession of the Applicant’s reversionary rights.

8. PAYMENT

Upon payment of the Consideration in accordance with this clause, CCS will become the owner of the Commission Claim and these terms and conditions will be binding on the parties. CCS agrees with the Applicant that it will repay to the Applicant so much of the proceeds from the Commission Claim as exceeds the aggregate of the value of the Consideration and the Discounting Fee. Such payment will be made by electronic funds transfer to the account nominated in clause 1.2, or by depositing or retaining the relevant amount with the Conveyancer recorded in clause 1.3 for the benefit of the Applicant. Being cognisant of the bank charges payable in respect of payments, the parties abandon any claim they may have against each other for over- or under-payment which does not exceed R50.

9. OBLIGATIONS OF THE APPLICANT

If the Transaction has not registered within 120 days of the payment of the Consideration to the Applicant, then CCS will be entitled to elect on notice in writing to the Applicant that the Consideration and Discounting Fee becomes immediately due and payable to it in terms of the Applicant’s indemnity. Should CCS at any time arrive at the conclusion, which shall be in its sole discretion, that the Transaction will not be registered in the relevant Deeds Office and/or that the ceded claim will accordingly not be paid, then CCS will be entitled to enforce the Applicant’s indemnity prior to the 120 day period stipulated above.

10. FURTHER ADVANCES

CCS may, in its sole discretion, give further capital advances against the Commission Claim, in its sole and absolute discretion. For the sake of convenience an application for such a further advance will be on the same standard application form as used for the first discounting application provided that the terms of the Agreement shall apply to such a further advance with the changes required by the context.

11. DEFAULT

11.1. The Applicant hereby acknowledges the following implications of default under this agreement:

11.1.1. CCS will give notice to the Applicant who has 7 business days to respond to such notice. Upon failing to respond, the amount due under this agreement will be handed over for collection to an attorney or debt collection agency.

11.1.2. CCS shall be entitled to all costs, fees and charges incurred in enforcing its rights under this agreement including costs on an attorney-and-own-client scale.

11.2. The Applicant agrees that CCS may perform any credit check prior to and after the acceptance of this agreement and may share any information relating to this Agreement with any credit bureaux.

11.3. The Applicant shall not terminate or attempt to terminate the Conveyancer’s mandate in any circumstance for whatsoever reason without prior written consent of CCS. Where the Conveyancer has acted dishonestly or where the Conveyancer has breached a material term in its relationship with the Applicant, the Applicant shall inform CCS of such facts within 2 days of becoming aware of same.

12. WARRANTIES AND UNDERTAKINGS

12.1. The Applicant makes the following warranties in favour of CCS, all of which are recorded to be material:

12.1.1. The Applicant chose English as the language of this agreement. Furthermore, the Applicant generally understands and appreciates the contents, risks, costs and obligations under this agreement.

12.1.2. The Commission Claim is irrefutable in law, and there are no other estate agencies or agents who have a lawful claim to estate agent’s commission as a result of the Transaction.

12.1.3. The Applicant hereby appoint and irrevocably mandate the Conveyancer as their agent to repay the amount of the Ceded Claim, together with so much of the proceeds from the Transaction that is due and owing in terms of this agreement, and select the address of the Conveyancer as their chosen *domicilium citandi et executandi* for the purpose of receiving notices and communications which may be given by hand, fax or email and notices shall be deemed to have been received on the day delivered by hand or on the day the email or fax was sent. The fax/email report will be sufficient proof of delivery.

12.1.4. All information provided by the Applicant in its application and for the purposes of its application is both true and correct and that no information that may affect CCS’s decision to enter into this agreement has been withheld.

12.1.5. The Applicant’s tax affairs are up to date in all respects and no outstanding monies are owed to SARS.

12.1.6. The Applicant is not aware and ought not reasonably to be aware of any fact or circumstance which may lead to the hindrance,

delay or cancellation of the Transaction or of its registration in the Deeds Office.

- 12.1.7. The proceeds of the Transaction and the object of the Commission Claim are not subject to a prior cession, pledge, liquidated claim or similar encumbrance whatsoever.

13. CANCELLATION

- 13.1. If this agreement is lawfully cancelled or terminated, or if the provisions thereof become unenforceable, or if CCS, having become entitled to do so, makes an election in terms of clause 9 above, or if the agreement or any part of it is or becomes or is found to be void or unenforceable for any reason, then the Consideration plus the Discounting Fee will be due and payable to CCS in terms of this clause and the Applicant's indemnity.
- 13.2. In any circumstance where the Consideration and/or the Discounting Fee or any other amount(s) becomes payable to CCS, then the Applicant(s) will with late payment be liable for *mora* interest on the Applicant's indebtedness to CCS, which shall be calculated at the rate of 3% per month, compounded monthly from the date on which amounts become payable to CCS by the Applicant to the date of final payment of the Applicant's indebtedness to CCS.

14. GENERAL

- 14.1. In the event of court proceedings being instituted in connection with this agreement, the parties herewith consent to the jurisdiction of the Magistrate's Court, notwithstanding the fact that the amount involved may exceed the jurisdiction of the Magistrate's Court.
- 14.2. No postponement, indulgence or extension displayed or granted by CCS in respect of the enforcement of the terms and provisions of this agreement shall constitute a waiver by CCS of its rights in terms of this agreement and the right to claim due and punctual performance of the terms thereof.
- 14.3. Every term of this agreement is divisible from the other terms and if a term is found to be invalid or unenforceable for any reason it will not affect the remainder of the terms of this agreement.
- 14.4. CCS shall be entitled to cede and assign its rights under this agreement to any third party without notice to or consent of the Applicant. The Applicant shall not be entitled to cede and assign its rights under this agreement to any third party.
- 14.5. The Applicant shall not be entitled to claim set-off in respect of any amount owed to CCS, notwithstanding that the Applicant may allege or claim that CCS is indebted to it for any reason whatsoever.
- 14.6. CCS may access any information held in respect of the Applicant by any credit bureaux and may transmit information regarding the non-compliance with the terms and conditions of this agreement to any credit bureaux.
- 14.7. **A certificate under the hand of a manager or director of CCS, whose appointment as such shall not be necessary to prove, as to the existence and the amount of the indebtedness of the Applicant(s) to CCS in terms of the Discounting Application and Agreement at any time and/or the fact that an amount of interest accrued thereon and/or any other fact, matter or thing relating to the indebtedness of the Applicant(s) to CCS shall be prima facie proof of the contents and correctness thereof and of the amount of the Applicants' indebtedness for the purpose of provisional sentence or summary judgement or any other proceedings against the Applicant(s) in any competent court and shall be valid as a liquid document for such purposes. Such certificate shall be binding on the Applicant(s) and shall be deemed to be sufficient particularly for the purpose of pleading or trial in any action or other proceeding instituted by CCS against the Applicant(s).**