



# PROPERTIES

## EXCLUSIVE DUAL MANDATE

### 1<sup>ST</sup> Property Practitioner

Agency	Azcorque Pty Ltd t/a Whats On Properties		
Individual representative			
Registration number / identity number	2022/301422/07		
VAT registration number			
Fidelity fund certificate number		date of issue	
Mandatory Disclosure Form	Yes	<input checked="" type="checkbox"/> No	

### 2<sup>nd</sup> Property Practitioner

Agency			
Representative			
Mobile telephone		work telephone	
Email address			

### The Property Practitioner's Commission

Percentage of Purchase Price		%	excluding VAT
Selling Agent Commission			

### Fixtures and Fittings

Refer to Annexure A
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### The Property

Physical address	
Freehold / sectional title	
Erf / section number	
Township / scheme	
Extent	
Municipal account number	
Title Deed number	

### The Seller (1)

Full name			
Registration number / identity number			
VAT registration number			
Marital status			
If married:	community of property	ANC	accrual system
Physical address			
Postal address			
Home telephone		work telephone	
Mobile			
Email address / es			
Representative			
Resident of South Africa	yes	no	

### The Seller (2)

Full name			
Registration number / identity number			
VAT registration number			
Marital status			
If married:	community of property	ANC	accrual system
Physical address			

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Postal address			
Home telephone		work telephone	
Mobile			
Email address / es			
Representative			
Resident of South Africa	<input type="checkbox"/> yes	<input type="checkbox"/> no	

**Mandate period**

Duration			
Commencement Date			
Expiry Date			
Monthly rates and taxes (including refuse)	R		(approximate amount)
Levies (if sectional title)	R		(approximate amount)
Levies (if sectional title)	R		(approximate amount)

Monthly services

Electricity and water	R		(approximate amount)
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**Marketing Price**

Marketing Price	R		including VAT
Occupation date			
Occupational rental	R		
Suspensive conditions to be fulfilled			
Valuation Schedule attached	<input type="checkbox"/> yes	<input type="checkbox"/> no	

**Boards**

Permission granted to erect sale boards	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="text"/> duration
Permission granted to erect show house boards	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="text"/> duration
Permission to erect sold boards in the event of a successful sale	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="text"/> duration

## 1. INTRODUCTION / PREAMBLE

- 1.1. The Seller hereby grants to the Property Practitioner the Mandate to market and offer the Property for sale substantially in accordance with the provisions of the Terms of Sale.
- 1.2. If the Valuation Schedule in item 1.11 is marked "yes", then the Property Practitioner has attached an estimated valuation of the Property as Annexure "A" to this Agreement.

## 2. DEFECTS LIST

A list of defects regarding the Property is set out in the Mandatory Disclosure Form attached hereto as Annexure "B".

## 3. GRANTING OF MANDATE

This Mandate will commence on the Commencement Date and continue until the Expiry date or as contemplated in clause 12.

## 4. TERMS OF SALE

- 4.1. The Seller has specified the Terms of Sale.
- 4.2. Notwithstanding the provisions of the Terms of Sale, the Seller shall be entitled, in his sole discretion, to accept a reduced Purchase Price or terms and conditions in the Deed of Sale that are more onerous to the Seller than in the Terms of Sale.

## 5. PROPERTY PRACTITIONER'S OBLIGATIONS

- 5.1. The Property Practitioner hereby undertakes:
  - 5.1.1. to use his best endeavours to find a purchaser who is willing and able, both legally and financially, to purchase the Property from the Seller on the Terms of Sale. Without in any way limiting the generality of the foregoing, the Property Practitioner undertakes, at its sole cost and expense, to:
    - 5.1.1.1. advertise the Property for sale at regular intervals, or as the Seller directs from time to time during the Mandate Period;
    - 5.1.1.2. perform all vetting on potential purchasers who have applied to purchase the Property, including performing credit, employment and other reference checks in order to ensure that the purchaser can afford the Purchase Price;
    - 5.1.1.3. put the Property on show;
    - 5.1.1.4. keep the Seller informed, on a weekly basis, of all endeavours to sell the Property;
    - 5.1.1.5. arrange for potential purchasers to view the Property by making arrangements with the Seller or current occupant of the Property to have access to the Property at all reasonable times for this purpose;
    - 5.1.1.6. inform the purchaser that the appointed conveyancer ("Conveyancer") will be the relevant contact person regarding any matters concerning the Property, once the OTP is signed and the Deed of Sale concluded; and
    - 5.1.1.7. ensure that any specific requirements in relation to a potential purchaser, as communicated to the Property Practitioner by the Seller, have been met and that, in the event that a purchaser does not meet those specific requirements, such purchaser does not take occupation of the Property for any reason whatsoever.
- 5.2. The Property Practitioner acknowledges that it is acting as an Property Practitioner for the Seller and that, as between the Seller and the prospective purchaser, the provisions of the CPA and POPIA may apply. The Property Practitioner hereby undertakes to comply with all relevant provisions of the CPA and POPIA, and to assist and guide the Seller in fulfilling its obligations in terms of the CPA and / or POPIA and any other relevant legislation. In particular, the Property Practitioner undertakes, in relation to the purchaser, not to:
  - 5.2.1. act in any manner that is unfair, unreasonable or unjust; or
  - 5.2.2. require the purchaser to waive any rights or assume any obligations or liabilities of the Seller, on terms that are unfair, unreasonable or unjust.
- 5.3. The Property Practitioner shall provide a potential purchaser with an adequate opportunity to consider and comprehend any sale agreement presented to such purchaser and will endeavour to explain the meaning and effect of any provisions contained therein to the best of the Property Practitioner's ability as the purchaser may require.
- 5.4. The Property Practitioner undertakes not to present an offer to purchase to a potential purchaser which is designed to mislead or deceive such a purchaser, or to require the purchaser to falsely express an acknowledgement that no representations or warranties were made by the Seller or Property Practitioner.
- 5.5. The Property Practitioner undertakes to assist with the negotiation, structuring and finalising of any sale agreement for the Property.
- 5.6. The Property Practitioner undertakes, once a Deed of Sale has been concluded, to co-ordinate with other specialist service providers and / or transferring attorneys, Conveyancers and financial institutions in order to facilitate the expeditious and timeous implementation and transfer of the Property from the Seller to the Purchaser.
- 5.7. The Property Practitioner hereby warrants the validity of his fidelity fund certificate as at the Signature Date.

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## 6. COMMISSION

- 6.1. The Property Practitioner is entitled to Property Practitioner's Commission from the Seller, which Property Practitioner's Commission shall be deemed to have been earned upon acceptance of the OTP by the Seller, giving rise to the Deed of Sale.
- 6.2. The Property Practitioner's Commission shall be payable once all conditions contained within the Deed of Sale have been fulfilled and shall be paid on the Registration Date, subject to anything to the contrary in this regard that may be set out in the Deed of Sale.

## 7. SELLER'S OBLIGATIONS

- 7.1. The Seller undertakes that:
  - 7.1.1. he will not, during the Mandate Period, appoint or allow any other Property Practitioner or Property Practitioner to sell or endeavour to sell the Property, nor will he or any other party on his behalf sell or endeavour to sell the Property;
  - 7.1.2. he will not do anything which might prevent, frustrate or hinder the Property Practitioner from effecting a sale of the Property as contemplated in this Agreement. For the purposes of this clause 10.1.2, "prevent, frustrate or hinder" shall, without in any way limiting the generality thereof, include:
    - 7.1.2.1. a refusal to co-operate with the Property Practitioner in the Property Practitioner's endeavours to sell the Property, including:
      - 7.1.2.1.1. by denying the Property Practitioner access to erect "For Sale" boards and / or "Show House" boards on the Property, if permission to erect such boards has been granted in terms of item 1.12; or
      - 7.1.2.1.2. by denying the Property Practitioner access to the Property at reasonable times and subject to reasonable notice for the purpose of showing it to potential purchasers and / or holding show days.
- 7.2. The Seller shall pay to the Property Practitioner the Property Practitioner's Commission upon (i) conclusion of a Deed of Sale during the Mandate Period, subject to any specific terms in this regard that may be set out in such Deed of Sale, and (ii) in the event that a Deed of Sale occurs:
  - 7.2.1. within 30 (thirty) days after the expiry of this Agreement for any reason whatsoever, to a person who was, during the Mandate Period, introduced to the Seller or the Property, as a potential purchaser thereof, by the Property Practitioner; or
  - 7.2.2. after the expiry of a period of 30 (Thirty) days after expiry or termination of this Agreement for any reason whatsoever and the Property Practitioner was the Effective Cause of the Deed of Sale; provided however that in both instances contemplated in clauses 10.2.1 and 10.2.2, the Property Practitioner furnished the Seller with a list of names of all persons introduced by the Property Practitioner to the Property or the Seller as bona fide potential purchasers, upon expiry or termination of this Agreement for any reason whatsoever.
- 7.3. If the Seller commits a breach of any of the provisions set out in clause 10.1, and persists in such breach for a period of 7 (Seven) days after receipt of a Written notice from the Property Practitioner calling upon the Seller to remedy the breach in question, he will be liable to pay the Property Practitioner the Property Practitioner's Commission as if a Deed of Sale had in fact been concluded, as a genuine pre-estimate of the damages that the Property Practitioner will sustain as a result of such breach.

## 8. SELLER'S ACKNOWLEDGEMENT

- 8.1. The Seller acknowledges and understands that, if he is in breach of his obligations under this Agreement and/or he permits or authorises any other Property Practitioner to market and / or sell the Property during the Mandate Period, he could become liable for the commissions of such third party Property Practitioner in addition to the Property Practitioner's Commission.
- 8.2. The Seller, by affixing his Signature to this Agreement acknowledges that he understands the meaning and effect of the Mandate granted to the Property Practitioner and that he understands the meaning and effect of the terms contained in this Agreement.

## 9. TERMINATION OF MANDATE

- 9.1. This Agreement shall automatically terminate on the Expiry Date, or upon conclusion of a Deed of Sale, and will not automatically extend or be continued beyond such time, unless the Parties agree to extend the duration of the Mandate in Writing duly Signed by both Parties; save for the continued operation of clause 10.2, and any other clauses which by their very nature will survive the termination or expiry of this Agreement.
- 9.2. If the Seller elects to terminate this Agreement in accordance with the provisions of the CPA, the Seller shall be obliged to provide the Property Practitioner with 20 (Twenty) Business Days' notice of such termination in Writing, as provided by section 14 of the CPA, provided however that the Seller shall:
  - 9.2.1. remain liable to the Property Practitioner for any amounts owed or payable in terms of this Agreement, including the provisions of the Agreement which remain in force and effect notwithstanding the termination of the Agreement; and
  - 9.2.2. be liable to pay the Property Practitioner a reasonable cancellation penalty in respect of the services rendered as contemplated in section 14(3)(b)(i) of the CPA.
- 9.3. Should the Property Practitioner approach the Seller by way of Direct Marketing, the Seller records that the Seller is aware of the Seller's right in terms of section 16 of the CPA to terminate this Agreement within 5 (Five) days after Signature if it was concluded as a result of Direct Marketing by the Property Practitioner.

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## 10. PROPERTY PRACTITIONER'S INDEMNITY

- 10.1. The Property Practitioner indemnifies the Seller against any and all loss, liability, damage or expense, including interest and penalties if applicable, which the Seller may suffer or sustain as a result of or which may be attributable to:
- 10.1.1. any breach of the Property Practitioner's obligations as set out in this Agreement; and
  - 10.1.2. any breach of the Property Practitioner's undertakings to ensure compliance with any applicable legislation including the CPA and / or POPIA, and in particular, without limiting the generality of the foregoing, (i) the inclusion of any unfair, unreasonable or unjust contractual terms, as contemplated in clause 8.2; and / or (ii) any misrepresentation or deception by the Property Practitioner of a material nature which would give rise to a claim by the purchaser in terms of the CPA and / or POPIA and / or any other relevant legislation.

## 11. CONFIDENTIAL AND PERSONAL INFORMATION

- 11.1. The Property Practitioner undertakes to treat as strictly confidential all information of whatsoever nature which the Property Practitioner may obtain from or relating to the sale of the Property, or in respect of the Seller, howsoever such information may be disclosed or obtained by the Property Practitioner, unless any part of such information is or becomes public knowledge and falls into the public domain other than through any act or omission on the part of the Property Practitioner.
- 11.2. The Property Practitioner acknowledges that, in exercising its rights and obligations in terms of this Agreement, as Property Practitioner of the Seller, it will collect, use and process the Personal Information of the Seller and potential purchasers for the purpose of:
- 11.2.1. entering into this Agreement;
  - 11.2.2. performing its obligations in connection with this Agreement;
  - 11.2.3. pursuing the legitimate interests of the Property Practitioner, Seller and potential purchaser under this Agreement and the OTP / Deed of Sale;
  - 11.2.4. the general administration of the relationship between the Property Practitioner, Seller and potential purchaser; and
  - 11.2.5. facilitating the conclusion of the OTP / Deed of Sale.

## 12. BREACH

- 12.1. Should either Party fail to comply with any and / or all terms and conditions in this Agreement ("**Defaulting Party**") and fail to remedy such a failure or breach for a period of 7 (Seven) days after dispatch of a written notice from the other Party ("**Aggrieved Party**") calling upon the Defaulting Party to remedy such breach, the Aggrieved Party shall be entitled, at his sole discretion and without prejudice to any other of his rights in law, either to:
- 12.1.1. claim specific performance of the terms of this Agreement; or to
  - 12.1.2. cancel this Agreement forthwith,
  - 12.1.3. and, in both cases set out in 15.1.1 and 15.1.2, this will include the right, without further notice to the Defaulting Party, to claim and recover damages from the Defaulting Party, in which case the Defaulting Party shall be liable for all legal costs incurred by the Aggrieved Party on an attorney and own client scale.

## 13. JOINT AND SEVERAL LIABILITY

In the event that the Seller consists of more than one party, each of the parties comprising the Seller shall be liable to the Property Practitioner jointly and severally for the performance by the Seller of its obligations in terms of this Agreement.

## 14. LETTERS AND NOTICES

- 14.1. Any letter or notice given in terms of this Agreement shall be in Writing and shall:
- 14.1.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
  - 14.1.2. if posted by prepaid registered post be deemed to have been received by the addressee on the 5th (Fifth) Business Day following the date of such posting; and
  - 14.1.3. if transmitted by facsimile or email be deemed to have been duly received by the addressee on the date of delivery.
- 14.2. Notwithstanding anything to the contrary contained herein, a Written notice of communication actually received by a Party shall be an adequate Written notice or communication to it notwithstanding that it was not sent to or delivered to the addresses set out in items 1.2 and 1.6 / 1.7 (as the case may be).
- 14.3. The addresses given by the Parties in the Schedule shall constitute the Parties chosen addresses for any and all purposes stipulated under this Agreement and the receipt of any documentation and the institution of any legal proceedings.

## 15. REGULATORY COMPLIANCE

- 15.1. The Seller consents to and authorises the Property Practitioner to:

  
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- 15.1.1. contact, request and obtain any information at any time and from any credit provider (or potential credit provider) or registered credit bureau in order to assess the behaviour, profile, payment patterns, indebtedness, whereabouts, and creditworthiness of the Seller; and
- 15.1.2. provide any information about the behaviour, profile, payment patterns, indebtedness, whereabouts, and creditworthiness of the Seller to any registered credit bureau or to any credit provider (or potential credit provider) seeking a trade reference regarding the Seller's dealings with the Property Practitioner.
- 15.2. The Seller acknowledges that the Property Practitioner will collect, use and process the Purchaser's Personal Information for the purpose of:
  - 15.2.1. entering into this Agreement;
  - 15.2.2. performing their obligations in connection with this Agreement;
  - 15.2.3. pursuing their legitimate interests under this Agreement; and
  - 15.2.4. the general administration of the relationship between Parties.
- 15.3. In addition to the foregoing provisions of this clause 18, both Parties undertake to ensure compliance with all Data Protection Legislation when processing Personal Information of the other Party.

**16. JURISDICTION OF THE MAGISTRATES COURT / GOVERNING LAW**

- 16.1. This Agreement is governed by South African Law.
- 16.2. Not limiting the jurisdiction that any other court may have, the Parties consent in terms of section 45 of the Magistrates' Courts Act 32 of 1944 (or any similar section of an act replacing such act) to the jurisdiction of the Magistrate's Court for the purpose of any proceedings in terms of or incidental to this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute may exceed such jurisdiction.

**17. NON VARIATION / ENTIRE AGREEMENT / MUTUAL SUPPORT**

- 17.1. No addition to or variation or consensual cancellation of this Agreement, including this clause, has effect unless it is in Writing and Signed by both Parties.
- 17.2. The Parties agree that this Agreement is the whole agreement between the Parties in regard to its subject matter.
- 17.3. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

**18. RELAXATIONS / INDULGENCES**

No indulgence by one Party to the other Party, or failure to strictly enforce the terms of this Agreement, is to be construed as a waiver or a basis for raising estoppel in any way.

**19. SEVERABILITY**

Each provision in this Agreement is severable from all others, notwithstanding the manner in which they may be linked together or grouped grammatically, and if in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force. In particular, the Parties acknowledge their intention to continue to be bound by this Agreement notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.

**20. SIGNATURE**

- 20.1. This Agreement shall be Signed in Writing.
- 20.2. This Agreement may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

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**21. SIGNATORIES**

DATED AT (place)

ON

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PROPERTY PRACTITIONER SIGNATURE

AS WITNESS (1)

AS WITNESS (2)

DATED AT (place)

ON

20

SELLER SIGNATURE

AS WITNESS (1)

AS WITNESS (2)

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