

CONDITIONS OF SALE

1. POWER OF SALE

- 1.1. This sale is made by **NORLIN BINTI OMUNDOK (NRIC NO. 860201-49-5362)** (hereinafter referred to as "the Judgment Creditor") in exercising the rights and powers conferred upon the Judgment Creditor pursuant to the Order dated 1st August 2024 against **MOLINA BINTI MOROSOD ((NRIC NO. 720826-12-5084))** (hereinafter referred to as "the Judgment Debtor") that all the Judgment Debtor's right and interest in the parcel of land described in a piece of land held under Native Title No.053091071 approximately measuring of 2.015 hectares more or less situated in the district of Kudat, Sabah (hereinafter referred to as "the said Property") be attached and taken in execution to satisfy the Judgment of the Judgment Creditor dated 22nd June 2022 under Suit No. SUIT NO.KDT-A53F-1/8- 2021 and is made subject to all conditions and category of land use, express or implied or imposed upon or relating to or affecting the said Property particularly stated in the Title Deed of the said Property.
- 1.2. The sale of the said Property is sold on an "as-is-where-is" basis and subject to all encumbrances which may be now subsisting, or which may hereafter come into existence.

2. THE RESERVED PRICE

- 2.1. Subject to the reserved price, the highest bidder being allowed by the Auctioneer shall be the Successful Bidder (hereinafter referred to as the "Successful Bidder") but the Judgment Creditor shall have the right to refuse any bid without having the necessity to give any reason for such refusal.
- 2.2. If any dispute shall arise to any bid(s) and/or the bidding process and/or the highest bid, the Auctioneer may, after having first obtained the Judgment Creditor's consent, at his own discretion determine the dispute or re-conduct the auction sale at the last undisputed bid or withdraw the said Property to be put up again for auction sale.
- 2.3. No bid shall be less than the previous bid and the reserved price for the said Property and no bid shall be retracted.

3. THE AUCTIONEER

- 3.1. The Auctioneer conducting the auction sale of the said Property shall be Messrs PG ACT FAST AUCTION (SABAH) SDN BHD, as named in the Proclamation of Sale, is a Licensed Auctioneer so appointed by the Judgment Creditor.

- 3.2. The Auctioneer shall not in any manner or for any reason whatsoever be deemed to be an agent of the Judgment Creditor and/or the said Property.

4. THE BIDDERS

- 4.1. Any intending bidders who intend to bid on behalf of another person, body corporate or firm is required to give the Auctioneer prior to the auction sale an authorization letter stating that he or she is authorized to sign all the necessary documents. For Bumiputra Lot, only Bumiputra is allowed to act for and on behalf of the intending bidder or bidder.
- 4.2. All intending bidders shall be required to verify their identity(ies) by showing the Auctioneer their identification documents prior to the commencement of auction, failing which they shall not be entitled to bid.
- 4.3. A bankrupt/ wound up company shall not be allowed to bid or act as agent for the bidder(s). Where the bidder is a foreigner or a foreign controlled company, it shall be the bidder's duty to ensure that the bidder is permitted by the prevailing law, regulations, and guidelines to purchase the said Property. All applications for approval by such a foreign bidder shall be at the sole responsibility and cost of the bidder.

5. PURCHASE PRICE

- 5.1. Immediately after the fall of the hammer, the Successful Bidder shall execute the memorandum attached hereto ("the Memorandum").
- 5.2. The executed Memorandum together with the Conditions of Sale and Proclamation of Sale shall in their entirety form the contract of sale for the said Property ("the Contract of Sale").
- 5.3. The last highest bid accepted by the Auctioneer and upon which the said Property is sold to the Successful Bidder shall be the purchase price for the said Property ("the Purchase Price").

6. BIDDING PRICE

- 6.1. Prior to the commencement of the auction sale, all intending bidders shall deposit with the Auctioneer a sum equivalent to twenty five percent (25%) of the reserved price for the said Property with a valid BANK DRAFT or CASHIER'S ORDER payable to "AKAUNTAN NEGARA MALAYSIA" ("the Bidding Deposit").
- 6.2. The auction sale shall be deemed to have commenced upon being so declared by the Auctioneer.

- 6.3. Any party who failed to deposit the Bidding Deposit to the Judgment Creditor's Solicitor within the time and in manner specified in Clause 6.1 hereto shall not be permitted to participate in the auction sale.
- 6.4. Notwithstanding anything herein stated, the Judgment Creditor shall be permitted to bid at the auction sale without having to deposit the Bidding Deposit to the Auctioneer.
- 6.5. No bid shall be less than the previous bid and the reserved price for the said Property and no bid shall be retracted. Should there be any retraction from a registered bidders) or the highest bidder after commencement of the auction (or after the fall of the hammer), the deposit of 25% of the reserve price placed by the registered bidders) or the highest bidder shall be forfeited by the Judgment Creditor and the said Property shall at the absolute discretion of the Judgment Creditor be put up for sale again or the Judgment Creditor may decide to adjourn the auction sale to another date.

7. PAYMENT OF THE PURCHASE PRICE

- 7.1. In the event that the Purchase Price is higher than the Reserved Price, the Successful Bidder declared by the Auctioneer shall immediately pay to the Auctioneer a sum ("Differential Sum") equivalent to the difference between twenty five percent (25%) of the Purchase Deposit, and the Bidding Deposit by BANK DRAFT or CASHIER'S DRAFT payable to "AKAUNTAN NEGARA MALAYSIA", as payment of deposit and towards part payment of the Purchase Price.
- 7.2. In the event the Successful Bidder fails to pay the Differential Sum or fails to sign the Contract of Sale immediately after the fall of hammer, the Bidding Deposit shall be forfeited by the Judgment Creditor and the said Property shall be put up for sale again at the date and time to be fixed by the Judgment Creditor. The cost and expenses of, in connection with and resulting from such re-auction together with any deficiency in the price obtained at the re-auction comparing to the price obtained in the aforesaid sale shall be recoverable from the defaulting Successful Bidder. A certificate by an officer of the Judgment Creditor as to the costs and expenses of, in connection with, resulting from, such re-auction shall be accepted by the Successful Bidder as binding, correct and conclusive.
- 7.3. The balance of the Purchase Price shall be paid by the Successful Bidder within NINETY (90) DAYS from the date of the auction sale payable to "AKAUNTAN NEGARA MALAYSIA".
- 7.4. Notwithstanding Clause 7.3 above, the Judgment Creditor may at the request of the Successful Bidder grant an extension of time immediately following the expiry of the aforesaid NINETY (90) DAYS to pay the balance of the purchase price provided always that the Successful Bidder shall pay the Judgment Creditor interest at the rate of eight per cent (8%) on the unpaid balance of the purchase price calculated from the day during such extended period of time to pay the balance of the purchase price.

- 7.5. In the event that the Successful Bidder default in complying with any of the conditions herein or fails to pay the Balance Purchase Price within the time allowed, then the Judgment Creditor may (without prejudice to their rights for specific performance) treat such default as a repudiation of the contract and terminate the sale without notice in which event the Bidding Deposit inclusive of the Differential Sum above shall be forfeited by the Judgment Creditor and may put up on sale at a date and time fixed by the Judgment Creditor.
- 7.6. The proceeds of sale shall be paid to AKAUNTAN NEGARA MALAYSIA., for its disposal according to the following order of priority: -
- (i) Paying the Charge due under the said Property (including the initial 25% deposit sum), if any;
 - (ii) Paying all the expenses of execution including but not limited to valuation fee, Auctioneer's fee and etc;
 - (iii) Paying the commission payable to the Court;
 - (iv) Paying all dues payable to the Government in respect of the said Property sold including assessment which are due and unpaid on the date of sale;
 - (v) Paying the Judgment Creditor, in respect of the Judgment Debt for which the execution is taken;
 - (vi) The costs of RM..... for Suit No. SUIT NO.KDT-A53F-1/8- 2021 under Judgment dated 22.6.2022 subject to allocator fees;
 - (vii) The costs of application for execution for BKI-36-20/10-2024;
 - (viii) All other costs incidental to this application; and
 - (ix) The balance, if any, shall be paid over to the Judgment Debtor.

8. JUDGMENT CREDITOR'S RIGHTS AT SALE

The Judgment Creditor reserved the following rights for the auction sale:-

8.1. Rights to bid

To bid without having deposit with the Auctioneer the Bidding Deposit. In the event if the Judgment Creditor is the Successful Bidder and so declared by the Auctioneer, the Judgment Creditor shall have the liberty to set off the Purchase Price against the amount due and owing by the Judgment Debtors under the Judgment Debt and all costs and expenses whatsoever resulting from the auction sale.

8.2. Rights to withdraw sale

To withdraw, postpone and call off the sale of the said Property at any time before the fall of the hammer; and

8.3. Rights to re-sale after withdrawal

To sell the said Property withdrawn at any time or times subject to such conditions and provisions whether identical with or differing wholly or in part from the conditions and

provisions applicable to the said Property to be auctioned and in such manner as Judgment Creditor may think fit.

9. COMPLETION

- 9.1. As soon as practicable after the receipt in full by Judgment Creditor of the Purchase Price together with all interest on late payment (if any), the Judgment Creditor shall apply to the Court for an order that the registrar to execute the Memorandum of Transfer in favour of the successful bidder.
- 9.2. The Successful Bidder's Solicitors shall upon such terms prepare the Memorandum of Transfer for the execution of the registrar of the Court.
- 9.3. The Judgment Creditor's Solicitors is irrevocably authorized to apply the Purchase Price towards the settlement of the items as stated in Clause 7.6 above.
- 9.4. The Judgment Creditor shall procure the release of the original title deed of the said Property to be released by the Chargee upon the settlement of the redemption sum thereto.
- 9.5. The Successful Bidder shall bear all costs and expenses including but not limited to the legal fees, ad-valorem stamp duty and registration fees of an incidental to the perfection of the transfer of the said Property to the Successful Bidder.

10. MEMORANDUM OF TRANSFER

- 10.1. Upon full payment of the purchase price in accordance with Clause 5.3 above and subject to the approval and the consent of transfer from any relevant authority or authorities, the Deputy Registrar/ Senior Assistant Registrar of the High Court of Sabah and Sarawak at Kota Kinabalu shall execute or cause to be executed as soon as possible at the Successful Bidder's cost and expense including legal fees, stamp duty and registration fees all relevant and necessary documents and instruments related to and or in order to give full effect of the execution proceedings and of any orders granted herein pursuant to the present application for execution proceedings including but not limited to the Memorandum of Transfer in favour of the Successful Bidder.
- 10.2. If required, the Successful Bidder shall within NINETY (90) DAYS from the date of the auction sale or such extended period granted pursuant to Clause 7 herein apply to and obtain from the relevant authority or authorities, if any, for consent to transfer and the Successful Bidder has to comply with all the terms and conditions as imposed by the relevant authority or authorities as the case may be in granting the said consent to transfer to the Successful Bidder within the aforesaid period or within such period as maybe specified by the relevant authority or authorities, whichever is earlier and to keep the Judgment Creditor or the Judgment Creditor's Solicitors informed at all times of the developments. All fees, charges and expenses in connection with or incidental to the application shall be borne by the Successful Bidder.

11. CONDITION OF THE SAID PROPERTY

All the intending bidder and/or bidders shall be deemed to have carried out all investigations and examinations of the said Property and the title particulars at their own cost and expense and upon being successful, accepts the said Property in the state and conditions in which the said Property is at the date of the auction sale.

12. DESCRIPTION OF THE SAID PROPERTY

- 12.1 The said Property as referred to in the Proclamation of Sale shall be deemed to have been correctly and sufficiently described and is sold subject to all liabilities and rights, if any, subsisting thereof.
- 12.2 All intending bidders shall be deemed to have sought independent legal advice, made necessary enquiries, searches and inspection of the said Property and is satisfied with the identity, description, state and condition of the said Property.
- 12.3 The said Property is believed to be and shall be taken to be correctly described and is sold subject to all express conditions, restrictions-in-interest, easements, leases, tenancies, occupiers, charges, caveats, previous sale and purchase, previous assignment, covenants, liabilities including but not limited to liabilities to any relevant authority or authorities incurred but not ascertained and any rates made but not demanded, encumbrances and rights, if any, subsisting thereon or thereover without any obligation arising to define the same respectively and Successful Bidder shall be deemed to have full knowledge of the state and condition of the Said Property and no error, misstatement, omission or mis-description shall annul the sale nor shall any compensation be allowed in respect thereof.
- 12.4 In the event of any error, mis-statement, omission and/or mis-description of any kind relating to the said Property in the Proclamation of Sale or any documents, such error, mis-statement, omissions and/or mis-description shall not in any manner annul the sale, nor shall there be and adjustment of the Purchase Price nor shall compensation be allowed nor shall the Judgment Creditor be open to any liability of any form.

13. VACANT POSSESSION

The Judgment Creditor does not undertake to deliver vacant possession of the said Property to the Successful Bidder. The Successful Bidder after the payment of the balance of the purchase price in full together with accrued interest thereon, if any, shall at his or her or its own costs and expenses take possession of the said Property without obligation on the part of the Judgment Creditor, the Judgment Creditor's Solicitors, the Auctioneer or their respective servants or agents and all relevant and related party or parties or any other party on account thereof to give vacant possession. However, the Successful Bidder is PROHIBITED from entering the said Property without full payment being made to the Judgment Creditor's Solicitors during the stipulated period.

14. SALE BEING SET ASIDE OR CONSENT NOT BEING OBTAINED

- 14.1. In the event the auction sale being set aside for any reason whatsoever by the Judgment Creditor or by an Order of Court or consent not being obtained from any relevant authority or authorities other than that due to any act of the default and/or omission by the Successful Bidder, the auction sale shall become null and void and be of no further effect from the date thereof and the Judgment Creditor shall refund the Bidding Deposit inclusive with the Differential Sum and other monies, if any, as the case may be, to the Successful Bidder free of interest and the Successful Bidder shall not be entitled to any claim and/or demand whatsoever against the Judgment Creditor.
- 14.2. In the event that the consent from the relevant authority or authorities shall be granted subject to the conditions not acceptable to the Judgment Creditor, the Judgment Creditor shall be entitled to terminate the sale in their absolute discretion whereupon the sale shall be terminated and this sale shall become null and void and be of no further effect and the Judgment Creditor shall refund the deposit and other monies, if any, paid herein towards account of the purchase price by the Successful Bidder to the Judgment Creditor free of interest less costs and fees incurred by the Judgment Creditor in connection with or relating to the auction sale and the Successful Bidder shall not be entitled to any claim and demand whatsoever against the Judgment Creditor, the Judgment Creditor's Solicitors, the Auctioneer or their respective servants or agents and all relevant and related party or parties or any other party on account thereof.
- 14.3. Upon refund and payment by the Judgment Creditor in this clause, the Successful Bidder shall have no other or further claims, demands whatsoever in nature and howsoever caused against the Judgment Creditor, the Judgment Creditor, the Judgment Creditor's Solicitors, the Auctioneer or their respective servants or agents and all relevant and related party or parties or any other party on account thereof.

15. DEFAULT TERMINATION

In the event that the sale is terminated for any reason whatsoever, the Successful Bidder, if vacant possession of the said Property is delivered, shall re-deliver vacant possession of the said Property to the Judgment Creditor at the costs of the Successful Bidder immediately upon such termination.

16. RISK(S) OF THE SAID PROPERTY

- 16.1. As from the time of sale, the said Property shall be at the sole risk of the Successful Bidder as regards to any loss or damage of whatsoever nature or howsoever occurring.
- 16.2. The Successful Bidder shall be deemed to have inspected and accepted the condition of the said Property as is where is before the auction sale and shall raise no requisition or objection thereon or thereto. No representation warranty or undertaking whatsoever is made or

should be implied as to whether or not the said Property complies with any relevant by-laws or legislation.

- 16.3. The Successful Bidder is deemed to have knowledge of contribution and other payments required to be complied with, if any, and such are available for inspection from the Auctioneer of the Judgment Creditor's Solicitors handling the sale.
- 16.4. Upon the fall of the hammer, all risks of the said Property shall pass to the Successful Bidder who shall at its own costs insure the same against damages by fire or usual perils.

17. OUTGOINGS

- 17.1. The quit rent, assessment, management fee and all other outgoing which may be lawfully due to any relevant authority or authorities up to date of the auction shall be paid out of the purchase money. Thereafter the same shall be borne by the Successful Bidder without any obligation arising on the part of the Judgment Creditor or the Judgment Creditor's Solicitors handling the sale to define the same respectively.
- 17.2. All other outstanding not mentioned in Clause 17.1 hereof or after the auction and administrative costs and charges for the consent for the transfer of the said Property to the Successful Bidder shall be borne by the Successful Bidder without any obligation arising on the part of the Judgment Creditor or the Judgment Creditor's Solicitors handling the sale to define the same respectively.

18. ENCROACHMENT/ ACQUISITION

The Judgment Creditor has no notice or knowledge of any encroachment or that the Government or other relevant authority or authorities has any immediate intention of acquiring the said Property and if such encroachments shall be found to exist or if the Government or other relevant authority or authorities has any such intention, the same shall not annul any sale nor shall any abatement or compensation be allowed in respect thereof.

19. EXCLUSION OF LIABILITY

- 19.1 All statements made in the Proclamation of Sale and Conditions of Sale or otherwise relating to the said Property are made without responsibility on the part of the Judgment Creditor, the Judgment Creditor's Solicitor, the Auctioneer of their representative servants or agents and all relevant and related party or parties or any other party on account thereof. No such statement may be relied upon as a statement of representation of fact. All bidder(s) must satisfy by inspection or otherwise as to the correctness of any such statements and neither the Judgment Creditor, the Judgment Creditor's Solicitors, the Auctioneer of their respective servants or agents and all relevant and related party or parties or any other party on account thereof has any authority to make or give any representation or warranty whatever in relation to the said Property.

19.2 Unless expressly provided herein, the Judgment Creditor, the Judgment Creditor's Solicitors, the Auctioneer or their respective servants or agents and all relevant and related party or parties of any other party on account thereof shall under no circumstances be liable to any bidders or the Successful Bidder, including but not limited to liability in tort, in relation to any matter or thing arising out of or in connection with, or in respect of the sale of the said Property whatsoever and howsoever caused or arising.

20. TIME OF ESSENCE

20.1. Time whenever mentioned herein shall be the essence of these conditions.

20.2. Notwithstanding that time mentioned herein may be extended from time to time, time shall remain of the essence for and after each extension.

21. DEFINITIONS/INTEPRETATIONS

21.1. All headings used herein shall be for ease of reference only and shall not affect the interpretation of the Conditions of Sale, Contract of Sale and Proclamation of Sale.

21.2. All references to the singular shall include the plural and all references to the masculine gender shall include feminine gender.