

Notarial register B 425 / 2018

Today, on fifteenth March 2018 there appeared before me, notary public Michael Becker, with public office in Dresden, Königstraße 17, in the offices of Sächsische Grundstücksauktionen AG in 01069 Dresden, Hohe Straße 12, where I presented myself at the request of those appearing, Ms Martina Stein, personally known to me, the notary public, and Ms Katja Müller-Pflugbeil, publicly appointed and sworn land auctioneer, also personally known to me, both with business address at 01069 Dresden, Hohe Straße 12. The question asked by me, whether the officiating notary public was or is involved in a matter, which is the subject matter of this notarisational, outside the office of notary public was answered in the negative by both of them. The participating parties further declared ex ante: We make the declarations below not in our own name, but on behalf of

Sächsische Grundstücksauktionen AG based in Dresden, Hohe Straße 12 in Dresden,

- hereinafter referred to as "Auction House" -

With regard to the auctions of plots of land, parcels and equivalent rights to be organised with the participation of the Auction House starting 01.06.2018, the following

TERMS AND CONDITIONS OF AUCTION:

- hereinafter also referred to as "General Terms and Conditions of Auction" - apply

- 1) Any vendor who owns a plot of land, parcel or equivalent rights - hereinafter referred to as "property" - entrusted to the auctioneer for auction, is obligated to maintain the sale offer until the end of the last auction date specified in the catalogue. The auction takes place at the locations designated by the Auction House. The Auction House is determined by the auctioneer who then auctions the property in a tangible way. If the object of the auction is a subdivided lot not referred to in the Land Register, the following shall apply: The right to specify performance, including that of determining actual boundary points, is therefore vested in the vendor, who must exercise this in accordance with the Agreement while implementing the plan drawing attached to the deed.
- 2) With regard to the properties to be auctioned, a minimum price (limit) has been agreed upon with the vendor, the calling of which initiates the auction of the property, unless a higher written offer has already been communicated to the auctioneer.
- 3) The auctioneer reserves the right to set the amounts, by which a new bid must at the minimum exceed previous bids (margin of increase) for each property on a case-by-case basis. The margin of increase is € 500, unless the auctioneer announces a different amount. It can also be changed during the auction.
- 4) Each bidder remains bound to a submitted bid until it is outbid by a higher bid issued by another bidder. If several bidders submit an equal bid, only the bid that was first accepted by the auctioneer is valid. If there are any doubts or ambiguities about the validity of a bid, the auctioneer decides at his discretion whether to accept a bid or repeat the auction.
He can revoke the bid acceptance and ask previous bidders if they maintain their bid and repeat or continue the auction starting with the highest bid maintained. These rules also apply to the post-auction sale.
- 5) The auctioneer may also admit bids in writing and bids by telephone submitted during the call of the properties provided the bidder has granted a representative present at the auction authorisation in time before the call and this authorisation is presented to the auctioneer in time and in written form before the call (direct

representation). Such bids shall also be in accordance with the Terms and Conditions of Auction without reservation. The amount of written bids must be notified at the beginning of the auction of the property after notification of the limit by the auctioneer to those present. By submitting a written bid, the bidder authorises the auctioneer and his authorised parties to communicate the bid and accept the bid. The auctioneer is prohibited for bidding for a particular person at his auctions unless another person has provided a written bid under the terms of Section 34 b (6) 3 of the Trade Regulation Act [GewO].

The bid will be awarded to the highest bidder. The bidder who submitted the bid on behalf of the highest bidder on the basis of covert authorisation is liable together with the highest bidder as joint and several debtors on awarding of the bid for the performance of all liabilities established by the contract conclusion, unless that bidder presents a power of attorney by the person represented eligible for entry in the Land Register at the latest on notarisation of bid and bid acceptance. If the auctioneer awards the bid to a legal person, the Auction House may require their legal representative in addition to the legal person personally vouch that the acquiring legal person will discharge all contractual payment obligations to all creditors. Moreover, the company representative shall personally accede to the obligations imposed on the legal person that he represents as joint and several debtors.

- 6) Upon bid acceptance, each buyer is obliged to pay bidding security which is 10 per cent of the highest bid, but at least € 2,000.00, if he is not exempted therefrom in whole or in part in writing. Bidding security is to be furnished immediately after bid acceptance by way of cash or domestic cheque made out to the Auction House and is to be deposited by the latter in an account in trust and then transferred to the notary's trust account, if such a trust account has been agreed upon. The Auction House may waive the bidding security in individual cases or reduce it particularly if the cash bid is less than € 2,000.00. The bidding security is to be credited against the purchase price. If the cash bid is not deposited in full and the contract cannot be performed for this reason, the bidding security primarily serves to settle claims for broker's commission of the Auction House, and only secondarily to settle any claims for damages on the part of the vendor. Bidding security can be used for these purposes at the close of the agreed payment deadline, or if the buyer violates his contractual obligations. Moreover, the bidding security is to be paid out in accordance with the concordant instructions of the vendor, the buyer and the Auction House. If such an instruction does not materialise, the bidding security can be deposited at the custodian of the district court at the place of the auction or be held in trust by the Auction House until a final judgment is available, by which the person authorised to disburse the money is determined.

After bid acceptance, the Auction House or the auctioneer can request the Purchaser to deposit an additional security up to 15 per cent of the purchase price with a lawyer admitted in the Federal Republic of Germany and to appoint him, if necessary, as person authorised to accept service.

The cost security serves first of all to ensure the payment of the notary fees, then the land transfer tax, thereafter the Land Register costs and last of all other costs and fees for the performance of the Agreement. The lawyer shall then be instructed to settle these claims from the deposited amount. After completion of the transaction, the security is to be accounted for and remaining amount to be repaid to the buyer. Until then the mandate is irrevocable. The lawyer is further irrevocably authorised to request the real estate transfer tax notice and other bills of charges and assessments and to receive them in the case of request. The notarisation shall be generally undertaken in such a way that the present notary public notarises bid and acceptance pursuant to Section 156 BGB in conjunction with Section 15 BeurkG. Subject matter of the Agreement will then be bid and acceptance as well as the auction sales text read out before the bidding process and the General Terms and Conditions of Auction, the auction sales text taking

precedence. In particular with regard to the description of the contractual object, the auction sales text read out for the auction is exclusively authoritative. Where the purchase price has not been provided in full on bid acceptance, the buyer has to personally submit to immediate enforcement in view of the purchase price. Main contractual obligations on the part of the buyer are also the obligation to submit in due time a confirmation of power of attorney in the form laid down by Section 29 GBO (if applicable, with proof of representation in the proper form), unless the buyer was represented by submitting power of attorney eligible for registration in the Land Register, and the obligation to pay the real estate transfer tax in due time. The notarisation costs will be collected by the notary public in the form of advance payments immediately after notarisation of the Agreement to avoid the second costs debtor liability and are to be paid by the buyer without undue delay. The payment of the costs is also one of the main contractual obligations. Until such time as the notary public has received the costs, execution by authorities is to be waived, unless the Auction House or the vendor instructs the notary public otherwise.

In the case of non-fulfilment of a main contractual obligation the other contracting party is vested with rights due to non-fulfilment of a main contractual obligation (damages instead of performance Sections 280, 281 BGB or the right of rescission Section 323 BGB).

Each contracting party may, at its own expense, request copies and counterparts of the deed, including complete copies after execution of the deed.

The vendor and the buyer shall notify the Auction House, the notary public and the other contracting party of any change of address without undue delay in text form.

The buyer undertakes to notify his tax registration number pursuant to Sections 139a et seqq. of the Tax Code [AO] without undue delay.

- 7) The auctioneer permits the Auction House to make the following statements regarding the property on behalf of the owner:
 - a) Entries in sections I, II and III of the Land Register and area size according to the entry in the Land Register index.
 - b) Any requirements laid down by the competent building authority and the district master chimney sweeper.
 - c) For leased objects, the actual, last determined required rent (net annual rent).

As far as the above-mentioned information regarding (a) to (c) are notified by the auctioneer, the auctioneer and the Auction House assume no liability for the correctness thereof.

If the Auction House has not received the above information from the competent authorities by the time of the auction, this will be communicated by the Auction House in the auction sales text. The details of the rents and the operating costs can vary between the time of the auction and the time of the economic transfer of benefits and encumbrances, be it through temporary vacancy or re-letting.

- 8) The auctioned property is not always purchased in a condition suitable for immediate use, in some cases in need of renovation and rehabilitation but thus, unless the auction sales text states otherwise, in the condition at the time of the bid acceptance, that is, to the exclusion of all claims and rights of the buyer based on a material defect in the lot or building. In such cases, depending on the circumstances, the buyer must expect to pay substantial additional expenses to transform the property into a usable condition. From the above exclusion of liability are excluded:
 - a) Claims and rights in respect of damages resulting from a wilful breach of duty by the vendor.
 - b) If the buyer is a consumer within the meaning of the law, claims for bodily injury are not covered by the exclusion of liability if the vendor is responsible for the breach of duty, as well as other damages that are the result of a wilful or grossly negligent dereliction of duty by the vendor.

- c) A dereliction of duty by the vendor is the equivalent of a dereliction of duty by a legal representative or vicarious agents.
 - d) If used movable objects in a public auction are also sold pursuant to Section 383 (3) BGB, the full exclusion of claims and rights is the same as in the case of the sale of immovable property as described in a) to c). If other movable objects are also sold, the statutory regulation applies, although claims for compensation of the buyer based on a material defect (including the above exceptions a) to c)) are excluded and the limitation period reduced to one year.
- 9) The Auction House and the auctioneer are liable to those involved in the bidding process only for preparation and execution of the auction within a legal framework. As far as the Auction House and the auctioneer rely on information and documents provided by third parties, they vouch only for their correct transmission, but not for their objective accuracy. This also applies to any transmission of identification features pursuant to Sections 139a et seqq. AO through them. Facts requiring disclosure are only transmitted by the auctioneer as messenger. Their timely notification for inclusion in the auction sales text is the sole responsibility of the vendor. Claims and rights of the parties involved in the bidding process for a dereliction of duty by the Auction House and the auctioneer - in particular for advice on valuation issues and for material defects in the property - are excluded. Exceptions are claims of the vendor and the buyer for bodily harm where the Auction House or the auctioneer are responsible for such dereliction of duty and the aggrieved party is a consumer within the meaning of the law. The exclusion of liability does not apply to damages where the auctioneer or the Auction House is responsible for the dereliction of duty either intentionally or grossly negligently vis-a-vis the vendor or the buyer.
- 10) Ownership, benefits and encumbrances (transfer of ownership) are transferred on the first day of the month subject to information to the contrary in the auction sales text following the payment or the deposit of the entire purchase price with the notary public and/or with an auctioneer as escrow agent as stipulated in the Agreement.

If the buyer has paid the purchase price or parts thereof by cheque, the transfer takes place without prejudice to the arrangements in the auction sales text and without prejudice to the agreed due date on the condition that ownership, benefits and encumbrances are retransferred to the vendor on reversal of the uncashed cheque.

The vendor is obliged to bear all current public and private encumbrances of the plot of land until the transfer date and all costs for the site development facilities existing on the day of the auction such as road, sewage system, etc. Any encumbrances or development costs not yet settled or remaining on the transfer date associated with the site development measures until the day of the auction are to be borne by the vendor. Development costs associated with measures carried out after the day of the auction shall be borne by the buyer. As far as the vendor has already made payments for periods after the transfer deadline, the buyer is obliged to refund those payments. The buyer shall refund the vendor the value of any stocks of fuel oil or other fuel existing on the transfer date.

In transferring the property, the buyer also assumes all civil and public law duties to implement safety precautions in relation to the property and shall indemnify and hold the vendor harmless from compliance with such duties.

Insofar as an existing statutory right of first refusal is exercised, the vendor is entitled to rescind the agreement with the buyer. If rights of first refusal are exercised only for a part of the contractual object, the vendor is entitled to rescind the deed of sale in its entirety or the part in question. In the latter case, the buyer is then entitled to withdraw from the remaining contractual object in full. This right of withdrawal shall cease if the declaration is not received by the buyer within four weeks of receipt of the vendor's declaration of partial withdrawal. Apart from any legal claims arising from the withdrawal, the buyer is not entitled

to any additional claims vis-a-vis the vendor.

- 11) The buyer shall take into charge any easements pursuant to Section 9 GBBERG irrespective of whether they have already been registered in the Land Register or will be registered as well as previously established easements not registered in the Land Register without set-off against the purchase price.

If the auction sales text envisages the assumption of existing charges on real property offsetting against the purchase price (highest bid), vendor, Auction House and auctioneer shall not accept liability for the approval of the assumption of debt by the creditors. If this is refused, the buyer is required to cover the relevant portion of the highest bid through other third party or own funds within a month of receipt of the refusal of the assumption of debt approval. The balance of such encumbrances at the transfer date to be determined by the Auction House shall form the basis for the final settlement of the cash bid. Differential amounts possibly resulting thereafter between the deposited and the actual cash portion shall be settled by means of a direct payment between buyer and vendor.

- 12) Irrespective of anything specified to the contrary in the auction sales text, the purchase price to be deposited shall be paid into a notary trust account to which the special rules under clause 21 apply as a matter of priority. The bidding security collected on a trust basis by the auctioneer is also to be paid into this account. Divergent agreements with the vendor between the time of bid acceptance and notarisation are at the buyer's own risk. They should - if at all - only be agreed with solvent entities.

- 13) Unless otherwise stated in the auction sales text, the deposit should be within one month from the auction date. The payment shall be effected,

- a) when the correctly ranked registration of the priority notice for the contractual object is in favour of the buyer and any registration of required financing encumbrances has been completed and
- b) the official and other authorisations, certificates, consents and supporting documents required for the entry in the Land Register of property transfer - with the exception of the tax clearance certificate - and
- c) any release from encumbrances documents eligible for entry in the Land Register have been provided for encumbrances not to be taken into charge, and
- d) the deposited amount is sufficient to settle the Land Register encumbrances not to be assumed by the buyer.

In the case of orders of administrators or liquidators, the respective notice must be deleted.

If encumbrances in the Land Register not to be assumed by the buyer are to be properly cancelled in the Land Register, the amounts required for cancellation including the consequential court and notary costs may be taken from the sum deposited once all the above conditions for disbursement have been met. Any bank charges for the safekeeping shall be borne by the vendor.

- 14) The Auction House confirms that it has taken out standard insurance coverage for the custodian accounts kept by an auctioneer as escrow agent. If the contracting parties agree on a deposit in a notary trust account in the bid acceptance deed, the rules contained in the Terms and Conditions of Auction in respect of accounts in trust shall apply mutatis mutandis together with the deviations contained in clause 21.

- 15) If the buyer does not pay on time, then the vendor is entitled to the resulting claims, in particular the right to default interest in accordance with Section 288 BGB. A notice of withdrawal from the Agreement must be notified to the other party (Section 126 BGB) in writing. The declarant himself has to ensure timely and appropriate receipt.

Each buyer and each representative of the buyer acting with covert power of attorney, who does not have power of attorney eligible for entry in the Land Register on notarisation of the bid, is also obligated to submit to immediate

enforcement, for the record of the authenticating notary public, by virtue of the highest bid given to the vendor and by virtue of the broker's commission to the Auction House in each case plus five per cent, in the case of non-consumers nine per cent above the base interest rate annually on this from the day of notarisation of the Agreement and to irrevocably instruct the notary public to issue an executable counterpart to the vendor or Auction House. If the buyer is no longer present, he shall retroactively make this declaration before a notary public without undue delay.

- 16) If properties are auctioned, where the auctioneer himself is involved as co-owner, this must be announced at the beginning of the auction.
- 17) The buyer shall bear the broker's commission owed by him due to the bid acceptance directly to the Auction House. This amounts in each case inclusive of statutory value added tax
 - a) at a hammer price (purchase price) up to € 9,999.00 17.85 per cent,
 - b) at a hammer price of € 10,000.00 to € 29,999.00 11.90 per cent,
 - c) at a hammer price of € 30,000.00 to € 59,999.00 9.52 per cent,
 - d) at a hammer price starting from € 60,000.00 7.14 per cent.

The brokerage fee applicable to the vendor is based on an individual agreement made with him. Broker's commissions are earned, due and payable on bid acceptance or on notarisation of the deed of sale and irrespective of further handling; a refund is excluded, unless an official or court authorisation required for the validity of the Agreement is definitively refused.

- 18) The buyer shall bear
 - a) the fees and expenses incurred for the notarisation, for the notarisation of the deed of sale or the record of bid acceptance and the conveyance as well as all associated execution and advisory fees including the authorisation(s) and confirmation(s) of power of attorney and, if applicable, the cost of his proof of representation as well as the cost of the drafts and the deposit (custodian fee), but only to the extent these fees and charges are not to be borne by the vendor in accordance with these terms and conditions;
 - b) the cost of the entries in the Land Register and the cancellation of the priority notice, the Land Register extracts, fees of the authorities, real estate transfer tax and other necessary approvals pursuant to Section 12 of the Property Ownership Act [WEG].

The vendor shall bear

- a) the cost of the authorisation(s) which he is responsible for or confirmation(s) of power of attorney and, if applicable, the costs of his proof of representation,
 - b) the cost of cancelling unassumed encumbrances in the Land Register with the exception of the execution fee as well as any trustee and custody fees only incurred due to the cancellation of encumbrances as well as any differential custody fees for the payment in instalments.
- 19) It should be noted that the transfer of ownership in the Land Register may be contingent on various regulatory approvals and negative clearance certificates referenced by the notary public in the contractual document. The procurement of the certificates and authorisations are undertaken by the central notaries public at the place of auction referred to in the deed of sale. The notary public is authorised to request Land register extracts. He is authorised to receive authorisations of every description and, if necessary, to notify them to other contracting parties and receive such notification for the respective other contractual party.
- 20) The application for transfer of ownership is to be filed by the notary public when the payment of the deposited purchase price matures, but not before the other documents to be provided by the buyer for the transfer of ownership have been provided. This also applies to alienation by the liquidator or examiner, unless it

has been evidenced to the notary public that the latter's authorisation has lapsed in the meantime.

- 21) For the safekeeping of the purchase price on a notary trust account, the following rules apply: Retroactive value date is prohibited. The notary public is not entitled to receive cash. The notary public is instructed by all parties to settle the claims of the creditors entered in the Land Register in proportion to the balances yet to be notified by the latter plus any compensation for early repayment and costs from the purchase price. In this context, the notary public is not required to examine the right to the claim in detail. The notary public is entitled, in order to bind the creditors to the declaration of duty pursuant to Section 875 (2) BGB, to request in trust the approvals of the deletion, lien release declarations, assignments and correspondence and to receive them on behalf of the parties concerned.

Purchase price components needed to repay registered creditors are hereby assigned to the notary public for this purpose. The notary public may refuse performance of the trust mandate if the creditors to be repaid or the buyer's financial backers to be registered in the Land Register impose obligations on him of such a kind as to impede the proper execution of the trust mandate. This is especially the case when a trust mandate of a creditor on the buyer side is for a limited term. Furthermore, he may return the trust mandate if it subsequently transpires that the execution of the Agreement is ultimately thwarted by contradictory fiduciary conditions, for example.

The interest accrued by the safekeeping is payable to the vendor. If the deposit amount is repaid to the depositor failing transfer of ownership, the interest shall be paid to the buyer. Payments from the trusts account shall be made by bank transfer from bank to bank and require the customary amount of time in the ordinary course of business. The claim to the purchase price is satisfied only if the amount is paid out by the notary public or the amount remains on the trust account at the request of the vendor after the due disbursement date. The notarial purchase price safekeeping incurs a special fee. This shall be borne by the buyer. As a result of the fiduciary commitment, a setoff or retention is also excluded in view of the deposited amount. On the due disbursement date the notary public is entitled to take costs and outlays to be borne by the vendor in this or another auction matter from the amount available to the vendor from the trust account.

- 22) Jurisdiction is the district court or regional court of the respective place of auction, unless the law provides mandatorily for another venue.
- 23) Reference in conformity with Section 36 of the Alternative Dispute Resolution in Consumer Affairs Act [VSBG]: Sächsische Grundstücksauktionen AG is neither willing nor obliged to participate in dispute settlement proceedings before a consumer body.

Read out and approved, signed together with the notary public as follows: