

# SDL PROPERTY AUCTIONS: ARTICLES OF ROUP

## ARTICLES OF ROUP

1. In these Articles of Roup and in the Minute of Preference and Enactment attached overleaf:
- 1.1 "Auction Agreement" means the agreement between the Seller and the Auctioneer for use of the Auctioneer's services.
- 1.2 "The Property" means those subjects described in the Minute of Preference and Enactment annexed and signed as relative hereto.
- 1.3 "Special Conditions of Sale" means any supplementary conditions annexed and signed as relative hereto.
- 1.4 "Seller" means the party named on the attached Minute of Preference and Enactment annexed and signed as relative hereto.
- 1.5 "Buyer" means the party named on the attached Minute of Preference and Enactment annexed and signed as relative hereto.
- 1.6 "Auctioneer" means the party named on the attached Minute of Preference and Enactment annexed and signed as relative hereto.
- 1.7 "Buyer's Terms (Scotland)" means the agreement between the Buyer and the Auctioneer for using the Auctioneer's services, whose terms form part of these Articles of Roup.
- 1.8 "Reservation Agreement" means the agreement under a conditional sale between the Buyer and Seller, whose terms form part of these Articles of Roup.
- 1.9 "Reservation Agreement" means the agreement under a conditional sale between the Buyer and Seller, whose terms form part of these Articles of Roup.
- 1.10 The Seller's solicitors are identified in the Minute of Preference and Enactment;
2. The Auction shall be held at the time, place and date ("the Auction Date") set out in the Auction Agreement or at such other place or on such other date as may be appointed in any Minute annexed hereto.
3. The Property is to be exposed for sale by Auction by the Seller on the Auction Date stated in the Auction Agreement, on the conditions contained in these Articles of Roup, or on such other conditions as shall be appointed in any Minute (which term shall include any Addendum) annexed hereto.
4. The conditions of sale applicable to the Property are as follows:-
  - 4.1 It is hereby declared and accepted by any person bidding at the Auction, that any reference made to Auction Conditions specified on SDL Property Auctions' website, and any documents related to or contained within the Auction Conditions do not apply, in whole or in part, to the sale of the Property. The sale of the Property shall be governed by these Articles of Roup, any additional articles of roup included by the Seller's solicitor within the legal pack, any Special Conditions of Sale, the Minute of Preference and Enactment (including any Addendum annexed thereto) or Reservation Agreement (as applicable), and any Minute to follow thereon, the Buyers Terms (Scotland) and Auction Agreement.
  - 4.2 Where there is a conflict between these Articles of Roup and any articles of roup provided by the Seller's solicitor within the legal pack, those provided by the Seller's solicitor shall prevail.
  - 4.3 The Property is offered subject to an undisclosed reserve price and the Seller reserves the right to bid by itself or by its agents up to the reserve price.
  - 4.4 The Seller reserves the right to sell the whole or any part of the Property before the Auction or to withdraw the whole of the Property or any part thereof from the Auction without declaring the reserve price.
  - 4.5 The person offering the reserve price or, if there be more than one bidder, the highest bidder above the reserve price shall be preferred to the purchase, and in the event of competition each bid must exceed the immediately preceding bid by at least such sum as shall from time to time be prescribed by the Auctioneer.
  - 4.6
    - 4.6.1 All bids shall be deemed to be made exclusive of any Value Added Tax which may be chargeable on the sale price;
    - 4.56.2 the Seller shall be entitled to charge and the Buyer shall be obliged to pay any Value Added Tax which may be chargeable on the sale price in addition to the sale price.
    - 4.6.3 The terms of Conditions 4.6.3 to 4.6.9 (inclusive) hereof shall only apply to the extent they are expressly stated to apply in the articles of roup included by the Seller, or any Special Conditions of Sale. The Seller and the Buyer hereby record their understanding that the sale of the Property constitutes a transfer of a business or a part of a business as a going concern (a "TOGC") for the purposes of the Value Added Tax Act 1994 ("VATA") and Article 5 of the Value Added Tax (Special Provisions) Order 1995 and is not to be treated as a supply of goods or services in terms thereof and the Buyer and the Seller undertake to use all reasonable endeavours to procure that the transaction is treated as a TOGC both before and after the Settlement Date (as defined in 4.7).
    - 4.6.4 The Seller warrants and undertakes to the Buyer:-
      - (a) that it is and will at the date of settlement be a registered taxable person within the meaning of VATA;
      - (b) that it has elected to waive exemption in respect of the Property under paragraphs 2 and 3 of Schedule 10 to VATA;
      - (c) that it will continue to use the Property until the Settlement Date in the course of furtherance of its business namely the letting thereof in exchange for rent. The Seller shall exhibit to the Buyer as soon as possible, and in any event prior to the Settlement Date, the Seller's certificate of VAT registration, a copy of the Seller's written notification to HM Revenue & Customs ("HMRC") of the election to waive exemption and the written acknowledgement thereof from HMRC.
    - 4.6.5 The Buyer warrants and undertakes to the Seller:-
      - (a) that the Buyer is and will at the Settlement Date be a registered taxable person within the meaning of VATA;
      - (b) that it will elect to waive exemption in respect of the Property under paragraphs 2 and 3 of Schedule 10 to VATA and will notify such election to HMRC within 7 days of the Auction Date; and
    - 4.6.6 The Seller shall request its own HMRC Office to confirm in writing that HMRC shall treat the sale of the Property as a TOGC and not chargeable to VAT. The Seller shall pass a copy of the letter containing such request and any correspondence following thereon to the Buyer. If said HMRC Office intimate to the Seller that VAT is properly chargeable in respect of the sale of the Property, the Buyer shall be entitled to make direct representations to the said HMRC Office and if, following such representations, the said HMRC Office still hold that the sale attracts VAT, the parties will be bound accordingly.
    - 4.6.7 If HMRC confirm prior to the Settlement Date that the sale of the Property is not a TOGC within the provisions of Article 5, and that VAT is properly chargeable in respect of the sale, then the Buyer shall pay to the Seller in addition to the price on the Settlement Date the said VAT in exchange for a valid and appropriate receipted VAT invoice in respect thereof.
    - 4.6.8 If HMRC confirm following the date of settlement that the sale of the Property is not a TOGC within the provisions of Article 5, and that VAT is properly chargeable in respect of the sale, the Buyer shall within 7 days of written demand to the Seller from HMRC to such effect being intimated to the Buyer and in exchange for a valid and appropriate receipted VAT invoice, make payment of the said VAT.
    - 4.6.9
      - (a) If the sale of the Property does constitute a TOGC within the provisions of Article 5, then at the option of the Seller, the Seller shall deliver to the Buyer on the Settlement Date all records relating to the Property and required to be kept by the Buyer in terms of Section 49 of VATA and Paragraph 6 of Schedule 11 of VATA, such records to be made available thereafter for inspection by the Seller if reasonably required. The Seller at its sole option shall be entitled to request permission from HMRC to retain and preserve the said records in terms of sub-section (1)(b) of Section 49 of VATA;
      - (b) If the Buyer breaches any warranty or undertaking in terms of any part of Condition 4.5, the Buyer shall
  - (c) that from the Settlement Date it intends to own and manage the Property in the course of furtherance of its business and to continue to let the Property in exchange for rent.
  - (d) that the Buyer shall notify the Seller as soon as possible prior to the Settlement Date that paragraph 2(B) of Article 5 of the VAT (Special Provisions) Order 1995 does not apply to the Buyer. The Buyer shall exhibit to the Seller 7 days prior to the Settlement Date the Buyer's certificate of VAT registration, a copy of the Buyer's written notification to HMRC of the election to waive exemption and the written acknowledgement thereof from HMRC.

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- indemnify the Seller in respect of any loss arising due to the Buyer's breach.
- 4.7 If the Property is knocked down to a successful bidder ("the Buyer"):-
- 4.7.1 The Buyer (or the Buyer's duly authorised agent ("the Offeror")) shall immediately pay the applicable deposit and any associated fees to the Auctioneer. The deposit must be paid to the Auctioneer by debit card or bank transfer. The Auctioneer does not accept cash deposits. The deposit shall be held by the Auctioneer as stakeholder.
- 4.7.2 The Auctioneer is entitled, with the consent and irrevocable authority of the Buyer (which the Buyer hereby acknowledges and grants) to release such deposit to the Seller's Solicitors. Upon the Auctioneer releasing the deposit, the Auctioneer's liability as stakeholder shall be discharged.
- 4.7.3 If completion of the sale and purchase does not take place, the Auctioneer is authorised (and the Seller and the Buyer acknowledge and irrevocably confirm their agreement to such authority) to release the deposit to the person entitled to it under the Articles of Roup (including the Special Conditions of Sale), the Minute of Enactment (including any Addendum annexed to it) and any Minute to follow thereon.
- 4.7.4 The Buyer or Offeror shall, forthwith after the Property being knocked down to him or her, sign a Minute of Preference and Enactment. In the event of failure to comply with the requirements of clause 4.6.1 or 4.6.4 above, the Auctioneer shall be entitled either (a) to withdraw the Property from the Auction or (b) to re-expose the Property for sale
- 4.8 The Buyer's date of entry to the Property (herein called "the Settlement Date") shall ordinarily be:
- (a) For unconditional sales, 15 business days after the date of the subscription of the Minute of Enactment by or on behalf of the Buyer; OR
- (b). For conditional sales, 40 business days after the date of the subscription of the Reservation Agreement by or on behalf of the Buyer; Subject to any such other date as may be specified in the Special Conditions of Sale, additional articles of roup included by the Seller's solicitor, Minute of Enactment or Reservation Agreement (as applicable).
- 4.9
- 4.9.1 The price (together with Value Added Tax, if applicable) under deduction of the deposit already paid in terms of Condition 4.6 hereof will be paid in full on the Settlement Date by the Buyer by telegraphic transfer to a bank account nominated by the Seller. Interest on the price or so much thereof as remains unpaid shall, notwithstanding consignment and that entry might not have been taken, be paid on demand by the Buyer to the Seller at a rate of 5% per annum above the Base Rate of the Bank of Scotland from time to time in force for the period from the Settlement Date until payment in full is made, provided that no interest will be payable in respect of any period where delay in completion is caused by the Seller or the Seller's Agents. The Seller will also be entitled to uplift and retain rent for the Property until the price is paid in full. Notwithstanding the foregoing, it is expressly stated that payment of the full purchase price (under deduction as aforesaid) on the Settlement Date is of the essence of the contract and failure by the Buyer to pay the purchase price as aforesaid within ten days of the Settlement Date shall, without prejudice to the Seller's other rights and remedies, entitle the Seller to rescind the contract hereby constituted and to retain said deposit which shall be forfeit to the Seller notwithstanding that the Seller has exercised its option to rescind the said contract. The Seller is entitled at its entire discretion to refuse to accept any part of the amount payable on settlement of the transaction that is not sent by means of an electronic funds transfer to the Seller's conveyancer's client account from the client account of a solicitor or licensed conveyancer acting for the Buyer and regulated by the appropriate professional body.
- 4.9.2 The following provisions shall apply in respect of any arrears of rent and other amounts due to the Seller from any tenant of the Property or any part or parts thereof:
- Part 1 Current rent
- (a) 'Current Rent' means, in respect of each of the tenancies subject to which the Property is sold, the instalment of rent and other sum payable by the tenant in advance on the most recent rent payment date on or within four months preceding the Settlement Date
- (b) If, on the Settlement Date, there are any arrears of Current Rent, the Buyer must pay them, whether or not details of those arrears are given in the Special Conditions
- (c) Parts 2 and 3 of this clause 4.8.2 do not apply to arrears of Current Rent
- Part 2 Buyer to pay for arrears
- (a) Part 2 of this clause 4.8.2 applies where the Special Conditions give details of arrears
- (b) The Buyer is, on the Settlement Date, to pay, in addition to any other money then due, an amount equal to all arrears of which details are set out in the Special Conditions
- (c) The Seller will assign to the Buyer all rights that the Seller has to recover those arrears
- Part 3 Buyer not to pay for arrears
- (a) Part 3 of this clause 4.8.2 applies where the Special Conditions either so state or give no details of any arrears
- (b) While any arrears due to the Seller remain unpaid the Buyer must:
- (i) Try to collect them in the ordinary course of management but need not take legal proceedings or forfeit the tenancy
- (ii) Pay them to the Seller within five working days of receipt in cleared funds (plus interest at the rate of 5% per annum above the Base Rate of the Bank of Scotland from time to time in force calculated on a daily basis for each subsequent day's delay in payment)
- (iii) On request, at the cost of the Seller, assign to the Seller or as the Seller may direct, all such rights to demand and sue for arrears as the Seller may reasonably require
- (iv) If reasonably required, allow the Seller's conveyancer to have on loan the counterpart of any tenancy against an undertaking to hold it to the Buyer's order
- (v) Not without the consent of the Seller release any tenant or surety from liability to pay arrears or accept a surrender of or forfeit any tenancy under which arrears are due, and
- (vi) If the Buyer disposes of the Property prior to recovery of all arrears, obtain from the Buyer's successor in title a covenant in favour of the Seller in similar form to part 3 of this clause 4.8.2
- (c) Where the Seller has the right to recover arrears, it must not without the Buyer's written consent bring insolvency proceedings against a tenant or seek the removal of goods from the Property.
- 4.9.3 Where the Property is sold subject to a lease under which the rent is due to be reviewed with effect from a date prior to the Settlement Date but such rent review has not been agreed or determined prior to the Settlement Date then in respect of each such lease:-
- (a) the rent in respect of the Property shall be apportioned on the Settlement Date on the basis of the Seller's reasonable estimate of the rent which will ultimately be agreed or determined in respect thereof;
- (b) the Buyer shall use its best endeavours as soon as reasonably practicable after the Settlement Date to agree such reviewed rent with the tenant or to procure the same to be determined;
- (c) forthwith on such agreement or determination the Buyer shall notify the Seller and shall supply the Seller with such document or other correspondence relating thereto as the Seller shall require;
- (d) within fifteen working days of notification and receipt by the Seller of such document or other correspondence required in terms of Condition 4.8.3(c) above the Seller or the Buyer (as the case may be) shall pay to the other the amount of any excess due to the other in respect of the period from the due date for review under the lease to the Settlement Date after taking into account the estimated sum apportioned under this Condition; and
- (e) if the Buyer shall be the tenant or any associated company employed by having office in or control over the tenant or acting on behalf of the tenant then the rent to be

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- apportioned on the Settlement Date in respect of the Property shall be the sum notified for the purposes of this Condition to the Buyer prior to the Settlement Date or if there shall be no such sums then the Seller's reasonable estimate of such rent shall be deemed to be the rent payable with effect from the date of review and this Condition shall be construed accordingly.
- 4.10 The risk of damage to or destruction of the Property will pass to the Buyer when bidding for the lot has ended and the Buyer holds the winning bid. The Buyer shall require to make his own arrangements for insurance of the Property with effect from that date and the Seller will be under no liability in respect of the damage to or destruction of the Property or any part thereof as from that date. The Buyer will be bound to proceed with the purchase of the Property in terms of these Articles of Roup notwithstanding damage to or destruction of the Property from whatever cause.
- 4.11 A copy of these Articles of Roup ("the Articles of Roup" which expression shall include any minute thereto), the title deeds, and letting documents relevant to the sale, will be available for inspection on the Auctioneer's website as part of the legal pack, and, whether or not they inspect the same, all bidders shall be held to have satisfied themselves before bidding not only of the sufficiency and validity of the legal pack and of the Seller's right to the Property and to sell the same but also of the extent, boundaries, pertinents and other particulars of the Property and of the feudities, public, local and other burdens and conditions affecting the same whether discoverable from the public records or not.
- 4.12 The Property is sold under burden of the ground burdens, conditions of tenure, servitudes, wayleaves and the whole other burdens, conditions, restrictions, reservations and others specified or referred to in the title deeds or otherwise affecting the same and no warranty of any kind is given or will be given expressly or impliedly as to the compliance by any occupants or proposed occupants of the Property with the terms and conditions of such burdens, conditions, restrictions, reservations and others.
- 4.13 The Property is sold subject to and with the benefit of all current lets and rights of possession and the letting documents referred to in the Inventory of Writs and all tenants' rights thereunder. All bidders shall be held to have satisfied themselves before bidding as to the content and effect of and compliance with the letting documents and as to the existence and covenant of the tenants thereunder, no warranty being given by the Seller as to these matters.
- 4.14 The Property is exposed for sale not according to the advertisement of the property or with reference to any information, plans or documents which may be communicated to the Buyer before or at the auction, but tantum et tale as it exists, and as the Seller has right thereto and the Buyer admits that he has inquired and otherwise takes all risk in relation thereto and that he does not rely on any actual or deemed warranty by or on behalf of the Seller. If any mis-statement, error or omission shall be found as regards the Property or plans thereof or as regards the Inventory of Writs or on any account whatever, the same shall not annul the purchase nor entitle the Buyer to be relieved thereof nor to claim any deduction or abatement from the price offered by him or to retain the same or any part thereof.
- 4.15 The Seller shall not be bound to produce or deliver any writs other than those specified in the said Inventory of Writs and the Buyer shall be bound to accept the said writs as complete and sufficient title to the Property in all respects and shall not be entitled to object to the same after the Auction upon any ground whatever nor to require that any other Titles or evidence be made up at the expense of the Seller. The Seller shall not be bound to exhibit, deliver or continue any Search for Incumbrances or Report in the Land Register against the Property or the proprietors thereof. No Searches will be exhibited in the Companies Register or the Register of Charges. No letter of obligation shall be delivered by the Seller's Solicitors in connection with the sale of the Property.
- 4.16 The rents and other monies receivable in terms of the letting documents subject to the rights of the Seller in terms of Condition 4.8 hereof and the feu duty, (if any), rates, and other outgoing in respect of the Property will be apportioned as at the Settlement Date or if later the date when the price is paid in full between the Seller and the Buyer, and there shall be reserved to the Seller all rights which it may have acquired in regard to these matters in respect of the period prior to the Settlement Date or if later the date when the price is paid in full.
- 4.17 There are expressly excluded from the sale such fittings and equipment and trade and stock-intrade as belong to the tenants of the Property.
- 4.18 All bidders shall be held to have satisfied themselves before bidding as to whether the Property and the current use thereof comply with all relevant statutes, orders and statutory requirements and as to the existence of any notices, orders or requisitions affecting the same issued by any public or other competent body.
- 4.19 On the Settlement Date, in exchange for payment of the whole price and interest thereon (if any) the Seller shall deliver to the Buyer
- (a) a disposition in favour of the Buyer of the Property according to the description given in the Special Conditions of Sale and under the reservations, burdens, conditions and others specified or referred to in the title deeds or otherwise and in these Articles of Roup and
- (b) those deeds specified in the Inventory of Writs which are deliverable. The grant of warrandice in said disposition shall be at the Seller's sole discretion.
- 4.20 The Auctioneer and Judge of the Roup shall be the Auctioneer specified in any Minute of Enactment applicable to the purchase. He shall determine all questions which may arise at or in the course of the Auction which determination shall be final whether between the Seller and the bidders or among the bidders including without prejudice to the foregoing generality any dispute which arises concerning a bidding in which case he may put up the Property at the last undisputed bidding or otherwise as he thinks proper.
- 4.21 The Law of Scotland shall apply to the interpretation of these Articles of Roup and any Minute of Enactment or other Minute to follow hereon and so far as the Buyer is not or may hereafter not be subject to the jurisdiction of the Scottish Courts, by subscription of the Minute of Enactment by or on behalf of the Buyer or by the Offeror, the Buyer prorogates the non-exclusive jurisdiction of the Court of Session in Scotland and binds himself to submit to the jurisdiction of the said Court of Session in relation to all actions arising out of these presents.
- 4.22 Notwithstanding any rule of law to the contrary,
- the contract of sale of the Property of which these Articles of Roup form part shall cease to be enforceable after a period of 2 years from the Settlement Date except
- (a) in so far as founded on in any court proceedings which have commenced within the said 2 year period; and
- (b) in relation to the Seller's rights of inspection referred to in Condition 4.5.9(a) above (where applicable).
- 4.23 The contract of sale of the Property of which these Articles of Roup form part shall, as at the date of signing of the Minute of Enactment to follow hereon by or on behalf of the Buyer or by the Offeror, represent and express the full and complete agreement between the Seller and the Buyer relating to the sale of the Property and shall supersede previous agreements between the Buyer and the Seller (if any) relating thereto.
- 4.24
- 4.24.1 the Auctioneer is an agent for the Seller and will be entitled to sign the Minute of Enactment on behalf of the Seller as his agent. By virtue of making a bid, any successful bidder to whom the Property is knocked down to hereby appoints the Auctioneer (and in doing so hereby warrants to the Auctioneer and the Seller that they have authority to make such an appointment) to sign any contract (including the Minute of Enactment requiring to be signed in terms of Condition 4.6.4 above) on behalf of the Buyer as the Buyer's agent;
- 4.24.2 the Auctioneer reserves the right to sell in separate lots if the whole of the Property is unsold or to sell in one lot where individual lots are offered. The Auctioneer reserves the right to sell prior to auction;
- 4.24.3 the Auctioneer reserves the right to regulate the bidding and to refuse to accept any bids without assigning any reason therefor in the Auctioneer's sole absolute discretion. In the event of any dispute in respect of the bidding or other conduct at the Auction, the Auctioneer's decision shall be final. In particular the Auctioneer may re-offer the lot as at the last undisputed bid at his absolute discretion;
- 4.24.4 the Auctioneer shall be under no financial liability in respect of any matters arising out of the Auction or any Particulars of Sale or the Auction Catalogue or in the conditions of sale. No claims shall be made against the Auctioneer by the Buyer or the Offeror in respect of any loss, damage or claims suffered by or made against the Buyer or the Offeror by reason of the Buyer or the Offeror entering any contract to purchase or acquire any other interest in the Property.

IN WITNESS WHEREOF these Articles of Roup typewritten on this and the preceding pages, together with the Special Conditions of Sale annexed and signed as relative hereto are subscribed for and on behalf of the Seller