# AGREEMENT

**FOR THE SALE OF A BUSINESS**

between:

# THE SELLER

(as recorded in item 1 of the Table below)

# (“the Seller”)

and

# THE PURCHASER

(as recorded in item 2 of the Table below)

# (collectively referred to as the “Parties”)

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| **1.** | **SELLER:** |  | |
|  | Name: |  | |
|  | Registration Number: |  | |
|  | Registered address: |  | |
|  | Email address: |  | |
| **2.** | **PURCHASER:** |  | |
|  | Name: |  | |
|  | Registration Number/Identity Number: |  | |
|  | Physical address: |  | |
|  | Email address: |  | |
| **3.** | **CLOSING DATE** (this is the date that the deal is concluded)**:** |  | |
| **4.** | **PURCHASE PRICE:** |  | |
| **5.** | **TERMS OF PAYMENT:** |  | |
| **6.** | **BUSINESS OF THE SELLER:** |  | |
| **7.** | **EFFECTIVE DATE** (this is the date, after the Closing Date, on which the Purchaser takes over operations of the Business)**:** |  | |
| **8.** | **If MARKS are included/excluded as a Sale Asset.** (Please mark applicable)**:** | Included: | Excluded: |
|  | If Marks are included as Sale Assets, please record what the Marks will comprise: |  | |
| **9.** | **If DEBTORS OF THE SELLER are**  **included/excluded as a Sale Asset.** (Please mark applicable)**:** | Included: | Excluded: |

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| **10.** | **SALE ASSETS** (in addition to Debtors (if applicable) and Marks (if applicable)**:** | Fixtures and fittings Equipment  Goodwill of the business |
| **11.** | **INTEREST RATE** (this is the penalty interest rate should the Purchaser fail to pay on time)**:** |  |
| **12.** | **ARBITRATION JURISDICTION**  (this should be the province where you are situated)**:** |  |

1. **DEFINITIONS**
   1. In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder:
      1. “**Agreement**” shall mean this agreement together with any annexures, addenda or schedules annexed hereto.
      2. "**Business**" shall mean, *inter alia*, the Business conducted by the Seller as set out in item 6 of the above Table as constituted by the Sale Assets;
      3. 1.1.3.
      4. "**Debtors**" shall mean the claims of the Seller against the Debtors of the Business as at the Effective Date as a Sale Asset, (if applicable), which applicability is recorded in item 9 of the above Table;
      5. 1.1.5.
      6. 1.1.6.
      7. "**Marks**" shall mean the trade marks, brands and designs owned by the Seller as a Sale Asset, (if applicable) and whether registered or not and used in connection with the Business, which

applicability is recorded in item 8 of the above Table;

* + 1. 1.1.8.
    2. "**Sale Assets**" shall mean those assets as set out in item 8 (if applicable), item 9 (if applicable) and item 10 of the above Table;
    3. "**Sale Liabilities**" shall mean the liabilities of the Seller as at the Effective Date, including any liability for taxation of whatsoever nature;

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# INTERPRETATION

* 1. Words importing natural persons shall include a reference to bodies corporate and other legal personae and *vice versa*;

2.4. Annexes to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;

2.8. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;

2.12. If any provision is a definition (or under this heading *"Interpretation"* and/or any other heading in this Agreement) and is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the Agreement; and

# SALE

1. **PURCHASE CONSIDERATION**

# RELEASE FROM GUARANTEES

5.2. Pending their release, the Purchaser hereby indemnifies and holds the Seller harmless against any claim which may be made against the Seller in terms of any such suretyship, guarantee or act of intercession.

# POSSESSION, OWNERSHIP AND CONTROL

* 1. On the Closing Date, but with effect from the Effective Date:
     1. the Seller will place the Purchaser in possession and ownership of

the Business;

* + 1. the risk in, benefit to and control of the Business and the Sale Assets will pass to the Purchaser.
  1. Accordingly, ownership in and to the Business and the Sale Assets shall pass to the Purchaser on the Effective Date.
  2. The Parties shall use their respective best endeavours to procure whatever consents, if any, may be required for the passing of the rights and obligations in terms of clause 6.2. If and insofar as such consents cannot be obtained, then that fact shall not as between the Seller and the Purchaser, negate the provisions hereof, but the Seller and the Purchaser shall act in all respects as if such rights and obligations had passed accordingly and the Seller shall continue, as against all affected third parties, to hold such rights and be liable for such obligations, for the benefit and risk of the Purchaser and, as regards liabilities, under indemnity from the Purchaser.

# WARRANTIES

7.1.2. the Purchaser will not be entitled to cancel this Agreement as a consequence of the breach of any of such warranties or representations, unless the breach is a material one which goes to the root of this Agreement and is incapable of being remedied by the payment of monetary compensation or otherwise, or if so capable of being remedied, the Seller fails so to remedy the breach within seven (7) days of receipt of written notice calling upon it so to do.

7.2.2. the breach is incapable of being remedied by the payment of monetary compensation or otherwise; or

7.3. The Seller warrants that:

7.3.3. no person has, nor will any person on the Effective Date have, any option or right to acquire any of the Sale Assets or any other assets of the Business other than in the ordinary and normal course of business;

7.3.6. all of the Sale Assets comprising the Business will be in good and proper working order;

aid and the Seller hereby indemnifies the Purchaser against any liability arising in respect thereof;

7.3.11. it will discharge the Sale Liabilities according to their tenor and hereby indemnifies and holds the Purchaser harmless against any claims in respect thereof.

7.3.12.2. it has not sold or otherwise disposed of or encumbered any of the rights attaching to the Marks (nor purported nor agreed to do so) to any person other than the Purchaser, nor has it granted any right, licence, option or privilege with respect thereto, nor encumbered the Marks in any way;

ttaching to the Marks and to the best of the Seller's knowledge and belief, there is nothing which will preclude the Purchaser from exploiting such rights at any time;

7.3.12.6. to the best of the Seller's knowledge and belief, the use of the Marks by the Purchaser will be unimpeachable by any third party;

7.3.13. The provisions of clauses 7.3.12.1 to 7.3.12.8 shall have no bearing to this Agreement in the event that the Marks do not form part of the Sale Assets.

# INSOLVENCY ACT PROVISIONS

.2. The Seller indemnifies the Purchaser against any loss or damage which the Purchaser may suffer as a result of notice of this transaction not being published in terms of the Act.

8.4. If the Purchaser gives notice to the Seller in terms of clause 8.3, then the Seller shall within 14 (fourteen) days of receipt by it of such notice procure that the Sale Assets concerned are released from attachment and returned to the Purchaser. If the Seller shall fail to procure such release and return, then the Seller shall within 7 (seven) days from the expiry of the 14 (fourteen) day period aforesaid, replace the attached assets and pay to the Purchaser whatever damages it may have suffered as a result of such attachment and/or pay to the Purchaser the replacement value of such assets and such damages as the Purchaser may have suffered as a result of such attachment.

# DEBTORS

1. **DISPUTE RESOLUTION AND ARBITRATION**

10.2. If either Party provides written notification to the other that such attempt has failed then each Party shall attempt to agree upon the appointment of a suitably qualified mediator, within 10 (ten) days of such dispute being referred.

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* 1. The arbitration shall be:
     1. held within the jurisdiction set out in item 13 of the above Table;
     2. conducted in the English language;

10.4.5. held as soon as is reasonably practicable in the circumstances and with a view to it being completed within 30 (thirty) business days of the date of the Arbitration Notice.

10.5.3. any other matter a suitably qualified independent person agreed upon between the Parties.

10.7. The arbitrator shall determine which Party shall pay the costs of and incidental to the arbitration or, if more than 1 (one) Party is to contribute, the ratio of their respective contributions, and the scale on which such costs are to be paid.

* 1. The provisions of this clause 10:
     1. constitute irrevocable consent by the Parties to any proceedings in terms of this clause 10 and no Party shall be entitled to

withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

~~10.9.2~~.

* 1. This clause shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has terminated.

# BREACH

* + 1. an order for specific performance and damages; or
    2. cancel this Agreement and claim damages.

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remedy the breach within thirty (30) days of receipt of written notice calling upon it so to do. If any dispute shall arise as to whether:

11.2.2. the breach is incapable of being remedied by the payment of monetary compensation or otherwise; or

then such dispute shall be determined, *mutatis mutandis,* in accordance with the provisions of clause 10 above.

11.3. Any amount falling due for payment by any Party in terms of or pursuant to this Agreement including any amount which may be payable as damages shall bear interest thereon, at the interest rate set out in item 12 of the above Table, and reckoned from the due date for payment (or, in the case of any amount payable by way of damages, with effect from the date upon which those damages are sustained) to the actual date of payment thereof, both dates inclusive.

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# ADDRESSES AND NOTICES

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* 1. A Party may change its *domicilium* to any other physical address or telephone or email address by written notice to the other Party to that effect. Such change of address will be effective seven days after receipt of notice of change of *domicilium.*
  2. All notices to be given in terms of this Agreement will:
     1. be given in writing;
     2. be delivered by email, or sent by courier;
     3. if delivered, be presumed to have been received on the date of delivery.

12.5. Notwithstanding the above, any notice actually received by the Party to whom notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has been given in accordance with the provisions of this clause.

# WHOLE AGREEMENT

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# VARIATIONS

* 1. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
  2. For the avoidance of doubt, data messages as defined in the Electronic Communications and Transactions Act No.25 of 2002 shall not constitute “writing” for purposes of this clause, whether such data message includes an electronic signature or not.

# NON-WAIVER

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performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against any other Party, unless reduced to writing and signed by both Parties.

# CESSION

1. **NON-REPRESENTATION**
   1. The Parties acknowledge that in entering into and performing this Agreement they do not do so on the basis of, and do not rely on any statement or representation or warranty or understanding other than as expressly contained in this Agreement at the Signature Date.

# APPLICABLE LAW

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# COSTS

* 1. Each Party shall bear that Party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

# SEVERABILITY

* 1. If any provision of this Agreement should be wholly or partly invalid, unenforceable or unlawful, then this Agreement shall be severable in respect of the provision in question (to the extent that it is invalid, unenforceable or unlawful) and the remaining provisions of this Agreement shall remain in full force and effect.

# SIGNATURE

21.3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

Signed at on the day of 20 . Seller

Name:

Duly authorised hereto

Signed at on the day of 20 . Purchaser

Name:

Duly authorised hereto