

**PART 4 APPENDIX DOCUMENT FILE****Appendix/Document File****I****LOAN AGREEMENT****LOAN AGREEMENT No. \_\_\_\_\_**

This Loan Agreement is entered into on January \_\_, 2002 by and between

\_\_\_\_\_ (hereinafter referred to as “Lender”),  
and

\_\_\_\_\_, pin , residing at \_\_\_\_\_, hereinafter-  
“Borrower”.

Lender and the Borrower shall hereinafter be jointly referred to as “Parties”.

## Section. DEFINITIONS.

For the purpose of this Agreement the words and expressions specified below have the meaning attributed to them below. Clause headings are for convenience only and should be disregarded in the interpretation of this Agreement.

- |      |                          |   |
|------|--------------------------|---|
| 1.1. | Adjustable Interest Rate | Interest rate applied to the Loan and composed of LIBOR plus risk margin pursuant to Section 4 of this Loan Agreement   |
| 1.2. | Agreement                | Refers to entire Agreement as provided by Section 17 of this Loan Agreement   |
| 1.3. | Banking Day              | Means a calendar day when commercial banks in Latvia are open for clients to perform banking transactions.  |
| 1.4. | Debts                    | Guarantees, any surety for obligations of third parties or other contingent liabilities for borrowed money or any indebtedness of Borrower, except for liabilities incurred pursuant to this Agreement. |
| 1.5. | Event of Default         | Events and circumstances specified in Article 12.1 of this Agreement  |
| 1.6. | LIBOR                    | Interest rate for loans in US dollars offered in the London Interbank Market as posted by Financial Times for the relevant date.  |
| 1.7. | Loan                     | Means an amount of USD _____ disbursed to Borrower pursuant to this Agreement.  |
| 1.8. | Loan Payment             | Refers to monthly repayment of Loan, or part of Loan, interest, penalties and default interest payable by Borrower pursuant to the terms of this Agreement  |

- 1.9. Loan Term Period consisting of \_\_\_\_\_ months of full Loan Payments and initial interest only payment starting with a date of first disbursement and ending in \_\_\_\_\_ 1<sup>st</sup>, 20\_\_\_\_, except for even specified in Article's 12.1. and 12.4. of this Loan Agreement.
- 1.10. Mortgage Agreement Agreement whereby Borrower mortgages Real Property to secure Borrower's obligations pursuant this Agreement
- 1.11. Principal Loan amount outstanding under this Agreement
- 1.12. Real Property Refers to apartment no \_\_\_\_\_, located at \_\_\_\_\_, Riga, Latvia, cadaster no. 0100 \_\_\_\_\_ which is the subject property to be purchased by the Loan proceeds.
- 1.13. Residential Mortgage Loan Application Application form and all documentation supporting it submitted by Borrower to Lender for the purpose of receiving this Loan.
- 1.14. Schedule Loan Amortization Schedule prescribing the repayment of Loan and interest at Adjustable Interest Rate
- 1.15. USD The currency of the United States of America

Kommentti: Page: 91  
Exact repayment term not stated in Estonia

#### Section. LOAN AND PURPOSE OF LOAN.

Whereas Borrower has submitted to Lender a Residential Mortgage Loan Application Lender agrees to lend to Borrower under the terms and conditions of this Agreement the Loan in the amount of USD \_\_\_\_\_,00 (\_\_\_\_\_ US dollars) for the purchase of Real Property. The Real Property shall be used as Borrower's primary residence. Borrower agrees to use Loan proceeds exclusively for this approved purpose.

#### Section. DISBURSEMENT

Any disbursement of the Loan will be made by Lender within five Banking Days after all of the following preconditions are completed by Borrower and verified by Lender:

Loan Agreement and Mortgage Agreement and other relevant documents have been signed and certified by notary public;

Borrower has paid to the seller of the Real Property USD \_\_\_\_\_ as a part of the purchase price;

Borrower has submitted to Lender sufficient evidence of payment to Lender the Loan origination fee fixed by Lender in the amount of USD \_\_\_\_\_ 00;

Lender has received to its satisfaction proof of insurance agreements which comply with the provisions of Section 10 of this Loan Agreement;

Lender has received to its satisfaction the following documents:

Real Property purchase agreement for the price of which Loan constitutes not more than 80% of the purchase price; and

Certificate issued by appropriate real estate registration institution evidencing that Real Property belongs to Borrower; and

Certificate issued by appropriate real estate registration institution evidencing that Lender holds the first mortgage on Real Property; and

Certificate evidencing that Lender holds the first mortgage on Real Property;

All applicable documents evidencing that all interested parties and all relevant institutions have consented to the pledge of Real Property;

Nuptial Agreement or equivalent document evidencing that Real Property is Borrower's separate property excluded from the joint property of spouses;

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0.5% in Lit

Kommentti: Page: 91  
b), c), d) not required in Estonia

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Applied in Latvia only

A certificate from appropriate real estate registration Institution containing full information regarding Real Property and evidencing that there is no other liens on the Property except for those on behalf of Lender.

No event or circumstance which constitutes an Event of Default has occurred or is deemed occurring upon the reasonable opinion of Lender.

Conditions identified in Section 3.1 are for Lender's benefit and may be waived by Lender.

Disbursement of the Loan shall be made by transfer of money by Lender to the following bank account as directed by Borrower:

Bank account: ,  
 Bank: JSC  
 Bank SWIFT code:  
 Beneficiary:.

All disbursements to Borrower or other person identified by Borrower, in accordance with Article 3.3 of this Loan Agreement, shall be made in US dollars.

The Loan shall be deemed disbursed to Borrower as of the date when Lender has submitted the payment order for transfer of the Loan to the bank account indicated by Borrower.

If Borrower has not performed all the preconditions for disbursement of Loan within three months after execution of this Agreement the Agreement shall become invalid. The Parties may agree in writing on extension of this term. If this Agreement becomes invalid according to this Clause, Borrower waves the right to claim any amounts spent in connection with this Loan, including, but not limited to Loan origination fee, expenses related to the evaluation of Real Property, legal and notarial costs.

#### Section. INTEREST

Borrower shall pay interest on the Principal disbursed and outstanding until the full amount of Principal has been repaid. Interest shall accrue from day to day starting from the date of disbursement of the Loan according to Section 3 of this Loan Agreement. Loan shall bear an Adjustable Interest Rate composed of the following two parts:

**risk margin**, which is \_\_\_\_% per annum; and  
**variable part, which equals to one year LIBOR** and shall be determined once a year- on the 15<sup>th</sup> January of each calendar year. In the event that the 15<sup>th</sup> of January is not a Banking Day the LIBOR shall be determined as of the closest preceding Banking Day. The Adjustable Interest Rate and adjusted Schedule becomes effective as of the 1<sup>st</sup> January and shall remain in force for one year. From the date of disbursement of the Loan until the first Interest adjustment date the LIBOR \_\_\_\_\_% per annum shall be applied.

By the 25<sup>th</sup> January of each year, Lender shall issue to Borrower a revised Schedule for Loan Payments for that respective year, calculated pursuant to the new Adjustable Interest Rate. Borrower hereby irrevocably undertakes to observe such Schedule.

Lender shall deem the Schedule to be received by Borrower within five days of its issuance. If the Schedule has not been received by the 26<sup>th</sup> January Borrower is

obliged to apply to Lender for the revised Schedule. Not receiving the Schedule shall not release Borrower from the obligation to make the Loan Payments calculated in accordance with Articles 4.1 and 5.3. of this Loan Agreement and indicated by the Schedule, nor from the related penalties and default interest for the Loan Payments past due.

#### Section. LOAN PAYMENTS.

Borrower undertakes to repay the Loan, interest and other amounts due under this Agreement by timely monthly Loan Payments. Loan Payments shall be made by the first date of the month following month for which the payment is due.

All Loan Payments shall be made in USD to Lender's bank account specified below:

Account number: \_\_\_\_\_  
 Bank: JSC "Latvijas Unibanka",  
 Bank Code: UNLA LV 2X.

Lender is entitled to require payment to a different bank account by giving a minimum of fifteen days prior written notice to Borrower.

Loan Payments shall be made in the order specified below:

**Loan Payment 1:** interest only payment based on the outstanding disbursed Principal for the respective calendar month.

**Loan Payment for each subsequent month:** part of Principal and interest inclusive calculated by taking annuity amortisation of the Principal balance assuming all past Loan Payments were made as scheduled over the remaining Loan Term at the current Adjustable Interest Rate. The bases for calculation and performance of Loan Payments shall be this Loan Agreement; the effective Schedule shall describe Loan Payments calculated pursuant to these terms.

All calculations under this Agreement shall be made in USD and based on 360-day year of 12 months, 30 days in each month.

Any payment to be made by Borrower under this Agreement shall be considered as made when funds have been received in the Lender's bank account.

If Borrower wishes to make Loan Payments for future months before the due date of the payment, Borrower shall notify the Lender before any such payment, otherwise any funds received in excess of the current Loan Payments shall be applied as prepayment of Principal in accordance with Section 7 of this Loan Agreement.

The Lender has the right to review the Amortisation Schedule and change amount or terms of Loan Payments if:

Adjustable Interest Rate is changed pursuant to Section 4 of this Loan Agreement;

The actual amount of Principal and interest outstanding differs from that calculated under this Agreement due to variation in the Borrower's Loan Payments. Lender shall be entitled to increase the monthly Loan

Payment amount in order to make all the amounts due pursuant to this Agreement repaid by the Loan Term.

The actual amounts or terms of disbursements differ from the amount or terms used in preparation of this Agreement and initial Schedule;

Any change in applicable laws or regulations shall make Loan Payments subject to any taxes or withholdings or increase the rate of taxation. Loan Payments shall be increased by the necessary amount to make the net amounts received by Lender equal to the Loan Payments under this Agreement.

If Loan Payments are changed pursuant to paragraphs 5.7.2-5.7.4., Lender shall send to Borrower the revised Schedule which becomes effective as of the date of its issuance. The Schedule shall be deemed received by Borrower within five days of its issuance. Borrower shall make Loan Payments in accordance with the most recent Schedule issued by Lender.

All payments made by Borrower will be applied first to costs and expenses incurred by Lender as a result of this Agreement, then to penalties and default interest, then to late interest, then to late Principal, then to current interest and then to current Principal.

When making any Loan Payment, Borrower shall indicate the loan identification number of this Agreement as provided by Lender. If Lender has received a payment which can not be identified, the particular payment is deemed to be unpaid until it is identified, and Borrower shall pay the applicable penalties in the manner provided below.

#### Section. LATE PAYMENT PENALTY

Loan Payment not received by Lender more than 14 (fourteen) calendar days past the due date shall be assessed with a USD 25 penalty payment which shall be paid in addition to the scheduled Loan Payment.

Loan Payment not received by Lender more than 30 calendar days past the due date shall require that a default interest rate will apply to Principal balance outstanding in addition to the regular Loan Payments. The default interest rate shall be 5% per annum more than current Adjustable Interest Rate stipulated in Section 4 of this Loan Agreement at the time of default. The default interest rate shall be applied from the first day of default and will remain in effect until all overdue Loan Payments are received. If during this time Adjustable Interest Rate, determined pursuant to Section 4 is changed, the default interest rate shall also be changed accordingly.

#### Section. PREPAYMENT

Borrower may repay the Loan in full or in part before the Loan Term without paying a penalty. If Borrower intends to repay the Loan fully before the Loan term, Borrower shall provide Lender a minimum 15 calendar days prior written notice and verify the exact payment amount. In case of full repayment of Loan Borrower shall pay interest stipulated in Article 4.1. of this Loan Agreement through the last day of the calendar month of such repayment.

## Section. FEES, EXPENSES, CURRENCY EXCHANGE RISK.

Borrower shall pay all applicable bank fees related to implementation of this Agreement, including, currency exchange and money transfer or other fees.

Prior to disbursement of the Loan Borrower shall pay all expenses related to the Loan and preparation and execution of this Agreement, including but not limited to legal fees, notary fees, appraisal fees, Real Property insurance fees, and other fees of any nature related to this Loan.

Borrower shall bear all expenses that may occur during the life of the Agreement and that are necessary to protect the interests of Lender, including Real Property insurance and appraisal costs, costs regarding any amendments to Agreement or other Loan documents, registration of Real Property or Part thereof with the Land Book; registration or novation of mortgage to Real Property and amendments to mortgage endorsement with any real estate registration institution, as well as expenditures incurred by Lender in demanding, suing for, recovering and receiving payment of any amount due to Lender under this Agreement, including but not limited to stamp taxes, court fees, legal fees and other expenses incurred in connection with the enforcement of this Agreement. Borrower shall immediately reimburse Lender for any such expenses incurred.

If any change in any applicable laws or regulations shall make Loan Payments subject to any taxes or withholdings or increase the rate of taxation the Borrower shall bear any of such applicable taxes or withholdings.

Borrower shall bear all currency exchange risks.

## Section. SECURITY

All obligations of Borrower to Lender as provided by this Agreement, shall be secured by first mortgage rights of Borrower's Real Property in accordance with Mortgage Agreement entered into on the same day when this Loan Agreement is entered into.

Borrower shall ensure that the Mortgage Agreement and other documents evidencing and duly establishing security are executed and registered with the respective real estate registration institution as required by the laws of the Republic of Latvia for proper and effective registration of first priority mortgage rights on Real Property. If the laws of the Republic of Latvia require registration of the Real Property with another real property registration institution, Borrower undertakes without delay take all necessary actions to re-register the Real Property and do everything possible to register in an appropriate manner Lender's mortgage rights to real Property in accordance with the Mortgage Agreement, including obligation to disclose to all competent institutions and officials the existence of the mortgage to Real Property and to register mortgage to Real Property corresponding to this Loan Agreement and Mortgage Agreement simultaneously with the registration of the Real Property with another real property registration institution, as well as sign any documents and take any action to for the above purpose.

Borrower shall not sell, donate, pledge, lease, assign, use Real Property as somebody's registered address except for the Borrower's dependants; dispose of or otherwise transfer or encumber with rights or obligations all or part of the Real Property without prior written consent of the Lender.

Borrower shall keep Real Property in good order and repair. Borrower shall notify Lender immediately if Real Property has been damaged, destroyed or materially

Kommentti: Page: 95  
Lithuania only

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Each country specifies name of its  
Real Estate Register

altered or third parties have filed any claims with regard to Real Property. Real Property shall be available for inspection at the request of Lender.

During the term of this Agreement, Borrower covenants to refrain from such activities that may damage the Real Property or reduce its value or possibility to sell. The Real Property shall not be used for unlawful purposes.

Borrower shall make payments of the real estate tax and any applicable state or municipality duties and other payments regarding Real Property maintenance, management and utilities as they come due. Borrower shall within 15 days from Lender's request but not less than once a year provide Lender with documents evidencing that all above payments have been made. Should Borrower fail to comply with these provisions the Lender shall be entitled, but not obliged, upon its discretion to make such payments on behalf of Borrower and collect from Borrower the costs incurred.

When all obligations of Borrower under this Agreement have been satisfied, Lender shall issue all necessary documents and authorises Borrower to cancel any liens and encumbrances created to secure the Loan. Borrower shall bear any costs associated with such actions.

Kommentti: Page: 96  
Specific for Lithuania

#### Section. INSURANCE

Within five Banking Days from the execution of this Agreement Borrower at his expense shall conclude following insurance agreements:

Real Property insurance against the following risks: fire, water, natural calamities, vandalism.

Each and every insurance agreement shall be concluded with an insurance company acceptable to Lender and on terms satisfactory to Lender. The Real Property insurance Agreement shall provide for recovery in an amount of replacement value of the Real Property but no less than the amount of the Loan or equivalent amount in official currency according to USD exchange rate provided by the Bank of Latvia as of the date of insurance agreement. Lender shall be identified as first loss payee. The terms of insurance agreements shall require 30 days prior notice to Lender of any amendment or expiration of insurance.

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Principal in Estonia

Borrower shall maintain insurance as provided in this Agreement until all Borrower's obligations arising from this Agreement have been satisfied. During the term of this Agreement Borrower shall annually provide Lender with documents evidencing insurance agreements and insurance premium payments in accordance with this Agreement at least 3 days before the expiration of the previous insurance. Should Borrower fail to comply with obligations hereunder Lender shall have a right to purchase such insurance and require Borrower to reimburse Lender.

#### Section. WARRANTIES AND REPRESENTATIONS.

Borrower acknowledges that the representations and warranties contained both in this Agreement and the Residential Mortgage Application Form are true and correct. Said warranties have been given for purpose of entering into this Agreement and Lender has agreed to lend money and entered into this Agreement relying on the truthfulness of each and every of such representation and warranty. Borrower shall be liable to Lender or third parties and shall protect Lender against any

claims if interests of third parties have been offended by false information provided by Borrower which may result in Lender's liability.

In addition to all representations and warrants given in this Agreement Borrower acknowledges the following:

Borrower has disclosed to Lender his marital status and all dependants as of the date of signing this Agreement and Borrower is not married/ Real Property shall

be separate property, excluded from the joint property of spouses;

Borrower has disclosed to Lender all undertakings in which he has unlimited liability or partnership;

Borrower has no tax debts and disputes regarding tax debts;

No lawsuits nor executive or bankruptcy proceedings have been initiated against Borrower;

Bank accounts of Borrower are not seized or blocked;

Borrower is entitled to enter into this Agreement, it constitutes a valid and legally binding obligation of the Borrower;

Borrower has disclosed to Lender all existing debts and obligations and are not in default on any loans or other debts;

Borrower has disclosed to Lender all existing encumbrances and obligations with regard to all of his/her property.

#### Section. EVENTS OF DEFAULT

The following shall constitute an Event of Default under this Agreement:

Borrower fails to pay any sum due pursuant to this Agreement on the due payment date; or

Borrower has used the Loan or part thereof for a purpose other than stated in Section 2 of this Loan Agreement; or

Borrower fails to perform any obligation or violates any provision of this Loan Agreement or Mortgage Agreement; or

Any representation, warranty or statement made in this Loan Agreement, Mortgage Agreement, Residential Loan Application Form or otherwise by Borrower to Lender proves to be false; or

A lawsuit, bankruptcy or executive proceedings which in the opinion of Lender may preclude repayment of the Loan, has been initiated against Borrower; or

Borrower fails to use Real Property exclusively as his and his family's primary residence; or

This Loan Agreement or Mortgage Agreement or related documents become invalid or disputed by Borrower; or

Borrower loses title to or authorization to use whole or material part of Real Property or any third party acknowledges and claims its legal rights to Real Property; or

The mortgage of the Real Property has not been registered as required by the Clause 9.2 or has not been registered simultaneously with the registration of the Real Property with the Land Book or Borrower fails to submit to Lender the certificate evidencing registration of the mortgage with the Land Book within five days after such registration; or

An event of default occurs on any of the Borrower's Debts which might cause an acceleration of such Debt that in Lender's opinion might impact Borrower's ability to perform the obligations of this Agreement; or



Borrower undertakes, co-signs or guarantees any other Debt or liabilities without prior written consent from Lender ; or

Criminal action is initiated or charges in criminal proceedings are brought against Borrower and Borrower is under the threat of imprisonment, forfeiture of property or other sanctions which in the opinion of Lender may have an adverse impact on Borrower's ability to fulfil the obligations under this Agreement;

Should an Event of Default occur or its occurrence is anticipated, Borrower shall notify Lender immediately of the nature of the default and Borrower's proposed remedy, if any.

Should an Event of Default occur the Lender may exercise separately or combined the following measures:

unilaterally terminate the Loan by sending to Borrower registered notice thereof, as well as declare the Principal, all interest and penalties due and all other amounts payable under this Agreement to be due and payable within 14 (fourteen) calendar days from the Lender's request;

effectuate Lender's mortgage rights on Real Property;

pursue any other remedies provided under applicable law to protect Lender's rights and interests;

request from Borrower a penalty in the amount of USD 100.00 for each Event of Default stipulated in Clauses 12.1.2-12.1.12 hereunder. The penalty is payable in addition to performance of obligations provided in this Agreement and shall not release the Borrower from performance of these obligations.

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USD 100

Lender shall have the right to terminate the Loan and declare Principal, all interest due and other amounts payable under this Agreement to be due and payable within 14 days when Borrower dies and the person who wishes to take over Real Property and Borrower's obligations pursuant to this Agreement is not acceptable to Lender. Lender shall have the right to apply rights and remedies provided in this Section to protect Lender's interests and recover the Loan.

The parties agree and acknowledge that Lender's rights referred to in Article 12.3. herein to require full repayment of the Loan and other amounts payable under this Agreement shall apply not only on the Loan Term, but also upon delay of any Loan Payment or occurrence of the Event of Default.

#### Section. ASSIGNMENT

Lender shall have authority to assign at any time all or part of his rights and obligations under this Agreement to a third party without Borrower's consent. On demand of Lender, Borrower shall execute documents and take action to make the assignment effective. Lender may disclose information about Borrower to a potential assignee as Lender sees fit.

Borrower shall not assign his rights and obligations under this Agreement without the prior written consent of Lender.

#### 14 Section. INFORMATION DISCLOSURE AND CUSTODY PROVISIONS

14.1. Borrower agrees that Lender processes Borrower's personal data for the purpose of servicing and control of fulfillment this Agreement as provided by the Personal Data Protection Act. By signing of this Agreement the Borrower conforms that he has been supplied with all the information stipulated by this Act.

Lender shall be entitled to disclose information regarding Borrower and this lending transaction in following occasion:

The Event of Default has occurred on part of the Borrower;

The information is provided to the third parties with whom Lender enters into any type of assignment, partnership or other type of attraction of capital resources agreements;

Information is provided to the related parties to the Lender;

in response to the request by the competent state authorities or other occasions provided by law

#### Section. INVALID AND ILLEGAL PROVISIONS

If any provision contained in this Agreement should prove to be invalid or unenforceable in any respect under applicable law, the validity and enforceability of the remaining provisions of this Agreement shall not be impaired and Lender and Borrower agree to replace such invalid or unenforceable provision by another provision in accordance with the purpose and meaning of this Agreement within 30 days after Lender's request.

#### Section. EXERCISE OF RIGHTS

No delay or omission on the part of Lender in exercising any right under this Agreement shall impair such right or be construed as a waiver of such right, and any single or partial exercise of such right shall not preclude a further exercise of such right. The rights and remedies provided in this Agreement are in addition to and not exclusive of any rights or remedies provided by law.

#### Section. GOVERNING LAW AND RESOLUTION OF DISPUTES.

This Agreement shall be governed by the laws of the Republic of Latvia and all disputes shall be resolved by such laws.

All disagreements between the Parties shall be resolved first by negotiations. The court of the Republic of Latvia shall have jurisdiction over any disputes relating to this Agreement unresolved by the Parties.

Borrower agrees that Lender pursues non-dispute enforcement procedure for recovery of the Loan provided by Articles 400-406 of the Civil Procedure Law.

#### Section. ENTIRE AGREEMENT

This Loan Agreement, Mortgage Agreement, effective Loan Amortisation Schedule, Residential Mortgage Loan Application and other written Loan documents constitute the entire agreement of the Parties and shall continue in full effect until Borrower repays the principal, interest, penalties, expenses and other amounts due under this Agreement.

Any changes or amendments to this Agreement shall be made in writing and signed by Borrower and Lender.

This Agreement is executed in five identical copies in Latvian.

Kommentti: Page: 100  
four in Latvia

## NOTICES

19.1. All notifications related to Loan Agreement shall be made in writing and delivered personally or by registered mail sent to the official addresses of the parties:

**Borrower:**

**Lender:**

\_\_\_\_\_

\_\_\_\_\_

Phone:

Phone:

Fax:

Fax:

19.2. Parties shall immediately notify each other in writing on changes in the above mentioned addresses. Borrower undertakes to inform Lender immediately if the telephone number, other contact information or the working place indicated in the Residential Mortgage Loan Application is changed.

By signing this Agreement the Borrower confirms that he has read the entire Agreement and understand the obligations entered into with this Agreement.

**Borrower:**

**Lender:**

\_\_\_\_\_

\_\_\_\_\_

## Appendix/Document File

### II

#### SELECT CISG PROVISIONS

##### PART I: SPHERE OF APPLICATION AND GENERAL PROVISIONS

##### CHAPTER I. SPHERE OF APPLICATION

###### *Article 1*

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

- when the States are Contracting States; or
- when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

###### *Article 2*

This Convention does not apply to sales:

- of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- by auction;
- on execution or otherwise by authority of law;
- of stocks, shares, investment securities, negotiable instruments or money;
- of ships, vessels, hovercraft or aircraft;
- of electricity.

###### *Article 3*

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

###### *Article 4*

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

- the validity of the contract or of any of its provisions or of any usage;
- the effect which the contract may have on the property in the goods sold. \*\*\*

###### *Article 6*

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

##### Chapter II. GENERAL PROVISIONS

###### *Article 7*

*Basic principles of Contract Drafting*

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

*Article 8*

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

*Article 9*

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned. \*\*\*\*

*Article 12*

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article. \*\*\*\*

**Part III. Sale of goods**

**CHAPTER I. GENERAL PROVISIONS**

*Article 25*

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

*Article 26*

A declaration of avoidance of the contract is effective only if made by notice to the other party. \*\*\*

*Article 28*

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement

for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention. \*\*\*

### CHAPTER II OBLIGATIONS OF THE SELLER

#### *Article 30*

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

#### **Section I. Delivery of the goods and handing over of documents**

#### *Article 31*

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- (a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;
- (b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;
- (c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

#### **Section II. Conformity of the goods and third party claims**

#### *Article 35*

- (1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
- (2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

- (a) are fit for the purposes for which goods of the same description would ordinarily be used;
- (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;
- (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
- (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

- (3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

#### *Article 36*

- (1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.
- (2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.\*\*\*

#### *Article 39*

- (1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give

notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.\*\*\*

### **Section III. Remedies for breach of contract by the seller**

#### *Article 45*

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:(a) exercise the rights provided in articles 46 to 52; (b) claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

#### *Article 46*

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter Article 49. \*\*\*

#### *Article 48*

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

*Article 49*

(1) The buyer may declare the contract avoided:

- (a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or
- (b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

- (a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;
- (b) in respect of any breach other than late delivery, within a reasonable time:
  - (i) after he knew or ought to have known of the breach;
  - (ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or
  - (iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performances.

*Article 50*

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

*Article 51*

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

### Chapter III. OBLIGATIONS OF THE BUYER

*Article 53*

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

**Section I. Payment of the price \*\*\***

*Article 55*

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at



the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned. \*\*\*

### **Section III. Remedies for breach of contract by the buyer**

#### *Article 61*

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

exercise the rights provided in articles 62 to 65;

(b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

#### *Article 62*

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

#### *Article 63*

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

#### *Article 64*

(1) The seller may declare the contract avoided:

if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

in respect of any breach by the buyer other than late performance by the buyer, within a reasonable time: (i) after the seller knew or ought to have known of the breach; or (ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period. \*\*\*

### **Chapter IV. PASSING OF RISK**

#### *Article 66*

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

#### *Article 67*

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to

the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

*Article 68*

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

*Article 69*

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place. \*\*\*

**Chapter V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER**

Section II. Damages

*Article 74*

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

*Article 75*

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74. \*\*\*

*Article 77*

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

*Article 78*

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

**Appendix/Document File**

## III

## ONLINE BANKING AGREEMENT

## LLOYDS TSB ON-LINE FOR BUSINESS

Please read this agreement carefully before applying.

This agreement replaces all earlier conditions for the Service. The accounts you can access through the Service have their own conditions. If there is a difference, this agreement will prevail.

The User Guide forms part of this agreement and should be read together with it. You must ensure Users follow the User Guide.

See the section at the end (The meaning of some words in this agreement) for definitions of underlined words.

**1. SECURITY**

1.1 You are responsible for ensuring each User complies with all security procedures.

1.2 In connection with Users' Passwords:

1.2.1 you must ensure Users take all reasonable steps to keep their Password secret. They must not disclose Password details to anyone else, including other Users, members of your staff, members of their families, Bank staff, or anyone on our helpdesk.

1.2.2 if you or a User thinks a Password is known to someone else, you must ensure the steps in the User Guide are taken **immediately**.

1.2.3 we will suspend that User's use of the Service until a new Password has been set up.

1.3 You must not let anyone other than Users operate the Service for you.

## **2. CARRYING OUT YOUR INSTRUCTIONS**

2.1 You authorise Users to use the Service. We do not need to get any further confirmation from you.

2.2 You will not be liable for instructions not authorised by a User if:

they are given after that User (or you) has notified us that they think the Password is known to someone else;  
the Security Codes have become known through our actions or negligence;  
the instruction was given as a result of some other breach of security, not caused by you or a User.

2.3 You will be liable for instructions given using a User's Security Codes in all other cases.

2.4 Once you or a User has given an instruction you cannot cancel it. If you ask us, we may try and reverse it as far as possible under the practices of the banking system. You will pay any costs.

2.5 We need not:

accept a conditional or reversible instruction; or  
pay someone sooner than we could following our normal banking practices.

2.6 We may, if we think justified, refuse to carry out an instruction or insist on written confirmation.

2.7 If we think a User may not have authorised an instruction, we will try to check it. We may refuse to act on it or take steps to reverse it. We will not be

responsible for loss to you as long as we have acted reasonably.

2.8 A transaction may not always be processed as soon as an instruction for it is given. Also, some instructions can only be processed during normal banking hours even though the Service may be operational longer.

2.9 The Service can usually be used at the times given in the User Guide. Routine maintenance, demand on the systems, and other circumstances may mean that it is not always possible.

### 3 OUR OWNERSHIP OF INTELLECTUAL PROPERTY

Material and information supplied, including the User Guide, may contain valuable information that belongs to us or others. You and Users must not use them except to operate the Service or take copies, sell, assign, lease, sub-licence or otherwise transfer them to anyone else.

### 4. EXISTING MANDATES

4.1 You confirm that **any** User you authorise under this agreement may use the Service to give us instructions on **every** account you hold with us.

4.2 Section 4.1 overrides any existing mandates, authorities and arrangements you have with us on your existing accounts.

### 5. LIABILITY FOR LOSS

5.1 We are only liable for direct loss to you, and then if only caused by our negligence or deliberate fault. We are not liable for indirect loss. Examples where we are **not** liable include:

acting on authenticated instructions which in fact were given by someone else (see 2.2 for exceptions);

incompatibility between your computer system and the Service;

anything beyond our reasonable control that disrupts the Service or causes your instructions to be delayed or not acted on.

5.2 Note that you cannot use the Service to tell us that the time when a

transaction is to be carried out is particularly important. If you need to be sure an instruction has reached us or when it will be carried out, phone us on the number in the User Guide. We will explain ways of paying people and when they should get payment.

## **6. ENDING YOUR USE OF THE SERVICE**

6.1 You may cancel the Service at any time, by giving notice as described in the User Guide.

6.2 You can only cancel a Service for all your accounts, not just some of them.

6.3 We may end or suspend your use of the Service. We will usually give you 30 days notice. However, we may give you a shorter notice period or none at all if we consider it necessary, for example, because of security concerns in connection with your use of the Service or unauthorised overdrafts or breaches of arrangements with us.

6.4 Ending your use of the Service will not affect instructions Users have already given.

## **7. ABOUT OUR CHARGES**

7.1 We may charge you fees for the Service and change them on 30 days' notice.

7.2 We may debit those fees from your principal current account or any other current account with us you specify.

## **8. OUR RIGHT TO MAKE CHANGES TO THIS AGREEMENT**

8.1 We have the right to change the terms of this agreement by giving you notice in writing or by sending you a message through the Service. Your use of the Service will not be affected by the change until you have received the notice.

8.2 We will normally give you 30 days notice of any change. It may be shorter to protect security or in other circumstances beyond our control. After you have

received notice, your use of the Service is acceptance of the change (but remember, you can always end the Service).

#### **9. THE VALIDITY OF THIS AGREEMENT**

We believe this agreement is fair. If any part proves not to be legally valid because it is unfair, it will not affect the rest and we are entitled to treat that term as changed in a way that makes it fair and valid.

#### **10. SERVICE QUALITY: RECORDING CALLS AND INSTRUCTIONS**

To check we have carried out your instructions correctly and to help improve our service, we will keep a record of all the instructions you give on the Service, and we may monitor and record calls to our helpdesk.

#### **11. THE LAW COVERING THIS AGREEMENT**

This agreement is governed by the law and courts of England and Wales or of Scotland, depending where your account is held.

#### **DEFINITIONS: THE MEANING OF SOME WORDS IN THIS AGREEMENT**

**Password** means the secret word or number used to confirm a User's identity when using the Service.

**Security Codes** means the Password and the user identification codes and details used to identify the User whenever they access and use the Service.

**Service** means the **Lloyds TSB online for business** service : the on-line system that enables you to obtain information from us and give electronic instructions to us on accessible accounts by (among other things) a computer, digital television, WAP phone or other electronic device linked to our system, and by any other means that we may make available for these purposes.

**User** means someone you have authorised and we have approved to use the Service.

**User Guide** means the guidelines we provide about the Service, including:

in printed form;  
spoken through any helpdesk;  
the on-line help service available as part of the Service;  
any message sent through the Service; and  
any updates of any of the above.

**You/Your** means you the business entity which becomes registered with us to use the Service.

**We/us/our/Bank** means Lloyds TSB Bank plc or Lloyds TSB Scotland plc.

[Close](#)



**Appendix/Document File**

IV

**ABC CAR HIRE  
TERMS AND CONDITIONS**

**1. rental agreement**

The owner agrees to let and the renter agrees to take on the rental of the vehicle described overleaf subject to all terms and conditions contained herein and overleaf. Owner means ABC Car Hire or ABC hirer's representative. The owner warrants that the vehicle is roadworthy.

**2. extension of rental period**

The owner may extend the period of rental at the request of the renter. The renter will pay such additional deposit or deposits as the owner shall require. In no event shall the duration of the rental exceed 3 months in aggregate.

**3. warranty by renter and additional driver – owner rights**

renter agrees to return vehicle to owner in same condition received, ordinary wear and tear accepted, on the due date specified overleaf.

renter agrees not to use vehicle for hire or reward nor use it in violation of any law, ordinance or regulation, nor remove it (without prior written consent of owner) from England, Scotland or Wales. Renter hereby warrants and undertakes to the owner

the accuracy of the information supplied to the owner

that in the case of business rental this agreement is entered into by the driver for and on behalf of the renter

that he will not operate vehicle or permit the vehicle to be operated in any way that would violate this contract, including driving by any person under 21 or over 80, in motor sport events, to tow any vehicle or trailer, by any person driving when unfit through drink or drugs or with blood alcohol concentration above the limit prescribed by road traffic legislation

that the licence shown to the owner at the time the car is rented is his own and fully valid

that he will further protect the interests of the insurer and owner by insuring the vehicle is always locked when unattended and the keys are kept secure

if renter commits any breach of this agreement, owner may treat the agreement as terminated and may seize, without legal process or notice to renter, vehicle at any time or place and renter waives all claims for damages connected with such a seizure

renter authorises owner to verify through credit agencies, the driver and vehicle licensing agency or other sources, personal driving and credit information provided by renter and any additional drivers overleaf

**(4) payment**

**renter expressly agrees to pay owner on demand**

the mileage charge at rate specified overleaf travelled by the vehicle during rental

service and time charges at rate specified overleaf  
 all fines and court costs for parking, traffic or other legal violations assessed against the vehicle renter  
 any fuelling charge currently operated by the owner  
 V.A.T. and all other taxes payable on aforesaid items  
 owner's costs, including reasonable legal fees where permitted  
 fair market value of repairing damage howsoever caused to the actual vehicle supplies, administrative fees, plus loss of revenue at the daily rate shown overleaf, based on owner's loss of use of the vehicle, diminishment of value, regardless of fault or negligence of the renter or any person, and regardless of whether damages are a result of an act of God. Owner shall have the sole right and responsibility to repair the vehicle  
 in the event of theft, fair market value of replacing the vehicle, administrative fees, plus loss of revenue at the daily rate shown overleaf, if theft protection insurance is not purchased or does not apply. If vehicle is stolen it should be reported to the police immediately and a crime reference number obtained.  
 renter agrees to allow owner to compute and debit final charges from renter's credit card if that is the form of payment used by renter

**(5) renter's own insurance**

if the renter selected "own insurance" overleaf, renter shall keep the vehicle insured with insurers approved by the owner on a comprehensive basis for a value which has been agreed in writing by the owner to be the fair market value of the vehicle against loss or damage by accident, fire and theft, and against third party and passenger liabilities

**(6) collision damage waiver/theft protection insurance**

if owner offers and renter accepts the abovenamed insurance with renter's initials in the appropriate box overleaf renter agrees to pay owner a maximum excess of £500 and owner agrees to relieve renter of any responsibility for damage and losses over the amount of the excess. Renter's excess can be waived by the purchase of excess protection. Any breach of contract warranties will invalidate CDW/TPI purchase by renter. CDW/TPI does not relieve renter of responsibility to owner for costs due to lost or stolen car keys. This includes costs of replacement, loss of use and administrative costs

**(7) in case of accident**

the renter shall, in the event of an incident that results in damage to the vehicle, procure that,  
 the renter's and/or driver's insurers are forthwith notified thereof and that such notice is confirmed in writing to the office where the car is rented immediately and in any event within 24 hours of the accident  
 no admission of liability is made to any person in relation to such accident  
 any writ of summons or other documentation relating to the proceedings is forthwith delivered to the owner at the address stated overleaf  
 the renter shall forthwith upon demand fully and effectually indemnify the owner against all losses, liabilities, costs, actions, claims or demands which it may incur or have brought against it in relation to the vehicle or its use and which are not recoverable under a policy of insurance whether the same is effected by the renter or the owner

the names and addresses of all witnesses thereto are collected and given to owner

**(8)** RENTER AUTHORISES OWNER TO SUBMIT FOR PAYMENT CREDIT CARD VOUCHERS IF A CREDIT CARD HAS BEEN PRESENTED AS A MEANS OF DEPOSIT OR SECURITY AT THE TIME VEHICLE WAS RENTED INCLUDING IF ANY THIRD PARTY TO WHOM A BILLING WAS DIRECTED REFUSES TO MAKE A PAYMENT

**(9)** all charges are subject to final audit

**(10)** this agreement is governed by and constructed in accordance with the laws of England. All disputes arising out of or in connection with the agreement shall be subject to the exclusive jurisdiction of the English courts.

**Appendix/Document File**

## V

## EMPLOYMENT AGREEMENT

PAINT PRODUCTS, INCORPORATED, hereinafter called "Employer", and KASPARS KIMIKIS, hereinafter called "Employee", enter into this agreement on the 31<sup>st</sup> day of December, 2002, in the City of Riga, Latvia.

## RECITALS

FIRST: Employer manufactures and distributes various types of paints and coatings through the United States and Europe. Employer maintains a laboratory in Riga, Latvia.

SECOND: Employer desires to develop, manufacture and distribute a paint that will protect metal from rust.

THIRD: Employer's product research, product development, accounts, customers, commission structure, and financial data, hereinafter called "employer information" are valuable, special and unique assets of Employer's business. If this knowledge and information were disclosed, the Employer would suffer serious commercial and competitive damage.

FOURTH: Employee is a chemist with knowledge and experience of value to Employer.

FIFTH: The relationship between Employer and Employee, established by this agreement, is unique and not comparable to any other relationship or agreement Employer has, or may in the future, enter into.

SIXTH: Because of the nature of his relationship with Employer, Employee will have access to, obtain, acquire and develop special knowledge, confidential information, and employer information, vital to Employer's continued success.

SEVENTH: Employee wishes to be employed by Employer, and Employer wishes to employ Employee, under the terms, covenants, and conditions set forth in the following Sections of this agreement.

For these reasons, and in consideration of the mutual promises and agreements hereinafter contained, Employer and Employee agree as follows:

*Basic principles of Contract Drafting*

## EMPLOYMENT AND TERM

### Section 1. Employment.

Employer does hereby employ, engage and hire Employee as a chemist at Alberta iela 13, Riga, Latvia. For valuable consideration hereinafter set forth, Employee accepts and agrees to such hiring, engagement and employment. Employee will research and develop rust-proofing paint products, particularly a paint that will prevent the formation of rust on surfaces, subject to the supervision and under the orders, advice and directions of Employer. Employee shall also perform other tasks customarily performed by chemists in similar businesses or enterprises, as well as such other unrelated services and duties assigned to him by Employer.

### **Section 2. Term of Employment**

The term of this agreement is for three (3) years, commencing on January 1, 2003 and ending on December 31, 2006, subject to end earlier as hereinafter provided.

## EMPLOYEE OBLIGATIONS

### **Section 3. Manner of Performance of Employee's Duties**

Employee will faithfully, industriously, to the best of his ability, experience and talent, and using his best efforts, perform all the duties that may be required of him under the express and implicit terms of this agreement, to the reasonable satisfaction of Employer. Employee will make every reasonable effort to maximize the benefit of this agreement to Employer. Employee shall render such duties at Employer's facility located at Alberta iela 13, Riga, Latvia, and any other place or places Employer may require.

### **Section 4. Recommendations for Improving Operations**

Employee will make available and present to Employer all information, suggestions or recommendations for the mutual benefit of Employer and himself.

### **Section 5. Other Employment**

Employee shall devote all his time, attention, knowledge and skill solely and exclusively to the business and interest of Employer, and Employer is entitled to all the benefits, profits, assets, or other issues arising from or incident to all work, services and advice of Employee.

During the term of this agreement, Employee will not be involved, directly or indirectly, in any other business similar to Employer's business or any allied trade.

However, this does not limit the right of Employee to invest in the capital stock or other securities of any corporation publicly owned or regularly traded on any public exchange, nor prevent Employee from investing in real estate.

### **Section 6. Nondisclosure of Information Concerning Business**

During the term of his employment, Employee will not divulge to any person, firm or corporation any information about any matters relating to the business of Employer. Employee and Employer stipulate that between them these business matters are

considered important, material and confidential, and gravely affect the effective and successful conduct of the business of the Employer and its goodwill.

**Section 7. Invention Made by Employee—Ownership in Employer**

Employee assigns to Employer all rights to all ideas, inventions, trademarks, and other developments or improvements conceived or developed by Employee.

Additionally, Employee assigns to Employer all rights to all ideas, inventions, trademarks, and other developments or improvements conceived or developed by Employee during Employee's own time, if (a) they were conceived or developed with the use of Employer's equipment, supplies, facilities or trade secret information, or (b) they relate to the Employer's business, or (c) they relate to Employer's actual or demonstrably anticipated research or development, or (d) they result from any work performed by Employee for Employer.

Employee will assist Employer, at its expense, in obtaining patents on any patentable ideas, inventions, trademarks, and other developments and will execute all documents necessary to secure such patents in the name of the Employer.

**Section 8. Employee's Inability to Contract for Employer**

Employee will not make any contracts or commitments for Employer without the written consent of Employer.

**Section 9. Surety Bond**

Employee will immediately make application for a surety bond in an amount specified by Employer. Employer will pay the premium on such bond. If such bond is refused or canceled, except with approval of Employer, Employee may be terminated immediately and Employee shall be entitled to compensation only to the date of such termination.

**EMPLOYER OBLIGATIONS**

**Section 10. Compensation to Employee**

Employer shall pay Employee, and Employee shall accept from Employer, in full payment for his services, compensation at the rate of Fifty Thousand Lats (50,000 Ls) per annum.

Employer will reimburse Employee for all necessary expenses incurred when travelling under Employer's directions.

Provisions of this Section will be subject to review and modification annually, provided however, that any modification to this Section comply with the provisions of Section 21 "Modification of Contract".

**Section 11. Facilities and Equipment**

Employer will provide Employee with the facilities, equipment, and personnel reasonably required to achieve the goals of this agreement.

**Section 12. Additional Compensation**

Employee is not entitled to any additional compensation by reason of any service which he may perform as the member of any managing committee or elected officer or director of Employer.

#### TERMINATION OF EMPLOYMENT

**Section 13. Termination**

Either party may cancel this agreement, for cause, on fourteen (14) days written notice. If Employer cancels this agreement, Employee is entitled to compensation for thirty (30) days. If Employee violates any of the terms of this contract, Employer may then end employment without notice and with compensation only to the date of such termination.

Breach or evasion of any term of this contract will result in immediate and irreparable injury. In addition to justifying termination of this agreement, any such breach or evasion will authorize recourse to any legal or equitable remedies to which the injured party may be entitled.

**Section 14. Termination Because of Discontinuance of Business**

If Employer discontinues operating its laboratory in Riga, Latvia, the purpose and intent of this agreement will no longer exist. In such case, this agreement will end as of the last day of the month in which Employer ceases operations of its laboratory as if that date was originally set forth as the termination date of this agreement.

**Section 15. Option to Cancel Contract for Permanent Disability of Employee**

Employer may cancel this agreement if Employee becomes permanently disabled during the term of this agreement. Employer may exercise this option by giving notice to Employee in care of Employer's Riga laboratory at Alberta iela 13, Riga LV-1010, Latvia, or at such other address as Employee shall designate in writing. This notice will inform Employee of Employer's intention to cancel. After this notice, this agreement will end on the last day of the month in which the notice is mailed, as if that date was originally set forth as the termination date of this agreement.

Employer will consider Employee to have become permanently disabled if, because of ill health, physical or mental disability, or for other causes beyond his control:  
 Employee failed to perform his duties for thirty (30) consecutive days; or  
 Employee failed to perform his duties for a total of sixty (60) days, either consecutive or not, during any period of 12 consecutive calendar months.

#### POST-TERMINATION OBLIGATIONS

**Section 16. Return of Employer's Property**

At the end of this agreement, regardless of how termination is effected, or whenever requested by Employer, Employee will immediately return to Employer all of Employer's property in Employee's possession or control.

**Section 17. Nondisclosure of Information Concerning Business After Termination of Employment**

All terms of Section 6 “Nondisclosure of Information Concerning Business” will remain in full force and effect for the period of five (5) years after the end of Employee’s employment for any reason. Additionally, during such five (5) year period, Employee shall not make or permit the making of any public announcement or statement of any kind that he was formally employed by or connected with Employer.

**Section 18. Noncompetition with Former Employer**

During the period of his employment, and for a period of two (2) years following the termination of his employment, however caused, Employee will not directly or indirectly, engage in or be employed by any business engaged in the development, manufacture, distribution, or sale of any paints or coatings or any other business competitive with Employer in the country of Latvia.

**Section 19. Liquidated Damages for Violation of Covenant Not to Compete**

If Employee violates the terms of Section 18 “Noncompetition with Former Employer”, Employee agrees to pay to Employer, as liquidated damages, the sum of Two Hundred Lats (200 Ls) per day, for each day or part thereof that Employee breaches.

It is recognized and agreed that damages in such event are difficult to ascertain, though great and irreparable, and that this agreement with respect to liquidated damages will in no event preclude Employer’s rights to injunctive relief.

**ADDITIONS AND MODIFICATIONS**

**Section 20. Contract Terms to be Exclusive**

This written agreement contains the sole and entire agreement between Employer and Employee, and supersedes all other agreements between them.

Employer and Employee acknowledge that neither has made any representation about the subject matter of this agreement or any representations inducing the execution and delivery hereof except as specifically set forth herein, and they have relied on their own judgment in entering into this agreement.

Employer and Employee further acknowledge that any statements or representations which they have previously made to each other are void and of no effect, and that neither of them has relied thereon in connection with his dealings with the other.

**Section 22. Employee Handbook**

Employee understands and acknowledges that Employer may publish, modify, or retract an Employee Handbook which may contain provisions concerning compensation, benefits, termination, or other conditions of employment.

Employee agrees and acknowledges that the provisions which now, or at any time in the future, are contained in the Employee Handbook do not constitute an agreement or contract between Employer and Employee, and will not be considered an addition to, or modification of, this agreement.



## VALIDATION AND LAW

**Section 23. Severability**

All agreements and covenants herein contained are severable. If any of them , except those contained in Section 1 “Employment” and Section 2 “Term of Employment”, are held invalid by any competent court, this contract shall be interpreted as if such invalid agreements, covenants or Sections were not contained herein.

**Section 24. Choice of Law**

Both Employer and Employee intend that this agreement, their performance, and all suits and court proceedings hereunder shall be construed under the laws of the state of Michigan, United States of America. In any action or other proceeding concerning this agreement, the laws of the State of Michigan, United States of America, shall be applicable and shall govern to the exclusion of the laws of any other forum, without regard to the jurisdiction in which any action or proceeding may be instituted.

## SIGNATURES AND DATE

EMPLOYEE  
KARLIS KIMIKIS

\_\_\_\_\_

\_\_\_\_\_

EMPLOYER  
PAINT PRODUCTS, INC.

\_\_\_\_\_

President

**Appendix/Document File****VI****DISTRIBUTION AGREEMENT**

This Distributorship Agreement is entered into as of November 27, 2000, by and between Q Scooter Manufacturing, Inc., 1625 S.E. Rhone Street, Portland, Oregon 97202 ("Manufacturer") and Latvijas Rotallietas SIA, Alberta iela 13, Riga, LV-1010 Latvia ("Distributor").

**WITNESSETH:**

WHEREAS, Manufacturer manufactures certain products which it is desirous of having sold in certain regions;

WHEREAS, Distributor is desirous of selling said products on the terms and conditions set forth herein,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**SECTION ONE  
APPOINTMENT**

Manufacturer appoints Distributor a Manufacturer Distributor and grants Distributor the nonexclusive right to sell and service certain Manufacturer products (referred to in this Agreement as the "Products") for designated industry markets (referred to in this Agreement as the "Markets"), as more fully described in Attachment 1 to this Agreement, in the geographic areas (referred to in this Agreement as the "Territory") listed in Attachment 2 to this Agreement, on the terms and conditions set forth in this Agreement.

**SECTION TWO  
DISTRIBUTOR'S DUTIES**

Distributor agrees to use its best efforts in marketing the Products in the Territory. In order to develop the full sales potential of the Territory, Distributor agrees that it will perform at Distributor's expense the following duties to Manufacturer's satisfaction:

- A. Promotion and Marketing. Distributor will engage in sales promotion activities in the Territory, such as distribution of printed matter supplied by Manufacturer to current and potential customers. The Products will at all times be designated by their correct Manufacturer names and identified as the Products of Manufacturer being offered for sale by Distributor as an independent Manufacturer Distributor.

- B. Sales Organization. Distributor will maintain a qualified sales organization which will call on customers and potential customers in the Territory as may be reasonably likely to purchase any of the Products. Distributor's sales personnel will participate in Manufacturer sales training programs as Manufacturer may conduct, and Distributor will conduct internal training designed to ensure the development and implementation of effective sales methods applicable to the Products.
- C. Places of Business; Inventory. Distributor will establish, staff, and maintain a place or places of business in the Territory as may be necessary to provide good customer support and marketing coverage in the Territory. Distributor will purchase and maintain an inventory of Products that, in the judgment of Manufacturer, is adequate to service customer requirements in the Territory. Within 30 days after the end of each calendar year, Distributor will deliver a written report to Manufacturer (a) describing any openings, closings, or relocations of places of business of Distributor occurring during the quarter and (b) listing in reasonable detail the quantities and location of Products in Distributor's inventory at the end of that year.
- D. Coordination. Distributor will coordinate its sales efforts with Manufacturer. To this end, Distributor will: (a) effectively and promptly follow up leads and referrals supplied by Manufacturer and keep Manufacturer informed of the results; (b) arrange for calls to be made by its salespersons in company with Manufacturer personnel on customers and potential customers when the calls are deemed appropriate by Manufacturer; (c) furnish Manufacturer with copies of documentation relating to sales of the Products as Manufacturer may reasonably request; (d) furnish Manufacturer with copies of all printed matter used by Distributor that is not supplied by Manufacturer and in which Manufacturer or the Products are mentioned; (e) convey to Manufacturer any information that may be of value to Manufacturer that may come to Distributor's attention concerning market conditions, competition, pricing, customers, and prospects, and (f) upon request by Manufacturer once each year, forecast sales of each of the Products and sales and marketing expenses for the coming year and update as required.
- E. General Conduct. Distributor will at all times conduct its business in a manner as will reflect favorably on Manufacturer and the Products and will not engage in any deceptive, misleading, illegal, or unethical business practice. Distributor will not offer or sell the Products outside Distributor's Territory and Market and will refer all inquiries regarding potential customers outside Distributor's Territory and Market to Manufacturer. Distributor will not design, manufacture, or market, nor will it act as a representative or distributor for, any products that compete with the Products. Distributor will disclose to Manufacturer the identities of all products and manufacturers that it distributes or represents and will notify Manufacturer of contemplated additions prior to making new commitments.
- F. Record Keeping. Distributor will establish and maintain records of its sales in sufficient detail to permit identification and destination of each of the Products

sold by Distributor. Distributor will retain these records until Manufacturer either (a) accepts custody of the records, or (b) consents in writing to their destruction or other disposal.

- G. Inspection. Manufacturer has the right on reasonable notice and during normal business hours to visit Distributor's places of business for the purpose of verifying satisfaction by Distributor of its duties under this Agreement.

### SECTION THREE PURCHASE OF PRODUCTS

- A. Purchase Orders. Purchases of the Products under this Agreement will be made by delivery to Manufacturer of Distributor's written purchase orders specifying in reasonable detail the types, quantities, and delivery dates of the Products ordered. No purchase order is binding upon Manufacturer until accepted in writing by Manufacturer.
- B. Prices. The initial prices and minimum order quantities for each of the Products applicable to Distributor are shown in Attachment 3 to this Agreement. All prices and minimum order quantities are subject to change by Manufacturer at its sole discretion on 30 days' written notice, and any change will apply to purchase orders received by Manufacturer after the effective date of the change.

### SECTION FOUR TERM AND RENEWAL; TERMINATION

- A. Term and Renewal. The term of this Agreement is for a period of 1 year from the date of this Agreement and is renewable automatically for consecutive 1-year renewal terms unless either party notifies the other party of non-renewal at least 90 days prior to the end of any such 1-year period or unless and until this Agreement is terminated pursuant to Section Four, Paragraph B of this Agreement.
- B. Termination for an Event of Default. Any material breach of this Agreement by either party constitutes an event of default if not cured within 10 days after written notice of the breach is given. Upon an event of default by either party, the other party may terminate this Agreement on 10 days' written notice.
- C. Effect of Termination. Upon termination, Distributor will cease being a Manufacturer Distributor, and neither party will have any further rights against the other except for money owed and other rights as by their nature must survive termination of the Agreement.

### SECTION FIVE SALES MATERIALS, TRADEMARKS AND MARKINGS

- A. Sales Materials. Manufacturer will furnish samples and supplies of its standard promotional and technical literature for the products in reasonable quantities at

Manufacturer's cost or at prices as may subsequently be agreed upon. This literature is subject to revision at any time without prior notice.

- B. Trademarks and Names. Distributor is granted permission to use during the term of this Agreement the trademarks and trade names used by Manufacturer in connection with the Products. This permission is expressly limited to uses necessary to sale of the Products and to performance of Distributor's obligations under this Agreement, and Distributor admits and recognizes Manufacturer's exclusive ownership of the marks and names and the renown of Manufacturer's marks and names throughout the world and specifically in the Territory. Distributor agrees to not take any action inconsistent with Manufacturer's exclusive ownership of the marks and names.
- C. Distribution; Alteration. Distributor will not provide customers with any materials that are not produced or approved in writing by Manufacturer for use in connection with the sale or service of the Products. In no event will Distributor alter or remove any of Manufacturer's Product packaging that provides information intended by Manufacturer for the ultimate user of the Products. Distributor will deliver appropriate technical materials concerning a Product to each customer on the date the Product is first delivered to the customer. When Manufacturer revises any technical literature, Distributor will replace outdated material previously distributed if requested to do so by Manufacturer.

#### SECTION SIX TERMS AND CONDITIONS

- A. Shipment. Delivery will be F.O.B. Manufacturer's plant. All shipments under this Agreement will be made in Manufacturer's standard shipping packages to Distributor at Distributor's address set forth above. Unless otherwise instructed in writing by Distributor, Manufacturer will select the carrier. Title and risk of loss to the Products purchased under this Agreement passes to Distributor upon delivery of the Products to the carrier.
- B. Acceptance. Distributor must inspect all Products promptly upon receipt at the shipping destination and may reject any goods that fail in any significant respect to meet Manufacturer's acceptance specifications. Products not rejected by written notice to Manufacturer within 10 days of receipt are deemed to have been accepted. Rejected Products must be returned freight prepaid to Manufacturer within 10 days of the date on which Manufacturer authorizes return. As promptly as possible but not later than 30 days after receipt by Manufacturer of properly rejected goods, Manufacturer may, at its option and expense, either repair or replace the properly rejected goods. Manufacturer will prepay transportation charges back to Distributor and will reimburse Distributor for any costs of transportation incurred by Distributor in connection with the return to Manufacturer of properly rejected goods; otherwise, Distributor must pay transportation charges in both directions.
- C. Payment. Terms of payment shall be 30 days after date of invoice.

- D. Taxes. Distributor will bear all applicable federal, state, municipal and other government taxes (such as sales, use, value added, or any similar taxes); all customs duties, imposts, and similar charges; and all personal property taxes assessable on the Products after delivery to the carrier at Manufacturer's plant.
- E. Warranty. Manufacturer warrants to Distributor for a period of 30 days from the date of original shipment to Distributor that the Products delivered by Manufacturer to Distributor pursuant to this Agreement are free from defects in materials and workmanship, however Manufacturer's obligation under this warranty is limited to replacing or repairing, at its option, at its factory, any of the Products (except expendable parts thereof) that within the warranty period are returned to Manufacturer and that are found by Manufacturer to be defective in proper usage. In the event of return, all transportation charges to Manufacturer's factory will be prepaid by Distributor however if returned parts are repaired or replaced under terms of this warranty, transportation charges in both directions shall in any such event be prepaid by Manufacturer in both directions. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATION ON THE PART OF MANUFACTURER.**
- F. Limitation of Liability. Notwithstanding any provision in this Agreement to the contrary, in no event is Manufacturer liable for indirect, incidental, or consequential damages and in no event may the liability of Manufacturer arising in connection with any of the Products (whether this liability arises from a claim based on contract, warranty, tort, or otherwise) exceed the actual amount paid by Distributor to Manufacturer for the Products.

#### SECTION SEVEN MISCELLANEOUS

- A. Independent Contractor. Distributor is an independent contractor and not an agent or employee of Manufacturer, and will not hold itself out as, or give any person reason to believe that it is, an agent or employee of Manufacturer. As an independent contractor, Distributor will not make any representations or warranties of any kind on behalf of Manufacturer. Distributor agrees to indemnify and hold Manufacturer harmless from and against any and all claims, liabilities, and damages arising out of breach of this provision by, or otherwise attributable to any act or omission of, Distributor, its agents, or employees.
- B. Assignment. The rights and duties of Distributor under this Agreement may not be assigned or delegated in whole or in part by operation of law or otherwise without the prior express written consent of Manufacturer. It is expressly understood that any material change in the direct or indirect ownership or control of Distributor, any merger or consolidation directly or indirectly involving Distributor, any acquisition by or of Distributor, or any

other substantial change in Distributor's organization would be an assignment within the meaning of this provision.

- C. **Enforcement of Terms.** Failure by either party at any time or from time to time to enforce any of the provisions of this Agreement is not construed to be a waiver of that provision or of the party's right to subsequently enforce each and every provision of this Agreement.
- D. **Confidential Information.** Distributor agrees not to disclose to any person outside of its employ, and, for a period of 5 years from termination of this Agreement, not to use for any purpose other than to fulfill its obligations under this Agreement, any information concerning customers or markets outside the Territory or the composition, manufacture, or development of any product of Manufacturer or any of its affiliates that is disclosed to Distributor by Manufacturer in confidence and that is not otherwise publicly available. Distributor further agrees not to disclose to Manufacturer any information that Distributor deems to be proprietary, and it is understood that any information received by Manufacturer may be used by Manufacturer as it deems appropriate without payment of any special consideration for its use.
- E. **Attorney Fees.** In the event that any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.
- F. **Titles and Subtitles.** The titles and subtitles used in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.
- G. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument.

#### SECTION EIGHT NOTICES

Notices and other communications under this Agreement must be in writing and mailed by registered or certified mail, postage prepaid, to the parties at their respective addresses specified in this Agreement, subject to the right to change their addresses by written notice.

#### SECTION NINE GOVERNING LAWS AND DISPUTES

This Agreement, and performance or breach under this Agreement, is governed by and interpreted both as to procedural and substantive matters in accordance with the applicable laws of the State of Oregon, United States of America.

#### SECTION TEN ENTIRE AGREEMENT

This Agreement supersedes and cancels all prior agreements, if any, between the parties, and may not be amended, altered, or changed except by a written agreement signed by both parties.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first written above.

BIG MANUFACTURER, INC.

SMALL OUTFIT CO.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name and Title

\_\_\_\_\_  
Name and Title



**Appendix/Document File**

**VII**

**PROPERTY LEASE - RESIDENTIAL**

**LEASE AGREEMENT OF RESIDENTIAL PREMISES**

Riga, Latvia  
14 October 2002

**PARTIES**

\_\_\_\_\_ (a copy of which is at Appendix 1), whose address is \_\_\_\_\_ Latvia, hereinafter referred to as LANDLORD,

and

\_\_\_\_\_ passport number \_\_\_\_\_ (a copy of which is at Appendix 2), whose address is \_\_\_\_\_ c/o \_\_\_\_\_ hereinafter referred to as TENANT,

hereinafter referred to as the Parties, who expressing their free will, without any delusion and fraud, have agreed to conclude this Agreement binding them and their legal successors under the following provisions:

**GENERAL CONDITIONS**

The LANDLORD agrees to convey and lease, while the TENANT agrees to accept the lease of the house and land located at \_\_\_\_\_ hereinafter referred to as the Premises (a copy of the Premises floor plan is attached at Appendix 3). The Premises consist of living room, kitchen, dining room, hall, utility room, four bedrooms, 2 bathrooms and a toilet. The Premises are surrounded by ~500 sq.m land and a garden shed. The total area of the Premises is ~180 sq.m. The use of the Premises is residential.

No term and condition of this contract and no expense of the TENANT confers property rights of the TENANT in the Premises or any part thereof.

The LANDLORD warrants that at the moment of signing of this Agreement it has rights to enter into this Agreement and undertake the obligations set herein. LANDLORD verifies that the premises are not alienated or subject to litigation.

**CHARACTERISTICS OF THE PREMISES**

The Condition of the Premises will be shown in the Deed Of Acceptance, which will be signed not later than 1 February 2003 between the Parties and constitutes an integral part of this Agreement.

**EFFECTIVE DATES**

The Agreement shall take effect as of the moment of its signature. The rent term is from \_\_\_\_\_ and its term shall be \_\_\_\_\_ years until \_\_\_\_\_. The LANDLORD agrees to deliver Premises to TENANT and TENANT agrees to accept Premises with Deed of Acceptance signed by both Parties.

The TENANT has a right to extend this Agreement under the same conditions for a period of \_\_\_\_ years except for the amount of monthly rent. The Parties will agree in writing to a new amount of monthly rent by at least \_\_\_\_\_. The new

monthly rent amount under the extension shall not be lower than the original amount of monthly rent under this Agreement.

LEASE PAYMENT

Monthly rent for the Premises is \_\_\_\_\_ US\$, or Latvian Lats, or Euros (\_\_\_\_\_ USD) per month. All taxes imposed on such payment for the use of the Premises are incorporated in this amount.

All rent and other payments shall be made to a bank account as directed by the LANDLORD on the basis of an invoice delivered by the LANDLORD to the TENANT at least 5 (five) days in advance of the due date. LANDLORD may change the bank account to where rent and other payments shall be made with 30 days written notice to TENANT.

The rent payment is due the first day of every month for the next month. For each day of delay in payment of rent, the TENANT pays to LANDLORD a penalty payment at the rate of 0,1% of the unpaid due amount per day.

The rental payment for the first six (6) months of this Lease Agreement is due within five (5) days after signing the Deed of Delivery Acceptance. The next monthly rent payment will be due on \_\_\_\_\_.

The TENANT shall pay to LANDLORD a security deposit in the amount of two months rent, that is \_\_\_\_\_ USD (\_\_\_\_\_ USD). Payment of this deposit is due on \_\_\_\_\_ to a bank account identified by LANDLORD. This deposit can be used for covering unpaid bills or covering damage caused to the Premises by the fault of the TENANT. If the deposit is not used in the order prescribed above, and the LANDLORD agrees in writing, it shall be considered to be the last two rent payments of this Agreement.

The TENANT shall directly pay its own bills, including: electricity, gas and water according to meter readings, garbage removal, security, and yard maintenance. LANDLORD shall provide to TENANT information that will allow TENANT to pay such bills directly to vendors. TENANT is responsible for installing telephone service and paying all related telephone bills.

GUARANTEES

LANDLORD guarantees a peaceful possession of the Premises to the TENANT within the term of this Agreement (and any extension thereto) without any interruption or disturbance from LANDLORD or any other potential TENANT.

LANDLORD guaranties that if it sells the land or house, the new owner will be bound under this Lease Agreement.

RIGHTS AND OBLIGATIONS OF THE LANDLORD

LANDLORD shall have the right to verify TENANT's compliance with the terms and conditions of this Agreement and has the right to require their full performance under the Agreement.

Upon notice from TENANT, LANDLORD shall be responsible for performance of capital repairs to the Premises at his own expense. Such repairs are not the responsibility of TENANT.

LANDLORD is not responsible for interruptions in delivery of heat, gas, water and other public utilities, if the applicable utility services are not under the authority of LANDLORD. LANDLORD undertakes to provide TENANT with working connections to all public utilities. In case of necessity, LANDLORD undertakes to settle all issues related to public utility services, the delivery of which is not dependant on LANDLORD, with the respective authorities.

LANDLORD is not responsible for losses that have occurred or may occur to TENANT. LANDLORD does not insure and is not responsible for insuring the contents of the Premises.

LANDLORD undertakes to perform ordinary repair of the Premises, if such repair is required by capital repair or installation of systems, or if such repair is required as a result of damage to the building or Premises, or due to other reasons. LANDLORD and TENANT agree that capital repairs to the premises may be necessary during the

period of this Agreement. The parties shall agree to dates, times and procedures for carrying out such repairs.

LANDLORD has the right to enter the Premises in the presence of TENANT or his authorized person to perform necessary immediate repairs or to ensure the delivery of utility services. Such entry shall occur as rarely as possible and in at previously agreed time with consent of TENANT. TENANT may not bar entry without just cause. Entry must take place in the presence of the TENANT or its appointee. In the case of an emergency or calamity, LANDLORD has the right to enter Premises without TENANT'S prior consent.

LANDLORD does not have an obligation to compensate to TENANT for any improvements, repairs to the Premises and installation of communications made by TENANT provided that such are made without coordination with LANDLORD.

LANDLORD is not responsible for TENANT's personal belongings in the yard, garden shed, home or any part of the Premises.

**RIGHTS AND OBLIGATIONS OF THE TENANT**

TENANT undertakes to not damage the Premises and the furnishings and equipment provided therein, or worsen the condition of the Premises and shall observe fire-prevention standards.

Under this Agreement, the above-mentioned Premises and related communication facilities shall be under the use of the TENANT. TENANT is aware of the condition of PREMISES and its communication facilities.

Upon expiration of the term of this Agreement and its extensions, if any, TENANT shall revert Premises to the standard as of the moment of execution of the Lease Agreement and as noted in the Deed of Acceptance, considering the regular wear and tear of Premises.

TENANT shall keep the Premises and its communication facilities in good order during the term of this Agreement, accepting reasonable wear and tear.

TENANT undertakes not to allow the use of PREMISES for illegal, risky or dangerous purposes. TENANT undertakes to observe generally accepted sanitation and hygiene standards.

If TENANT carries out reconstruction of the PREMISES at his own expense, then he shall do so only with the consent of appropriate public institutions and LANDLORD prior to launching of such works.

TENANT is responsible for damage caused to the Premises by its fault by the fault of its authorized representative or employee.

TENANT undertakes to carry out all day to day required repairs at his own expense, if damage is made by TENANT, and to keep the PREMISES in due order.

In case of accident and any damages, the Parties, in the presence of an invited expert, shall sign an accident certificate to determine the responsible person who is to cover the expenses to eliminate the damages.

TENANT undertakes not to do anything that would disturb the peace and calm of neighboring buildings. TENANT shall immediately inform LANDLORD or its representative of places where repairs are required or where damage has occurred causing leakage of water or escape of gas.

In case of accident, if LANDLORD or its representative is not available TENANT has the right to ask the municipality services to repair the damages. He shall inform LANDLORD at his earliest convenience, but not later than within 30 days of the accident. If the accident is caused at the fault of the TENANT, the LANDLORD is not responsible for compensation of damages incurred to the TENANT. If the damages are caused at the fault of the LANDLORD, the LANDLORD shall compensate the losses incurred to the TENANT and third persons.

To divide responsibility for accidents between the TENANT and the LANDLORD, the parties should follow the procedure specified in Clause 7.9.

TENANT is not allowed to lease the PREMISES or any part of it to third persons without written agreement of LANDLORD.

TENANT has an obligation in accordance with law to compensate LANDLORD or third persons that use the Premises any loss, which has occurred due to the damage of Premises, furniture or equipment therein through the fault and/or negligence of the TENANT or its invitees (except regular wear and tear).

FORCE MAJEURE

Neither of the parties is responsible for the losses caused to the other party by Force Majeure.

For the purposes of this Section, the expression "Force Majeure" means any event of circumstances which is beyond the control of the party concerned (acting and having acted reasonably and prudently) resulting in or causing the failure by the party concerned to deteriorate in performance of its obligations under this Agreement and this failure could not have been prevented or overcome by it acting reasonably and prudently.

The expression "Force Majeure" shall specifically include social unrest, in case of emergency, foreign intervention, and shall specifically exclude any event, which is a failure to perform by either party, which could have been prevented by reasonable and prudent management of such party.

EXPIRATION OF THE AGREEMENT

LANDLORD may terminate this Lease Agreement:

if TENANT regularly causes structural damages or destroys the Premises regarding which written warnings have been received from LANDLORD;

if TENANT has failed to make due lease payment two month in sequence despite written reminders.

In the event that under extraordinary circumstances beyond the control of the German Embassy, such as decision of the German Ministry of Foreign Affairs to close the Embassy in Latvia and recall it's employee to Germany, TENANT through the German Embassy shall have right to terminate the lease before the end of its normal term. In such case, TENANT is obliged to give LANDLORD written notice of cancellation three months prior to the date it will be affected. TENANT has right to use this clause beginning from 1 February 2004. **(Perhaps this could be deleted??)**

If this Agreement is to be terminated, then LANDLORD or his representatives shall have rights, starting with the last 30 days of the term of the Agreement, to visit the Premises along with the TENANT and persons willing to rent the Premises. LANDLORD or his representative shall provide TENANT with 2 days prior notice of such visit.

SCOPE OF THE AGREEMENT

This signed Agreement constitutes the entire agreement of the Parties. No oral amendments will be regarded as provisions of this Agreement. Any changes or supplementation to this Agreement will be valid only if signed by both of the Parties. The Deed of Acceptance, to be signed no later than 1 February 2003, will be a valid supplementation to this Agreement.

DISPUTES OF THE PARTIES

Any disputes between the Parties shall be settled through amicable negotiations, but should the Parties fail to reach settlement, then any such disputes shall be resolved at *Rīgas Starptautiskā Šķīrējtiesa* (Riga International Arbitral Tribunal). The claims filed with Riga International Arbitral Tribunal shall be processed by one arbiter in English according to the applicable legislation of the Republic of Latvia and according to the rules of said tribunal.

SPECIFIC CONDITIONS

This Agreement is binding upon the administrators of the parties, employees of the parties and legal successors.

On matters that are not provided for by this Agreement Parties shall follow the legislation of the Republic of Latvia.

The LANDLORD verifies that the building has insurance of civil liability.

This Agreement has been drawn up in 2 copies in English, one copy given to the TENANT and one to the LANDLORD.

ATTACHMENTS AND SIGNATURES OF THE PARTIES

Attachments:

Copy of passport of LANDLORD  
Copy of passport of TENANT  
The plan of the Premises  
Certificate of ownership title

THE LANDLORD

---

THE TENANT

---

**Appendix/Document File****VIII  
Property Lease - Commercial****DRAFT LEASE AGREEMENT  
BEFORE EDITING**

sq

Riga, \_\_\_\_\_, \_\_\_\_\_

SIA "Juglas projekts"  
Elizabetes iela 11, Riga, LV-1010  
Reg. No. 000349111

as represented by Ewald Mensch, hereinafter referred to as the "Lessor", on the one hand, and

Sample  
Street street No  
Riga, LV-Code, Latvia  
Reg. No: Numberas represented by Name,  
hereinafter referred to as the "Lessee", on the other hand,

(hereinafter the Lessor and the Lessee both together referred to as the "Parties"),

enter into the following Agreement:

**1. SUBJECT OF THE AGREEMENT**

2.

The Lessor agrees to lease to the Lessee and the Lessee agrees to lease from the Lessor upon the terms and conditions set forth in this Agreement, the premises which shall be located in the building at ..... Riga (hereinafter referred to as the "Shopping Centre" or the "Building") of the total area of

**Area sq.m.**

(that can be changed to actual figures after completion of construction) on the level level of the Shopping Centre, as set forth in greater detail in Appendix No 1 attached to this Agreement and forming an integral part of it (hereinafter referred to as the "Premises").

**2. THE USE OF PREMISES**

The Premises shall be used in connection with trade and other services within the general concept of the Lessee's activities. The list of products and services in groups to be sold / rendered by the Lessee at the premises is attached to this agreement as Appendix No 2 and forms an integral part of same.

Change of groups of products and services provided by the Lessee at the Premises shall not be

*Basic principles of Contract Drafting*

permitted without a written agreement of the Lessor. If the Lessor considers that such change of products and services to be sold at the Premises will create an unwanted competition within the Shopping Centre, it has the right to refuse such sales.

The Lessee shall at all times use the Premises only as provided in this Agreement. The Lessee shall also at all times conduct its business in accordance with the current Rules and Regulations of the Building, attached to this Agreement as Appendix No 3 and forming an integral part of same. Breach of these rules shall be considered as a breach of this Agreement.

The Lessor shall grant to the Lessee the non-exclusive right to use, in common with others entitled to such use all areas and facilities outside the Premises such as stairs and corridors (hereinafter referred to as "Common areas") as they exist from time to time, subject to any rights reserved by the Lessor under the terms hereof or under the terms of any rules and regulations governing the use of the Common areas and issued by the Lessor.

### **3. TRANSFER AND ACCEPTANCE OF THE PREMISES**

The Premises shall be made available to the Lessee at least 14 days before (hereinafter: "the Commencement date") the day of opening of the Building, which is scheduled to be on the 1<sup>st</sup>, October 2001 (hereinafter: "the Opening date"). The Lessor may change the Opening date by notifying the Lessee on same no later than 1<sup>st</sup>, July 2001. The Lessee shall have the right to declare the Agreement null and void if the Lessor fails to transfer the Premises to the Lessee until 1<sup>st</sup>, April 2002.

The Premises shall be taken over by the Lessee in accordance with the conditions stated in Appendix No 4 attached to this Agreement and forming an integral part of same. The Lessee may make changes to the above conditions subject to prior approval by the Lessor. The difference in cost between the standard described in Appendix No 4 and its own requirements shall be covered by the Lessee itself.

The Lessee shall present to the Lessor for approval the proposed furnishings and technical works which the Lessee wishes to do with the Premises. The Premises for this purpose shall be made available to the Lessee not less than 2 (two) weeks before the Commencement date, if required.

The actual transfer and taking over of Premises shall take place on the Commencement date by both Parties executing Transfer-Acceptance Act of the Premises (hereinafter referred to as "Act"), which Act shall be integral part of this Agreement (enclosed as Appendix No 5), and which Act shall describe the condition of the Premises and list the equipment and appliances placed (installed) therein, if any, at the time of taking over the Premises.

The Premises shall be delivered to the Lessee clean and ready for use together with heating, sanitary facilities, water, sewerage, telephone, electric power supply networks, and facilities acknowledged to be integral parts of the Premises.

### **4. TERM OF THE AGREEMENT**

The Agreement shall be valid from the day it is signed and shall be in effect until 31<sup>st</sup>, December 2011 inclusive.

Upon the expiry of the term of the Agreement, the Lessee shall have the first hand right to renew the Agreement for the period of 5 (five) years on the same terms as offered by the Lessor to any third party, provided that during the term of the Agreement the Lessee has duly and timely fulfilled all its obligations under the Agreement.

## 5. RENT AND OTHER PAYMENTS

The Lessee undertakes to pay rent for the lease of Premises to the Lessor, as well as maintenance costs and charges for utilities.

The Rent is determined to

**US \$ Price**

per square meter per month, that amounts to

**US \$ price**

per month for the Premises w/o V.A.T. (hereinafter: "the Rent").

In addition to the Rent the Lessee shall pay V.A.T. (at the day of signing of the agreement – 18 %) that is

**US \$ VAT.**

The Rent with V.A.T. amounts to

US \$ rent & VAT

per month.

The Rent shall be charged starting from the Opening date.

The parties agree that the Lessor has the right to change the payment currency to EUR instead of US \$. This change can be made from the Opening date until Latvia might become a member state of the European Union or join EUR as a currency in effect in the territory of Latvia Republic.

In addition to the Rent the Lessee undertakes to pay maintenance cost and charges for common utilities, including:

- 5.6.1. Water supply costs
- 5.6.2. Sewerage costs
- 5.6.3. Heating costs
- 5.6.4. Hot water supply costs
- 5.6.5. Heating, water (incl. hot) and sewerage system maintenance costs
- 5.6.6. Waste removal costs
- 5.6.7. Street cleaning costs
- 5.6.8. Maintenance and cleaning costs for places in general use
  
- 5.6.9. Lighting costs for places in general use and streets.
- 5.6.10. Fire and security alarm systems maintenance costs
- 5.6.11. Chimneys and air ventilation systems cleaning and maintenance costs
- 5.6.12. Costs for pest control in places in general use.
- 5.6.13. Greenery maintenance costs
- 5.6.14. Electricity, telephone, and other communication systems networks maintenance costs
- 5.6.15. Guarding of the Building costs



## 5.6.16. Maintenance costs for lifts, escalators and other installations.

Maintenance cost and charges for common utilities shall be paid according to annual budget as a'conto payment per month in addition to the rent-payment. On the 1<sup>st</sup>, July every year the actual and realised cost shall be clarified and the payment adjusted according to exact figures. For the 1<sup>st</sup> period, from the Opening date until 1<sup>st</sup>, July 2002 the payment is set to be **US \$ 5,00** (VAT excluded) per square meter rented area.

The total amount of Rent and maintenance costs and charges for common utilities (VAT 18% included) for all Premises per month is

**US \$ Grand Total,**

which can be adjusted with the official consumer price index in Latvia in accordance with the terms lined out in the paragraph 5.12. If additional payments occur, expenses shall be validated and approved by the Lessee.

If new maintenance costs and charges for common utilities are introduced or increased, exceeding the current/agreed level of maintenance costs and charges for utilities by more than 10%, the Lessor at least one (1) month before such charges are introduced shall calculate the new amount of the maintenance costs and charges for utilities to be paid and notify the Lessee on same.

In addition to the Rent, maintenance costs and charges for common utilities the Lessee shall make the following additional payments:

For electric power supply in the Premises – according to indications of the electric meter installed in the Premises, which can be controlled by the Lessee any time;

For telephone use and communication services – according to rates specified by the telephone network owner, whose invoice will be sent to the Lessee.

The Lessee at its own expenses shall ensure other operations related to maintenance of its shop area including but not limited to cleaning and internal window cleaning.

From the 1<sup>st</sup>, October 2002, approximately one year after the Opening date and later every year, the Lessor shall be entitled to review the amount of the Rent according to information on changes in consumer price index during a corresponding period of time published by the State Statistics Committee of the Republic of Latvia or the European Union, in case Latvia joins the Union and becomes a full-fledged member. The amount of increased or decreased Rent shall not exceed 5 (five)% per year.

Payments for maintenance and common utilities mentioned in Clause 5.6. may be made in LVL either, according to currency exchange rates specified by the Bank of Latvia in effect on the payment date. Funds shall be credited to the Lessor's bank account specified in Clause 12.

At the beginning of every month, the Lessee shall receive invoice with the amount of Rent and calculated maintenance costs and charges for common utilities for the current month. Additionally, once a month the Lessee shall receive invoices for telephone use and electricity consumption in the Premises for the previous month.

The Lessee shall pay all the invoices within 10 calendar days from the date of the invoice receipt.

The Lessee shall make payment of one (1) month Rent at the latest within one (1) month upon signing the present Agreement. The Lessee shall make payment of Rent for additional two (2) months at least one (1) month before the Commencement date according to an invoice submitted by the Lessor. The amount of three (3) months rent as described above shall be subject to 18% VAT payment and shall remain as a security deposit made by the Lessee for the following 2 (two) years of the term of Agreement starting from the Opening date. Upon expiry of this term the guarantee deposit can be substituted by a time-unlimited, irrevocable and absolute bank guarantee amounting to 3 months rent. The guarantee shall provide the disbursement of the payment pursuant to the first written demand of the Lessor. The Lessor has to return this guarantee within one month after cancelling this contract under condition that the Lessee has fulfilled all its obligations as per this Agreement.

The funds credited to the Lessor's bank account, and not the funds of remittance, shall be considered as due payment. However, if the money is not on date credited to the Lessors bank account, but the Lessee proves the transfer, the payment shall be deemed as paid on time.

The Lessee shall pay a penalty in the amount of 18% per annum of the outstanding amount of delay. The interest will be calculated on the daily rate of delay. Any payment made by the Lessee shall cover penalty first.

In case the Lessee does not prepare the Premises for trade and does not commence trading on the Opening date, the Lessee shall pay the following penalty - for the first week of delay or fraction of a week, a penalty of one (1) month Rent and in addition for each successive day after the first week, a further penalty equal to twice the daily rental rate.

The Lessee shall not be entitled to request that the Rent be reduced or lodge reimbursement claims against the Lessor, should communal services be suspended due to breakdowns, natural calamities, or other causes which do not depend on the Lessor.

## **6. RIGHTS AND OBLIGATIONS OF THE LESSOR**

The Lessor, at the Lessor's expense, shall keep in good condition and repair the foundations, exterior walls and roof of the Building.

The Lessor shall ensure maintenance of the fire prevention, heating, plumbing, ventilating, air conditioning, water supply, sewerage and electrical systems, devices and appliances, including devices and appliances on Premises.

The Lessor reserves the right to install new or additional utility facilities throughout the Building and the Common areas for the benefit of the Lessee or other lessees of the Building, including, but not limited to such utilities as plumbing, electrical systems, communication systems, fire protection and detection systems, so long as such installations do not unreasonably interfere with Lessee's use of the Premises.

The Lessor shall ensure 24-hour guard of the Building.

The Lessor or its authorised representative shall be entitled to enter the Premises in order to check on the Premises' condition, in case such entry is performed at a previously approved time with the Lessee's consent within min. one (1) day's notice in advance. The Lessor may serve upon the Lessee a notice in writing specifying any repairs necessary to be done, if damages arise through the Lessee's fault, and require the Lessee to eliminate them. If the Lessee does not within 10 days after service of such notice proceed diligently with the execution of such repairs, the Lessee shall permit the Lessor or its representatives and workmen to enter the Premises and execute such repairs. The costs of such repairs shall be paid by the Lessee according to the Lessor's invoice.

In an emergency (for example, fire, explosion, water-damage) the Lessor shall enter the Premises at any time day and night. The Lessee shall make the Premises accessible and shall provide the Lessor with the keys of the Premises for this purpose.

Within three (3) months before the expiry of the term of this Agreement the Lessor or its representatives shall be entitled to enter the Premises together with persons willing to lease the Premises after the expiry of the term of this Agreement, at working hours with min. one (1) working day's notice in advance and the Lessee undertakes not to object to such visits.

The Lessor may take planned reconstruction measures with the purpose of modernisation of the Building without the Lessee's consent, in case the above measures and extent hereof have been notified to the Lessee one (1) month in advance. The Lessee shall not have the right to compensation or reduced Rent in case of customary repair works to the Building or Common areas unless these repair works substantially interferes with the Lessee's business activities. Such reconstruction shall be agreed upon in writing.

The Lessor shall:

- provide the Lessee with all communal services, which receiving depends on the Lessor;
- notify the Lessee of planned overhaul and/or reconstruction of the Building one (1) month in advance;
- notify the Lessee one (1) month in advance of short-term repairs and/or reconstruction that may interfere with the Lessee's use of the Premises;
- review maintenance costs and charges for utilities in case the Lessee fails to receive communal services envisaged hereunder through the Lessor's fault;
- abstain from hindering the Lessee in its use of the Premises.

In case of alienating of the Building to another person, to ensure that the Lessee retains its rights as a Lessee. The Lessor will not object against the Lessee's rights to register the Lease Agreement in the Land Book. The payment for registration shall be made at the Lessee's expenses.

In case of some accident due to the fault of the Lessor, it undertakes to eliminate such damages immediately, but not longer than within 72 (seventy two) hours after the Lessee's application,

if possible. If the damages are not eliminated during this period, the Lessee has a right to eliminate damages by own expense accordingly handing in the bill to the Lessor who shall immediately refund the Lessee's expenses, but not later than 15 days after the Lessor has received an invoice from the Lessee.

At all times during the term of the Agreement, the Lessor shall have a valid insurance policy and shall promptly pay all premiums in respect thereof, covering the building in an amount equal to its replacement value, providing protection against the usual risks, including fire, vandalism, flood, malicious mischief and any other damage to the Building, as well as third party liability and the necessary cleanup before rebuilding and restoring may commence.

## **7. RIGHTS AND OBLIGATIONS OF THE LESSEE**

The Lessee, at the Lessee's expense, at all times during this Agreement shall keep in good order, repair as well as clean the Premises and every part thereof, including, but not limited to, fixtures, interior walls and surfaces, ceilings, windows and doors located within the Premises. Any repair work shall be carried out by experienced companies or people to a standard acceptable by the Lessor.

The Lessee shall ensure that structures, engineering networks, and communications of the Premises are used correctly by its employees and customers and are safe from damage, according to building standards and regulations in effect.

The Lessee has read the Rules and Regulations of the Building attached as Appendix No 3 and forming an integral part of this Agreement. The Lessee shall arrange for its employees and other similar persons to observe and follow the above Rules and Regulations too.

The Lessee may place its signboard (with the Lessor's written approval of the pattern and location thereof) outside the Premises without extra payments to the Lessor. All works shall be performed so that the Premises, construction structures, or communications will not be damaged.

The Lessee shall not assign, mortgage, sublet or otherwise transfer or encumber all or any part of the Premises without prior written consent of the Lessor. Any such assignment or subletting without consent of the Lessor shall be void and shall entitle the Lessor to terminate this Agreement immediately without refunding any advance payments received.

The Lessee is entitled in the course of the use of the Premises to perform the necessary cosmetic repairs of the Premises at its own cost and expense, subject to approval by the Lessor.

The Lessee shall not, without the Lessor's prior written consent, make any structural alterations, improvements, additions and installations in or about the Premises. Any structural alterations, improvements, additions or installations in or about the Premises that the Lessee desires to make shall be presented to the Lessor in written form together with detailed plans.

The Lessee shall not commit any waste upon the Premises or any nuisance or act which may disturb other lessees in the Building.

If a breakdown occurs in the public utilities supplying systems, devices or appliances, the Lessee shall promptly notify the Lessor or its representative and the institution, which manages the appropriate systems, devices or appliances. Upon occurrence of the emergency breakdown Lessee shall take all the reasonable measures to minimise damage to the Premises and the Building.

The Lessee shall:

Immediately notify the Lessor on changes in legal form of its enterprise. Should the Lessee sell its enterprise or a part thereof or if there occur changes in the ownership of the Lessee's enterprise, previous approval of the Lessor shall be required in connection with assignment of this Agreement to the Lessee's successor.

Maintain the Premises and facilities located in them in good order according to requirements issued by relevant institutions of the Republic of Latvia and the Rules and Regulations, not allow aggravation of the Premises' engineering and general condition, except normal wear and tear;

use the Premises for purposes as per Clause 1 and Clause 2 only;

be materially responsible for damages to the Building and the Premises caused through the Lessee's or its employees or customers (to the agreed Premises) fault. The Lessee shall immediately remove faults in engineering networks, as well as remove any other faults within one (1) week of their occurrence. Should the Lessee default the above obligations, the Lessor shall be entitled to arrange that faults are removed at the Lessee's expense;

Allow the Lessor or its representatives to perform engineering check-up of the Premises at a previously approved time, with the Lessee's attendance ensured, and with check-up reports being drawn up and signed by the Lessor and the Lessee;

Until 1<sup>st</sup> August, 2001 inform the Lessor in writing about the Lessee's authorised representative (first name, family name, address, telephone) who should act in cases of accidents occurring beyond working hours.

At all times during the term of the Agreement the Lessee shall have a valid insurance policy and shall promptly pay all premiums in respect thereof, covering the Premises in an amount equal to their full replacement value, providing protection against the usual risks, including fire, vandalism, flood, malicious mischief and any other damage to the Premises.

The Lessor's interest will be noted on the insurance policy and all proceeds will be used for the repair, restoration or reconstruction of the Building. The insurance policy will be taken out with a reputable insurance company.

Furthermore, the Lessee shall have a valid insurance policy, covering third party liability: claims for death, personal injury and property damage occurring in or about the Premises.

## **8. TERMINATION OF THE AGREEMENT**

The Lessor is entitled to terminate this Agreement by means of unilateral declaration with

immediate effect if the Lessee does not fulfil any of its substantial obligations under this Agreement despite having received a written notice or cure this breach within reasonable period of time (such period not to exceed fifteen (15) days), as well as in other cases specified in this Agreement.

Within the meaning of this Clause, breach of substantial obligations include, but is not limited to:

Default by the Lessee to pay the Rent or other payments under this Agreement for more than 15 (fifteen) days;

Damaging or worsening condition of the Premises as a result of activities of the Lessee or its employees;

Failure to obtain or maintain insurance policies as provided under Clause 7.11. herein;

The case if the Premises are used for purposes not provided in this Agreement;

If the Lessee sells products / goods not specified in Appendix 2 to this Agreement;

The case if the Lessee has not commenced trading in the Premises within thirty (30) days after the Commencement date;

The case if the Lessee is in breach with respect to any of its obligations hereunder and such breach of obligations is not remedied within 15 days from receipt by the Lessee of a written Lessor's notice thereof;

If the Lessee subleases the Premises or any part of same without the Lessor's prior approval.

8.3. In case this Agreement is terminated for any of the reasons described above in Clause 8.1. and 8.2., the Lessor shall be entitled to liquidated damages in the amount as decided by the court or agreed between the parties.

8.4. Neither of the Parties shall be held liable for the failure to perform or a delay in performance of any obligation under this Agreement, if such delay or failure were due to a Force Majeure (i.e. any cause outside the control of the Party whose performance is affected and which the affected Party is unable to prevent by exercising reasonable diligence or to overcome by employing reasonable means, such causes include but are not limited to revolutions or other disorders, wars, acts of enemies, fires, floods, acts of God, adverse legislative changes).

8.5. Should the Building or the Premises are completely destroyed due to Force Majeure, the Agreement shall be terminated. If the Building or the Premises are rebuilt or restored, the Agreement shall remain valid, and the Lessor shall bring the Premises to their normal condition. The Lessee will be returned all the money paid beforehand for the period of time, during which the obligations of the Agreement were not carried out.

8.6. The Agreement may be terminated before the expiry of its term by mutual agreement between the Parties.

## **9. RETURN OF THE PREMISES**

9.1. After the expiry of the term of the Agreement or in case of termination of the Agreement, the Lessee shall transfer the Premises in as good condition as received, ordinary wear and tear exempted, clean and free of debris. Before vacancy, the Premises shall be restored at the expense of the Lessee to a condition that resembles the condition of the Premises on the Commencement date, taking into account normal wear and tear.

- 9.2. One (1) month prior the expiry of the term of the Agreement, the Parties shall agree to the extent of the necessary repair work provided in Clause 9.1.
- 9.3. All alterations, improvements, additions and installations which are made on the Premises by the Lessee and which can not be removed without damage to the Premises, shall become the property of the Lessor and shall remain upon and be transferred with the Premises at the expiration or termination of the Agreement, unless Lessee with the permission of the Lessor removes them and restores the Premises to their prior condition at the Lessee's own cost and expense.
- 9.4. In case if Lessee fails to transfer Premises in due time or in due condition, the Lessee shall pay a late charge for each day of delay in the amount of double rent payment per day as calculated on the basis of the Clause 5.2.

#### **EXTENT OF THE AGREEMENT**

- 10.1. This Agreement contains all agreements of the Parties with respect to matters mentioned herein. This Agreement may be modified in writing only, signed by both Parties.
- 10.2. If any one or more provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected in any way.
- 10.3. This Agreement shall be governed by the Laws of the Republic of Latvia. To the extent not covered by this Agreement the rights and obligations of the Parties shall be as determined by the applicable Latvian Law.
- 10.4. In the event any dispute cannot be settled by mutual negotiations between the Lessor and the Lessee, the dispute shall be solved in the International Arbitration Court in Stockholm, pursuant to the rules of the above arbitration court. The number of arbitrators shall be one, the arbitration language – English.
- 10.5. The notices under this Agreement shall be sent to the respective addresses of the Parties as indicated in this Agreement. The Parties shall provide timely notices to each other on the changes in their addresses, telephone and facsimile numbers, as well as on the change of their respective bank accounts.

#### **FINAL PROVISIONS**

- 11.1. This Agreement has been executed in 2 (two) copies in Latvian and English, one for each Party.

#### **MAILING ADDRESSES AND BANK ACCOUNTS OF THE PARTIES**

The Lessor:

*Basic principles of Contract Drafting*

SIA “Juglas projekts”  
11 Elizabetes Str.  
Rīga, LV-1010  
Latvia

The Lessee:

Sample  
Street street No  
Rīga, LV-Code  
Latvia

Bank  
Code: Code  
Acc. No: Account

Enclosures:

1. Plan of the Premises
2. List of products / goods to be sold by the Lessee
3. Rules and Regulations of the Building
4. Conditions for transfer and acceptance of Premises
5. Transfer and Acceptance Act of the Premises

**13. SIGNATURES:**

THE LESSOR:  
IZNOMĀTĀJA VĀRDĀ:

On behalf of SIA “Juglas projekts”:  
SIA “Juglas projekts” vārdā:

---

**Ewald Mensch**



## IX Incoterms 2000

**INCOTERMS 2000** are internationally accepted commercial terms defining the respective roles of the buyer and seller in the arrangement of transportation and other responsibilities and clarify when the ownership of the merchandise takes place. They are used in conjunction with a sales agreement or other method of transacting the sale. \_\_\_\_\_

- EXW - Ex Works -- Title and risk pass to buyer including payment of all transportation and insurance cost from the seller's door. Used for any mode of transportation.
- FCA - Free Carrier -- Title and risk pass to buyer including transportation and insurance cost when the seller delivers goods cleared for export to the carrier. Seller is obligated to load the goods on the Buyer's collecting vehicle; it is the Buyer's obligation to receive the Seller's arriving vehicle unloaded.
- FAS - Free Alongside Ship -- Title and risk pass to buyer including payment of all transportation and insurance cost once delivered alongside ship by the seller. Used for sea or inland waterway transportation. The export clearance obligation rests with the seller.
- FOB - Free On Board and risk pass to buyer including payment of all transportation and insurance cost once delivered on board the ship by the seller. Used for sea or inland waterway transportation.
- CFR - Cost and Freight -- Title, risk and insurance cost pass to buyer when delivered on board the ship by seller who pays the transportation cost to the destination port. Used for sea or inland waterway transportation.
- CIF - Cost, Insurance and Freight -- Title and risk pass to buyer when delivered on board the ship by seller who pays transportation and insurance cost to destination port. Used for sea or inland waterway transportation.
- CPT - Carriage Paid To -- Title, risk and insurance cost pass to buyer when delivered to carrier by seller who pays transportation cost to destination. Used for any mode of transportation.
- CIP - Carriage and Insurance Paid To -- Title and risk pass to buyer when delivered to carrier by seller who pays transportation and insurance cost to destination. Used for any mode of transportation.
- DAF - Delivered at Frontier -- Title, risk and responsibility for import clearance pass to buyer when delivered to named border point by seller. Used for any mode of transportation.
- DES - Delivered Ex Ship -- Title, risk, responsibility for vessel discharge and import clearance pass to buyer when seller delivers goods on board the ship to destination port. Used for sea or inland waterway transportation.
- DEQ - Delivered Ex Quay (Duty Paid) -- Title and risk pass to buyer when delivered on board the ship at the destination point by the seller who delivers goods on dock at destination point cleared for import. Used for sea or inland waterway transportation. DDU - Delivered Duty Unpaid -- Title, risk and responsibility of import clearance pass to buyer when seller delivers goods to named destination point. Used for any mode of transportation. Buyer is obligated for import clearance.
- DDU - Delivered Duty Unpaid -- Seller fulfills his obligation when goods have been made available at the named place in the country of importation

- DDP - Delivered Duty Paid -- Title and risk pass to buyer when seller delivers goods to named destination point cleared for import. Used for any mode of transportation.
  
- *Note:* EXW, CPT, CIP, DAF, DDU and DDP are commonly used for any mode of transportation. FAS, FOB, CFR, CIF, DES, and DEQ are used for sea and inland waterway.

**X**  
**Agency contract**

-----Sākotnējā ziņa-----

No: "Emmanuel Clot" <e-clot@porcelain.org>

Sūtīts: 2004-10-06 13:40:59.857

Kam: "Roman Justs" <albertapipes@one.lv>

Par: contract agreement

ATELIER D'ART DE LIMOGES

ZI Ponteix, 3 rue Thomas Edison / 87220 Feytiat - Limoges - France Phone : +33 555 313

474 - fax : +33 555 313 475 Website : <http://www.atelier-limoges.com> / Email : e-clot@porcelain.org

Dear Roman,

Good morning.

Thank you for your last email.

Referring to my yesterday message, I am pleased to inform you as follows :

- Please find enclosed the project of contract with you.

I kindly invite you to read it carefully and inform me concerning this project.  
If you would like some changes, feel free to ask me.

On another hand, I would be grateful if you could explain me first step of prospection you plan to lead :

- Number and kind of shops targeted
- Time allowed by week
- Direct sale on the Internet (any website building project) or to shops
- Will you display our boxes in your shp or elsewhere ?

On my side, and following experience on this point, I can propose you following commercial toolkit for Christmas season, which is a great one for our products :

- Selection of 10 - 20 boxes (fancies, high class decoration, refined, casket, classical)
- 10 printed catalogues
- Authenticity certificate
- Elegant individual blue gift boxes
- Porcelain hand painted displays supports This commercial toolkit could be quoted at wholesale prices.

I hope that all these points will satisfy you and allow us to start to work together for Christmas season.

I am looking forward to reading from you and I remain at your disposal.

Best regards,

Emmanuel.

Emmanuel CLOT  
Sales Manager

## Atelier d'Art de Limoges



3 Rue Thomas Edison  
 Z.I. du Ponteix  
 87220 LIMOGES – FEYTIAT  
**FRANCE**  
 Tel: +33 (0) 555 313 474  
 Fax : +33(0) 555 313 475  
 Website : atelier-limoges.com  
 Email : atelier.limoges@porcelain.org

### AGENCY CONTRACT AGREEMENT

**Object:**

The present contract is established to define the commercial relations between the ATELIER D'ART DE LIMOGES Company, Located ZI Ponteix, 3 rue Thomas Edison France named the exporter,

And,

Roman Justs, Latvia, named the agent.

**Products:**

The contract is established to ensure the promotion of the ATELIER D'ART DE LIMOGES products as per its catalogue.

Also, this contract is established to ensure the promotion of future ATELIER D'ART DE LIMOGES products.

**Territory:**

The contract is established to ensure the agency representation of ATELIER D'ART DE LIMOGES products by ROMAN JUSTS on following geographical area:

All Latvia, Lithuania and Estonia territories.

The contract is not exclusive and allows the exporter to contract with all other agents on same or different geographical area without any obligations beside ROMAN JUSTS.

**Agent's commitment:**

The agent by signing the contract takes commitment to:

- Promote by all available measures and resources the ATELIER D'ART DE LIMOGES company and products.
- Send to the exporter regular market feed-back and written activity report (at least once a month).
- Support the exporter in his commercial activity in above described territory.
- Attend and participate to all required commercial show and exhibition.
- Ensure the commercialization, sales and payment of all ATELIER D'ART DE LIMOGES products and all the related followings.
- To not communicate data, drawings, commercial and other information related to ATELIER D'ART DE LIMOGES products or Company of such a nature as to be prejudicial to the exporter.

**Exporter's commitment:**

*Basic principles of Contract Drafting*

The exporter by signing the contract takes commitment to:

- Support by all available measures and resources the commercial activity of the agent to promote ATELIER D'ART DE LIMOGES Company and products.
- Provide TIF or JPG photos to agent of entire Limoges items range available from ATELIER D'ART DE LIMOGES (except exclusivities granted to other ATELIER D'ART DE LIMOGES clients, agents, or other partners) for promotional purpose and when required.
- Keep informed the agent of all internal changes of such a nature to change the commercial relations between the parties
- Keep informed the agent of all contracts signed for promotion of ATELIER D'ART DE LIMOGES products on agent's territory
- Remunerate the agent for all effective sales made thanks to his action under below conditions

**Commission:**

Under reserve of all obligation respect, the exporter takes commitment to remunerate the agent as follows:

A free commission buying/selling basis. The commission for the agent will be the difference between exporter's wholesale price granted to agent and agent's final price granted to final customer.

The commission amount will be calculated on EXW wholesale prices granted to agent (annex 2).

As the commission is a free buying/selling basis, agent will be remunerated directly on his sales by final customer payment.

Commission is due to agent during all period of contract validity. No commission are or will be due to agent for sales prior to contract validity and after contract ending, even if sales results from clients attracted by agent during the contract period.

**Commercial promotion costs**

All the costs for prospecting and promotion engaged by the agent are at his own charge. His commission remuneration scale must include these costs and agent cannot claim reimbursement of costs beside the exporter.

All the costs engaged for the promotion of the exporter's product which have an event aspect (fair, exhibiton or other) will be negotiated apart from this contract between the agent and the exporter.

**Law and litigation:**

The contract is submitted to the French law for all relations between the agent and the exporter.

In case of any litigation between the exporter and the agent, the parties have obligation to try to settle their litigation by mutual mediation.

In case of mutual mediation failure, both parties have to try to settle their litigation by a third party mediation choose by common agreement of both parties. If no agreement is found by both parties, the exporter choice of third party will be considered.

In case of third party mediation failure, both parties have to settle their litigation beside French court of Limoges, France.

**Contract duration:**

The contract is established for a duration period of 1 year from signature date.

The contract will be automatically renewed by both parties except otherwise stated and for a duration period of 1 year from contract's birthday date.

*Basic principles of Contract Drafting*

**Contract cancellation:**

The contract will be cancelled in following cases:

- Non-respect of agent commitments
- Non-respect of exporter commitments
- Exporter or agent wish. In such a case, the party wishing cancellation has to send a letter by mail to other party stipulating contract's ending. From date of letter, cancellation of contract will take effect in a 1 month time.

In any case of cancellation, no fees and or compensation could be claim by one of the party or both parties.

**Language:**

Language of the contract and all relations will be made in English.

**Copies:**

The contract is established in two (2) original copies.

**Date and Signature:**

Established in 2 originals, on Tuesday, October, 05<sup>th</sup> 2004.

For and behalf of ROMAN JUSTS

**Roman Justs**  
President

For and behalf of ATELIER D'ART DE  
LIMOGES  
**Pascal Guinot**  
President

**XI**  
**Procurement contract**

**Framework Contract**  
**for the Provision of Products**  
**of the Manufacturer**

between the  
Republic of Ruritania (Federation)  
as well as other customers  
according to article 3

- abbreviated as “customer” or “CUST” –  
all represented by the  
Federal Procurement Ltd  
Niedere Donaustrasse 63  
R – 1020 Hauptstadt  
– abbreviated as “FPL” –

and

CONT

- abbreviated as “Contractor” , „CONT“ or “...” –

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## PRELIMINARY NOTE

Federal Procurement Ltd ('FPL') was established with company code AB 000000 under the Federal Act on the Establishment of a Federal Procurement Limited Company (FP-GmbH-Gesetz), FPLI I 39/2001 idF FPLI I 99/2002. FPL's task involves, among other things, implementing award procedures including the conclusion of framework contracts in the name and for the account of the Federation.

FPL is authorised under § 3 para. 3 FP-GmbH-Gesetz in the name and for the account of states, municipalities, and municipal associations as well as public customers according to § 7 para. 1 Z 2 and 3 Purchase Contracts Awards Act 2002 (BVerG 2002), BGBl. I Nr. 99/2002, to implement award procedures to meet their requirements regarding goods and services, as long as these fall within the executive domain of the Federation (hereafter referred to as "other authorised purchasers"). It is furthermore provided that these other authorised purchasers will benefit directly or indirectly through FPL services. In this way, the named public customers will be given the possibility to purchase goods and services required through framework contracts concluded by the enterprise according to the conditions stipulated therein. By "entering into" the frame contracts, the customers assume the rights and duties therein (compare 486 of the addenda to the stenographic transcripts of the Parliament XXXI.GP) within the scope of the conditions of the BVerG 2002.

### 1. Subject of the Contract

The subject of the contract is the provision of xxxxxx from manufacturer XXXX as well as any related consultation, installation, or maintenance services.

Through the conclusion of this contract, no obligation to accept is created by the customer.

The present framework contract does not exclude the Federation from making other bids for the named components on account of separate requirements.

### 2. The Customer and Authorised Departments

The customer is the Federation represented by Federal Procurement Ltd. Authorised purchasers for the purpose of the framework contract are all federal departments as well as other users according to § 3 Para. 3 FP-GmbH-Gesetz. The ordering, provision, and billing of goods and services will occur directly between the contractor and authorised purchasers.

#### **2.1 Authorisation of Other Users**

Through entry into this frame contract, the contractor concedes public customers the right to lay claim to contractual services within the total ordered quantity at any time, as long as they are in possession of an appropriate FPL customer number (see customer list<sup>1</sup>). Claims of any kind resulting from the purchase of other users against the Federation or the FPL are excluded.

---

<sup>1</sup> The current list of customers can be found on the FPL homepage ([www.FPL.gv.ra](http://www.FPL.gv.ra)) in the *Öffentlichen Bereich* under *Kundenservice*.

The customer lists may be expanded conjointly at any time.

### 3. Contract Duration

The contract will be concluded for an indefinite period, but for at least 12 months. The contract may be terminated in written form by both CUST and CONT on giving three months notice expiring at the end of a quarter. The letter must be sent by registered mail.

### 4. Prices

Throughout the entire duration of the contract, XXXX guarantees to accept every lower price (if applicable) that the customer or authorised departments agree on for a product from the valid price list for comparable purchasing criteria according to the price list in the appendix, as the new price for the contractual product, starting with the month following its disclosure, provided that the lower price is based on a more favourable retail price of the contractor to its sales partner.

Cross-subsidised price models of other market participants are excluded from this provision.

The following conditions in the corresponding product groups on the official XXXX price list are stipulated.

### 5. Subcontractors

The contractually covered services may also be obtained via the subcontractors in the following list. In this case, contractual services will be provided and billed by the subcontractors. In this case the full satisfaction of debt can only be performed vis-à-vis the subcontractor.

Company	
---------	--

### 6. General Conditions

#### **Type of Purchases**

The authorised departments may purchase unlimited contractual products and other services.

In the case of orders through authorised purchasers, a written order confirmation must be issued (incl. prices and delivery times) in every instance.

#### **Terms of Delivery**

##### **Delivery Times**

The supplier is obligated to deliver the products within 28 days maximum.

If the supplier fails to adhere to these times, excluding acts of God or fault of the customer, then the provisions in Article 8.7 “Delay” apply.

### **Delivery Location**

Delivery locations are in principal offices or sites of the customer and other users and their storerooms and, if applicable, the storerooms of outside companies (to be named) in the entire Ruritanian federal region.

### **Delivery Patterns**

Deliveries occur “free to the door” of the authorised purchaser directly to a location within Ruritania specified beforehand and quoted in the order.

As a rule, delivery should take place between 08:00 and 16:00. Additional arrangements can be made with the authorised purchaser.

### **Removal of Packaging Material**

In the case of on-the-spot services from the supplier (for instance, unpacking and assembly of equipment and the like), the latter is obligated to remove the packaging material free of charge and dispose of it properly or to provide for its proper disposal.

The supplier will indicate its licence number of the release from duty agreement and the licence agreement according to packaging ordinance (VerpackVO, FPLI Nr. 645/1992). The license number will further be indicated on all bills and delivery notes.

### **Conditions of Payment**

40 days net are stipulated.

The obligation to pay arises in principle with billing – at the earliest, however, on the day of taking delivery or the day of completion of purchase.

If the amount of the bill exceeds € 7,000. -- (incl. purchase tax), then CONT must present a set-off waiver declaration or a special waiver declaration to the responsible finance office.

### **Purchasing**

The contractor agrees that at the discretion of the authorised department components under consideration for installation may be subject to a function and service test, to prove the accuracy of information given by the manufacturer about the service good as to functionality and service capacity of components (acceptance trial).

Purchase of components will occur on certification of their functionality and service capacity through a test of random samples and will be entirely free of charge to the customer, even when no purchase follows due to unsatisfactory inspection results.

If the inspection fails to satisfy the customer, it can be extended for a maximum of 21 days at the request of the supplier, if it is plausible that it can sufficiently improve test results through appropriate measures.

If the supplier fails to make use of additional time provided, or if the efficacy of the product remains inadequate, then all products made available by the supplier will be prepared for collection and will be considered as undelivered. The conditions for delivery delay will be applied.

### **Electronic Catalogues**

FPL uses an electronic catalogue purchasing system for retrieval of catalogues and products from framework contracts and general agreements concluded.

The contractor (CONT) will make the products and catalogues of the bid available to FPL by means of an electronic catalogue. The respective products and catalogues should be integrated directly into FPL's catalogue purchasing system.

The minimum requirements stipulated in the framework contract regarding the structure and technical prerequisites of the catalogue must be fulfilled (see 7.5.4 "Minimum Requirements Regarding Structure and Technical Prerequisites of Catalogue").

### **Legally Valid Purchasing**

Purchases pertaining to this frame contract will be transacted in principle through the FPL e-shop. Fax and other orders through a medium other than the e-shop will only be allowed in special cases after consultation with FPL.

In such cases, the following references must be given when ordering:

- FPL partner number of the customer
- FPL business code

### **Incoming Orders**

The contractor is obligated to remain fully informed regarding any orders under Contract Article 7.5.2 "Legally Valid Ordering". For this purpose, FPL will provide it with deliverer's access to the e-shop. This enables the contractor to create order confirmations within the e-shop and to send them to the respective consumer.

It is not sufficient for the supplier to send the customer an order confirmation if this process is not consequently displayed in the FPL system.

### **Minimum Requirements Regarding Structure and Technical Prerequisites of Catalogue**

a) The standard format for the import of catalogues is BMEcat. Catalogues for integration into the FPL e-catalogue purchasing system must be created in the latest version (currently Version 1.2) and sent to FPL preferably as a complete xml-file including the necessary DDT data files (Document Type Definition) and multimedia data files. As an alternative to BMEcat, other data

structures and standard formats will be accepted if all required data fields and catalogue data can be displayed in these structures and appropriate converters for fault-free import into the FPL catalogue purchasing system FPL – capable of functioning in the catalogue display in the FPL catalogue purchasing system – are available from the contractor.

b) Creation of a catalogue structure and definition of product groups will be undertaken by the contractor in coordination with FPL, tied in with its experience with customer search behaviour typical for the domain, in a user-friendly manner.

c) Catalogues and their products should be classified and displayed as clearly as possible according to the “ecl@ss” product classification system (Release 4.1: see [www.eclass.ra](http://www.eclass.ra)). The resulting concrete classification should be deposited in the catalogue import file.

d) CONT is responsible for the technical and textual accuracy of the catalogue. FPL will test data files made available, both for possible importation faults or warnings, and regarding content – but only in the form of spot checks. If import files of the CONT exhibit technical defects in the system of the customer or if the minimum requirements are not fulfilled or only partially fulfilled, then CONT must effect an appropriate change of the import file in coordination with CUST and resend it to FPL within four working days. Content that contradicts the framework contract must be corrected by CONT and resent to FPL within three working days.

e) The catalogue content displayed must be configured in line with the standard definitions of BMEcat – required fields and optional fields in the required scope – as well as with the existent domain-typical catalogue and user experience of the contractor and FPL. Moreover, all product data sheets (.pdf file) and image files (jpg. format) must be made available to the customer in a multimedia data file. The catalogue content should be entirely in the German language.

f) The technical preparation of catalogue content and prices (catalogue updates) and required updates will be carried out by CONT independently in a conjointly acceptable fashion and in coordination with FPL. Required changes will be attended to within the FPL system or will be made available to FPL via catalogue update. CONT must inform FPL beforehand. If changes are to be made on an appointed date, then FPL must be notified four working days beforehand at the latest.

### **Handling Allowances**

Given that the contractor accumulates expenses by creating and maintaining electronic catalogues, and at the same time saves logistical expenses through the transaction process and the electronic catalogue purchasing system, the contractor is obligated to assume a portion of these expenses. These expenses will be levied through orders by the contractor itself in the form of allowances and will be transferred to FPL. The stipulated allowance will be 1.1%, excluding purchase tax, of net order value.

Allowances will be billed quarterly after the event, starting from 31.03.06. The amount invoiced is payable within 24 days and will be transferred to the FPL account indicated on billing. To abide by payment terms, the bank statement of the contractor on the last day of the term is sufficient. Any interest for delay will be payable in the amount of four percent above the base lending rate of the Ruritanian National Bank. This sum will be limited to a maximum of € 3,000.--, excluding purchase tax.

## 7. Other Conditions during the Period of the Contract

### **Communication / Contact Person**

Communication between customer and supplier/manufacturer is of great importance in the course of the project and during the period of the contract, since only through efficient communication can errors and blunders as well as difficulties be recognised in good time and then dealt with quickly. Thus, responsible persons and/or contact persons along with substitutes as well as institutional and organisational structures should be disclosed.

For suppliers and manufacturers the following in particular:

- Supplier in charge of the overall project, and a substitute.
- Manufacturer's personnel in charge of the overall project, and substitutes.
- Suppliers/manufacturers in charge of a department (handling, technology, accounting, billing, logistics, support, guarantees, etc.)

The persons or person subgroup indicated above require contact details (address, telephone, fax and e-mail) and must be referred to by name.

### **Other Information**

CONT must send the following information to CUST without delay:

- Delivery constraints, delivery delay, and other delivery impairments.
- The appearance of faults in hardware/software/etc.
- Discontinuation of a product.
- Changes in company structure or personnel.

Information must be sent as follows:

Preliminary information verbally, by telephone, fax, or by e-mail to the customer, otherwise in written form (with a company stamp) by post.

Handbooks required for users and support must be made available to the customer free of charge, also in machine-readable form.

The customer may make excerpts and copies of these files only for internal use.

### **Contractor's Duty to Warn**

If a circumstance occurs in contractor's sphere that might lead to a deferment of service provision, then contractor will notify the purchasing department in written form without delay and will provide information about the projected length of time and measures taken to shorten deferment.

### **Assertion of Rights and Duties of Customer**

The assertion of rights and duties of the customer pertaining to implementation of the respective concrete service/delivery, including inspection and rejection of services, inspection, payment or rejection of bills, and the assertion of any customer claims that might pertain to this, is the responsibility of the respective users.

The term “user” refers to the individual departments of the Federation and other users under § 3 Para. 3 FP-GmbH-Gesetz.

Rights and duties pertaining to fundamental issues regarding the structure or circumstances of the overall contract will be asserted by Federal Procurement Ltd. This in particular concerns exercise of the right to cancel, the right of withdrawal, and implementation of changes to the contract.

Contractor will contact the user in question directly in the case of all business incidents related to individual cases. If the user claims substantial defects in contractor services, then contractor will inform Federal Procurement Ltd. without delay.

Purchases from this framework contract will occur through individual users, who will send a written order for this purpose to contractor.

### **Retention of Title**

Retention of title is excluded.

### **Place of Fulfilment**

The place of fulfilment is the entire federal region.

### **Delay**

If contractor is responsible for a delay in providing a service, a communication pertaining to willingness to purchase, or the live operation of the contractual object or a separable part, or if contractor is responsible for a delay in that it is unable to adhere to provision of an outstanding service or a separable part in any way, or not at the proper location, or not in the agreed fashion, or not on the specified service date, or if it fails to adhere to the contractually stipulated response times (see Article 2.20), then customer is entitled to:

- § insist on fulfilment of the service and demand a penalty for every calendar day of delay, or
- § withdraw from the contract after setting a suitable period of grace, irrespective of the right to enforcement of a penalty. In this case, the penalty can only be claimed until the date of withdrawal from the contract.

The customer may demand the higher of the following of sums per calendar day of delay as a penalty:

- § € 110.--
- § 1/1000 of the stipulated total price of delayed services

The penalty may not be modified by any court of law under § 1336 RFPL. This penalty is limited to ten percent of the total price of the order. Assertion of

damages claims over and above this, in the case of contractor fault, follows the provisions of Article 08.8, "Liability and Guarantee".

### **Liability and Guarantee**

The liability and guarantee of the contractor complies with legal regulations.

### **Liability for Damages Claims and Execution by Substitution**

Contractor is liable according to legal regulations for all damage to persons and material that are caused by contractor and its personnel during execution of work. The same is valid for failure to implement or improper implementation of any scheduled work or for other breaches of contract, provided that this results in damage to the customer.

### **Withdrawal from Framework Contract**

The customer is entitled to withdraw from the contract immediately in the following cases:

- a) If liquidation, composition or bankruptcy proceedings are opened regarding the assets of contractor or if a motion to open a composition or bankruptcy proceeding has been dismissed for want of adequate assets.
- b) If circumstances exist that render the proper implementation of the service manifestly impossible.
- c) If a fundamental breach of contract is existent; this includes, among other things, violation of the obligation of secrecy.
- d) If contractor
  - has committed acts in order fraudulently to inflict damage on the customer, particularly if it has come to any agreements with other enterprises that are disadvantageous for the customer, immoral, or against the principle of competition.
  - has directly or indirectly promised or offered elements of the customer, who are concerned with the conclusion or execution of the contract, immoral advantages or has directly threatened them with harm or inflicted harm on them.

Unilateral cancellation of a contractual relationship according to sub-head c) is only valid if contractor, after setting of an appropriate grace period, has been called upon to redress misconduct and assure that future breaches of contract will not transpire, and this demand was not met in due time.

### **Purchasing Statistics**

Every month the supplier will send FPL cumulative supply information in tabular form with references to orders as well as (on demand) to the purchasing departments for verification (as an Excel file by e-mail). This supply information must in any event include:



- User categories (to be disclosed by FPL).
- Purchasing departments [+ contact person (if possible)].
- Customer number.
- Purchase order date.
- Delivery date.
- Invoice date.
- Quantity and type of service.
- Additional components.
- Number of service hours.
- Purchase value excl. purchase tax / indicate order and invoice value.
- Tax rate.
- Gross purchase value / indicate order and invoice value.
- Total revenue (total of all order values) – indicate invoice value!
- Analysis key (if disclosed by the FPL).

Note: Even if subcontractors are involved, CONT must send reports cumulatively.

### **Contractor's Staff and Personal Security Requirements**

Contractor is obligated, in the scope of the contractual services, to employ only reliable and trained staff and to replace appointed staff on the justified demand of the customer. All of contractor's staff assigned to the contractual services must be familiarised with all security requirements to be followed if need be. It is also the responsibility of contractor to ensure that staff employed by third party companies likewise adhere to and/or implement all the requirements mentioned here, and to make necessary arrangements with these third party companies to this end.

### **Social Obligations of the Contractor**

The contractor must adhere to all the relevant requirements of the Accords Nr. 29,87,94,95,98, 100,105, 111 and 138 of the International Labor Organization (ILO), BGBI Nr 228/1950, Nr. 20/1952, Nr. 29/1954, Nr. 81/1958, Nr. 86/1961 and FPLI. III Nr. 200/2001. The contractor is furthermore obligated, in the execution of the contractual services, to adhere to all the rules and regulations valid in Ruritania as provided by labour and social laws.

### **Obligation of Secrecy and Data Protection**

Contractor is obligated to adhere to all statutory obligations of secrecy, in particular to nondisclosure of all knowledge gained in the implementation of the present contractual relationship, provided that the customer does not release it from this obligation in written form. If it avails itself of other persons for the provision of its services, then contractor is obligated, with other liability regardless of negligence or fault, to include in this obligation of secrecy all other persons that it draws on for provision of work and to employ only staff and assistants who have been expressly bound to secrecy in written form according to § 11 Para. 1 Line 2 of the Data Protection Act 2000, FPLI. I Nr. 165/1999, in the version valid at the time. A breach of the secrecy obligation entitles the customer to immediately cancel the contract. Any penal sanctions will remain unaffected.

**Publications**

Contractor is not entitled, without prior written consent of the customer, to refer to the customer directly or indirectly in the context of services, acquisitions or publications, in particular for advertising purposes.

**Legal Succession**

The transfer of all rights and duties in this contract requires the explicit prior consent of the customer.

**Applicable Law and Refusal of Service**

For any disputes regarding the framework contract, including any disputes about the effective accomplishment of the framework contract, only Ruritanian law may be applied, without exception, but excluding all references to foreign law. The application of UN sales law is excluded.

A dispute between the contractual partners does not entitle them to unilaterally discontinue their services under the framework contract. However, the customer's right to temporarily abandon the obligation to pay remains unaffected in the case of a violation of laws or other provisions (in particular if this violation could lead to liability of the customer), or in the case of service defaults for which contractor is responsible.

**Written Form**

Subsidiary agreements pertaining to this contract as well as changes to the contract must be in written form. This written form clause can only be suspended in written form. The absolute presumption exists that this requirement of written form will never be deviated from through verbal agreement or implied acts.

**Severability Clause**

If individual conditions of the framework contract are or become completely or partially invalid or prove themselves to be infeasible, the validity of the other conditions of this contract will remain unaffected. By way of (amending) interpretation, the conditions should apply that correspond as closely as possible to the economic purpose of the invalid stipulation. If the interpretation precludes legal basis, the contractual partners are obligated to reach amending agreements accordingly. This is also valid if through implementation or interpretation of the contract a gap appears which needs to be provided for.

For the Customer:

For the Contractor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**XII**

**Share purchase agreement**

*DRAFT -*  
**SHARE PURCHASE AGREEMENT**

made  
between

domiciled in ... Spain  
commercial register no.  
represented by

(referred to as "**Seller 1**")

**and**

ID Nr. [●]

(referred to as "**Seller 2**")  
(jointly referred to as "the **Sellers**")

**and**

domiciled in ... Germany  
commercial register no.  
represented by

(referred to as "**Buyer**")

(Seller and Buyer also referred to individually as "**Party**" or jointly as "**Parties**")

**FOR ALL SHARES IN**

**Kft.**

domiciled in ... Hungary  
commercial register no.

(referred to as "...")

**and**

**Kft.**

domiciled in ... Hungary  
commercial register no.

(referred to as "...")

(... and ... also referred to jointly as “the **Companies**”)

the day of [●] as follows:

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## PREAMBLE

A. Sellers are:

(a) [REDACTED],

(b) [REDACTED],

[Regulation concerning party majority; Entire or partial debt; common right practice; Exemption of a seller etc.]

Buyer is [REDACTED]

B. Sellers have [REDACTED]

C. Against this background Sellers established contact with Buyer. Sellers intend to sell and transfer all their respective shares in [REDACTED] to Buyer, and Buyer intends to purchase all of these shares.

D. Definitions of terms used in this agreement are listed in Annex E.

**THE PARTIES THEREFORE AGREE AS FOLLOWS:**

### 1 CORPORATE SITUATION

#### 1.1 Corporate Situation

[REDACTED] ("the **Company**") is a limited liability company duly incorporated under Hungarian law with its registered seat at [REDACTED] and registered in the commercial register under no. [REDACTED].

[REDACTED] is a shareholder in the following other companies: [REDACTED]

The Company has no other subsidiary or holding companies and holds no shares whatsoever in other companies or legal entities.

#### 1.2 Nominal Capital of the Company

The Company's nominal capital amounts to [REDACTED] Forint. The capital is fully paid up in [cash]. Sellers - as the Company's sole shareholders - hold all the Company's shares as follows:

Shareholder	Share	Percentage
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

.....	.....	.....
<b>Total</b>		<b>100.00%</b>

The Object of purchase consists of all of the shares listed above (“the **Shares**”).

## **2 PURCHASE OF SHARES**

### **2.1 Sale of Shares; Entitlement to Dividend**

Under this agreement, Sellers sell and transfer the Shares with legal effect on the Effective Date, and Buyer purchases and accepts transfer of the Shares. Sale and transfer of the Shares includes transfer of the following, of all of which Buyer is aware: all connected entitlements and other rights and obligations to which Sellers are or may be entitled under the articles of association and valid decisions of the shareholders of ..... including entitlement to all profits of ..... which have not been distributed up to conclusion of this agreement.

### **2.2 Entry into Effect of Sale and Transfer of Shares**

2.2.1 This agreement becomes effective with the signature of both parties.

2.2.2 Performance of this agreement is conditional on fulfillment of the preconditions stipulated in Clause 3.2 (“the **Preconditions**”).

2.2.3 Fulfillment of the Preconditions binds the Parties to convene for Closing under Clause 3.1 and to perform the acts set out in Clause 3.6. On the Closing Day the Shares will be transferred to Buyer. At that point all rights obligations and risk in connection with the Shares pass to Buyer. The day on which Closing takes place is referred to as “the **Closing Day**” or “the **Effective Date**”.

## **3 CLOSING, PRECONDITIONS**

### **3.1 Closing; Day of Closing**

Parties will convene to implement this agreement, in particular for transfer of the Shares (“**Closing**”), not later than ten (10) banking workdays after the last of the Preconditions set out in Clause 3.2 has been fulfilled or fulfillment has been waived by the Buyer. Closing takes place in the offices of [-] in [-] unless Buyer and Sellers agree on a different location.

### **3.2 Preconditions**

Performance of this agreement is conditional on fulfillment of the following Preconditions. Sellers must prove fulfillment of Preconditions (with the exception of Clause ...) by providing Buyer with written evidence acceptable to Buyer at Buyer's

sole discretion. A Precondition is also regarded as fulfilled if it becomes effective on condition of performance of Closing.

**3.2.1** Preconditions (agreement of creditors, cartel regulator, internal committees, dissolution of contracts, transmission of collateral etc.) dependent on the respective transaction.

3.2.2 No changes, circumstances, or incidents have occurred regarding ..... or its business operations which – in themselves or in conjunction with other changes, circumstances, or incidents – have (or which may justify expectation of) significant adverse effects on .....’s financial or assets position, its profitability, business operations or business outlook.

3.2.3 Sellers have fulfilled their contractual obligations as follows:

- (a) Sellers’ Warranties not limited by qualifiers such as “essentially“ that are (i) at the time of concluding this agreement and (ii) on the Closing Day - if issued anew at that point in time - complete and correct in all respects;
- (b) Sellers’ Warranties limited by qualifiers such as “essentially“ that are (i) at the time of concluding this agreement and (ii) on the Closing Day - if issued anew at that point in time – essentially complete and correct.;

to the intent that the foregoing stipulations in (a) and (b) do not apply to warranties that explicitly refer to other points in time;

- (c) Sellers have completely fulfilled all other obligations under this agreement due at or before the Closing Day;

### **3.3 Waiver of Fulfillment of Preconditions**

Buyer may at its sole discretion and in writing waive fulfillment collectively or individually of Preconditions stipulated in Clause 3.2 vis-à-vis Sellers. Waiver does not affect Buyer’s other rights under this agreement.

### **3.4 Obligations with Respect to Preconditions**

**3.4.1** Parties must make all reasonable efforts to provide the necessary basis for fulfillment of Preconditions. (as needed. Allocate obligations/liability between parties).

3.4.2 Once a Precondition is fulfilled, Sellers and Buyer will promptly inform each other.



### 3.5 Consequences of Non-fulfillment of Preconditions

- 3.5.1 If the Preconditions set out in **Clause 3.2** remain unfulfilled at latest **...** months after conclusion of this agreement, then Sellers and Buyer may withdraw from this agreement by written notice to the other Party.
- 3.5.2 Withdrawal from the agreement under this Clause **3.5** is effective only if the statement of withdrawal was received by the other Party before fulfillment or waiver of the Precondition of which non-fulfillment constitutes the basis for withdrawal.
- 3.5.3 If Buyer withdraws from this agreement on the basis of non-fulfillment of Preconditions stipulated in Clauses **...** then Sellers will compensate Buyer for all costs and expenses incurred in connection with preparing, negotiating, and concluding this agreement and will indemnify Buyer against all such obligations.
- 3.5.4 Withdrawal under this Clause **3.5** does not affect validity of the provisions in **Clauses 12 to 16**, which remain in full force between the Parties.

### 3.6 Closing: Acts to be Performed

- 3.6.1 At Closing, the Parties will contemporaneously issue and hand over the following documents and perform the following acts:
- (a) Sellers hand over evidence of fulfillment of Preconditions stipulated in Clauses **...** in form and substance acceptable to Buyer;
  - (b) Sellers (each respectively) hand over a written statement - signed personally or by their managing directors on the Closing Day – confirming fulfillment of Preconditions set out in Clauses **...** and **...** at the time of signature. The burden of proof regarding fulfillment of Preconditions set out in **...** and **...** remains with the Sellers after handing over the statement;
  - (c) **if no no change/extension of management:** The Company's management issues and hands over to Buyer all documents necessary for registration of change of shareholders in the commercial register, in particular a list of shareholders (corresponding in content to Annex **...**) and an irrevocable power of attorney (corresponding in content to Annex **...**).
  - (d) Sellers hand over a statement corresponding in content to Annex **...** and signed in compliance with the form requirements by each of the

Sellers and the Company respectively by which Sellers and Company declare waiver of their preemption right regarding transfer of Shares.

- (e) Buyer hands over a statement corresponding in content to Annex ... confirming Buyer's knowledge of the Company's articles of association and declaring that Buyer accepts them as binding.
- (f) Parties sign a joint statement corresponding in content to Annex ... declaring that ownership of Shares is transferred to Buyer on the Effective Date.
- (g) Parties sign a statement corresponding in content to Annex ... in the Hungarian language documenting in short form transfer of Shares to Buyer for submission to the Registration Court; to check: new requirements of Gt. § 127 Sec. 4, 2. Subsec; Ctv. Annex 2, Head II, 1 a) aa)
- (h) Sellers hand over a unanimous decision passed by shareholders of ..... approving transfer of Shares;
- (i) Buyer pays first installment under Clause 4.3.

(j) if need be (dependent on the respective transaction) and without claim to completeness: retirement of managing director, handing over of documents, business report etc; conclusion of trust agreement; discharge of obligations (e.g. shareholders' loan)

3.6.2 Though all acts listed under Clause 3.6.1 will *de facto* be performed according to the above order they will be regarded as performed contemporaneously at 5 pm on the Closing Day. As long as any act under Clause 3.6.1 remains not performed, the Closing and all acts performed so far will be regarded as not performed. Parties will mutually confirm complete fulfillment of Clause 3.6.1 by signing the Closing Memorandum ("the **Closing Memorandum**"). Signing the Closing Memorandum transfers the Shares to Buyer.

3.6.3 Buyer may waive fulfillment by Sellers of all or individual acts under Clause 3.6.1 and automatically implement transfer of Shares by paying the purchase price in accordance with Clause 4.3. In this case Sellers must hand over to Buyer all documents under Clause 3.6.1 ... to ... within ... workdays after receiving the purchase price.

## 4 PURCHASE PRICE, PAYMENT MODALITIES

### 4.1 Purchase Price

4.1.1 The Purchase Price of the Shares is

[€.....,-] ([.....] Euro)

less:

(a) if need be: dependent on transaction certain obligations and reserves, accruals of Company, e.g. from shareholders' loans, in particular if discharged at Closing; and

(b) the amount resulting from adjustment of Purchase Price pursuant to Clause ...

respectively at the Effective Date ("the **Purchase Price**").

4.1.2 Each Seller is entitled to part of the Purchase Price proportionate to its share in the Company's overall share capital under the third column of the table in Clause **Virhe. Viitteen lähdettä ei löytynyt..**

### 4.2 Time of Payment of Purchase Price

The Purchase Price is due and payable as follows:

#### 4.2.1 1. Installment:

At Closing contemporaneously with transfer of the Shares:

[€.....,-] ([.....] Euro)

#### 4.2.2 2. Installment:

Within 10 workdays after registration of Buyer as shareholder in the commercial register:

[€.....,-] ([.....] Euro) plus interest from Closing

#### 4.2.3 3. Installment:

.... calendar days after Closing:

[€.....,-] ([.....] Euro) plus interest from Closing

#### 4.2.4 (...)

4.2.5 Buyer pays interest on installments not paid at Closing (hereinafter referred to as "**Security Amount**") at the interest rate stipulated in Clause 16.3 from Closing. The Security Amount secures warranty claims, claims for reduction

of Purchase Price, and other claims arising out of this agreement (“a/the **Secured Claim**”). In case of a Secured Claim, Buyer may deduct the respective amount from the next installment due.

#### 4.3 Payments to Sellers

All payments by Buyer to Sellers under this **Clause 4.** are remitted by crediting the joint account no. [ ] of Sellers at [ ]-Bank ([ ]) (“the **Sellers’ Account**”). All costs and charges in connection with remittance are assumed by [ ]. Payment is regarded as made to all Sellers by credit entry on the Sellers’ Account. It is for Sellers to further remit payments to their individual accounts: further remittance does not lie in Buyer’s sphere of responsibility.

### 5 ANNUAL STATEMENTS OF ACCOUNTS, ADJUSTMENT OF PURCHASE PRICE

#### 5.1 Annual Statements of Accounts

Sellers hand over to Buyer the annual statements of accounts (balance sheet and profit and loss account of the Company) for financial years 2....., 2..... and 2..... (“the **Annual Statements of Accounts**”). The Annual Statements of Accounts appear in Annex **5.1**.

#### 5.2 Effective Date Account

5.2.1 Sellers (or, after Closing, Buyer) will prompt the Company’s management to provide within two weeks after the Effective Date a financial statement (balance sheet and profit and loss account) for the period from .....2006 until the Effective Date (“the **Effective Date Account**”). The Effective Date Account is prepared on the basis of stock-taking and conforms with proper accounting principles, in particular maintaining formal and substantial accounting- and valuation continuity. A copy of the general ledger as of the Effective Date will be attached to and form part of the Effective Date Account.

5.2.2 The Effective Date Account will be audited at the expense of the Company by an auditor to be appointed by Buyer (“the **Effective Date Auditor**”). At the request of the Effective Date Auditor, the Effective Date Account is adjusted as far as necessary to enable the Effective Date Auditor to issue an unqualified audit certificate (korlátozás nélküli könyvvizsgáló záradék). The Effective Date Auditor stamps and initials each individual page of the copy of the general ledger attached to the Effective Date Account.

5.2.3 If neither Sellers nor Buyer raise objections against the Effective Date Account in writing and including a statement of grounds within two (2) weeks

after the certified Effective Date Account has been received, then the Effective Date Account is binding on both Parties.

- 5.2.4 If an objection is raised within the above period and Parties cannot agree on the disputed matter within an additional period of two (2) weeks, then ... will be appointed as arbitrator (“the **Arbitral Auditor**”). The Arbitral Auditor will notify a decision in writing within six weeks after appointment (“the **Arbitral Audit**”). The Arbitral Audit contains a binding statement on the proportion of Parties’ respective prevailing and losing. The Arbitral Audit is final and binding on the Parties. The Effective Date Account including the attached copy of the general ledger must be corrected in accordance with the Arbitral Audit.
- 5.2.5 When the Effective Date Account including the attached copy of the general ledger becomes binding according to the above stipulations, then the whole will become an integral part of the present Contract without further notice.
- 5.2.6 The Arbitral Auditor’s fees and expenses and the costs of the Arbitral Audit are initially recoverable from the Party that raised the objection. If both Parties raised objections, then the costs of the Arbitral Audit are initially recoverable from both Parties in equal shares. After the Arbitral Audit has been notified, Parties compensate costs already paid in accordance with the proportion of their respective prevailing and losing. Each Party bears its own costs and the costs of its consultants.

### 5.3 Adjustment of Purchase Price

The Purchase Price under **Clause 4.1** of this agreement is reduced by the amount to which the Company’s equity (saját tőke) as stated in the binding Effective Date Account (“the **Effective Date Equity**”) deviates negatively from the equity as stated in the financial statement as of **31 December 2...**. The respective amount is to be deducted from the next installment due. A reduction of less than EUR ... is precluded. Currency conversion is performed in accordance with the exchange rate of the Hungarian National Bank at the Effective Date.

## 6 SELLERS’ WARRANTIES

Sellers guarantee and warrant *vis-à-vis* Buyer that the statements under **Annex 6** at the time of concluding this agreement and at the Closing Day are complete, correct, and not misleading (“**Sellers’ Warranties**”) and acknowledge that the correctness and completeness of Sellers’ Warranties were crucial for the Buyer’s decision to purchase the Shares and conclude this agreement.

## **7 LEGAL CONSEQUENCES**

### **7.1 Restitution in Kind; Damages**

- 7.1.1 If one of the Sellers' Warranties under Clause 6 of this agreement is not in every respect complete, correct, and transparent, then Sellers, within 14 banking workdays after being notified by Buyer of breach of warranty, must arrange matters for Buyer or, at Buyer's choice, for the Company so as to bring about the situation that would exist if the respective warranty were in every respect complete, correct, and transparent (restitution in kind). If breach of the warranty consists in the existence of an obligation, then Buyer's entitlement to restitution in kind includes the right to be indemnified against that obligation.
- 7.1.2 If Sellers fail to provide restitution in kind within the period set out in Clause 7.1.1, then Buyer is entitled to payment by Sellers to Buyer or, at Buyer's choice, to the Company of the sum required to ensure restitution in kind.
- 7.1.3 As far as restitution in kind under Clause 7.1.1 is not possible or is not sufficient to compensate for all damage, including indirect damage, resulting from Sellers' breach of Warranty, Buyer is entitled to payment of monetary compensation by Sellers to Buyer or, at Buyer's choice, to the Company.
- 7.1.4 Buyer reserves the right to assert further legal remedies.

### **7.2 Preclusion of Warranty Claims**

Buyer may not assert a warranty claim under this agreement to the extent to which damage sustained by Buyer was completely compensated by a third party or by insurance (however, Sellers bear costs of consequent increase in insurance premium).

### **7.3 Buyer's Knowledge**

Buyer's knowledge of breach of warranty does not preclude Buyer's rights.

### **7.4 "The Best of Sellers' Knowledge"**

For purposes of this agreement a circumstance or fact is to "the best of Sellers' knowledge" if

- (a) a Seller, a member of the management, a holder of a special statutory authority (*cégvezető*), or any other executive employee of a Seller or the Company, or

- (b) anyone who currently counsels or in the past has counseled at least one of Sellers or the Company in connection with preparing, negotiating, or implementing this agreement or of legal transactions agreed therein (including legal, tax, finance, and technical advisers and auditors),

has, had, or ought to have (had) knowledge of such a circumstance or fact, or, in the ordinary course of business, has or had access to files, records, or other documents (in printed, electronic, or other form) referring to such circumstance or fact.

## **8 INDEMNITY AGAINST CLAIMS**

### **8.1 Third Party Claims**

Sellers indemnify Buyer or, at Buyer's choice, the Company against claims asserted by third parties and which would not exist if the warranties under Annex 6 at the time of concluding this agreement or at the time of Closing or at the time referred to in the warranty had been correct.

### **8.2 Environmental Indemnity**

8.2.1 In particular, Sellers indemnify Buyer or, at Buyer's choice, the Company against all environmental damage.

8.2.2 For purposes of this contract the terms "contamination", "environment", and ....., have the meaning defined in Annex 8.1.

### **8.3 Tax Indemnity**

8.3.1 Sellers indemnify Buyer or, at Buyer's choice, the Company

- (a) against all unpaid taxes assessed against the Company pertaining to the period until and including the Closing Day or resulting from acts or business operations carried out before or on the Closing Day;
- (b) against all obligations resulting from breach of tax warranty under Clause ... of Annex 6.

8.3.2 "**Taxes**" within the meaning of this agreement include all taxes, fees, customs duties, contributions including social security contributions, and other charges under public law assessed by an authority ("a **Tax Authority**"); "**Taxes**" further include all ancillary fiscal payments, e.g. interest, additional costs and surtax, as well as penal and administrative fines imposed by a Tax Authority.

## **8.4 Proceedings**

- 8.4.1 As soon as such claims or official measures are initiated against the Company or the Company is warned that such claims or official measures might be initiated, Buyer will arrange prompt written notification of Sellers by the Company of asserted or potential claims and current or anticipated proceedings; however, non-notification does not preclude Buyer from asserting warranties or claim for indemnity.
- 8.4.2 A claim for indemnity arises if and as far as a third party enforces a claim by legal action or – in case of environmental or tax indemnity – if and as far as an official order is made. In this case Sellers, on written notification by Buyer or the Company, must pay to Buyer or the Company within 15 workdays the amount necessary to satisfy the claim or comply with the official order as security until a final decision has been delivered. Buyer is entitled to deduct the amount from the next installment due.
- 8.4.3 Defending such claims and proceedings lies within the sole competence and discretion of the Company and Buyer. They are also entitled to satisfy such claims, to enter into an amicable settlement, or to revert or not to revert to other available legal acts at their own discretion. Settlement of accounts regarding the claim to indemnity and, if applicable, amounts paid by Sellers or deducted from installments by Buyer under Clause 8.4.2 is carried out between the Parties when an amicable settlement regarding the claim is reached or when a judgment concerning the claim becomes final (in case of claims by third parties) or when the official order becomes final (in case of environmental and tax indemnity). Further rights of Buyer, in particular under Clause 7, remain unaffected.

## **9 LIMITATION OF SELLERS' LIABILITY**

### **9.1 Statute of Limitations**

All claims of Buyer under this agreement are subject to a limitation period of sixty (60) months starting from due date of the relevant claim with the exception of

- (a) all claims of Buyer arising from a breach of warranty under Annex 6, Nos. 1.1, 1.2, 1.3 and 1.8 which are subject to a limitation period of thirty (30) years starting from the Closing Day;
- (b) all claims of Buyer under Clause 8.2 (environmental indemnity) which are subject to a limitation period of ten (10) years starting from the Closing Day;



- (c) all claims of Buyer under Clause 8.3 (tax indemnity) which are subject to a limitation period of six (6) months starting from the time when the respective tax assessment becomes final;
- (d) all claims of Buyer *vis-à-vis* Sellers arising from an intentional breach of obligations under this agreement which are subject to limitation periods as provided by law (if no longer limitation period applies under the above provisions);

(these periods are jointly referred to as “**Limitation Periods**”).

## **9.2 Suspension of Statute of Limitations**

The statute of limitations will be suspended with the assertion of a claim in writing by Buyer *vis-à-vis* Sellers.

## **10 FURTHER OBLIGATIONS OF SELLERS**

### **10.1 No Deviation from Ordinary Course of Business**

10.1.1 Sellers must, from the conclusion of this agreement until the Closing Day, inform Buyer of every business transaction or decision that could fundamentally influence the Company’s course of business. Sellers will promptly provide Buyer with the respective information and instruct the Company accordingly.

10.1.2 During the period referred to in **Clause 10.1.1** Sellers will ensure that the Company conducts its business solely within the framework of its ordinary course of business and in accordance with its previous business practice. Sellers will prevent deviations from previous business practice.

10.1.3 The following measures until the Closing Day require written approval by Buyer:

- (a) entering into engagements or other obligations whose value exceeds the amount of **EUR ...,-** in individual cases or **EUR ...** in total;
- (b) pledging or otherwise encumbering Company assets or items of property;
- (c) taking up loans or other financing instruments;
- (d) acquiring or disposing of shares in companies or entering into a commitment to do so;

- (e) concluding or amending employment contracts including changing salaries and other (including performance-related) remuneration, paying or entering into an obligation to pay bonuses, other special payments, pensions or severance pay to managing directors or other employees of the Company;
- (f) decreasing the Company's bank balance by more than EUR ...-- (in the individual case or in total);
- (g) opening new branches of business or branch offices;
- (h) terminating or substantially amending essential contracts;
- (i) decisions by shareholders;
- (j) investments (acquisition of capital assets and equipment) in total exceeding the amount of EUR ... .
- (k) any other business transaction or decision that could fundamentally influence the Company's course of business.

10.1.4 If the Company stands at risk because of an impending significant adverse event or situation and no time is available to obtain Buyer's consent or Buyer fails to react in time to Sellers' request for consent, then Sellers may and must arrange for the Company to take appropriate measures despite absence of Buyer's consent.

## **10.2 Damages**

Sellers, with or without fault, must compensate Buyer or, at Buyer's choice, the Company for all damage incurred by or in connection with breach of obligations under Clause 10.1.2

## **10.3 Firm Name, Trademarks etc.**

Buyer may but is not obliged to continue using the Company's current name or variations of it. Starting from the Closing Day, Sellers will discontinue use of these or other Company names giving rise to confusion. Sellers guarantee non-use of these firm names by Sellers or other enterprises controlled by Sellers or either of them starting from the Closing Day.

## **11 PROHIBITION OF COMPETITION, PROHIBITION OF ENTICEMENT**

### **11.1 Prohibition of Competition**

Sellers and each of them must for a period of **3 years** starting from the Effective Date refrain from any action by which Seller would, directly or indirectly, enter into competition with the Company. In particular, Sellers will not establish, acquire, or participate in any enterprise that directly or indirectly competes with the Company or its business operations in the area of **...** Exempt from this prohibition of competition is acquisition of up to **5 %** of the shares of a listed company conditional upon the absence of influence by Sellers or either of them on the executive organs of any such listed company. Under the above rules, Sellers also guarantee non-competition of enterprises controlled by Sellers or either of them.

### **11.2 Prohibition of Enticement**

**If need be.**

### **11.3 Contractual Penalty**

Sellers must pay to Buyer (or, at Buyer's choice, to the Company) a contractual penalty in the amount of **EUR ...--** (Euro **...**) in every case of noncompliance with the obligations under **Clause 11.1**. In case of continuous noncompliance the contractual penalty is incurred anew at the start of every month during which noncompliance continues. Claims by Buyer for compensation for further damage as well as claims to refrain from future noncompliance remain unaffected. A contractual penalty incurred will not be deducted from such claims for compensation.

## **12 CONFIDENTIALITY AND PRESS RELEASES**

### **12.1 Confidentiality with regard to the Company**

Sellers, for a period of **3 years** starting from the Effective Date, will keep information about the Company and its business operations strictly confidential, will effectively protect such information against access by third parties, and will not use such information for their own purposes or purposes of others. Exempt from this obligation are facts publicly known without infringement of this obligation or whose disclosure is required by law.

### **12.2 Confidentiality with regard to this Agreement and the Parties**

Parties will keep strictly confidential all information about the content of this agreement, the other Parties and their associated companies received in connection with negotiating, concluding, or implementing this agreement, will effectively protect such information against access by third parties, and will not use such information for their own purposes or purposes of others. Exempt from this obligation are facts

publicly known without infringement of this obligation or whose disclosure is required by law.

### **12.3 Disclosure of Information**

Buyer may disclose information protected under **Clause 12.2** to Buyer's associated companies as well as to third parties as far as necessary for implementing this agreement and the legal transactions agreed therein or for their financing or the financing, restructuring or sale of Buyer or an associated company of Buyer. Prior to any disclosure of information, Sellers and Buyer shall oblige the recipient of information in written form to confidentiality in accordance with Clause **12.2**.

### **12.4 Press Releases**

Parties will consult each other before publication about the form and content of all press releases or similar voluntary statements regarding the legal transactions provided for in this agreement.

## **13 COSTS**

### **13.1 Consultancy Fees**

Each Party bears its own costs and expenses in connection with preparing, negotiating, and implementing this agreement, including fees, costs, and expenses of their consultants.

### **13.2 Residual Costs, Fees**

The costs of ... will be borne by both Parties in equal shares.

## **14 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

### **14.1 No Assignment without Consent**

Rights and obligations under this agreement can neither fully nor partially be assigned without prior written consent of the other Party.

### **14.2 Assignment by Buyer**

However, Buyer may assign rights and obligations under this agreement to an associated company of Buyer and to banks and finance companies financing this transaction. In case of assignment of rights and obligations to an associated company of Buyer, Buyer is liable for fulfilling assignee's rights and obligations under this agreement.

## **15 NOTIFICATIONS**

### **15.1 Form of Notifications**

All legal declarations and other notifications (“**Notifications**“) in connection with this agreement must be in written form and sent by recorded delivery unless mandatory law requires notarial certification or another form. Transmission by facsimile fulfills the requirement of written form. Transmission by other means of telecommunication and in electronic form (e-mail) does not fulfill the requirement of written form.

### **15.2 Notifications to Sellers**

All Notifications to Sellers in connection with this agreement must be addressed to:

[–]

as well as report to their consultant:

[–]

### **15.3 Notifications to Buyer**

All Notifications to Buyer in connection with this agreement must be addressed to:

[–]

as well as report to their consultant :

[–]

### **15.4 Change of Address**

Parties must promptly notify in writing the respective other Party and their consultants of any change of address as specified in Clauses 15.2 and 15.3.

### **15.5 Notifications to Consultants**

15.5.1 Receipt of Notifications under this agreement by the Parties’ consultants neither constitutes nor substitutes receipt of Notifications by the Parties themselves.

15.5.2 It is irrelevant for receipt of Notification by a Party whether the Notification was received as a report by its consultant; this is irrespective of whether this agreement provides for receipt.

## **16 FINAL PROVISIONS**

### **16.1 Applicable Law**

This agreement is governed by ... law.

### **16.2 Arbitration Proceedings**

All disputes arising out of this agreement or its breach, cancellation or nullification are submitted to and decided by ...

- (a) the number of arbitrators is: three;
- (b) the applicable substantive law is: ... law
- (c) the proceedings are conducted in ... language.

### **16.3 Interest**

As far as not agreed otherwise, each Party pays interest to the other on payments due, from the time at which payment becomes due until the day of payment. The interest rate corresponds to 3-month Euribor on the first banking day of the respective calendar month plus ... per cent on the basis of days elapsed and a 360-day year.

### **16.4 Amendments**

Amendments, supplements, or termination of this agreement, including amendment of this provision itself, require written form unless mandatory law requires a stricter form.

### **16.5 Headings**

Headings of clauses and paragraphs in this agreement solely serve the purpose of clarity. They are irrelevant for interpretation of the agreement.

### **16.6 Annexes**

All annexes and annexes of annexes form integral parts of this agreement.

### **16.7 Language**

This Agreement is signed in German, English, and ... versions. Only the ... language version is authentic. All other language versions are merely for information only and have no influence on the interpretation of this Agreement.

If in the ... language version of this Agreement a concept is annotated in parenthesis in Hungarian, the Hungarian annotation of the ... formulation ... prevails.

#### **16.8 Whole Agreement**

This agreement contains all agreements between the Parties concerning its subject matter. It replaces all oral or written negotiations, agreements, and understandings concerning the subject matter of this agreement that have been agreed upon by the Parties prior to conclusion of this agreement. There exist no subsidiary agreements to this agreement. The Preamble forms an integral part of this agreement and has binding effect between the Parties.

#### **16.9 Severability Clause**

If any provision of this agreement is or becomes fully or partially void, invalid, or unenforceable, then the validity and enforceability of the remaining provisions remains unaffected. The void, invalid, or unenforceable provision is regarded as replaced by a provision that in extent, time, place, or area of application comes closest to the economic intent pursued by the void, invalid, or unenforceable provision. The same applies to possible gaps in this agreement respectively.

\_\_\_\_\_, on [•]

\_\_\_\_\_

...

\_\_\_\_\_

...