

DATED _____

..... LIMITED

- to -

..... LIMITED

FRANCHISE AGREEMENT

THIS AGREEMENT is made the _____ day of _____

BETWEEN:

(1) a limited liability company incorporated in the Republic of Kenya whose address is care of P. O. Box in the said Republic (hereinafter the "**Grantor**" which expression shall where the context so admits include its successors and assigns) of the one part; and

(2) a limited liability company incorporated in the said Republic whose address is P. O. Box, aforesaid (hereinafter the "**Franchisee**" which expression shall where the context so admits include its successors and assigns) of the other part; and

WHEREAS:

A The Grantor operates the business of the supply, distribution and / or fitting of the Products through its own and franchised outlets in various parts of the Republic of Kenya.

B The Grantor has valuable proprietary rights embodied in and or pertaining to the Marks.

C The Franchisee has considerable marketing experience in the Territory and wishes to be granted a franchise by the Grantor and the Grantor wishes to grant a franchise to the Franchisee to establish and operate a Shop and to act as a supplier, distributor and operate a fitment centre for the Products and to utilise the Marks for such purposes in the Territory

Operative Provisions

Interpretation

In this Agreement unless the context otherwise requires:

'Confidential Information' means any information which is disclosed by either party to the other pursuant to or in connection with this Agreement whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such except such information which is in the public domain;

'Marks' means the trade names, trade marks, logos, service marks, commercial announcements (slogans) and related insignia (logos) associated with the Grantor and its Products to which the Grantor has sole distributor and / or proprietary rights;

'Products' means the Grantor's range of motor vehicle suspension systems tyres after sales parts and accessories as are at the date of this Agreement in the range of Products developed and supplied by the Grantor together with any future products of the Grantor and a list of the present range of Products supplied is annexed on the Schedule hereto;

'Shop' means the supply, distribution and fitment shops(s) operated by franchisees under a Franchise Agreement with the Grantor;

'Term' this Agreement shall commence on and shall remain in force until determined as provided hereunder;

'Territory' meansTown and its environs up to a radius of One Hundred (100) kilometres in the Republic of Kenya;

NOW IT IS HEREBY AGREED as follows:

1. Grant of Franchise

In consideration of the payment of a one off franchise fee of Kenya Shillings Two Hundred Thousand (KShs. 200,000) payable in advance on or before the commencement of this Agreement the Grantor hereby grants the Franchisee a franchise to establish and operate a Shop situate in a prime business area of the Territory for the Term subject to the terms and conditions of this Agreement. The said one off franchise fee shall be payable in respect of but not limited to the following:

The Grantor's corporate advertising costs in respect of the Products;

The Grantor's administration costs in respect of the franchise hereby granted;

The training costs incurred by the Grantor in pursuance of the provisions of this Agreement.

The Franchisee shall have the right to establish and operate a Shop within the Territory;

2. Stock and Services

- 2.1 The Grantor shall at the commencement of this Agreement deliver a consignment of the Products to the Franchisee and thereafter the Franchisee shall at all times purchase all its stock of the Products from the Grantor and the Grantor shall provide the Franchisee with the Products for supply and distribution in the Territory together with a list of the complete range of equipment and hardware required to carry out fitment of the Products;
- 2.2 The Grantor will deliver the first consignment of Products ordered to the Franchisee's place of business in the Territory and any subsequent deliveries will be at the Franchisee's own expense through the Franchisee's preferred means of delivery. In the event the Franchisee shall have a Nairobi office delivery to such office by the Grantor shall be free of charge;
- 2.3 The Grantor will provide training to the Franchisee's nominees to provide an understanding of the Products and the quality and standards to be maintained and will give to the Franchisee information and advice reasonably requested by the Franchisee in connection with the marketing of the Products;
- 2.4 Subject to mutual agreement between the parties the Grantor may assist the Franchisee to market and advertise the Products in the Territory and provide technical advice on matters relating to the Products;
- 2.5 The Grantor may at their absolute discretion advertise the Products through the local media in the Territory. Any further advertising of the Products by the Franchisee of Products provided by the Grantor or with the Grantor's Marks will only be carried out with the Grantor's prior written approval. The cost of such additional advertising will be borne by the Franchisee however the Grantor will at their absolute discretion consider joint advertising with the Franchisee in the Territory;
- 2.6 All proprietary information and materials furnished to the Franchisee by the Grantor shall remain the property of the Grantor and shall be deemed Confidential Information and shall not be reproduced or disclosed to others while this Agreement remains in force and subsequent to its termination.

3. Terms of Payment for the Products

- 3.1 The Franchisee shall purchase the Products from the Grantor at special prices as shall be notified by the Grantor and in accordance with the Grantor's conditions of sale. The sale price of the Products by the Franchisee will not exceed the Grantor's current price list as notified to the Franchisee upon signing of this Agreement. The prices may, at the Grantor's complete discretion, be changed upon providing the Franchisee with one (1) month's notice. Any discounts on the sale price will be at the discretion of the Franchisee;
- 3.2 Orders for Products from the Grantor by the Franchisee will be by way of a Local Purchase Order;
- 3.3 The Products will be invoiced on delivery and the Franchisee will be allowed thirty (30) days from the date of invoice to pay for the Products. Interest will be charged by the Grantor at the same rate as the minimum lending rate of Bank of Kenya Limited as prescribed from time to time on all outstanding invoices until payment in full;
- 3.4 The Grantor may at their discretion supply Products on credit which the Franchisee will be invoiced for at the time of sale by the Franchisee;
- 3.5 For the avoidance of doubt it is hereby agreed that the title to any consignment of the Products (including the initial consignment as provided in clause 3.1 above) delivered to the Franchisee shall not pass to the Franchisee and the Grantor shall remain the legal and beneficial owner until such time as the Grantor has received payment in full of the price therefor but the Products shall be at the Franchisee's risk from the time of delivery to the Franchisee.

4. Maintenance of Quality and Reputation

- 4.1 The Franchisee will ensure the Shop is renovated and fitted in accordance with the standard and colour scheme recommended and approved by the Grantor and that the Products display stands are as outlined by the Grantor;
- 4.2 The Franchisee will avail reasonable space in the Shop for displaying the Marks and will ensure that the Marks and other recommended logos are prominently displayed on the Franchisee's signage and on any site occupied by the Franchisee in executing any works for any clients;
- 4.3 The Franchisee shall employ competent and well trained staff at its own expense and shall be expected to sell from the Shop only those products supplied or approved for sale in the Shop by the Grantor. During the continuance of this Agreement the Franchisee shall not sell any products other than those supplied or approved by the Grantor;
- 4.4 The Franchisee shall operate equip and maintain the Shop in accordance with the mandatory and suggested specifications, standards, equipment, hardware and operating procedures prescribed by the Grantor from time to time. The Franchisee will make, at the Franchisee's sole expense, changes necessary to conform to these specifications, standards and operating procedures including but not limited to repairing equipment and hardware not in good condition and upgrading and remodelling the Shop;
- 4.5 The Franchisee will be solely responsible for all costs of building establishing equipping and operating the Shop and will use their best endeavours to comply with the Grantor's specifications.

5. Records, Inspection and Disclosure

- 5.1 The Franchisee shall keep true, proper and separate records showing the date of delivery, price, character and sale of the Products and shall permit the Grantor's duly authorised representatives to inspect the sales records during the Term;
- 5.2 The Franchisee shall permit the Grantor's duly authorised representatives to enter the Shop without prior notice during regular business hours to determine whether or not the Franchisee is complying with its obligations as hereunder;
- 5.3 The Franchisee on entering into this Agreement and during the continuance of the Term shall make full disclosure of all material circumstances and of everything known to it which would likely influence the conduct of the Grantor including in particular the disclosure of other agencies or franchises in which the Franchisee are interested directly or indirectly.

6. Displays, Advertising, Promotion and Marketing

- 6.1 The Franchisee shall display the Grantor's name and Marks prominently on its Shop and its signs and vehicles used in the Franchisee's day-to-day business provided always that the Franchisee shall ensure that all its letterheads and invoices clearly show the name of the Franchisee as being the proprietor of the Shop;
- 6.2 Every use of the Grantor name and its Marks in any display, advertisement, promotion or otherwise by the Franchisee shall be in a form and character approved in advance by the Grantor;
- 6.3 The Grantor shall provide the Franchisee with such advertising, promotional and marketing materials as the Grantor considers reasonably necessary for use by the Franchisee in the Territory and shall provide the Franchisee with sales aids including (without limiting the foregoing) catalogues, sales brochures and sales manuals as relate to the Products for purposes of promoting, marketing and advertising the Products in the Territory.

7. Stock of Products

- 7.1 The Franchisee shall use its reasonable endeavours to maintain at all times sufficient stocks of the Products for the supply, distribution and sale of the Products throughout the Territory;
- 7.2 The Grantor shall from time to time furnish the Franchisee with up-to-date copies of the price lists for the Products;

8. Indemnity

The Franchisee hereby agrees to indemnify and keep the Grantor indemnified from and against all and any loss damage or liability whether criminal or civil suffered and legal fees and costs incurred by the Grantor because of :

- 8.1 any neglect or default of the Franchisee or its agents employees licences or customers in

connection with the operation of the Shop;

- 8.2 any other reason so long as such damage liability fees or costs resulted from the operation of the Shop.

9. Termination

This Agreement shall continue in force from the date hereof until determined by either party giving three (3) months' written notice of their intention to terminate the Agreement.

10. Effects of Termination

Upon termination of this Agreement:

- 10.1 The Franchisee shall surrender and cease to exercise all rights granted under this Agreement. The Franchisee shall immediately change the appearance of the Shop so it will no longer be identified with the Grantor and shall stop using the Marks, signs, colours, structures, printed goods and forms of advertising indicative of the Grantor's or any business identical with or similar to the business reasonably contemplated by this Agreement.
- 10.2 Termination of this Agreement shall not relieve the Franchisee from its obligations to pay to the Grantor all moneys that may be due from the Franchisee to the Grantor in accordance with the terms hereof as at the date of termination.
- 10.3 This Agreement shall not entitle the Franchisee to any claim or counterclaim against the Grantor on account of any losses or damages it may incur in the course of its operations under this Agreement;
- 10.4 The Franchisee shall cease using and return within a period of thirty (30) days following termination all property of the Grantor and all confidential and proprietary written material (and all copies thereof) together with all promotional material received from the Grantor;
- 10.5 All Confidential Information will remain the property of the Grantor. The Franchisee shall not during or after the Term of this Agreement, without the prior written consent of the Grantor, disclose to any unauthorised person or entity or use for the benefit of any unauthorised person or entity, any Confidential information;
- 10.6 The Franchisee and the Guarantors shall immediately upon termination of this Agreement cease to use all signs and Marks of the Grantor and ensure that it does not supply any of the Products save as otherwise agreed by the parties in writing.

11. Warranties and Liability

- 11.1 The Franchisee shall purchase and maintain with a reputable insurance firm in full force and effect comprehensive insurance (including but not limited to product liability) adequate to insure its undertakings herein and shall furnish proof of such insurance upon request by the Grantor;

- 11.2 The Grantor warrants to the Franchisee that it is not aware of any rights of a third party in the Territory which would or might render the sale of the Products or the use of its Marks unlawful.
- 11.3 All Products ordered by the Franchisee for resale from the Grantor shall have a warranty that the Products are in a good and merchantable condition. Such warranty shall be extended to the Franchisee's customers subject to the Grantor's Standard Terms of Warranty a copy of which has been supplied to the Franchisee prior to signing of this Agreement.

12. Assignments

The Franchisee shall not sub-franchise or sub-licence any other right granted hereunder without the prior written consent of the Grantor.

13. Improvements by Franchisee

Subject as may otherwise be agreed between the parties all inventions, patents and patent applications which are conceived, made or acquired by the Franchisee while this Agreement remains in effect shall automatically be licensed on a royalty-free and non-exclusive basis to the Grantor along with the right to sub-licence such inventions, patents and patent applications to any and all the Grantor's franchisees.

14. No Partnership

- 14.1 Nothing in this Agreement shall constitute a partnership between the Grantor and the Franchisee nor constitute the Grantor or the Franchisee (as the case may be) an agent of the other.
- 14.2 The parties agree that the Franchisee shall at all times obtain the Grantor's prior written approval which shall not be unreasonably withheld to the letterheads, bills and invoices used by the Franchisee in the course of operating the Shop where the same shall have reference to the Grantor or its Marks and that the Franchisee shall indemnify the Grantor against any claims made by any of its clients as a result of any such usage.

15. Communications and Notices

- 15.1 All communications and notices between the parties in respect of this Agreement shall be delivered by hand or sent by facsimile transmission (with confirmation posted within 24 hours) to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this clause given below or such other address as the recipient may have notified to the other parties in writing.

15.2 Communications and notices shall be deemed to have been received:
if delivered by hand, on the day of delivery;
if sent by facsimile transmission, at the time of transmission;
if sent by registered post, Ten (10) days after posting.

- 15.3 In proving such service it shall be sufficient to prove that the letter or facsimile (as the case may be) containing the notice was properly addressed and posted or (as the case may be) transmitted. Any notice given by hand shall be deemed to have been served at the time of delivery.

16. Governing Law

This Agreement shall be governed and interpreted in all respects in accordance with the laws of Kenya.

17. Entire Agreement

This Franchise Agreement contains the entire agreement between the parties and no changes or modifications shall be made unless in writing and signed by both parties.

18. Arbitration

Any dispute difference or question, which may arise between the parties to this Agreement or any of them touching upon the construction of this Agreement shall be referred to the decision of a single arbitrator to be agreed between the parties or in default of agreement within Fourteen (14) days to be appointed at the request of either of the parties by the chairman for the time being of the Institute of Chartered Arbitrators of Kenya in accordance with and subject to the provisions of the relevant Act for the time being in force. The parties hereby agree that they shall abide by any decision so made by such arbitrator.

SCHEDULE

[LIST OF PRESENT RANGE OF PRODUCTS ANNEXED HERETO]

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto the day and year first hereinabove mentioned.

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presence of:)
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Director)
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)
Director/Secretary)

SEALED with the Common Seal of)
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Drawn By: