

AGREEMENT

General Precedent

SALE OF SHARES

THIS AGREEMENT is made the _____ day of _____ One Thousand Nine Hundred and Ninety-Nine **BETWEEN** _____ of P O Box Kenya ("the Vendor" which expression where the context so admits includes his personal representatives and assigns) and _____ of care of P O Box _____ Kenya ("the Purchaser" which expression where the context so admits includes her personal representatives and assigns)

WHEREAS

- A. _____ **LIMITED** (hereinafter called "the Company") is a limited liability company incorporated in Kenya and has at the date hereof an authorized share capital of Kenya Shillings _____ (_____) divided into _____ (_____) ordinary shares of Kenya Shillings _____ (_____) each of which _____ are issued and fully paid:
- B. The Vendor is the beneficial owner free of any charge lien encumbrance option or adverse interest of all the issued shares in the Company which are registered as set out in the First Schedule:
- C. The Company is the beneficial owner free from any mortgage charge lien or other encumbrance or adverse interest and has vacant possession of the immovable property (hereinafter called "the Property") more particularly described in the Second Schedule:
- D. The Company possesses or will at the Completion Date (hereinafter defined) possess all necessary permits and licences (hereinafter called "the Licences") to enable it to carry on its business in Kenya:
- E. The persons named in the Third Schedule are the only directors of the Company:
- F. The Company has no subsidiaries:
- G. The Vendor is willing to sell and the Purchaser desires to purchase the Shares on and subject to the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED as follows:-

1. The Vendor shall sell and the Purchaser shall purchase the Shares free from all charges or liens or any other encumbrances and with all rights (including but not limited to all rights of dividend) attaching to the Shares with effect from _____ 19 _____ .
2. The consideration for the said sale is Kenya Shillings _____ (_____)("the Consideration").
 3. (1) The Purchaser shall pay to the Vendor a deposit of Kenya Shillings _____ (_____)("the Deposit") on execution of this Agreement.
 - (2) The Deposit shall be placed on interest-bearing call deposit with a licensed bank at the best rate of interest obtainable.
 - (a) If the sale is not completed on the Completion Date because of the failure of any of

the conditions in clause 4 or any default by Vendor in carrying out any of the Vendor's obligations under this Agreement, the Deposit together with all interest earned thereon shall be refunded to the Purchaser: or

- (b) If the sale is not completed on the Completion Date because of any default by the Purchaser in carrying out any of the Purchaser's obligations under this agreement, the Deposit together with all interest earned thereon shall be forfeited and shall belong absolutely to the Vendor; or
- (c) The Deposit shall be retained to the Vendor absolutely on the Completion Date as part of the Consideration.

4. Completion of the purchase by the Purchaser is conditional upon

(1) there being no restriction or regulation of the Government of Kenya introduced between the date hereof and the Completion Date (hereinafter defined) which would substantially affect the operation or profitability of the business of the Company or which would prevent completion of the sale; and

(2) all necessary governmental and other consents to enable completion being obtained.

5. (1) The sale shall be completed on the _____, 19____ or such other date as the parties may in writing agree (hereinafter called "the Completion Date")

(2) If the sale is not completed by _____, 19____ this Agreement shall be cancelled and the parties shall be returned to their original positions as if it had not been made except that the Deposit shall be retained by the Vendor.

6. Between the date of this Agreement and the Completion Date the Vendor shall give and shall procure that the Company gives to the Purchaser's professional advisors such facilities as may be required by the Purchaser for inspecting the Licences, the Property, all other assets of the Company, and all title deeds, share registers, account books, bank accounts, minute books, records, insurance policies and all other agreements, documents, deeds, permits, consents and bonds of the Company.

7. The sale shall be completed on the Completion Date at the offices of as follows when:-

(1) The Purchaser shall pay to the Vendor the sum of Kenya Shillings being the Consideration less the Deposit:

(2) The Vendor shall deliver to the Purchaser:

- (a) Duly executed transfers in respect of the Shares in the names of the Purchasers or its nominees.
- (b) The Share Certificates for all the Shares or indemnities in lieu thereof:
- (c) Form D in respect of the value of each of the Shares as required by the Stamp Duty Act (Cap.480) duly completed and signed by the Company's auditors:
- (d) Vacant possession or control of the Property and the business of the Company and of all assets and property of the Company and of the title deeds of the property and all other documents and of all share registers, statutory books (including books of account) and the Common Seal of the Company:
- (e) A resolution signed or duly passed by all the Directors of the Company substantially in the form of the draft contained in the Fourth Schedule:
- (f) Letters of resignation from office as Directors of the Company signed by all the Directors named in the Third Schedule.

- (3) Performance by either party of its obligations under subclauses (1) or (2) of this Clause is conditional upon the other party being ready and willing to perform its obligations under subclauses (2) or (1) (as the case may be) and for the purposes of this Agreement completion of the sale involves due performance by each party of all its said obligations.
8. The Vendor hereby gives to the Purchase which is contracting for this purpose for itself and on behalf of the Company the warranties undertakings and indemnities set out in the Fifth Schedule.
9. (a) The Purchaser having made arrangements with _____ (hereinafter called "the Bank") for the continuation of the facilities presently enjoyed by the Company it is hereby agreed that the Vendor shall on or before the Date of Completion procure that the guarantees and securities created by the Company in favour of the Bank particulars of which are set out in the Sixth Schedule hereto shall be released and discharged and the Purchaser shall procure that the Company shall execute and deliver to the Bank such fresh guarantees and securities as the Bank may require in order to secure the advances to the Company.
- (b) All costs and expenses incurred in connection with the discharge and release of the securities referred to in the preceding sub-clause shall be for the account of the Vendor and all costs and expenses incurred in connection with the preparation of the said fresh securities shall be for the account of the Purchaser.
10. The Vendor agrees to execute and perform or procure the execution and performance of such other acts deeds documents and things as may be necessary effectually to vest the beneficial ownership of the Shares in the Purchaser or its nominees free from all charges, liens, encumbrances, options or other adverse interests.
11. Notwithstanding the completion of the sale of the Shares the provisions of this Agreement and the warranties, undertakings and agreements herein contained shall continue thereafter to subsist for so long as may be necessary for the purposes of giving effect to each and every one of the provisions in this Agreement and all warranties undertakings and agreements given herein by the Vendor or Purchaser are binding upon the Vendor or Purchaser respectively and upon their successors and assigns.
12. The Vendor covenants with the Purchaser that it will not at any time during the term of Three years from the Completion Date either solely or jointly with or as agent for or shareholder in any other person or company directly or indirectly carry on or be engaged or concerned or interested in carrying on of any trade or business competitive with that of the Company or permit its name to be used in carrying on or in connection with any such trade or business in the area in which the Company carried on its business on the Completion Date.
13. Each party shall bear its own costs in connection with this transaction the Purchaser being responsible for all stamp duties and other disbursements in respect thereof and the Vendor being responsible for all taxes payable in consequence of the said sale.
14. Any notice hereunder shall be in writing and may be delivered in person or sent by registered airmail to the address of the party shown herein. A notice by registered post shall be deemed to have been served four days after posting and production of the registration receipt shall be proof of posting.
15. This Agreement supersedes all previous agreements or negotiations, whether written or oral, between the parties relating to this sale.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective Common Seals to be affixed

the day and year first herein written.

FIRST SCHEDULE
Shareholding in the Company

Name of Registered Shareholder

Number of Shares

SECOND SCHEDULE
Particulars of the Properties

THIRD SCHEDULE
Directors of the Company

FOURTH SCHEDULE
Board Resolution

Appointment of Additional Directors

That the following persons be and are hereby appointed Directors of the Company with effect from the
day of 1999 and that the said additional Directors be welcomed
to the Board of Directors that is to say:-

FIFTH SCHEDULE
Warranties Undertakings and Indemnities of the Vendor

1. The Vendor warrants to the Purchaser who is contracting for this purpose for himself and on behalf of the Company that to the best of his knowledge and belief and except as otherwise expressly provided for in the within-written Agreement and save as disclosed to the Purchaser in writing in a Letter of Disclosure dated the 1999 or otherwise in writing:-

- (a) The statements contained in the recitals hereto relating to the Vendor and the Company are true and correct in all respects:
- (b) The Accounts of the Company a copy of which is annexed as Appendix 1 ("the Accounts") give a true and fair view of the position of the Company as at 1999 ("the Accounts Date") and that since the Accounts Date there has been no material reduction in the aggregate net assets of the Company as represented by its balance sheet contained in the Accounts or deterioration in the financial position of the Company since the Accounts Date:

- (c) The Accounts include provision and reserve in full for all liabilities (including contingent liabilities whether or not quantified or disputed) of the Company at the Accounts Date and that specific provision has been made to cover all taxes for which the Company was liable at the Accounts Date:
- (d) That the Company has not since the Accounts Date issued or agreed to issue or given or agreed to give any option in respect of any share or loan capital of the Company or any option in respect of any debentures or other securities:
- (e) That the Company has not entered into any long term or abnormal contracts or undertaken any obligations whatsoever except such as are usual and necessary in the ordinary and proper course of its business or as are referred to in the accounts and in particular but without limiting the generality of the foregoing that there are no contracts for the purchase of stocks at prices substantially in excess of market prices ruling at the dates such contracts were made or for the sale of stocks at prices substantially lower than market prices ruling at the dates such contracts were made:
- (f) There are no existing service agreements or contracts between the Company and any directors officers executives or employees thereof which cannot be terminated on three months' notice or less:
- (g) No part of the amounts included in the Accounts or in the books of the Company as due from debtors has been released on terms that any debtor pays less than the book value of his debt as at the date or has been written off or has proved to any extent irrevocable or is now regarded as irrevocable:
- (h) Of the assets of the Company and any of the plant machinery fixtures fittings equipment and motor vehicles included in the Accounts and also any such acquired by the Company since the Accounts Date:
 - (a) none has been retaken into possession by the owner under any hire purchase agreement;
 - (b) none has been sold or disposed of at materially less than book value;
 - (c) none was acquired at a price substantially in excess of market value;
- (i) There has been no substantial increase in any fees or emoluments paid or payable to any officer or employee of the Company since the Accounts Date:
- (j) The Company is not aware of any contingent liabilities and has not except in the normal course of business entered into any forward commitments since the Accounts Date other than those already disclosed in writing to the Purchaser:
- (k) There are no outstanding notices or demands served on the Company in respect of any of its assets:
- (l) The Company is not engaged in any litigation or arbitration proceedings and no such proceedings and no prosecutions are pending or threatened and the Vendors know of no facts or matters likely to give rise thereto and the Company is not in default in respect of any obligation whether contractual statutory or municipal:
- (m) Full disclosure of all remuneration payable to each officer and employee of the Company has

been made to the Purchaser:

- (n) The Company has no subsidiaries:
- (o) All the assets of the Company including debts due or represented as being due to it are its absolute property and free from any hiring leasing rental credit sale or hire purchase agreement:
- (p) The Company has effected and maintained all insurances necessary and proper to be effected and maintained by reason of the nature of the business carried on and such insurances are now in force and there is no fact or matter which could lead to any such insurances being vitiated or repudiated or any premiums thereon being increased:
- (q) The tax returns of the Company have at all times been correct and are not in dispute with the income tax authorities:
- (r) The Company has not given any guarantees indemnities or bonds which remain undischarged:
- (s) There are no obligations of the Company to pay any pensions or other sums to or in respect of any former officers or employees of the Company nor will any such obligations arise at any time in the future in respect of any present officers or employees of the Company other than obligations arising by operation of law:
- (t) The Company is not under any contingent liability to pay compensation for loss of office or employment to any director or employee of the Company:
- (u) The Company has not exercised or purported to exercise or claim any lien over the Shares:
- (v) All returns, particulars, resolutions and other documents required to be filed or delivered on behalf of the Company to the Registrar of Companies have been properly made and so filed or delivered as required by the Companies Act and the Company has made all other appropriate returns and all relevant information has been supplied to all relevant governmental municipal and local authorities and there is no dispute or matter unresolved of any material importance with any of the said authorities:
- (w) There are no options or other agreements in force which call either at the date hereof or in the future for issue or give to any person the right to call for the issue of any share or loan capital of the Company:
- (x) The Company has in its possession control or reputed ownership no goods in respect of which the seller or supplier thereof has reserved either title thereto or any right of disposal after delivering of possession thereof:
- (y) All goods and products sold and held in stock by the Company were and are of good and merchantable quality and free from any flaw and defect whatsoever:
- (z) The Company its officers employees or agents have not disclosed or caused to be disclosed to any third party any fact or matter the disclosure of which would be contrary to any agreements entered into by the Company prohibiting such disclosure.
- (aa) All the Licences are valid and in force and the Company has done nothing which could affect the validity or the renewal thereof.

2. The Vendor agrees to ensure that prior to the Completion Date the Company will not except with the previous written consent of the Purchaser:-

- (a) create grant or issue or agree to create grant or issue any mortgages charges debentures or other securities;
- (b) create or issue or agree to create or issue any share or loan capital or agree to give any option in respect of any share or loan capital;
- (c) enter into any long term or abnormal contract or capital commitment;
- (d) do or suffer anything whereby its financial position may be rendered less favourable than at the date hereof;
- (e) pass any resolution by its members in general meeting or make any alteration to the provisions of its Memorandum or Articles of Association;
- (f) in any way depart from the ordinary course of its day to day business either as regards the nature scope or manner of conducting the same;
- (g) pay or agree to pay to its directors or officers or any of them any remuneration or other emoluments or benefits whatsoever other than those which have been disclosed and agreed to by the Purchaser;
- (h) acquire any assets on hire purchase or deferred terms;
- (i) dispose of any material part of its fixed assets;
- (j) permit any liens to arise on any part of its assets;
- (k) knowingly permit any of its normal insurances to lapse or do anything which might or could cause any of the Licences to be cancelled or not renewed;
- (l) permit any of the Licences to lapse or do anything which might or could cause any of the Licences to be cancelled or not renewed.
- (m) part with vacant possession of the Property or any part thereof or allow any person to trespass on or occupy the Property or any part thereof.

3. The Vendor hereby undertakes with the Purchaser who is contracting for this purpose on behalf of himself and of the Company that he will indemnify the Company and the Purchaser against:

- (a) any claim or demand for income tax corporation or similar tax already assessed or which may hereafter be assessed for any period ending on or before the Accounts Date in respect of any income of the Company so far as the same exceeds the provisions made in the accounts of the Company to the Accounts Date;
- (b) any debt or liability of the Company arising in respect of the period ending on or before the Accounts Date other than those debts and liabilities which are disclosed in the accounts of the Company to the Accounts Date;
- (c) the recovery of any tax from the Company in respect of any income tax advantage obtained

by the Company provided that such recovery is in respect of the period prior to the Accounts Date:

- (d) any loss or damage suffered by the Company or the Purchaser due to breach of any of the warranties and undertakings given in this Agreement on the part of the Vendor.

APPENDIX 1
Audited Accounts of the Company to

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SIGNED by the Purchaser in the presence)
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Drawn By: