

A HIRE PURCHASE AGREEMENT made on the

day of

1999

BETWEEN

THIFTY LIMITED of Hazina Towers, Monrovia Street, P O BOX 12345, Nairobi (hereinafter called the “**Owner**” which expression shall where the context so admits include the Owner’s successors and assigns) on the one part

AND

Of P.O. BOX

Nairobi (hereinafter called the “**Hirer**” which expression shall where the context so admits include the Hirer’s successors, assigns and/or personal representatives) on the other part.

TERMS AND CONDITIONS

Hiring

The Owner is letting and the Hirer is taking on hire the Goods described in the Delivery receipt by Hirer contained in the Schedule (Including each item so described and renewals and replacements of the Goods and additions to them) on the items and conditions out in this Agreement including the schedule.

Hirer’s Obligations

Make payment

Pay the Deposit, the account service fee and the additional security specified in the Schedule on or before the signing of this Agreement;

Pay the installments specified in the schedule punctually and without previous demand deduction counterclaim or set-off to the Owner. The Hirer acknowledges that punctual payment of the installment shall be of essence of this Agreement and that the Hirer shall be deemed to have repudiated this Agreement if any installment or part thereof shall remain unpaid for more that Fourteen (14) days after becoming due;

Pay all sums due to the Owner under this Agreement to the Owner at its address shown above or to its order. Payments made by post or through Banks shall be at the risk of the Hirer;

Use of Goods

Use of the Goods properly and ensure that they will be safe and without risk to health, shall not use or permit the Goods to be used for any reliability trial, speed testing, rallying, racing or record attempting or any competition whatsoever, shall not remove or alter or permit removal or alteration of identification or registration numbers or marks on the Goods, shall not allow the Goods to become, in the Owner’s opinion, in jeopardy and shall not conceal or abandon the Goods;

Modification of Goods

Not modify or alter the Goods but, if they shall become liable under any statutory enactment to be modified or altered, the Hirer shall immediately inform the Owner by notice in writing and effect such modification or alteration at his own expense;

Damage, loss and repair

Be responsible for loss of or damage to or caused by the Goods and replace the Goods if so required by the Owner;

Notice of loss

Immediately give notice in writing to the Owner of the happening of any material loss or damage to the Goods;

Repair and Maintenance

Keep the Goods properly repaired and maintained but shall not pledge the Owners credit or permit any lien to be created on them;

Inspection

Allow the Owner, its representatives or agents access at all reasonable times to inspect the Goods and, if necessary, repossess them on the termination of the hiring under this Agreement;

Plating

If so required, allow the Owner to indicate its ownership on the Goods;

Location of Goods

Keep the Goods in the Hirer's sole possession (if fixed or static at the location (if any) specified in the Schedule) and shall not sell, assign, mortgage, charge or sublet the Goods or any interest in them or the benefit of this Agreement nor, without the Owner's prior written consent, remove or permit the removal of the Goods from Kenya, and shall advise the Owner of any change of location of the Goods;

Insurance

Keep the Goods at the Hirer's expense during the continuance of the Hiring for their full replacement value and for the uses for which the Goods are being put with full comprehensive or all-risks cover with Insurers to be approved by the Owner and under a policy, or policies noting the Ownership of the Goods by the Owner and stating that no payment is to be made to the Hirer under the policy unit the Owner's interest has been discharged. The Hirer hereby irrevocably appoints the Owner to be his sole agent for receipt of any insurance money and for any negotiation or compromise with the Insurers as to the amount payable and to institute proceedings whether the Hirer's name or otherwise against the Insurers in relation to any claim against them and give an effective receipt and discharge to the Insurers;

Punctually pay all premiums under the said policy or policies and produce the receipts for such payments to the Owner on demand and do everything necessary to maintain the said policy or policies in full effect and not do anything whereby the said policy or policies will or may be vitiated;

Indemnity

As an obligation surviving termination of the hiring of the Goods and/or this Agreement, indemnify the Owner in respect of any claims made against the Owner and all damages, costs and expenses (including all legal costs on Advocate and Client basis) suffered or incurred by the Owner as a result of any third party claim arising out of the state, condition or use of the Goods or in any way arising out of the Goods being let under this Agreement;

Pay taxes

Keep the Goods free of all liens and distraints and pay all taxes, outgoings, fines and impositions in respect of the Goods and their letting under this Agreement and the location, excepting only any taxes on or assessed by reference to the Owner's profits.

Bank charges

Pay the Owner all bank charges incurred by the Owner in respect of banking transactions arising out of or connected with this Agreement;

Pay all legal and other expenses

Pay the Owner all expenses (including legal costs on Advocate and client basis) incurred by or on behalf of the Owner in ascertaining the whereabouts of, taking possession of, preserving, insuring and storing the goods and of any legal proceedings taken by or on behalf of the Owner to enforce the provisions of this Agreement.

Further Stipulations

It is now mutually agreed that:

Non-payment of insurance premiums and taxes

If the Hirer shall fail to pay any premiums required to be paid in respect of clause 2) j) above or to pay any other sums required to be paid under any other provision of clause 2 above, the owner may pay such premiums or sums and the Hirer shall reimburse then Owner all its costs and expenses forthwith on demand;

Payment of insurance premiums by the Owner

In the event that the Hirer requests the Owner to finance the payment of any Insurance premiums required

to be paid by the Hirer in respect of clause 2) j) above, the Owner will finance payment of the same provided an Insurance Premium Financing Agreement has been completed and executed by both the Hirer and the Owner which said Insurance Premium Financing Agreement shall be deemed to be incorporated in and form part of this Agreement.

Conditions, Warranties and exclusions

It is hereby mutually agreed that:

Upon the request of the Hirer the owner will at the cost and expense of the Hirer assign to the Hirer the benefit of all express warranties granted in favour of the Owner by the supplier of the Goods or the manufacturer of them or any third party;

The Hirer declares that he has selected the Goods and has examined them and that they are in every respect satisfactory;

Save for sub-clause 3) b) above the Owner does not let the Goods with any representation concerning the condition, performance or qualities of the Goods or with or subject to any condition or warranty express or implied other than a warranty of its unencumbered title thereto so that, without prejudice to the generality of the foregoing, there is excluded:-

any condition of fitness of the Goods for any particular purpose;

in cases where the Goods are let by reference to a description to any condition that the Goods will correspond with that description; or

where the Goods are let by reference to a sample, any condition that the bulk will correspond with the sample in quality, that the hirer will have a reasonable opportunity of comparing the bulk with the sample, and that the Goods will be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination; and

any condition of merchantable quality in respect of the Goods;

The Owner shall not be liable to the Hirer:-

in contract or in tort for loss, injury or damage arising by reason of any defects be latent or apparent on examination;

for any statement condition warranty or representation made by any supplier, dealer, agent, broker or other person through whom this transaction may have been introduced, negotiated or conducted and persons other than those in the employ of the Owner have no authority express or implied to act as agent for the Owner;

either for any loss whatsoever suffered by the Hirer as a result of the Goods or any part of them being unusable or to supply any replacement Goods during any period when the Goods or part of them are unusable;

for any loss or damage incurred or sustained by the Hirer in consequence of the Owner terminating the hiring or in retaking possession of the Goods;

for any deterioration, wear and tear or wastage of the Goods from the date of repossession of the same by the Owner until the date of sale or disposal.

Interest

The Hire Purchase charges specified in the Schedule have been calculated by charging interest at the specified rate shown in the Schedule (called "the Specified rate") upon the cash price of the Goods specified in the schedule on a flat rate basis (called "the method of calculation");

The Owner may at any time in its absolute discretion vary the specified rate and/or the method of calculation;

In the event that the specified rate and/or method of calculation is varied pursuant to sub-clause 3 d) ii) above then the Hire Purchase charges shall forthwith be recalculated in accordance with such variation and the installments revised pursuant thereto. The Hirer shall thenceforth pay the revised installments for the

remainder of the hire period;

The Owner shall not be required to notify the Hirer in advance of any variation(s) pursuant to sub-clause 3 d) ii) and any failure by the Owner so no notify the Hirer shall not prejudice or affect the right of the Owner to recover the revised installments payable subsequent to such variation.

Late payment

The Hirer shall pay interest to the Owner at the Late Payment Rate specified in the schedule on all overdue payments of installments such interest to accrue on a daily basis after as well as before judgement from the due date until payment in full;

The Hirer shall pay interest to the Owner at the Late Payment Rate specified in the Schedule on all other sums due to the Owner under this Agreement such interest to accrue on a daily basis after as well as before judgment from the date demanded until payment in full;

The Owner may at any time in its absolute discretion vary the Late Payment Rate of interest specified in the Schedule and shall not be required to notify the Hirer in advance of any variation(s).

Application of Insurance Monies

All insurance monies payable under the policy or policies of insurance referred to in clause 2) j) hereinabove shall be paid to the Owner and be applied as follows at the Owner's option:-

in making good the damage; or

in replacing the Goods to which the terms of this Agreement shall apply; or

in paying to the Owner the unpaid balance of the Hire Purchase price specified in the Schedule and all other sums payable by the Hirer, this Agreement and in paying any surplus to the Hirer;

If after payment of the said insurance monies to the Owner under the said policy or policies any part of the balance of the Hire Purchase price or other sums payable under this Agreement remain unpaid, the same shall forthwith become payable by the Hirer and upon payment of the same by the Hirer, this Agreement shall come to an end and subject to the rights of the insurers therein title to the Goods shall vest in the Hirer.

Continuing liability

The continuance of this Agreement or the Hirer's liability for payment of the installments and all other sums under it shall not be affected in any way by the loss, theft or total loss of the Goods or any damage to or defect in the Goods whether latent or patent.

Title to the Goods

The Hirer may become the Owner of the Goods at any time during the period of hire paying to the Owner the amount by which at such time the amount already paid by the Hirer by way of installments falls short of the aggregate of:-

the balance of the Hire purchase price specified in the Schedule;

any other money due to the Owner pursuant to this Agreement;

the Option Payment

Termination by the Hirer

Subject to clause 5) b) below the Hirer may terminate the hiring of the Goods by giving seven (7) days notice in writing to the Owner and be delivering up the Goods to the Owner at such place as may be specified and approved by the Owner and in a condition consistent with the performance of the Hirer's obligations under this agreement;

If when the Hirer wishes to terminate the hiring of the Goods and any other Agreement or Hire Purchase Agreement made between the Owner and the Hirer (or any Associated Company of the Hirer) before or after or on the date of this Agreement is subsisting (and any Agreement under or in respect of which any sum is owing by the Hirer shall be deemed to be subsisting), the Hirer, unless the Owner otherwise agrees, shall not be entitled to terminate this Agreement without at the same time terminating or procuring the termination of all such other Hire Purchase Agreements.

Automatic termination

The hiring of the Goods and the consent of the Owner to the Hirer continuing in possession of the Goods shall automatically and without notice terminate on happening of any of the following events in consequence of which the Owner shall have the right to immediately retake possession of the Goods:-

if the landlord of any premises where the Goods may be by himself or his agent shall take or threaten to take any steps to distrain upon the Goods;

the commission by the Hirer (being an individual) of any act of bankruptcy;

the levy against the Hirer of any distress (other than distress by a landlord within clause 6) a) above) or execution;

the Hirer entering into or attempting to enter into a composition with its creditors or (in the case of a limited liability company) going into liquidation except a voluntary liquidation for the purpose of amalgamation or reconstruction on terms previously approved in writing by the Owner;

a receiver or an administrator being appointed in respect of the Hirer's assets or any part thereof or a meeting, whether formal or informal, being called of the Hirer's creditors or any of them;

upon the death of the Hirer.

Termination by the Owner

The Owner may, on the happening of any of the events specified in clause 7) b) below, without notice to the Hirer terminate the hiring of the Goods in consequence of which the Hirer shall no longer be in possession of the Goods with the consent of the Owner and the Owner shall have the right to immediately retake possession of the Goods;

The following are the events referred to in clause 7) a) above:-

any installment or other sum payable hereunder by the Hirer remaining unpaid after the expiry of Fourteen (14) days of becoming due;

a breach by the Hirer of any of the provisions of this Agreement other than those relating to the payment of money;

the Goods being, in the sole opinion of the Owner, concealed, missing or in jeopardy;

the Goods being abandoned by the Hirer.

Liability of Hirer on termination

If the hiring of the Goods is terminated pursuant to clauses 5,6 or 7 above, the Hirer shall become liable to pay the Owner (in addition to all other sums {if any} in respect of which the Hirer shall be indebted to the Owner):-

any overdue installments with interest thereon as herein provided;

any other sum due under this Agreement with interest thereon as herein provided;

any expenses and costs incurred by the Owner in tracing, storing, insuring and/or recovering possession of the Goods;

the cost of all repairs required to be done to the Goods to put them in a condition consistent with the performance of the Hirer's obligations under this Agreement;

as agreed compensation for the Owner's loss the Balance of the Hire Purchase Price of the Goods specified in the Schedule less the aggregate of:-

the installments previously paid under this Agreement;

the overdue installments due under the Agreement up to the date of termination

the proceeds of sale of the Goods if repossessed and sold and, if not sold, their value as certified by a person (acting as an expert) nominated by the Owner and who habitually deals in Goods of a similar nature of the Goods;

interest at the Late Payment Rate on the amount of the agreed compensation payable under Clause 8) e) above from the date of termination until the date of payment;

damages (if any) for any breach of this Agreement.

Goods to remain personal property

As between the Owner and the Hirer the Goods now let shall remain personal or moveable property and shall continue in the ownership of the Owner notwithstanding that they may have been affixed to any land or building. The Hirer shall be responsible for any damage caused to any land or building by the affixing or removal of the Goods from it (whether the Owner or the Hirer affixes or removes them) and, as an obligation surviving termination of this Agreement, shall indemnify the Owner against any claim made in respect of such damage. The Owner may inform the Owner of the premises where the Goods are from time to time located of its ownership of the Goods.

Assignment of Owner's rights

The Owner shall be entitled to assign the benefit of the Agreement or any right or rights of the Owner hereunder including the license conferred on the Owner to enter upon premises and inspect and/or repossess the Goods and any assignment of the benefit of this Agreement by the

Owner shall be deemed to include an assignment of the Owner's rights to enter premises and to repossess the Goods.

Right of set-off

Where the Hirer has incurred any liability to the Owner whether under this Agreement or any other agreement or otherwise and whether such liability is liquidated or unliquidated the Owner may set off the amount of such liability against any sum that would otherwise be due to the Hirer under this Agreement.

Collateral Security

In addition to any other security which the Owner may hold from time to time, the Owner is entitled to hold by way of security for the outstanding balance of the Hire Purchase Price specified in the Schedule and all other sums due under this Agreement all monies deposited by the Hirer in accounts with the Owner whether now or in future including any amount specifically deposited by the Hirer in a cash security account and in the event of the Hirer making default in payment of any sum due under this Agreement the Owner may at any time and without notice to the Hirer combine and consolidate all or any of the Hirer's accounts and/or set off all monies so held against the amount of the Hirer's indebtedness under this Agreement. Nothing done by the Owner pursuant to this clause shall suspend or prejudice the remedies of the Owner under this Agreement.

Notices

Any notice or demand served under this Agreement shall be sufficiently served if sent by prepaid post telex or facsimile transmission or by delivering the same by hand to the address of the addressee as shown in the Schedule and any such notice or demand so served shall be deemed to have been served:

if delivered by hand at the time of delivery

if sent through the post 48 hours after the time of dispatch and in proving service it shall be sufficient to prove in the case of a letter that such letter was properly delivered or stamped addressed and placed in the post (as the case may be) and

if sent by telex or facsimile transmission at the time of transmission and in proving service it shall be sufficient to prove that such telex or facsimile was duly dispatched to a current telex or facsimile number of

the addressee.

Miscellaneous

This Agreement contains all the terms agreed between the Owner and the Hirer and the Hirer has not relied on any representation or warranty by the Owner except as expressly stated or referred to in this Agreement;

where two or more persons are named as Hirers in the Schedule hereto their liability hereunder shall be joint and several;

No relaxation forbearance delay or indulgence by the Owner in enforcing any of the terms of this Agreement or the granting of time by the Owner to the Hirer or the extension or re-scheduling of this Agreement shall prejudice or affect or restrict the rights and powers of the Owner hereunder nor shall any waiver by the Owner of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof;

If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part thereof shall to the extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected;

All sums payable under this Agreement shall be paid together with the addition of such Value Added Tax or other taxes are legally payable on those sums.

Interpretation

The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement

Words denoting the singular number only shall include the plural and vice versa and words denoting any gender include all genders;

The expression “Associated Company of the Hirer” means any Company which in relation to the Hirer is either;

a subsidiary as defined by Section 154 of the Companies Act (Cap 486); or

a holding company as defined by Section 154 of the Companies Act (Cap 486); or

any other subsidiary of the holding company of which the Hirer is a subsidiary;

In clauses 6) c) to 6) e) the expression “the Hirer includes an Associated Company of the Hirer.

In witness whereof the parties have hereunto set their hands this day of One Thousand Nine Hundred and Ninety- Nine.

}
}
}
}
}
}
}
}
}
}
}
}