

## **Precedent D2: Sale of a company: short form**

*Short form agreement for sale of shares of a trading group of companies, for a cash consideration with completion following immediately upon exchange of contracts; including short form warranties.*

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## SHARE SALE AGREEMENT

Date: 19

Parties:

1 'The Vendors': the persons whose names and addresses are set out in column 1 of Schedule [1].

2 'The Purchaser' : [\_\_\_\_\_] Limited (registered no [\_\_\_\_\_] ) whose registered office is at [\_\_\_\_\_].

Operative provisions:

### **1 Interpretation**

1.1 In this agreement the following words and expressions have the following meanings:

'CA' Companies Act 1985

'COMPANIES ACTS' CA, the former Companies Acts (within the meaning of CA s 735(1)) and the Companies Act 1989

'COMPANY' [\_\_\_\_\_] Limited

'DEED OF INDEMNITY' a deed in the form set out in Schedule [4]

'DISCLOSURE LETTER' the disclosure letter, of the same date as this agreement, from the Vendors to the Purchaser

'FA' Finance Act

'GROUP COMPANIES' the Company and its Subsidiaries for the time being

'ICTA' Income and Corporation Taxes Act 1988

'LAST ACCOUNTS' the audited balance sheet, as at the Last Accounts Date, and audited profit and loss account for the year ended on the Last Accounts Date of each Group Company, including in the case of the Company the audited consolidated balance sheet as at such date and the audited consolidated profit and loss account for such period, and the directors' report and notes

'LAST ACCOUNTS DATE' [\_\_\_\_\_] 19[\_\_\_] (being the date to which the Last Accounts have been prepared)

'PROPERTIES' the properties of the Group Companies shortly described in Schedule [5]

'SHARES' the [\_\_\_\_\_] issued Ordinary Shares of [\_\_\_\_\_] each of the Company

'SUBSIDIARY' a subsidiary as defined in CA s 736

'TAXATION' all forms of taxation, duties, imposts and levies whatsoever, and wherever or whenever imposed

'WARRANTIES' the warranties and representations by the Vendors in clause [5] and Schedule [3].

1.2 All references in this agreement to a statutory provision shall be construed as including references to:

1.2.1 any statutory modification, consolidation or reenactment (whether before or after the date of this agreement) for the time being in force;

1.2.2 all statutory instruments or orders made pursuant to a statutory provision; and

1.2.3 any statutory provisions of which a statutory provision is a consolidation, reenactment or modification.

1.3 Any reference in this agreement to the 'Vendors' includes their respective personal representatives.

1.4 A reference in this agreement to FRS shall be a reference to a statement of standard accounting practice issued or adopted by The Accounting Standards Board Limited.

1.5 Clause headings in this agreement are for ease of reference only and do not affect the construction of any provision.

## **2 Agreement for sale**

2.1 Subject to the terms and conditions of this agreement the Vendors shall sell as with full title guarantee and the Purchaser shall purchase the Shares, with all rights attaching to them and with effect from the date of this agreement.

## **3 Purchase consideration**

3.1 The purchase consideration for the Shares shall be the sum of £[\_\_\_\_\_].

3.2 The Vendors shall be entitled to the purchase consideration in the amounts set out in Schedule [1].

## **4 Completion**

4.1 Completion of the purchase of the Shares shall take place at the offices of the Vendors' solicitors immediately after the signing of this agreement.

4.2 The Vendors shall deliver to the Purchaser:

4.2.1 duly completed and signed transfers in favour of the Purchaser or as it may direct of the Shares together with the relative share certificates;

4.2.2 duly completed and signed transfers in favour of the Purchaser or as it may direct of all shares of the Subsidiaries of the Company and not registered in the name of the Company, together with the relative share certificates;

4.2.3 the Deed of Indemnity duly executed by the Vendors and the Company;

4.2.4 the resignations of the directors and the secretary from their respective offices in each Group Company, with a written acknowledgement from each of them executed as a deed in such

form as the Purchaser requires that he has no claim against any Group Company on any grounds whatsoever;

4.2.5 the resignation of the existing auditors of each Company confirming that they have no outstanding claims of any kind and containing a statement under CA s 394(1) that there are no such circumstances as are mentioned in that section.

4.3 There shall be delivered or made available to the Purchaser:

4.3.1 the seal and certificate of incorporation of each Group Company;

4.3.2 the statutory books of each Group Company, complete and up to date;

4.3.3 the title deeds relating to each of the Properties;

4.3.4 the appropriate forms to amend the mandates given by each Group Company to its bankers.

4.4 The Vendors shall repay all monies then owing by them to any Group Company, whether due for payment or not.

4.5 Board Meetings of each Group Company shall be held at which:

4.5.1 such persons as the Purchaser may nominate shall be appointed additional directors;

4.5.2 the transfers referred to in clauses [4.2.1 or 4.2.2] (as the case may be) shall be approved (subject to stamping); and

4.5.3 the resignations referred to in clauses [4.2.4 and 4.2.5] shall be submitted and accepted.

4.6 Upon completion of the matters referred to in clauses [4.2 to 4.5] the Purchaser shall deliver to the Vendors' solicitors a banker's draft for the amount of the purchase consideration for the Shares.

## **5 Warranties by the vendors**

5.1 The Vendors jointly and severally warrant to the Purchaser that, save as stated in the Disclosure Letter, the Warranties set out in Schedule [3] are true and accurate in all respects and that the contents of the Disclosure Letter, and of all accompanying documents, are true and accurate in all respects and fully, clearly and accurately disclose every matter to which they relate.

5.2 Each of the Warranties is without prejudice to any other warranty or undertaking and, except where expressly stated, no clause contained in this agreement governs or limits the extent or application of any other clause.

5.3 The rights and remedies of the Purchaser in respect of any breach of the Warranties shall not be affected by completion of the purchase of the Shares, by any investigation made by or on behalf of the Purchaser into the affairs of any Group Company, by any failure to exercise or delay in exercising any right or remedy or by any other event or matter whatsoever, except a specific and duly authorised written waiver or release.

## **6 Restrictive agreement**

6.1 For the purpose of assuring to the Purchaser the full benefit of the businesses and goodwill of the Group Companies, each of the Vendors undertakes by way of further consideration for the

obligations of the Purchaser under this agreement as separate and independent agreements that he will not:

6.1.1 at any time after Completion disclose to any person, or himself use for any purpose, and shall use his best endeavours to prevent the publication or disclosure of, any information concerning the business, accounts or finances of any Group Company or any of its clients' or customers' transactions or affairs, which may, or may have, come to his knowledge;

6.1.2 for a period of [\_\_\_\_\_] years after Completion either on his own account or for any other person directly or indirectly solicit, interfere with or endeavour to entice away from any Group Company any person who to his knowledge is now or has during the [\_\_\_\_\_] years preceding the date of this agreement been a client, customer or employee of, or in the habit of dealing with, any Group Company;

6.1.3 for a period of [\_\_\_\_\_] years after Completion, without the Purchaser's prior written consent either alone or jointly with or as manager, agent for or employee of any person, directly or indirectly carry on or be engaged or concerned or interested in [\_\_\_\_\_] (a) in the business of [\_\_\_\_\_] ; or (b) in any other business similar to any business carried on by any Group Company at the date of this agreement.

## 7 Communications

7.1 All communications between the parties with respect to this agreement shall be delivered by hand or sent by post 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.

7.2 Communications addressed to the Purchaser shall be marked for the attention of [\_\_\_\_\_].

7.3 In proving service by post it shall only be necessary to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause.

### SCHEDULE 1

#### Vendor's holdings and consideration

Vendor's name and address	Holding of shares	Amount of the purchase consideration
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### SCHEDULE 2

#### Details of group companies

#### Part 1: The company

Company number:

Date of incorporation:

Share capital:

Authorised

Issued

Registered office:

Directors:

Secretary:

## **Part 2: The subsidiaries of the company**

Name of subsidiary:

Registered number:

Share capital:

authorised

issued

Registered office:

Directors:

Shares held by company or (where specified) by its subsidiaries or its or their nominee:

## SCHEDULE 3

### Warranties

#### **1 Corporate matters**

1.1 The information relating to the Group Companies contained in Schedule [2] is true and complete in all respects.

1.2 The Shares constitute the whole of the issued and allotted share capital of the Company.

1.3 The Company, or (where specified) a Subsidiary of the Company, is the sole beneficial owner of all the issued or allotted shares of the Subsidiaries of the Company listed in Schedule [2].

1.4 There are no agreements or arrangements in force, other than this agreement, which grant to any person the right to call for the issue, allotment or transfer of any share or loan capital of any Group Company.

1.5 The register of members and other statutory books of each Group Company have been properly kept and contain an accurate and complete record of the matters with which they should deal; and no notice or allegation, that any of them is incorrect or should be rectified, has been received.

1.6 All returns, particulars, resolutions and documents required to be filed with the Registrar of Companies in respect of each Group Company have been duly filed and were correct.

## **2 Accounting matters**

2.1 The Last Accounts have been prepared in accordance with the historical cost convention; and the bases and policies of accounting, adopted for the purpose of preparing the Last Accounts, are the same as those adopted in preparing the audited accounts of each Group Company in respect of the three last preceding accounting periods.

2.2 The Last Accounts:

2.2.1 give a true and fair view of the assets, liabilities (including contingent, unquantified or disputed liabilities) and commitments of each Group Company at the Last Accounts Date and its profits for the financial period ended on that date;

2.2.2 comply with the requirements of the Companies Acts and other relevant statutes;

2.2.3 comply with all current FRSs applicable to a United Kingdom company;

2.2.4 are not affected by any extraordinary, exceptional or nonrecurring item;

2.2.5 properly reflect the financial position of each Group Company as at their date.

2.3 All the accounts, books, ledgers, financial and other records, of whatsoever kind, of each Group Company are in its possession and give a true and fair view of its financial position.

## **3 Financial matters**

3.1 No Group Company had any capital commitments outstanding at the Last Accounts Date and no Group Company has, since then, incurred or agreed to incur any capital expenditure or commitments or disposed of any capital assets.

3.2 Since the Last Accounts Date no Group Company has paid or declared any dividend or made any other payment which is, or is treated as, a distribution for the purposes of ICTA Part VI Chapter II.

3.3 No Group Company has, since the Last Accounts Date, repaid, or become liable to repay, any indebtedness in advance of its stated maturity.

3.4 There are no liabilities (including contingent liabilities) which are outstanding on the part of any Group Company other than those liabilities disclosed in the Last Accounts or incurred, in the normal course of trading, since the Last Accounts Date.

3.5 Having regard to existing facilities, full details of which are set out in the Disclosure Letter, each Group Company has sufficient working capital for the purposes of continuing to carry on its business, in its present form and at its present level of turnover, for a period of twelve months after the date of this agreement.

3.6 None of the facilities available to any Group Company is dependent on the guarantee or indemnity of, or any security provided by, a third party other than another Group Company.

3.7 The amounts now due from debtors will be recoverable in full in the normal course of business, and in any event not later than twelve weeks from the date of this agreement.

3.8 No part of the amounts included in the Last Accounts as owing by any debtors remains unpaid or has been released on terms that any debtor pays less than the full book value of his debt.

3.9 Each Group Company has, since the Last Accounts Date, paid its creditors in accordance with their respective credit terms; and there are no amounts owing by any Group Company which have been due for more than six weeks.

3.10 No guarantee, or agreement for indemnity or for suretyship, given by, or for the accommodation of, Group Company is outstanding.

#### **4 Taxation matters**

4.1 The Last Accounts make full provision or reserve for all Taxation (including deferred Taxation) which is liable to be or could be assessed on each Group Company, or for which it may be accountable, in respect of the period ended on the Last Accounts Date.

4.2 All returns, computations and payments which should be, or should have been, made by any Group Company for any Taxation purpose have been made within the requisite periods and are up to date, correct and on a proper basis and none of them is, or is likely to be, the subject of any dispute with the Inland Revenue or other Taxation authorities.

4.3 Each Group Company has duly deducted and accounted for all amounts which it has been obliged to deduct in respect of Taxation and, in particular, has properly operated the PAYE system, by deducting tax, as required by law, from all payments made, or treated as made, to its employees or former employees, and accounting to the Inland Revenue for all tax so deducted and for all tax chargeable on benefits provided for its employees or former employees.

4.4 No Group Company is, or will become, liable to pay, or make reimbursement or indemnity in respect of, any Taxation (or amounts corresponding thereto) in consequence of the failure by any other person (not being a Group Company) to discharge that Taxation within any specified period or otherwise, where such Taxation relates to a profit, income or gain, transaction, event, omission or circumstance arising, occurring or deemed to arise or occur (whether wholly or partly) on or prior to the date of this agreement.

4.5 No Group Company has, since the Last Accounts Date, incurred or is, or has become, liable to incur after that Date expenditure which will not be wholly deductible in computing its taxable profits except for expenditure on the acquisition of an asset to be held otherwise than as stock in trade, details of which are set out in the Disclosure Letter.

4.6 No Group Company has, since the Last Accounts Date, made or agreed to make, otherwise than to or from another Group Company a surrender of, or claim for, group relief under ICTA Part X Chapter IV (Group relief) or is liable to make or entitled to receive a payment for group relief otherwise than to or from another Group Company.

4.7 The execution or completion of this agreement will not result in any profit or gain deemed to accrue to a Group Company for Taxation purposes.

4.8 No Group Company has in the past six years carried out, or been engaged in, any transaction or arrangement in respect of which there may be substituted for the consideration given or received by such Company a different consideration for Taxation purposes.

4.9 If each of the capital assets of the Group Companies were disposed of for a consideration equal to the book value of that asset in, or adopted for the purpose of, the Last Accounts, no liability to corporation tax on chargeable gains or balancing charge under the Capital Allowances Act 1990 would arise.

4.10 Each Group Company has duly registered and is a taxable person for the purposes of value added tax and none of them has applied for treatment or is treated as a member of a group which includes any company other than the Group Companies.

## **5 Trading matters**

5.1 Since the Last Accounts Date the business of each Group Company has been continued in the ordinary and normal course, and there has been no deterioration in its turnover, or its financial or trading position or prospects.

5.2 No Group Company is, or has agreed to become, a member of any joint venture, consortium, partnership or other unincorporated association.

5.3 No Group Company is engaged in any litigation or arbitration proceedings, as plaintiff or defendant; there are no proceedings pending or threatened, either by or against any Group Company; and there are no circumstances which are likely to give rise to any litigation or arbitration.

5.4 There is no dispute with any revenue or other official department in the United Kingdom or elsewhere, in relation to the affairs of any Group Company, and there are no facts which may give rise to any dispute.

5.5 There are no claims pending or threatened, or capable of arising, against any Group Company, by an employee or workman or third party, in respect of any accident or injury, which are not fully covered by insurance.

5.6 Each Group Company has conducted and is conducting its business in all respects in accordance with all applicable laws and regulations, whether of the United Kingdom or elsewhere.

5.7 No power of attorney given by any Group Company is in force.

5.8 There are no outstanding authorities (express or implied) by which any person may enter into any contract or commitment to do anything on behalf of a Group Company.

5.9 The Disclosure Letter contains accurate particulars of all subsisting contracts to which any Group Company is a party at the date of this agreement.

5.10 No Group Company is or will with the lapse of time become in default in respect of any obligation or restriction.

5.11 No Group Company has manufactured, sold or supplied products which are, or were, or will become, in any material respect faulty or defective, or which do not comply in any material respect with any warranties or representations, expressly or impliedly made by it, or with all applicable regulations, standards and requirements in respect thereof.

5.12 No Group Company is subject to any liability or obligation (save as may be implied by law) to service, repair, maintain, take back or otherwise do or not do anything in respect of any goods that have been, or are hereafter delivered by it.

5.13 No Group Company is a party to, and its profits or financial position during the past three years have not been affected by, any contract or arrangement which is not of an entirely arm's length nature.

5.14 None of the functioning of the software programs used in the operation of equipment by or for the benefit of a Group Company will be adversely affected by the fact that the first two digits in the years

after 31 December 1999 will be '20'.

## **6 Property matters**

6.1 The Group Companies have good and marketable title, to all of the Properties, which comprise all the estate or interest of the Group Companies in any land or premises, and [one of the Group Companies is the proprietor of each of the Properties registered at HM Land Registry with absolute title.] [Particulars of the titles to the Properties are set out in Schedule [5].]

6.2 The Group Companies have in their possession, or under their control, all duly stamped deeds and documents which are necessary to prove title to each of the Properties.

6.3 There is no option, or agreement for sale, mortgage (whether specific or floating), charge, lien, lease agreement or lease, overriding interest, condition, restrictive covenant, easement or other encumbrance in respect of any of the Properties.

6.4 The Properties are not subject to the payment of any outgoing (except business and water rates).

6.5 The Group Companies have duly and punctually performed and observed all covenants, conditions, agreements, statutory requirements, planning consents, byelaws, orders and regulations affecting any of the Properties, and no notice of any breach of any such matter has been received.

6.6 The use of each of the Properties is the permitted use for the purposes of the Town and Country Planning Act 1990.

6.7 There are no compulsory purchase notices, orders or resolutions affecting any of the Properties.

6.8 The Properties have at all times been held by the Group Companies as investments and not trading stock.

## **7 Employment matters**

7.1 Full particulars of the identities, dates of commencement of employment, or appointment to office, and terms and conditions of employment of all the employees and officers of each Group Company, including without limitation profit sharing, commission or discretionary bonus arrangements, are fully and accurately set out in the Disclosure Letter.

7.2 Since the Last Accounts Date or (where employment or holding of office commenced after that date) since the commencing date of the employment or holding of office, no change has been made in the rate of remuneration, emoluments or pension benefits, of any officer, exofficer or senior executive of any Group Company (a senior executive being a person in receipt of remuneration in excess of £15,000 per annum).

7.3 No Group Company is bound or accustomed to pay any moneys other than in respect of remuneration, or emoluments of employment, or pension benefits, to, or for the benefit of, any officer or employee of any Group Company.

7.4 Apart from the pension scheme referred to in the Disclosure Letter ('the Scheme'), no Group Company is under any legal or moral liability or obligation, or a party to any exgratia arrangement or promise, to pay pensions, gratuities, superannuation allowances or the like, or otherwise to provide 'relevant benefits' within the meaning of ICTA s 612, to or for any of its past or present officers or employees or their dependants; and there are no retirement benefit, or pension or death benefit, or similar schemes or arrangements in relation to, or binding on, any Group Company or to which any Group Company contributes.

7.5 Full particulars of the Scheme are contained in, or annexed to the Disclosure Letter, including without limitation true copies of the trust deeds and latest actuarial report and full and accurate details of the assets, funding arrangements and current membership.

7.6 The assets, investments or policies held by the trustees of the Scheme are sufficient to satisfy the liabilities and obligations (both current and contingent) which the Scheme has to its members.

## **8 Asset matters**

8.1 The Group Companies owned at the Last Accounts Date, and had good and marketable title to, all the assets included in the Last Accounts, and (except for current assets subsequently sold or realised in the normal course of business) still own and have good and marketable title to them and to all assets acquired since the Last Accounts Date.

8.2 The stock of raw materials, packaging materials and finished goods now held are not excessive and are adequate in relation to the current trading requirements of the businesses of the Group Companies; and none of the stock is obsolete, slow moving, unusable, unmarketable or inappropriate or of limited value in relation to the current business of any Group Company; and no contracts are outstanding which are likely to result in the foregoing not being true.

8.3 The stockintrade of each Group Company is in good condition and is capable of being sold by it, in the normal course of its business, in accordance with its current price list, without rebate or allowance to a purchaser.

8.4 The plant, machinery, equipment, vehicles and other equipment used in connection with the business of each Group Company:

8.4.1 are in a good and safe state of repair and condition and satisfactory working order and have been regularly and properly maintained;

8.4.2 are its absolute property, save for those items the subject of the hire purchase, leasing or rental agreements listed in the Disclosure Letter, or in respect of which the outstanding payments do not exceed £1,000;

8.4.3 are not expected to require replacements or additions at a cost in excess of £5,000 within the next six months;

8.4.4 are all capable, and (subject to normal wear and tear) will remain capable, throughout the respective periods of time during which they are each written down to a nil value in the accounts of the Group Companies (in accordance with normal recognised accounting principles), of doing the work for which they were designed or purchased.

8.5 All the stockintrade of each Group Company, and those of its other assets and undertakings which are of an insurable nature, are, and have at all material times been, insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured against by persons carrying on the same business as that carried on by it.

8.6 Each Group Company is now, and has at all material times been, adequately covered against accident, damage, injury, third party loss (including product liability), loss of profits and other risks normally insured against by persons carrying on the same business as that carried on by it.

8.7 All insurances are currently in full force and effect, and nothing has been done or omitted to be done which could make any policy of insurance void or voidable, or which is likely to result in an increase

in premium.

8.8 No claim is outstanding, or may be made, under any of the insurance policies and no circumstances exist which are likely to give rise to a claim.

## **9 General matters**

9.1 All information given by any of the Vendors, the Vendors' solicitors or the Vendors' accountants to the Purchaser, the Purchaser's solicitors or the Purchaser's accountants relating to the business, activities, affairs, or assets or liabilities of any Group Company was, when given, and is now accurate and comprehensive in all respects.

9.2 There are no material facts or circumstances, in relations to the assets, business or financial condition of any Group Company, which have not been fully and fairly disclosed in writing to the Purchaser or the Purchaser's solicitors, and which, if disclosed, might reasonably have been expected to affect the decision of the Purchaser to enter into this agreement.

### SCHEDULE 4

#### Deed of indemnity

Date: 19

Parties:

1 'The Covenantors': the persons whose names and addresses are set out in the Schedule.

2 'The Company' : [\_\_\_\_\_] Limited (registered no [\_\_\_\_\_] ) whose registered office is at [\_\_\_\_\_] on behalf of itself and each Group Company.

Recital:

This deed is entered into pursuant to an agreement made between the Covenantors (1) and [\_\_\_\_\_] ('the Purchaser') (2) relating to the sale of all the share capital of the Company ('the Agreement').

Operative provisions

## **1 Definitions**

In this deed the meanings of 'GROUP COMPANIES', 'THE LAST ACCOUNTS', 'THE LAST ACCOUNTS DATE' and 'TAXATION' shall be the same as in the Agreement.

## **2 Indemnity**

2.1 Subject as provided below, the Covenantors jointly and severally covenant with the Company (for itself and as trustee for each Group Company) to indemnify each Group Company against:

2.1.1 any liability for Taxation which arises wholly or partly in respect of, or in consequence of, any acts, omissions or transactions occurring or entered into on, or before, the date of this deed or which results from, or is calculated by reference to, any income, profits or gains earned, received or accrued, or deemed to have been earned, received or accrued, on or before that date;

2.1.2 any resultant costs; and

2.1.3 any Taxation payable by the Group Company on or in respect of any payment made under this deed.

### **3 Exclusions**

3.1 The indemnity in clause [2.1] shall not apply to any liability:

3.1.1 to the extent that either an appropriate provision or reserve in respect of the liability was made in the Last Accounts or the liability was specifically referred to and quantified in the notes to those Accounts;

3.1.2 for which the Group Company is, or may become, liable wholly, or primarily, as a result of transactions in the normal course of its business after the Last Accounts Date;

3.1.3 to the extent that the liability arises as a result only of the appropriate provision or reserve in the Last Accounts being insufficient by reason of any increase in rates of Taxation made after the date of the Agreement.

### **4 Conduct of claims**

4.1 The Company shall notify the Covenantors in writing of any information which comes to its notice, whereby it appears that the Covenantors are, or may become, liable under this deed.

4.2 Subject to clause [4.3], the Company shall, at the expense of the Covenantors, take or procure each other Group Company to take such action, to contest any claim which could give rise to a liability under this deed, as the Covenantors, or a majority of them, may reasonably require.

4.3 The Covenantors shall, at the request of the Company, provide, to the reasonable satisfaction of the Company, security or indemnities, or both, in respect of all the costs and expenses of any action taken pursuant to clause [4.2].

### **5 General**

5.1 This deed shall be binding on the Covenantors and their respective personal representatives.

5.2 The provisions of the Agreement relating to communications shall apply to any communication to be given under, or in connection with, this deed.

## **SCHEDULE 5**

Short particulars of the properties