



Namagri Properties CC
P.O. Box 80266, Windhoek, Namibia
Tell: 081 128 6821
E-mail: alex@namagri.com
CC. Reg. No: CC/2017/12187

IN THE PUBLIC AUCTION OF:

THE TRUSTEES FOR THE TIME BEING OF THE VAN DE VIJVER FAMILY TRUST

Registration number T272/12

An inter vivos trust duly established in terms of the laws of Namibia and registered in accordance with the Trust Administration Act, 2023 (Act No 11 of 2023), herein represented by **Christophe Gaston Georgette Van de Vijver** and **Paul Marie Georges Machitus van de Vijver** in their capacities as trustees duly authorised thereto

of

P O Box 90538, Windhoek, Namibia

Tel.: +264 (0)81 129 4737 / +264 (0)61 375300

Email: christopher@nuvella.com.na / nicole@nuvella.com.na

(hereinafter referred to as the SELLER)

AND

BRAK PROPERTY DEVELOPMENT THREE (PROPRIETARY) LIMITED

Registration number 2011/0841

a private company with limited liability duly incorporated according to the laws of Namibia and herein duly represented by **Paul Marie Georges Machitus van de Vijver** in his capacity as director and being duly authorized thereto

of

P O Box 90538, Windhoek, Namibia

Tel.: +264 (0)81 129 4737 / +264 (0)61 375300

Email: christopher@nuvella.com.na / nicole@nuvella.com.na

(hereinafter referred to as the COMPANY)

AND

NAMIBIA AGRICULTURAL DISTRIBUTORS CC

Registration number CC/2008/1910

A close corporation duly incorporated according to the laws of Namibia and herein represented by Alex Mcdonald, he being duly authorised thereto

of

P O Box 80266, Olympia, Windhoek, Namibia

Tel.: +264 (0)81 128 6821

Email: alex@namagri.com

(hereinafter referred to as the AUCTIONEER/AGENT)

CONDITIONS OF SALE

The SUBJECT MATTER of the COMPANY which is offered for sale and which will be put up to auction on the **25th October 2024 at 10:00** consist of the total issued shares in the COMPANY, inclusive of the SELLER'S rights, title and interest in and to any claims on loan account against the COMPANY (collectively hereinafter referred to as the SUBJECT MATTER), the said COMPANY being the registered owner of:

| | |
|------------------|--|
| CERTAIN | ERF NO 3 BRAKWATER INDUSTRIAL ESTATE (situated at Shali Industrial Estate, Farm No 428 Brakwater, Windhoek) |
| SITUATE | in the Municipality of Windhoek Registration division "K" Khomas Region |
| MEASURING | 1,1794 (one comma one seven nine four) Hectares |
| HELD | by Deed of Transfer No. T 1222/2015 |
| SUBJECT | to the conditions contained therein and together with all fixed improvements thereon |

The sale shall be subject to the following conditions:

1. THE AUCTIONEER / AGENT

The SUBJECT MATTER will be put up for auction and sold by **NAMIBIA AGRICULTURAL DISTRIBUTORS CC**, Registration Number: **CC/2008/1910**, who has been appointed by the SELLER as Auctioneer.

2. THE RESERVE PRICE AND ACCEPTANCE PERIOD

2.1 The AUCTIONEER / AGENT may sell the SUBJECT MATTER at or above the reserve price calculated at a rate of N\$1 100.00 (One Thousand One Hundred Namibia Dollars) per square metre or such lesser amount as the SELLER may be prepared to accept, subject however to a minimum upset price of N\$935.00 (Nine Hundred and Thirty Five Namibia Dollars) per square metres.

2.2 If the reserve price is not reached, or if there is no reserve price, the AUCTIONEER / AGENT is authorized to sell the SUBJECT MATTER to the Highest Bidder, provided the SELLER has confirmed acceptance of the price offered by the Highest Bidder in writing within **48 (FORTY EIGHT)** hours from the date of sale, failing which the SUBJECT MATTER shall be deemed not to be sold, subject however to the conditions of 2.4 hereof. Any acceptance and confirmation by the SELLER of the price offered shall be communicated in writing to the PURCHASER within **48 (FORTY EIGHT)** hours after receipt thereof by the AUCTIONEER / AGENT.

- 2.3 For purposes hereof, the offer made by the Highest Bidder shall be kept and remain open for acceptance and confirmation by the SELLER for the aforesaid period of **48 (FORYT EIGHT)** hours and such Bidder shall not be entitled to withdraw such offer prior to the expiry of such period.
- 2.4 Any notice given by the AUCTIONEER / AGENT to the Highest Bidder in terms hereof to the address furnished to the AUCTIONEER / AGENT shall be deemed to have been received by him on date of delivery by hand or on the day following the date it has successfully been sent via electronic post to the email address of the PURCHASER.
- 2.5 If any dispute arises about any bid or the AUCTIONEER / AGENT makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. If the AUCTIONEER / AGENT suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the SUBJECT MATTER may immediately be again put up for auction.
- 2.6 The EFFECTIVE DATE of the sale will be the date of transfer of the issued shares of the COMPANY and cession of the loan accounts into the name of the PURCHASER or his nominee against simultaneous cancellation of all existing bonds and registration of a new bond (if any) as referred to in clause 3.1 hereof.
- 2.7 This transaction constitutes an indivisible sale of the shares and the claims on loan account.
- 2.8 Any amount offered in terms hereof shall be exclusive of VAT as the sale of the SUBJECT MATTER does not constitute a supply in accordance with the VAT Act and VAT is therefore not payable.

3. DEPOSITS AND COMMISSIONS

- 3.1 The PURCHASER shall pay a deposit of **10% (ten per cent)** of the purchase price in cash to the AUCTIONEER / AGENT for credit of the SELLER on the date of the sale immediately after the auction, and the balance against transfer to be secured by a bank or any other financial institution's guarantee, to be approved by the SELLER'S Legal Practitioners and to be furnished to the aforesaid within **21 (twenty one)** days after the date of sale or if a loan has to approved within **10 (ten)** days after approval thereof. Should the guarantee not be rendered in accordance herewith the SELLER shall be entitled to cancel the agreement forthwith and the SUBJECT MATTER will be put up for auction again. In the event of such cancellation the deposit paid shall be forfeited to the SELLER as a pre-estimate of the SELLER'S liquidated damages which the PURCHASER accepts as reasonable.
- 3.2 The deposit will be kept in an interest bearing trust account by the Legal Practitioners appointed by the SELLER for the benefit of the PURCHASER.
- 3.3 The PURCHASER shall on the date of sale, over and above the amount offered as purchase price pay Auctioneer's charges and commission calculated at **5% (five percent) excluding VAT**, of the purchase price.

- 3.4 If the PURCHASER fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled summarily by the SELLER on the report of the AUCTIONEER / AGENT after due notice to the PURCHASER, and the SUBJECT MATTER may again be put up for sale. The PURCHASER shall, in the event of such cancellation forfeit any deposit paid as well as any Auctioneers commission paid. Should the SELLER as a consequence of the PURCHASER'S breach suffer damages in excess of the forfeited deposit the PURCHASER shall be liable to the SELLER for such excess. If the PURCHASER is already in possession of the property, the SELLER may, on **7 (seven)** days' notice, apply to a Competent court for an order for ejecting the PURCHASER or any person claiming to hold under him therefrom.
- 3.5 It is, however, expressly agreed hereby that in the event of this Agreement being cancelled by mutual agreement between the SELLER and the PURCHASER or due to the neglect or failure of the SELLER, then the SELLER will immediately become liable for the payment of the aforesaid charges and commission to **NAMIBIA AGRICULTURAL DISTRIBUTORS CC**.
- 3.6 The sale shall be for Namibia Dollars and no bid in any other currency shall be accepted.

4. VAT

For purposes of VAT, the Parties record that the sale of the SUBJECT MATTER is exempt from VAT in terms of Section 10(1) of the Value Added Tax Act, Act No 10 of 2000 (paragraph 2(a) of Schedule 4 referred to in Section 10(1)) exempt financial services which by definition includes, under paragraph (d) thereof, transactions of Sale of Shares.

5. OCCUPATION

- 5.1 Vacant occupation and possession of the PROPERTY shall be given to the PURCHASER on the EFFECTIVE DATE from which date all risks and benefits in respect thereof shall pass to the PURCHASER.
- 5.2 If occupation of the PROPERTY is given to the PURCHASER prior to the EFFECTIVE DATE the PURCHASER shall not be entitled to make any alterations or additions to the PROPERTY before the EFFECTIVE DATE. The PURCHASER shall be obliged in the event of the cancellation or lapse of the Agreement to forthwith vacate the PROPERTY and restore it to the SELLER in the same condition as when the PURCHASER took occupation, it being acknowledged that no tenancy shall be created by the PURCHASER taking occupation prior to the EFFECTIVE DATE or the SELLER remaining in occupation after the EFFECTIVE DATE and furthermore that the PURCHASER will have no claims whatsoever against the SELLER arising out of any alterations or additions made to the PROPERTY by the PURCHASER.
- 5.3 In the event of the PURCHASER taking vacant occupation of the property prior to the EFFECTIVE DATE or the SELLER remains in occupation after the EFFECTIVE DATE, the party enjoying occupation while the property is registered in the name of the other party shall for the period of such occupation be obliged to pay occupational in the amount of N\$ _____ per month or pro rata share thereof which rental shall be payable on the 1st of each and every month.

6. TRANSFER OF THE SUBJECT MATTER

- 6.1 The PURCHASER shall, as soon as possible after the sale at the auction and immediately on being requested by the Auctioneer, sign these conditions of sale, and if he has purchased in his capacity as a Representative, state the name of his principal.
- 6.2 A PURCHASER who purchases as Nominee on behalf of a Third Party shall within **7 (seven)** days from date of sale hereof furnish the name and particulars of such third Party to the Auctioneer or the SELLER's Legal Practitioners, failing which such Nominee shall be bound by all the conditions herein set out.
- 6.3 The PURCHASER shall be obliged to take transfer of the SUBJECT MATTER forthwith and as soon as possible after being requested thereto by the Legal Practitioners and against payment of the full purchase price and after compliance of all the conditions contained herein in which case any claim for occupational interest shall lapse. Transfer shall otherwise be passed only after the PURCHASER has complied with the provisions of conditions 3.1 and 3.3 hereof.
- 6.4 The SELLER has nominated the legal Practitioners **Dr WEDER, KAUTA & HOVEKA INC, 3rd Floor WKH House, P.O. Box 864 Windhoek, Namibia** to attend to the transfer of shares and cession of loan accounts and all legal matters relating to the registration of the SUBJECT MATTER.
- 6.5 The SELLER will be liable for the costs and fees of the Legal Practitioners of this Conditions of Sale, all Mortgage Bond registration costs and fees (if any) and any other costs necessary to effect transfer of the SUBJECT MATTER, which payment of costs and fees shall be done immediately upon request by the Legal Practitioners to the SELLER. Such fees and costs will be based on the prescribed fees for conveyancing of immovable property as approved by the Law Society of Namibia

7 VOETSTOOTS

The property is sold together with all improvements VOETSTOOTS and as represented in the Title Deed and diagram and the SELLER or the Auctioneer do not hold themselves liable for any deficiency that may be found to exist and renounces all excess. The property is further also sold subject to all servitudes and conditions specified in the Deed of Transfer or which may be imposed upon any subsequent subdivision.

8 BREACH

- 8.1 In the event of the PURCHASER failing to fulfill on due date any of the terms and conditions of this conditions of Sale, the SELLER or the agent shall have the right either,-
- 8.1.1 To cancel the sale by registered letter addressed to the PURCHASER, in which event the PURCHASER shall forfeit all monies paid to the SELLER or his Agent in terms hereof, without prejudice to the SELLER's other legal rights and remedies and the right to claim damages. This amount shall be retained to the SELLER as "Rouwkoop".

OR

- 8.1.2 To claim payment of the full purchase price and the fulfillment of all terms and conditions hereof.

9 NO WARRANTIES

The parties hereby acknowledge that there are no further undertakings or agreements between each other, that no warranties other than those referred to in Annexure "A" hereto have been given by or on behalf of any party and that no representations have been made by or on behalf of any party, either in writing or verbal, except as contained in this conditions of Sale, and that the terms of this Conditions of Sale and annexures hereto constitute the whole agreement between the SELLER and the PURCHASER and that no variation, alteration, modification or suspension of any of the terms of this contract shall be of any force or effect unless reduced to writing and signed by the SELLER and the PURCHASER.

10 RATES AND TAXES

The SELLER shall ensure that the COMPANY pays all rates and taxes until the EFFECTIVE DATE or date of occupation of the PROPERTY whichever occurs first and the PURCHASER undertakes to refund to the SELLER any amount of rates and taxes pro rata, which may be paid in advance on the EFFECTIVE DATE, or such date of occupation.

11. IMPLEMENTATION

11.1. Provided that the PURCHASER has duly delivered the Guarantees or Letters of Undertaking as provided for in Clause 3.1 hereof, the SELLER shall forthwith after the EFFECTIVE DATE, deliver the following documents for the benefit of the PURCHASER, all of which will be kept by the Legal Practitioners, for delivery to the PURCHASER against confirmation of receipt of the Purchase Price by the SELLER in its bank account:

11.1.1 the share certificate(s) relating to the shares and appropriate share transfer forms duly completed and signed to enable transfer of the shares to be registered in the name of the PURCHASER or its nominee(s);

11.1.2 the following appertaining to the COMPANY:

11.1.2.1 the original memorandum and articles of association (or a certified copy);

11.1.2.2 the original certificate of incorporation (or a copy certified as aforesaid);

11.1.2.3 the original certificate to commence business (or a copy certified as aforesaid);

11.1.2.4 the minute book and share register;

- 11.1.2.5 a resolution passed by the directors of the COMPANY approving of the transfer of the shares into the name of the PURCHASER or his nominee(s);
- 11.1.2.6 the written resignation of the directors, the secretary and the public officer;
- 11.1.2.7 a resolution passed by the directors of the COMPANY appointing the nominee(s) of the PURCHASER as director(s), secretary and public officer;
- 11.1.3 the written cession(s) of the Claims and/or the rights title and interest in and to the debentures; and
- 11.1.4 the title deed of the PROPERTY insofar as it is not retained by any bondholder;
- 11.1.5 building compliance certificate;
- 11.1.6 Tax Clearance Certificate issued NAMRA
- 11.1.7 the latest Audited year-end financial statements of the **COMPANY**;
- 11.1.8 Certificate of Good Standing issued by BIPA;
- 11.1.9 Copy of the Beneficial Ownership Declaration duly submitted to BIPA.
- 11.2. Whereupon the Legal Practitioners shall forthwith cause on the EFFECTIVE DATE:
 - 11.2.1. The transfer of shares to be registered and into the name of the Purchase or his nominee;
 - 11.2.2. Payment to be effected of the Guarantees or Letters of undertaking to be delivered in terms of clause 3.1 hereof;
 - 11.2.3. attend to or cause the cancellation of the original Share Certificate(s) of the SELLER in the COMPANY;
 - 11.2.4. attend to or cause the issuing of share certificates to the PURCHASER, reflecting the new shareholding in the COMPANY;
- 11.3 Upon finalisation of the Effective Date Statements, the SELLER shall:
 - 11.3.1 procure the resignation of the Auditors as at the EFFECTIVE DATE (if so required by the PURCHASER); and
 - 11.3.2 deliver to the PURCHASER all remaining books of account, records and documents of the COMPANY, which will include all TAX related records and documents and computations.

- 11.4 The PURCHASER shall be entitled to study all of such documents at the offices of the Legal Practitioners prior to the EFFECTIVE DATE.

12 GENERAL PROVISIONS

- 12.1 This document constitutes the entire agreement between the parties, and no additions to or variation of this Conditions of Sale and Annexures hereto shall be of any force or effect unless recorded in writing and signed by or on behalf of the parties.
- 12.2 The parties acknowledge that they understand and agree to the contents hereof and that the meaning and consequences of the material provisions of this Conditions of Sale and Annexures hereto is clear to them.
- 12.3 Neither the SELLER nor the Agency / Auctioneers on the SELLER's behalf warrants the correctness of any advertisements relating to the PROPERTY, nor the size or extent of the property.

13 BUILDING COMPLIANCE CERTIFICATE

- 13.1 The SELLER shall arrange, at his expense, to have the buildings or structures (if any) erected upon the property and the current use of the PROPERTY, inspected by an authorized inspector as defined in Regulation 1 of the Municipality of Windhoek Building Regulations published under General Notice 57 of 28 April 1969 and to furnish the LEGAL PRACTITIONERS and/or the PURCHASER with a CERTIFICATE OF COMPLIANCE of the buildings as erected and use thereof with approved plans and the establishment, subdivision or consolidation conditions, imposed in terms of the Town Planning Scheme and the aforesaid Building Regulation respectively;
- 13.2 Should any work be required to be done or any other actions to be taken before the CERTIFICATE OF COMPLIANCE can be issued, then such work shall be effected and such actions taken by the SELLER at the expense of the SELLER prior to the EFFECTIVE DATE.
- 13.3 The Parties agree that in case of structural changes having to be made to the said property, an amount equal to a pro-forma invoice by such builder/renovator will be withheld in trust by the Legal Practitioners until such compliance has been obtained.

14. SPECIAL CONDITIONS

The parties herewith specifically record that this sale shall be subject to the following:

- 14.1 The SELLER herewith undertakes to effect the constructions and installation of the necessary services on the property at his cost, which includes electricity, functional water, sewerage, storm water, street lights and adequate roads according to general acceptable engineering standards as certified by an independent engineer appointed by the SELLER, who's decision shall binding and final, provided that all the requirements in paragraphs 21 have been met.

- 14.2 The PURCHASER undertakes to sign and effect the signature of all the necessary documentation within 7 (seven) days prior the EFFECTIVE DATE to transfer the Nampower contracts into his name.
- 14.3 The PURCHASER shall be obliged to be a member of the Brak Property Owners Association, (Non-profit Association Incorporated under Section 21), Company No. 21/2015/0148 registered by all the owners of the Brak Property Development and acknowledges that he/she has read the Memorandum and Articles of Association including the rules therein contained and will be bound by it as if incorporated in this agreement. It is also recorded that the conditions contained in the Memorandum and Articles of Association are registered against the title deed of the hereinmentioned immovable property by way of Notarial Deed.
- 14.4 The PURCHASER acknowledges by signing this Conditions of Sale that he has read and understood the Memorandum and Articles of Association, a copy of which is annexed hereto and signed by all parties hereto and shall automatically and ipso facto on registration of the said shares into his name automatically become a member of the Brak Property Owners Association, (Non-profit Association Incorporated under Section 21), Company No. 21/2015/0148 and be bound by it's Rules.
- 14.5 It is herewith specifically recorded that the following electrical supply conditions will be applicable for each respective property, namely:
- 14.5.1 Portions 1, 2, 3, 33, 34, 35, 36 and 37 will be supplied with a 3 x 90 Ampere (60 KVA) standard circuit breaker situated at the kiosk;
- 14.5.2 Portions – Remainder will be supplied with a 3 x 60 Ampere (40kVA) standard circuit breaker. The supply cable will terminate 1 (one) meter from the property boundary;
- 14.5.3 Metering – The meter is expressly excluded from the services. Upon completion of the building project the Owners Association will process the application. An accessible meter board will be installed with an electronic meter as specified. All electrical works shall be carried out by a qualified registered electrical contractor with the Municipal Council of Windhoek or Nampower;
- 14.5.4 It is further recorded that the following meters shall be installed:
- LPU (3x100A) – Elster A1700 class1 with GPRS modem;
- SPU (3x60A) – Elster class 1 (20/80) DOL (Direct online) with GPRS modem;
- All tariffs shall be approved by the ECB (Electricity Control Board). The PURCHASER shall be obliged to submit his requirements to the BODY CORPORATE for the required supply. If capacity is available it shall be levied at true cost plus 5% (five) per cent administration fees;
- 14.5.5 It is a further recorded that the owners' association will function and start operating as from date of hand over to the City of Windhoek of all infrastructure.

- 14.6 It is recorded that between plots 1 and 2 there shall be a right of way in favour of the Brak Property Owners Association, (Non-profit Association Incorporated under Section 21), Company No. 21/2015/0148 and or the Municipal Council of Windhoek which must be accessible by the said Owners Association or the said Municipal Council for the purposes of sewerage drainage which will be located behind these plots.
- 14.7 It is further recorded that no access to and from the Transnamib service road is foreseen in the development.
- 14.8 The parties herewith record that the water storage for firefighting is designed for moderate-risk fire. The PURCHASER shall all necessary steps to ensure that its activities are restricted to moderate risk and that their operations are classified as such by the fire department of the Municipal Council of Windhoek. The PURCHASER shall be liable for any damage or destruction as a result of any act and omission in the course and scope of its activities outside the definition moderate risk, except in circumstances where negligence are proven.

Signed on behalf of the SELLER AT _____ ON THIS _____ DAY OF
_____ 2024.

(SELLER)

(SELLER)

(AUCTIONEER)

In the presence of the undersigned witnesses:

AS WITNESSES

1. _____

2. _____

I certify hereby that today at _____ ON THIS _____ DAY OF
_____ 2024 in my presence the hereinbefore-
mentioned property was sold for

N\$ _____
(EXCLUSIVE OF ANY VAT AND AUCTIONEERS CHARGES AND COMMISSION)

to _____
(FULL NAME OF PURCHASER)

and a 10% (ten percent) deposit of N\$ _____ was paid

and Auctioneers' commission of N\$ _____ was paid

I, the undersigned _____

Identity Number or Date of Birth _____

Married Yes/No _____

If yes, in community of property or with antenuptial contract _____

(Please note that if married in community of property, both parties must sign)

P.O. Box _____

Telephone _____

residing at _____

in the district of _____

do hereby bind myself as the PURCHASER of the SUBJECT MATTER in accordance with the Bid made by me and to pay the deposit and the balance of the purchase price including any VAT and Auctioneers charges and commission and to comply with all the terms and conditions stated hereinbefore immediately when requested thereto.

AS WITNESSES

1. _____ (PURCHASER)

2. _____

ANNEXURE "A"**1. WARRANTIES BY SELLER**

The SELLER hereby declares and warrants in favour of the PURCHASER that as at the EFFECTIVE DATE:

- 1.1 the COMPANY is incorporated as a private COMPANY with limited liability according to the laws of Namibia with an authorized share capital of N\$4 000.00 (Four Thousand Namibia Dollars) comprising of 4 000 (four thousand) ordinary shares of N\$1.00 (One Namibia Dollar) each;
- 1.2 of the aforesaid shares 100 (one hundred) ordinary shares have been fully issued.
- 1.3 such shares constitute the entire issued share capital of the COMPANY;
- 1.4 the SELLER is the registered and/or beneficial owner of the shares;
- 1.5 no shares in the issued share capital of the COMPANY are bonus or capitalisation shares;
- 1.6 the COMPANY is under no obligation to increase its authorised share capital and/or issue further shares;
- 1.7 the Claims (if any) have no fixed terms for repayment;
- 1.8 the SELLER has the right, power and authority to sell the equity, free from any option, rights of first refusal or charges whatsoever;
- 1.9 no steps will have been taken for the deregistration of the COMPANY;
- 1.10 all statutory requirements in connection with the administration of the affairs of the COMPANY will have been complied with, and in particular the Companies Act, the Income Tax Act and all or any ordinances or regulations or proclamations appertaining to the business of the COMPANY;
- 1.11 no person has any right to obtain an order for the rectification of the register of members of the COMPANY and such register contains a true and accurate record of the members of the COMPANY from time to time;
- 1.12 no person is entitled to participate in or to a commission on the profits or dividends of the COMPANY other than as a shareholder in respect of dividends;
- 1.13 the only asset of the COMPANY will be:

| | |
|------------------|--|
| CERTAIN | ERF NO 3 BRAKWATER INDUSTRIAL ESTATE |
| SITUATE | in the Municipality of Windhoek Registration division "K" Khomas Region |
| MEASURING | 1,1794 (one comma one seven nine four) Hectares |
| HELD | by Deed of Transfer No. T 1222/2015 |

- 1.14 the COMPANY will be the registered owner of the PROPERTY which is free from all charges and other liabilities;
- 1.15 the COMPANY is not bound and will not be bound to any Party under any Agreement of service or any other Agreement of whatsoever nature.
- 1.16 the COMPANY has given no option or right to any person, firm or COMPANY, to purchase or acquire the PROPERTY;
- 1.17 the COMPANY will not have any promissory notes, bills of exchange, bills of sale or other securities issued or negotiated by it outstanding;
- 1.18 the COMPANY's books and records have been fully and properly maintained according to law and are capable of being written up within a reasonable time so as to record all of the transactions of the COMPANY;
- 1.19 the minute books of the COMPANY contain all of the material resolutions passed by its directors and members;
- 1.20 the COMPANY will have no liabilities other than the claims (if any) and will have discharged each and every obligation and/or liability of the COMPANY, actual or contingent, which arose and/or was incurred prior to the EFFECTIVE DAE, including taxes (if any) which may be levied on the COMPANY in respect of any period up to and including the EFFECTIGVE DATE and any other amounts owing by the COMPANY for which the COMPANY may be liable up to and including the EFFECTIVE DATE;
- 1.21 To the extent that any deferred taxation liability has or should have been provided for in the Financial Statements or Effective Date Statements in accordance with the generally accepted accounting practise, such deferred taxation liability, shall, for purposes of this Agreement, not be regarded as a contingent liability and shall have no effect on the purchase consideration of the equity.
- 1.22 the EFFECTIVE STATEMENTS shall:
 - 1.22.1 comply with the requirements of the Companies Act;
 - 1.22.2 be prepared in conformity with generally accepted accounting practice;
 - 1.22.3 fairly present the affairs of the COMPANY as at the relevant date;
 - 1.22.4 indicate the PROPERTY as the only asset with no liabilities
- 1.23 the COMPANY will have no employees or commitments to directors, officers or employees or former officers or employees and there will be no fees or other remuneration, pensions or leave pay outstanding to any director, officer or employee;
- 1.24 the COMPANY will not have granted and/or entered into any guarantee, suretyship and/or indemnities;
- 1.25 the COMPANY will not be engaged in litigation nor will any law suits or arbitration proceedings or criminal proceedings be pending or threatened against the COMPANY;
- 1.26 the SELLER is not aware of any facts, matters or circumstances which may give rise to:

- 1.26.1 the cancellation of the insurance policy by which the building(s) on the PROPERTY is insured or the repudiation of any Claims thereunder or to such policy not being renewed in the future or only being renewed subject to the imposition of onerous conditions not presently applicable;
- 1.26.2 any of the COMPANY's licences and other authorities being cancelled or not being renewed in the future or only being renewed subject to the imposition of onerous conditions not presently applicable thereto;
- 1.27 neither the SELLER nor the COMPANY is aware of any encroachments, servitudes nor of any pending expropriation of the PROPERTY or of any portion thereof;
- 1.28 to the best of the SELLER'S and the COMPANY's knowledge and belief no person and no representative of any community has lodged a claim for the restitution or expropriation of the PROPERTY or any right to the PROPERTY. The SELLER and the COMPANY are not aware of any pending claim for restitution.
- 1.29 from the Signature Date the COMPANY will not have made any material alterations to any of the buildings on the PROPERTY, nor will it have effected any material improvements to the PROPERTY without the prior written consent of the PURCHASER. The SELLER will maintain the PROPERTY in a good and tenable condition and in the same condition as that in which the PROPERTY was in at the Signature Date;
- 1.30 the improvements on the PROPERTY are structurally sound and entirely free from defects, including without restricting the generality thereof, the roof, the plumbing, the air conditioning equipment and electrical system
- 1.31 building plans have been submitted to and approved by the relevant Local Authority in respect of all buildings and other improvements on the PROPERTY;
- 1.32 the SELLER has, to the best of his knowledge and belief made a full and complete disclosure to the PURCHASER of all information relating to the COMPANY and the PROPERTY which would be material in relation to a decision to acquire the equity (or the PROPERTY) and in relation to the price to be paid for the equity.

2. **INDEMNITY**

- 2.1 Without prejudice to any rights or remedies available to the PURCHASER, the SELLER hereby indemnify the PURCHASER against all liabilities, actual or contingent, and in particular, against any Claims or actions pursuant to any taxation liabilities, damages, criminal fines and legal costs of the COMPANY, accrued or the cause of action of which arose on or before the EFFECTIVE DATE and for which no provision is made in this Conditions of Sale
- 2.2 Without in any way limiting the generality of clause 2.1, the SELLER hereby indemnify the PURCHASER against:
 - 2.2.1 all taxation of every kind, not paid, and for which no provision is made in the Effective Date Statements for all periods up to and including the EFFECTIVE DATE;
 - 2.2.2 all taxation of every kind which may be levied upon the COMPANY as a result of:

- 2.2.2.1 the re-opening by the tax authorities of any taxation assessment of any nature whatsoever in respect of any period up to the EFFECTIVE DATE;
 - 2.2.2.2 any new or additional assessment of any nature whatsoever by the tax authorities in respect of any period up to the EFFECTIVE DATE;
- 2.2.3 all interest and penalties of any nature whatsoever payable by the COMPANY under the Income Tax Act and/or the V.A.T. Act (and under any circumstances whatsoever), for all periods up to and including the EFFECTIVE DATE.
- 2.3 The SELLER may, in the name of the COMPANY, defend any claim or assessment made against the COMPANY by the income tax authorities or any person in respect of any period for which the SELLER has indemnified the PURCHASER should the SELLER contend that the COMPANY is not liable for same.
- 2.4 The parties shall co-operate with each other fully in order to implement the provisions of clause 2.3 and, without limiting the generality of the foregoing, the PURCHASER shall cause the COMPANY to furnish the SELLER or their nominee(s) with the necessary powers of attorney and resolutions in order to give effect to the foregoing.
- 2.5 The SELLER shall furthermore be afforded full access to all relevant records and documents of the COMPANY.
- 2.6 The SELLER hereby indemnifies the COMPANY against any liability for costs which may be incurred in pursuance of the provisions of clause 2.3.
- 2.7 Notwithstanding anything to the contrary herein contained or implied, should the COMPANY by operation of the law be obliged to pay any claim or assessment pending the dispute thereof and/or opposition thereto then the SELLER shall be obliged to fund such payment pending the full determination thereof.