

PLEASE NOTE: This is a sample document only, there are a number of Schedules which are delivered with this document which are not shown in this sample



SALE OF BUSINESS AGREEMENT

Company Pty Ltd ACN 111 222 333
the Seller

ABC import Pty Ltd ACN 222 555 666
the Buyer

AGREEMENT FOR SALE OF BUSINESS

THIS AGREEMENT MADE THE _____ DAY OF _____ 20_____.

BETWEEN: **Company Pty Ltd ACN 111 222 333** a company duly incorporated and registered in New South Wales and having its registered office in that State at 1 Perth Street Perth 5000 as Trustee of the Johns Family Trust (the “**Seller**”);

AND: **ABC import Pty Ltd ACN 222 555 666** a company duly incorporated and registered in New South Wales and having its registered office in that State at 1 Sydney Street Sydney 2000 as Trustee of the Roberts Family Trust (the “**Buyer**”).

WHEREAS:

- A** The Seller is the owner of and carries on the business (the “**Business**”) as described in Part A of Schedule One.
- B** The Seller wishes to sell and the Buyer wishes to buy the Business subject to and on these terms and conditions.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1. In this Agreement and in the Schedules unless the context otherwise requires, these words and phrases have the following meanings:

“**Advanced Payments**” means all deposits, prepayments or advance payments made or paid by Customers to the Seller for or on account of Unfulfilled Orders as at Completion and not invoiced prior to Completion.

“**Agreement**” means this agreement.

“**Annual Leave**” means annual leave within the meaning of Part 7, Division 4, Subdivision C of the *Fair Work Act 2009* (Cth).

“**Assets of the Business**” means all of the following:

- (i) The Goodwill;
- (ii) The Plant and Equipment;
- (iii) Unfulfilled Orders;
- (iv) All the services which the Business provides to Customers as its Products;
- (v) The Business Names;

- (vi) The Business Documents, books, records, drawings, papers, computer print outs, details in relation to Advanced Payments, sale records, information and other memoranda relating to or held in connection with the Business;
 - (vii) The List of Customers;
 - (viii) The list of all Transferring Employees;
 - (ix) All information and data relating to the Products, their distribution, marketing, promotion and Sale in the Business;
 - (x) The Key Agreements and all agreements and arrangements relating to the conduct of the Business including but not limited to agreements and/or arrangements with Customers or Suppliers;
 - (xi) All Intellectual Property used by the Seller in the conduct of the Business and owned by the Seller including all Trade Marks and Designs;
 - (xii) All software owned by the Seller and used in the conduct of the Business;
 - (xiii) All current Mobile Phone Contracts;
 - (xiv) All Information Technology owned by the Seller and used in the Business;
 - (xv) All the Products; and
 - (xvi) All Communications,
- but does not include the Excluded Assets.

“**ATO**” means the Australian Taxation Office.

“**Book Debts**” means all amounts owing on whatsoever account to the Seller as at Completion in respect of the Business being the amounts set out in the Book Debts List provided to the Buyer on Completion.

“**Business**” means the business conducted by the Seller as a going concern described in Part A of Schedule One including the Assets of the Business described in Part A of Schedule Two as at Completion.

“**Business Documents**” means all documents of whatsoever kind or nature whether in hard form or in electronic form that in any way relate to the past, present or future conduct of the Business and include but are not limited to:

- (i) all registers of the Business;
- (ii) the Key Agreements;
- (iii) all non-current and current contracts with Customers, Suppliers and/or Contractors to which the Seller is a party;
- (iv) all title documents, files, correspondence, ledgers, O H & S records, charts, reports,

- sales data, business plans, strategies market analysis forecasts, Customer records, price lists, checklists, manuals, maintenance records, lease registers, advices given, Customer Warranty records, Advanced Payments records, sales and all other documents and memoranda of whatsoever kind or nature relating to the Business; and
- (v) all documents in any way relating to the ownership or use in the Business of Intellectual Property and/or Information Technology.

“Business Names” means the registered business names under which the business is conducted by the Seller being the business names set out in Part B of Schedule One.

“Claim” includes any cause of action, action, suit, proceeding, claim, demand, cost, charge, expense or threat or notice of a claim or demand or assertion of liability of whatsoever kind or nature and howsoever, wheresoever and whensoever arising.

“Complete” means the carrying out of all steps required by this Agreement to occur on Completion;

“Completion” means the time when each of the parties has done all things which are required to be done in order to effect completion of the Sale by the Seller and purchase by the Buyer of the Business.

“Completion Date” means the 30 June 2010 or such other date as the parties may agree as being the date upon which Completion is to take place.

“Completion Notice” means a written notice which either party is entitled to serve on the other in the event of Completion not occurring on the Completion Date through any failure, delay or inability on the part of that other party. Such Completion Notice will require Completion to take place on a date and at a time not less than 21 days after the date of service of the Completion Notice at the offices of the party giving the Notice or at the office of the solicitor or agent of that Party. Such date and time for Completion will be of the essence.

“Confidential Information” means all information in whatsoever form that is:

- (i) marked or identified as “Confidential”, “Secret”, “Not to be Disclosed” or “Private”;
- (ii) designated, described or referred to by the discloser in any document or correspondence as confidential, secret or private or not to be disclosed;
- (iii) confidential by its nature or relevance to, or about or concerning any aspect of the Business or the Assets of the Business;
- (iv) confidential by its nature as concerning the affairs, management, Employees, Customers, Suppliers, strategies, procedures, policies or objectives of the discloser or the Business;

but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the discloser has published, circulated or announced publicly.

“**Consent**” means any consent, permission or authority required for the purposes of this Agreement including any consent permission or authority required in order to transfer the Seller’s interest in the Assets of the Business.

“**Contractor**” means any Person that provides contract or consulting services to the Seller that in any way relate to the Business.

“**Creditors**” means trade creditors of the Business as at Completion.

“**Customers**” means all of the customers of the Business as at the Completion Date and includes all Persons that have at any time in the preceding twelve (12) months prior to Completion been customers of the Seller.

“**Customer Contracts**” means all current contracts with Customers and all Unfulfilled Orders between the Seller and Customers including those set out in Schedule Eleven.

“**Customer Warranties**” means all Product warranties given by the Seller to Customers in respect of any Sale or supply of Products which are still enforceable by the Customers.

“**Completion Date**” means the date upon which Completion occurs.

“**Communications**” means all telephone numbers, facsimile numbers and email addresses used in respect of the Business.

“**Deposit**” means the sum of \$200 which sum forms part of the Purchase Price and must be paid by the Buyer on exchange of signed counterparts of this Agreement by bank cheque into the trust account of the Seller’s solicitor or business agent and be immediately accountable to the Seller on Completion.

“**Designs**” means all designs registered under the *Designs Act 2003* (Cth) or unregistered.

“**Disclosed Information**” means all information disclosed by the Seller in writing to the Buyer in the Disclosure Letter relating in any way to the Business.

“**Disclosures**” mean all disclosures which the Seller has made to the Buyer prior to the Buyer entering into this Agreement about the Business.

“**Disclosure Letter**” means the letter or letters handed over to the Buyer at least three (3) days prior to exchange of signed counterparts of this Agreement setting out any Disclosures, information, circumstances, events, risks, potential Claims or possibilities in any way relating to the Business or the Assets of the Business or any of the Warranties or any of them.

“**Dollars**” means Australian Dollars.

“**Due Diligence**” means all:

- (i) investigations, enquiries, searches and advices of whatsoever kind or nature which the Buyer has actually carried out, made or obtained prior to entering into this Agreement about the Seller and the Business; and
- (ii) investigations, enquiries, searches and advices of whatsoever kind or nature which a reasonable Buyer, having regard to the nature of the Business and the Disclosures made would have carried out, made or obtained prior to entering into this Agreement about the Seller and/or the Business.

“Employees” means the individuals named and described in Schedule Three as the employees employed by the Seller in the Business immediately before the date of this Agreement and where applicable includes Past Employees.

“Employee Entitlements” means all entitlements of Transferring Employees to Personal Leave, Long Service Leave, Annual Leave and Statutory Superannuation as at the Completion Date.

“Encumbrance” means where applicable any mortgage, charge (whether fixed or floating), pledge, lien, adverse Claim to ownership, option to purchase, restrictive covenant as to transfer, bill of sale or any other security but does *not* include the leases or hiring agreements relating to the Leased Assets. Encumbrance also does *not* include the lease of the Leased Premises or any licence to use any Information Technology or Intellectual Property not owned by the Seller but used in the Business.

“Environmental Laws” means all environmental laws, State or Federal, including all regulations, by-laws and codes of practice made pursuant to those environmental laws that in any way regulate, permit, restrict, prohibit, license, accredit or authorise any conduct that in any way relates to the Business as conducted by the Seller.

“Excluded Assets” means all assets owned by the Seller and not used in the Business and also means all assets used in the Business that are not included in the Sale of Business descriptions which are listed in Part B of Schedule Two.

“Goodwill” means the goodwill of the Business as at Completion.

“GST” means the goods and services tax imposed on a supply of goods or services within Australia pursuant to the GST Act.

“GST Act” means *A New Tax System (Goods & Services Tax) Act 1999 (Cth)*.

“Guarantees” means all guarantees and/or indemnities given by the Guarantors in respect of the obligations and liabilities of the Seller that relate in any way to the Business including but not limited to the Guarantees listed in Schedule Six.

“Guarantors” means each of the Persons that have given a guarantee including but not

limited to the persons named in Schedule Six as Guarantors.

“Information Technology” means all of the software and software systems used by the Seller to carry on the Business together with all passwords and user codes and including software used by the Seller under non-assignable licence agreements with third parties.

“Instalment” means, where applicable, any instalment of the Purchase Price where the Purchase Price is to be paid by instalments.

“Insurance” means all policies of insurance taken out in relation to the Business, the Business Assets and/or any activities of the Business.

“Intellectual Property” means all forms of intellectual property recognised by Law including but not limited to copyright recognised under the *Copyright Act 1968 (Cth)* or any other Legislation in all works, pictures, plans, layouts, designs, drawings, Websites and artwork of whatsoever kind of nature and howsoever stored and in any way used in the Business and owned by the Seller, all Designs used in the Business and owned by the Seller, all intellectual property used in the Business owned by the Seller and recognised under the *Circuit Layouts Act 1989 (Cth)* and all Trade Marks that are owned by the Seller and are used in the Business.

“Key Agreements” means all agreements listed Part C of Schedule One.

“Laws” means any laws applicable to the Business and/or to the Business Assets or any of them including but not limited to Legislation.

“Leased Assets” means the assets described in Schedule Seven all of which are used in the Business and leased or hired under a financial arrangement by the Seller.

“Legislation” means any Act, statute, law, rule, regulation or by-law of Australia, any State of Australia or government or local government authority that may in any way be applicable.

“Liabilities” means at any relevant time debts and/or liabilities of whatsoever kind or any nature, accrued, contingent, liquidated or unliquidated and howsoever arising relating to the Business whether matured or unmatured and whether due and payable at any time and including where applicable all and any liabilities for assessed taxes.

“Licences” means all licences, permits, accreditations, certificates, authorities and consents which are held by the Seller or by any Employee and are necessary or desirable in order to conduct any activity forming any part of the Business.

“List of Customers” means the Customers of the Seller immediately prior to the date of this Agreement, as listed in Schedule Eight.

“Litigation” means any civil or criminal proceedings in any court of Australia and, if applicable, in any court of competent jurisdiction anywhere in the world in which the Seller is a party.

“Long Service Leave” means Long Service Leave accrued to Transferring Employees as at Completion.

“Mobile Phone Contracts” means the mobile phone contracts in the name of the Seller which phones are currently used by employees in the ordinary course of the Business.

“Motor Vehicles” means the motor vehicles described in Schedule Five, all of which are owned or leased by the Seller and used in the Business.

“Notice” means a notice given by one party to the other pursuant to this Agreement.

“Notice to Complete” means a notice given by one party to the other requiring that party to Complete.

“Notice of Termination” means a notice by one party to the other giving notice of termination of this Agreement.

“Obsolete or Damaged Stock” means Raw Materials, Work in Progress and Finished Goods that are not fit for use or are otherwise unmerchantable. Any Raw Materials that are over twelve (12) months old as at Completion will be deemed to be unmerchantable.

“O H & S” means all applicable Occupational Health and Safety practices and procedures.

“O H & S Legislation” means all Occupational Health and Safety Legislation which in any way apply to the activities of the Seller in conducting the Business.

“Ordered Products” means all Products that have been ordered by a Customer prior to Completion but not invoiced to a Customer as at Completion.

“Past Employees” means individuals who are not employed by the Seller immediately prior to Completion but were employed by the Seller in the period twelve (12) months prior to the date of this Agreement.

“Period of Restraint” means the period commencing on Completion and continuing for 2 years years or such lesser period as any court may decide as a reasonable period of restraint in order to protect the Goodwill as transferred to the Buyer as part of this Sale.

“Person” includes any company, entity or individual.

“Personal Leave” means personal leave under the *Fair Work Act 2009* (Cth).

“Plant and Equipment” means all plant machinery and equipment and all spare parts and components relating thereto, motor vehicles, computer equipment, office equipment and furniture used by the Seller in the Business and includes all the components, apparatus, plant

and equipment, furniture and fittings and spare parts including those items set out in Schedule Nine.

“Premises” means the premises at which the Seller carries on the Business being the premises described in Part D of Schedule One.

“Premises Lease” means the lease described in Part E of Schedule One being the current lease of the Premises.

“Products” means (where applicable) tangible goods, products and items or (where applicable) means the agreed services or (if applicable) a combination of both as described in Schedule Four.

“Purchase Price” means the sum of Ten Thousand Dollars (\$10000) including the Deposit and the Inventory Price subject to any adjustments.

“Purchase Orders” means, where the Products are supplied by a third party Supplier, all orders for Products placed by the Seller in the ordinary course of business with Suppliers but not delivered and not invoiced to the Seller at Completion.

“Regulatory Authority” includes the Australian Competition and Consumer Commission, the Department of Fair Trading, IP Australia, and any other local or state authority or department that in any way regulates any activity of the Seller conducted in the Business.

“Restricted Activities” means after Completion:

- (i) the carrying on or being financially or otherwise interested in or becoming engaged in or concerned with in any capacity whatsoever in any business in the Territory which is or is likely to be within the Period of Restraint in competition with the Business as conducted by the Buyer;
- (ii) the inducing or soliciting or endeavouring to induce or solicit any Employee to leave the employment of the Buyer or employing any Transferring Employee during the Period of Restraint;
- (iii) approaching any Customer with the view to inducing that Customer to cease to be a Customer. In this respect Customer means any Person or entity that is a Customer of the Buyer during the Period of Restraint;
- (iv) carrying on during the Period of Restraint in the Territory either alone or together with any other Person or being concerned with or interested in any company or other entity that carries on business in the Territory in competition with the Business as conducted by the Buyer.

“Sale” means sell, transfer, assign, dispose of, convey or any other words to that effect.

“Schedules” mean the schedules to this Agreement.

“**Seller Guarantees**” means guarantees given by the Seller that in any way relate to the Business or the assets of the Business which guarantees are describe and listed in Schedule Twelve.

“**Suppliers**” means all persons (if any) that supply Products for on-sale to Customers of the Business.

“**Supplier Contracts**” means the supply contracts set out in Schedule Ten.

“**Surviving Clause**” means a clause containing rights and/or obligations on the parties which are in the Agreement expressly stated to be Surviving Clauses and they survive where applicable the termination of this Agreement or, if applicable, if this Agreement is not terminated will survive Completion and will not merge in Completion with the intent that the parties will continue to have both rights and obligations enforceable against each other.

“**Tax Invoice**” means an invoice issued for a supply under the GST Act.

“**Territory**” means the area described in Part G of Schedule One.

“**Trade Marks**” means all trade marks and trade names registered by the Seller under the *Trade Marks Act* 1995 (Cth) or unregistered and which are used by the Seller in the Business and are listed in Part F of Schedule One.

“**Transferring Employees**” means only those Employees of the Seller as set out in Schedule Three who agree to take up employment with the Buyer from Completion.

“**Unfulfilled Orders**” means all orders from Customers for Products which have not been invoiced or fulfilled at Completion.

“**Warranties**” means the representations, undertakings and warranties given on the part of the Seller to the Buyer as set out in Schedule Twelve.

“**Website**” means the website or websites that the Seller owns and which is/are used to promote the Business and/or the Products or any of them.

“**Wholesale Price**” means the published prices of Suppliers.

1.2. Any reference to a party that is an individual in this Agreement includes his or her heirs, legal personal representatives, assigns and successors in title. Any reference in this Agreement to a party that is a corporation includes a reference to its lawful assigns and successors in title. Any reference to any gender includes all genders including the neuter gender. Any reference to the singular includes the plural and vice versa. All headings and clause numbers throughout this Agreement have been inserted for ease of reference only and do not define, limit or affect the meaning or interpretation of this Agreement. Any reference to any Law includes any variation, amendment, re-enactment or replacement thereof. All recitals, appendices and

Schedules form part of this Agreement. Any expression used in this Agreement which is defined by the *Corporations Act 2001 (Cth)*, unless otherwise defined, has the same meaning in this Agreement as it has in the *Corporations Act 2001 (Cth)*.

2. SALE AND PURCHASE OF THE BUSINESS

- 2.1. The Seller sells to the Buyer and the Buyer purchases from the Seller free of all Encumbrances and any adverse interest whatsoever the Business including all the Assets of the Business on Completion for the Purchase Price which will be paid to the Buyer as set out in Clause Three.
- 2.2. From time to time and at all times after Completion the Seller will, at the request of the Buyer or any Person deriving title from the Buyer, execute for no fee and do all such lawful transfers, assurances, assignments and things for further and more perfectly assigning, transferring and assuring the Business and the Assets of the Business and every part thereof to the Buyer. This is a Surviving Clause.
- 2.3. Until such transfers, assurances and assignments have been completed, the Seller will hold the Business and the Assets of the Business and every part thereof so remaining untransferred, unassured or unassigned upon trust for the sole and absolute benefit of the Buyer. This is a Surviving Clause.
- 2.4. Any cost or expense incurred by the Seller in meeting any request of the Buyer under this clause must be promptly reimbursed by the Buyer to the Seller. This is a Surviving Clause.
- 2.5. Where either or both the Seller and the Buyer are entering into this Agreement as trustee for a trust, then such party represents to the other that under the terms of the trust it has full power and authority to enter into this Agreement, to meet all its obligations under this Agreement and nothing in this Agreement or contemplated by it will, if such event occurs, constitute a breach of trust by that party or be beyond its powers as trustee of the trust.

3. PURCHASE PRICE, DEPOSIT AND OTHER PAYMENTS

- 3.1. The Purchase Price for the Sale of the Business including all the Assets of the Business will be paid by the Buyer to the Seller or as the Seller may in writing direct as follows:
 - 3.1.1. on exchange of signed counterparts of this Agreement, the Buyer will pay the Deposit by bank cheque which must subject to Completion be deposited into the trust account of the Seller's solicitor or agent and accounted to the Seller

on Completion or otherwise accounted for and paid as provided in this Agreement;

3.1.2. on Completion the Buyer will pay to the Seller or as the Seller may in writing direct by bank cheque the balance of the Purchase Price being the amount of \$10 000.

4. AFTER EXCHANGE AND BEFORE COMPLETION

4.1. The parties must use their best endeavours to obtain all necessary written Consents from all third parties that might be required in order to effectively transfer the Assets of the Business to the Buyer on Completion. Without limiting the generality of this clause:

4.1.1. the Seller will endeavour to obtain written Consents from the lessors to the transfer of all of the leases of the Leased Assets to the Buyer. The Buyer will on its part execute all such transfers as transferee and undertake to accept full and exclusive responsibility for all obligations under the leases for the balance of the terms thereof;

4.1.2. the Buyer must arrange and provide all replacement guarantees to the lessors as may be required by them as a condition of their Consent;

4.1.3. if for whatever reason the Seller is unable to obtain such Consent or the lessors or any of them do not agree to discharge any Guarantees and accept replacement guarantees then the Buyer must if required by the Seller or any Guarantor on Completion provide all funds necessary to pay out those leases (where a lessor will not so Consent to transfer or discharge the Guarantee) and the Seller must then transfer that Leased Asset to the Buyer as part of the Assets of the Business. This is a Surviving Clause.

4.1.4. The Seller will use its best endeavours to obtain all necessary written Consents to the assignment of the Key Agreements to the Buyer effective on Completion.

4.2. The Buyer must at least seven (7) days before the Completion Date deliver to the Seller all transfers and assignments of the Assets of the Business that it requires the Seller to execute as transferor or assignor. The Seller must execute these as transferor and deliver these to the Buyer on Completion.

4.3. Promptly after exchange of signed counterparts the Seller will identify all Intellectual Property, software and Information Technology used by it under licence in the Business and the Seller will use all reasonable endeavours to obtain all necessary

Consents required to transfer or assign all such licences to the Buyer. Where however such licences cannot be readily transferred or assigned it will be the Buyer's exclusive responsibility to acquire such software licences or make its own arrangements in respect of software and Information Technology. The Buyer will not be entitled to terminate this Agreement or Claim compensation from the Seller or raise any requisition if for whatever reason the Seller after using all reasonable endeavours is unable to procure such Consents.

- 4.4. Before the Completion Date the Buyer will provide all information as may required by third parties that have the benefit of any Guarantee in respect of any obligation of the Seller to enable that third party to consider any accepting replacement guarantees in the same or similar terms to the Guarantees so as to thereby enable the Seller on Completion to obtain any Consent and any Guarantor to obtain a full and complete discharge from those third parties of all such Guarantees.
- 4.5. The Seller will after the exchange of counterparts of this Agreement provide the List of Customers to the Buyer as per Schedule Eight.
- 4.6. After exchange of counterparts of this Agreement, the Seller will continue to conduct the Business in the usual and ordinary course but will not:
- 4.6.1. enter into any new Customer Contract without first notifying the Buyer;
 - 4.6.2. place any Purchase Orders for delivery after Completion except with the prior approval of the Buyer;
 - 4.6.3. acquire any new Leased Assets except with the Buyer's prior approval;
 - 4.6.4. enter into any new Supplier Contracts without first notifying the Buyer;
 - 4.6.5. breach any of the Key Agreements.
- 4.7. After exchange of counterparts of this Agreement, should any event occur that substantially and adversely affects the Business or the value of any of the Assets of the Business and the Seller becomes aware thereof, the Seller must promptly give Notice to the Buyer thereof.

5. ON COMPLETION

- 5.1. On Completion the Seller will deliver possession and pass full title to the Buyer in and to the Business and all of the Assets of the Business free from all Encumbrances and will hand over the control, title and management of the Business to the Buyer absolutely.
- 5.2. On Completion the Seller will provide to the Buyer duly executed transfers, assignments and conveyances of all the Assets of the Business including without

limitation the transfer of all Key Agreements, Customer Contracts and Supplier Contracts, the Premises Lease, Leased Assets and all rights to use the Intellectual Property and the Information Technology in so far as those transfers can be reasonably obtained by the Seller. In respect of Information Technology, the Seller must transfer all passwords and user codes that relate thereto.

- 5.3. On and if reasonably required after Completion the Seller and the Buyer must each do all other things and execute all other documents or instruments as may be reasonably necessary to confer on the Buyer the absolute and exclusive title to all the Assets of the Business including without limitation the transfer of all Motor Vehicle registrations to the Buyer and including the Seller's interest as lessee in the Leased Assets. This is a Surviving Clause.
- 5.4. On Completion the Seller will deliver to the Buyer such documents as the Buyer might require for lodgement with any Regulatory Authority to effect the registration of any transfer of any Assets of the Business to the Buyer or the accreditation of the Buyer as the new owner of the Business including without limitation all transfers of copyright, Designs, Trade Marks and Business Names.
- 5.5. On Completion the Seller will provide to the Buyer evidence of either:
- 5.5.1. the release of the Business and the Assets of the Business from any Charge or other Encumbrance; or
 - 5.5.2. evidence that the Charge or Encumbrance has been fully discharged.
- 5.6. The Seller will on Completion change its name to a name not including the word/s Craig Smtih and the Seller will on or after Completion on request from the Buyer promptly provide to the Buyer on Completion any Consents which the Buyer may require in order to enable the Buyer to register or use any company or business or trade name that includes the word/s Craig Smtih. The Seller must execute all required transfers or other documents so as to enable the Buyer to have all domain names, Websites and Trade Marks transferred to it. This is a Surviving Clause.
- 5.7. On Completion the Seller will deliver to the Buyer a Book Debts List setting out all amounts owed to the Seller by Customers as at Completion. The Book Debts are part of the Excluded Assets and are not included in this sale.
- 5.8. On Completion the Seller will deliver to the Buyer the Mobile Phone Contracts. These together with all Communications will be transferred by the Seller to the Buyer on Completion and each party will do all things and execute all documents in order to

facilitate the transfer of the Mobile Phone Contracts and the Communications to the Buyer.

- 5.9. On Completion, the Seller must deliver all Business Documents to the Buyer.
- 5.10. On Completion, all Guarantors are entitled to full and complete discharges from all Guarantees and the Buyer must have done all things to enable those discharges to be provided by third parties to the Seller including without limitation the granting of replacement guarantees. Notwithstanding anything elsewhere contained, the Seller will not be obliged to Complete if all Guarantees are not fully discharged.
- 5.11. Notwithstanding anything else where contained the Seller will not be obliged to Complete unless the whole of the Purchase Price is paid on Completion.
- 5.12. All the Seller's Guarantees must be discharged on Completion and replaced with Guarantees given by the Buyer. The Seller is not obliged to Complete unless all Seller Guarantees are fully discharged on Completion.
- 5.13. Where any Guarantees or any of the Seller's Guarantees cannot be fully and completely discharged on Completion and the Seller elects to Complete, the Buyer must execute deeds of indemnity with the Seller and the relevant Guarantors indemnifying the Seller and each Guarantor against any Liability after Completion under the Guarantee or Seller's Guarantee where such Liability arises as a direct or indirect consequence of any act or omission by the Buyer after Completion. This is a Surviving Clause.
- 5.14. Notwithstanding anything elsewhere contained, the Seller will not be obliged to Complete unless the whole of the Purchase Price is paid on Completion.
- 5.15. The Seller covenants to the Buyer that on and from Completion it will stand possessed as a bare trustee of all Assets of the Business that are for whatever reason not transferred to the Buyer on Completion and will hold the same for the absolute and exclusive benefit of the Buyer until such Assets of the Business are fully and completely assigned, transferred and conveyed to the Buyer or as it may in writing direct. This is a Surviving Clause.

6. EXCLUDED ASSETS

- 6.1. It is expressly agreed that the Seller will retain full and absolute title in respect of the Excluded Assets and each and every part thereof with the intent that those Excluded Assets do not form any part of the Assets of the Business included in this Sale. This is a Surviving Clause.

- 6.2. In respect of Book Debts, the Seller will be responsible for collecting these provided however that the Seller will not commence Litigation or make any threat thereof against any Customer in respect of a Book Debt unless 30 days has expired since Completion and the Seller has first Notified the Buyer of its intention to commence Litigation to recover the Book Debt. This is a Surviving Clause.
- 6.3. Where any payment is made to the Buyer after Completion which includes in whole or in part any Book Debt, then the Buyer must promptly account to the Seller for the Book Debt or any part thereof paid to it and provide full details of the Customer. This is a Surviving Clause.
- 6.4. Where the Buyer is to carry on the Business at the Premises from Completion, all Excluded Assets must be removed by the Seller on Completion or within such other time as the Seller and the Buyer may in writing agree and if not removed on Completion or at such other time as may be agreed then the Seller will be deemed to have abandoned those Excluded Assets and the Buyer may use or dispose of them as it thinks fit without any liability to the Seller. This is a Surviving Clause.

7. PURCHASE ORDERS

- 7.1. In respect of any Purchase Orders, the Buyer will be responsible to pay for these and undertakes to the Seller to promptly pay for these Purchase Orders as they become due. This is a Surviving Clause.
- 7.2. The Buyer indemnifies the Seller and covenants to keep the Seller fully indemnified in respect of any Liability to pay any Supplier for any Purchase Order. This is a Surviving Clause.
- 7.3. The Seller will on and after Completion, if required by the Buyer, execute all documents, directions, authorities and instructions to the Supplier directing the Supplier to deliver all Purchase Orders to the Buyer. This is a Surviving Clause.

8. WARRANTIES AND INDEMNITIES

- 8.1. The Seller provides to the Buyer the Warranties as set out in Schedule Twelve. These Warranties are made by the Seller to the Buyer as at Completion and are all true and not misleading in any way. This is a Surviving Clause.
- 8.2. Each of the Warranties will be treated as a separate Warranty in respect of each statement made and the interpretation of any statement made will not be restricted by reference to or inference from any other statement. This is a Surviving Clause.
- 8.3. Except where the context clearly states otherwise, each Warranty is given by the Seller as at Completion and is, as far as the Seller is aware, a comprehensive

- statement of all material facts on the subject matter of the Warranty. This is a Surviving Clause.
- 8.4. The Seller hereby agrees to indemnify the Buyer and keep the Buyer indemnified from and against any Liability in respect of any Claim made against the Buyer to the extent that such Claim arises directly from any breach of any Warranty. This is a Surviving Clause.
- 8.5. To the extent any Disclosed Information made to the Buyer in the Disclosure Letter puts the Buyer on notice of any fact, circumstance, situation, risk or event or should put the Buyer on notice thereof then to that extent and notwithstanding anything elsewhere in this clause no Warranty or representation is given or made by the Seller to the Buyer in respect thereto and the Buyer is not entitled to rely upon such facts, circumstances, risks or events in any Claim for breach of Warranty. This is a Surviving Clause.
- 8.6. The Buyer has carried out its own Due Diligence and is on Notice to the extent that Due Diligence has or should have put the Buyer on notice of any fact, circumstance, risk or event. Notwithstanding anything elsewhere in this clause, the Seller gives no Warranty or representation to the Buyer in respect of those facts, circumstances, risks or events of which the Buyer is or should have been on notice of and the Buyer is not entitled to rely upon such facts, circumstances, risks or events in any Claim for breach of Warranty. This is a Surviving Clause.
- 8.7. The Buyer acknowledges that in the course of its Due Diligence it has been given access to all of the Business Documents, the Key Agreements, all files and correspondence referred to in the Disclosure Letter, all Customer Contracts, all Supplier Contracts, all contracts, licences and leases in any way relating to the Leased Assets, the Intellectual Property, the Information Technology and the Premises Lease. The Buyer has satisfied itself as to the terms of those documents and will not make any Claim for breach of Warranty, will not raise any requisition or Claim any compensation in respect to anything therein or seek to terminate this Agreement in reliance upon anything therein. This is a Surviving Clause.
- 8.8. The Buyer will only be entitled to make a Claim for any breach of Warranty or to Claim indemnity within one (1) year of Completion and must give Notice of that Claim to the Seller at least one (1) month prior to such Claim being made. If no Notice of Claim or if Notice is given and no Claim is made within that time, the Buyer will not thereafter be entitled to make any such Claim on the Seller and any rights and

entitlements that might otherwise exist in the Buyer to bring such actions and make such Claims will be deemed for all purposes as fully waived and fully released by the Buyer and forever foregone and abandoned by the Buyer with the intent that, if not made within that one (1) year period, the Seller will have no liability to the Buyer whatsoever under this Agreement for such Claim. This is a Surviving Clause.

8.9. A Notice of Claim must be in writing and must set out in detail the facts and circumstances that the Buyer alleges gives rise to the Claim, the amount Claimed and how it is calculated, and the Notice must be signed by the Buyer. A Notice of Claim that does not comply with these requirements will be invalid and deemed not to have been given. This is a Surviving Clause.

8.10. The Seller's total Liability to the Buyer for any breaches of Warranty, Claim for indemnity and for any other breach of this Agreement will be limited in total to an amount of \$500 taking into account all Claims of whatsoever kind or nature previously made and paid or for which the Seller is liable to pay. Once such total amount is reached and paid, the Buyer will have no entitlement to make any further Claim for breach of Warranty or to be paid by the Seller any other sum or amount on any account whatsoever. This is a Surviving Clause.

9. AFTER COMPLETION

9.1. The Buyer must at its own expense take over and conduct the Business and to the extent that involves ongoing obligations to Customers, Suppliers, Contractors and Transferring Employees, then the Buyer must meet all those obligations. The Buyer indemnifies and will continue to indemnify the Seller against any Liability or loss the Seller might sustain as a consequence of any failure by the Buyer to meet those obligations. This is a Surviving Clause.

9.2. The Buyer must at its own expense fully carry out after Completion all outstanding Customer Warranties. The Buyer indemnifies the Seller against any Claim a Customer might make as a consequence of any failure or delay on the part of the Buyer in carry out any Customer Warranty work. This is a Surviving Clause.

9.3. The Buyer indemnifies the Seller against any Liability or loss the Seller might incur as a direct or indirect result of any act, omission or breach by the Buyer relating to the Premises Lease. This is a Surviving Clause.

9.4. To the extent that any contract, lease, licence or agreement cannot be transferred or assigned to the Buyer then the Seller will hold the benefit of such contract or agreement on trust for the Buyer absolutely. The Buyer will indemnify the Seller and

keep the Seller fully indemnified against any Liability to any lessor under any leases of Leased Assets in so far as they relate to any act or omission, breach or non compliance by the Buyer under those leases after Completion. This is a Surviving Clause.

10. CUSTOMERS' GOODS, UNFULFILLED ORDERS & ADVANCE PAYMENT

10.1. The Seller must provide the Buyer with a list of all Customers who have wholly or partly paid in advance for Products as at Completion. The Buyer acknowledges that as from Completion the Buyer will hold Customer Goods as a bailee for the relevant Customer. Such Customer Goods are not included in this Sale. This is a Surviving Clause.

10.2. The Buyer will indemnify the Seller and keep the Seller indemnified in respect of any act or omission on the part of the Buyer after Completion which gives rise to an entitlement on the part of any Customer to make any Claim in respect of any damage, destruction or loss of any of the Customer Goods of that Customer after Completion. This is a Surviving Clause.

10.3. The Seller will indemnify the Buyer and keep the Buyer indemnified in respect of any act or omission on the part of the Seller prior to Completion which gives rise to an entitlement on the part of any Customer to make any Claim in respect of any damage, destruction or loss of any of the Customer Goods of that Customer. This is a Surviving Clause.

10.4. On Completion, the Seller must deposit into a separate account with the Buyer's nominated bank an amount equal to the total of all Advanced Payments held by the Seller at Completion. The joint signatures required on that account are to be a nominee of the Seller and a nominee of the Buyer. Both nominees must sign all cheques or withdrawals. The Buyer will only be entitled to be paid any Advanced Payment when the Products, the subject of the Advanced Payment, have been provided to and accepted by the Customer and the Seller has been provided with reasonable evidence of that delivery and acceptance. This is a Surviving Clause.

10.5. The Buyer must follow and observe all directions, terms of delivery and meet all other previously agreed requirements of the Customer in respect of Customer Goods. This is a Surviving Clause.

11. TRANSFERRING EMPLOYEES

11.1. The Seller will do all things reasonably required of it by the Buyer to encourage the Employees to be Transferring Employees and thereby continue to be employed in the

- Business from Completion. The Seller and the Buyer will make a joint announcement to Employees about the Sale of the Business. Unless otherwise agreed, this announcement is to be made promptly after the date of this Agreement.
- 11.2. The Buyer acknowledges that the Purchase Price assumes the Buyer will take over and be exclusively responsible for all amounts due to the Transferring Employees as at and from Completion by way of Employee Entitlements being the amounts as set out in Schedule Three calculated up to the Completion Date and all such Employee Entitlements of Transferring Employees as at Completion will be the responsibility of the Buyer. If Completion does not take place on the Completion Date this will be an adjustment to the Purchase Price. This is a Surviving Clause.
- 11.3. The Buyer agrees and undertakes with the Seller that it will offer to employ the Transferring Employees on substantially the same terms and conditions that they have been employed by the Seller up to Completion. The Buyer will be solely responsible for any redundancy payments payable after Completion in respect of Transferring Employees. This is a Surviving Clause.
- 11.4. The Seller will procure and ensure that all superannuation payable in respect of the Transferring Employees is fully paid up to Completion. This is a Surviving Clause.
- 11.5. On and after Completion the Buyer will take over all Liabilities for Long Service Leave, Annual Leave and Personal Leave in respect of the Transferring Employees and will keep the Seller fully and completely indemnified against any Liability to the Transferring Employees or any of them in respect of such Long Service Leave, Annual Leave and Personal Leave at any time thereafter due to them and including such amounts that are accruing at Completion. This is a Surviving Clause.
- 11.6. In respect of Long Service Leave, Annual Leave and Personal Leave of Transferring Employees the parties acknowledge that this has been adjusted in the Purchase Price on the basis that it is the total of accrued Long Service Leave, Annual Leave and Personal Leave accruing to Transferring Employees up to the Completion date. This is a Surviving Clause.
- 11.7. For the purposes of this Clause, the parties acknowledge that in calculating the Long Service Leave component of Transferring Employees entitlements, Transferring Employees with less than 5 years employment with the Seller are not to be included; in respect of any entitlements of Transferring Employees with between 5 and less than 10 years employment with the Seller only half their entitlements are to be included; and in respect of any entitlements of Transferring Employees with 10 years or more

employment with the Seller all of their entitlements are to be included. This is a Surviving Clause.

12. COVENANTS AS TO NO COMPETITION AND CONFIDENTIAL INFORMATION AFTER COMPLETION

12.1. The Seller covenants with the Buyer in order to protect the Goodwill of the Business that the Seller will not after Completion directly or indirectly engage in any Restricted Activities in the Territory for:

12.1.1. 24 months from Completion;

12.1.2. 18 months from Completion;

12.1.3. 12 months from Completion;

12.1.4. 6 months from Completion;

without the prior written approval of the Buyer. This is a Surviving Clause.

12.2. It is intended that the primary restraint on the Seller is set out in clause 12.1.1 and that clauses 12.1.2, 12.1.3 and 12.1.4 are separate alternatives and are to be applied in order of priority until a valid enforceable restraint is constituted. This is a Surviving Clause.

12.3. The Seller and the Buyer both agree and will not dispute that all periods of time and the Territory area are reasonable in order to protect the Goodwill. This is a Surviving Clause.

12.4. If the restraints contained in this clause are held to be void as unreasonable for the protection of the interests of the Buyer but would be valid if part of the wording was deleted or the period or the area of the Territory was reduced, the restraints will apply with such modifications and/or reductions necessary to make them effective and enforceable. This is a Surviving Clause.

12.5. The restraints contained in this clause are separate, distinct and several. If any restraint is unenforceable, it may be severed without affecting the remaining enforceability of the other restraints. This is a Surviving Clause.

13. NO REPRESENTATIONS

13.1. Apart from the Warranties and any express representations in this Agreement, the Seller gives no other warranties nor makes any other representations to the Buyer in respect of the Business or any of the Assets of the Business and the Buyer expressly acknowledges that it has relied on its own enquiries and investigations and has carried out its own thorough Due Diligence on the Business before entering into this Agreement. The Buyer expressly states that it does not rely upon anything said or

represented by the Seller in respect of the Business or any Assets of the Business before entering into this Agreement except to the extent what might have been said or represented is expressly contained in this Agreement or in the Warranties. This is a Surviving Clause.

13.2. The Buyer further acknowledges that it is satisfied that it has been given full and complete access to all information and documentation including the Business Documents required by it in order for it to carry out its Due Diligence and to reach its decision to enter into this Agreement. This is a Surviving Clause.

13.3. In respect of the Disclosed Information, the Buyer may not seek to terminate this Agreement in reliance thereon or make any Claim for compensation or make any requisition on the Seller in respect of that disclosed information. This is a Surviving Clause.

14. TERMINATION AND SPECIFIC PERFORMANCE

14.1. If the Seller is ready, willing and able to Complete and the Buyer is for whatever reason not able to Complete then the Seller may at any time after the Completion Date serve a Notice to Complete on the Buyer requiring the Buyer to Complete at a date and time being not less than twenty one (21) days after the service of the Notice to Complete on the Buyer. The Notice to Complete must:

- 14.1.1. make the time for Completion of the essence;
- 14.1.2. specify the date, time and place at which Completion is to take place;
- 14.1.3. be signed by the Seller.

If the Buyer does not Complete on the date and time specified in the Notice to Complete then the Seller may at any time thereafter serve a Notice of Termination of this Agreement on the Buyer.

14.2. If the Buyer is ready, willing and able to Complete and the Seller is for whatever reason not able to Complete then the Buyer may at any time after the Completion Date serve a Notice to Complete on the Seller requiring the Seller to Complete at a date and time being not less than twenty one (21) days after the service of the Notice to Complete on the Seller. The Notice to Complete must:

- 14.2.1. make the time for Completion of the essence;
- 14.2.2. specify the date, time and place at which Completion is to take place;
- 14.2.3. be signed by the Buyer.

If the Seller does not Complete at the date and time specified in the Notice to Complete then the Buyer may at any time thereafter serve a Notice of Termination of

this Agreement on the Seller.

14.3. In addition to the rights of termination set out in this clause, either party may terminate this Agreement by giving Notice of Termination to the other party to that effect if:

14.3.1. Completion has not taken place within 40 days of the Completion Date and no Notice of Termination has been served; or

14.3.2. the parties have despite their best endeavours been unable to obtain Consents required in order to assign the Key Agreements.

14.4. In the event that the Seller terminates this Agreement as a consequence of:

14.4.1. the Buyer failing to Complete after being served with a Notice to Complete, and

14.4.2. the Buyer being served with a Notice of Termination,

then the Seller will also be entitled to Claim damages from the Buyer. The Seller will be entitled to deduct from the Deposit the damages it has sustained. Where the Buyer disputes the amount of damages suffered by the Seller, the Deposit will continue to be held by the Seller's solicitor or agent until the amount of the Seller's damages have been determined. The solicitor or agent is entitled to invest the Deposit with a bank. The interest will be paid as between the Seller and the Buyer in the same proportions as the Deposit. This is a Surviving Clause.

14.5. In the event that the Buyer terminates this Agreement as a consequence of:

14.5.1. the Seller failing to Complete after being served with a Notice to Complete; or

14.5.2. the service of a Notice of Termination; or

14.5.3. any failure on the part of the Seller to obtain the Consent for the assignment of any Key Agreement,

then the Buyer will be entitled to a full and immediate refund of the Deposit. This is a Surviving Clause.

14.6. Either party may in the alternative to terminating this Agreement require the other party to specifically perform its obligations and Complete. In pursuance thereof such party requiring specific performance will be entitled to bring an application (which entitlement to bring such proceedings may not be opposed) for specific performance of any obligation under this Agreement.

15. PUBLIC POLICY

- 15.1. It is not the intention of any of the parties to break or contravene any provision of public policy or Laws and none of the parties believe that any of the terms of this Agreement constitute such a breach or contravention. This is a Surviving Clause.
- 15.2. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability will not affect any other provision of this Agreement but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This is a Surviving Clause.

16. THE PREMISES

- 16.1. On Completion the Seller will either transfer the Premises Lease to the Buyer or surrender the Premises Lease to enable the Buyer to enter into a new lease with the owner of the Premises.
- 16.2. Where there is to be a transfer of the Premises Lease, the Seller and the Buyer will do all things reasonably required and provide all requested information as may be needed in order to obtain the written consent of the lessor of the Premises to the transfer of the Premises Lease to the Buyer on the basis that upon the acceptance by the Buyer of all the obligations of the lessee under the Premises Lease from Completion, the lessor will release the Seller from any further liability to the lessor in respect of anything that might occur or any obligation arising after Completion.
- 16.3. Upon the lessor granting consent to the transfer of the Premises Lease to the Buyer, the Seller and the Buyer will on Completion execute a transfer of the Premises Lease to the Buyer. The Seller will execute as transferor of the Premises Lease and the Buyer will on its part execute the transfer as transferee of the Premises Lease and will undertake in such form as the lessor may require to and to the Seller that, as lessee, the Buyer accepts full and exclusive responsibility for all liabilities and obligations under the Premises Lease from Completion for the balance of the term of the Premises Lease and where applicable including any extension of the term or further term of the Premises Lease.
- 16.4. Any Guarantor of the Premises Lease will be entitled to a full discharge of any Guarantee of the Premises Lease. The Buyer will also provide all replacement guarantees to the lessor of the Premises as may be required by the lessor as a condition of the lessor's Consent to the transfer of the Premises Lease and/or the discharge of any Guarantee given in respect of the Premises Lease.

16.5. In the alternative to Clauses 16.2 to 16.4, if there is to be a surrender of the Premises Lease then the seller will, with the approval of the lessor of the Premises, surrender the Premises Lease effective on Completion. On Completion and subject to the surrender of the Premises Lease, the Buyer will enter into a new lease of the Premises with the lessor on such terms as the lessor and the Buyer have agreed.

17. DENIAL OF MERGER OF WARRANTIES

17.1. None of the covenants, Warranties, representations and undertakings herein contained shall be deemed in any way to merge in or be modified or discharged by the payment of the Purchase Price, any moneys or any instalment thereof or by the transfer of the Business or any of the Assets of the Business or any other act or thing done pursuant hereto. The intent of the parties is that all of the covenants, Warranties, representations or undertakings herein will continue to be binding upon the parties except where there is a contrary intention clearly expressed limiting the period during which those covenants, Warranties, representations or undertakings are binding and enforceable.

18. NOTICES

18.1. All Notices must be in writing, signed by the party sending it, addressed to the recipient at the address or facsimile number or email address set out below or to such other address or facsimile number or email address as a party may from time to time notify to the other. A Notice may be served personally on any director of the recipient or served by prepaid post or served by facsimile to the recipient or by email to the recipient at the respective address or facsimile number set out below:

(a) The Seller:
The Managing Director
Company Pty Ltd
1 Perth Street Perth 5000
Attention: Bob Brown
Facsimile: 02 9898 7897
Email Address: rodney@email.com.au

(b) The Buyer:
The Managing Director
ABC import Pty Ltd
1 Sydney Street Sydney 2000
Attention: Bob Brown
Facsimile: 01 95556666
Email Address: rodney@email.com.au

18.2. Without limiting any other means by which a Party may be able to prove that a Notice has been served on the other Party, a Notice will be deemed to be duly served if served by hand on the date when it is left at the address of the recipient. If a Notice is served by pre-paid post, it will be deemed served on the third day after the date of posting (whether received or not). If a Notice is served by facsimile or by email, it will be deemed served on the next day after the sending of the facsimile or email to the recipient. A transmission report generated by the facsimile machine of the sender or the email record of it being sent will be conclusive evidence that the facsimile or email has been sent on the date shown on the facsimile record or email record.

19. CONFIDENTIAL INFORMATION

19.1. The recipient of Confidential Information undertakes to the discloser and covenants to the discloser that it will not disclose to any third party other than its legal or accounting advisors any Confidential Information disclosed to it without the prior written consent of the discloser. This is a Surviving Clause.

19.2. Each recipient of Confidential Information undertakes to the discloser only to use the Confidential Information for the purpose it was disclosed and no other.

19.3. Unless otherwise agreed all information of whatsoever kind or nature that is disclosed by one party to the other will be presumed to be the Confidential Information of the discloser unless the recipient is able to prove to the contrary. This is a Surviving Clause.

19.4. The obligations of confidentiality in this clause will continue to be fully binding upon each of the parties and fully enforceable against each party by the other notwithstanding Completion has occurred or, where Completion has not occurred, then notwithstanding that one or other of the parties has terminated this Agreement. This is a Surviving Clause.

19.5. After Completion the Seller undertakes to the Buyer not to disclose or use any Confidential Information about the Business for any purpose whatsoever other than to meet its lawful and proper obligations. The Buyer as from Completion has the exclusive right to use all Confidential Information about the Business and the Assets of the Business as it thinks fit and nothing in this Agreement will prevent or limited such use. This is a Surviving Clause.

19.6. The parties agree that the obligations of confidentiality in this clause are essential terms of this Agreement. Each party further agrees that damages alone would be an inadequate remedy in the event of any breach of confidentiality by a party and that the

party complaining of breach of confidentiality by the other will be entitled to seek declaratory and injunctive relief as well as damages. This is a Surviving Clause.

- 19.7. The Buyer must on request from the Seller after Completion give the Seller access to all Confidential Information and Business documents as the Seller may reasonably require in order to meet any Liability, ATO obligation tax and comply with any statutory obligation, enforce or defend any Claim against any third party or defend any prosecuted or dispute any alleged Liability. This is a Surviving Clause.

20. INSURANCE POLICIES

- 20.1. The Buyer acknowledges that as from exchange of signed counterparts of this Agreement it will be its responsibility to take out all such Insurance policies over the Business and the Assets of the Business to protect its interest as the Buyer.
- 20.2. The Seller will maintain all Insurance policies that it currently has over the Business and the Assets of the Business up to and including Completion. The Seller will on or at any time after Completion be entitled to cancel all such policies. This is a Surviving Clause.
- 20.3. If an event occurs that entitles the Seller to claim on any policy of Insurance and such Claim relates to the damage or destruction of any Asset of the Business, then the Buyer must still Complete and pay the Purchase Price in full provided that the Seller will account to the Buyer for any amount when it receives payment pursuant to that Insurance Claim. This is a Surviving Clause.

21. ASSIGNMENT

- 21.1. No rights arising out of or under this Agreement are assignable by one party without the prior written consent of the other Party. A party may withhold its consent in its absolute discretion.

22. COUNTERPARTS

- 22.1. This Agreement may be executed in as many counterparts as may be deemed necessary or convenient and all of such counterparts taken together will be deemed to constitute one and the same instrument.

23. STAMP DUTY, TAXES AND COSTS

- 23.1. The Buyer will promptly pay and be exclusively responsible for all stamp duty assessed as payable on this Agreement and all Sales, transfers and assignments and on any document executed pursuant to this Agreement. The Buyer is also exclusively responsible for any fines or penalties that may be incurred in respect of such assessment. This is a Surviving Clause.

23.2. The Buyer indemnifies and covenants to keep indemnified the Seller against any liability to pay stamp duty on this Agreement and on any document executed pursuant to this Agreement. This is a Surviving Clause.

23.3. Each party will pay their own legal costs of or incidental to this Agreement.

24. GST

24.1. The Seller and the Buyer agree that this Sale of the Business in this Agreement is a Sale of the Business as a going concern as defined in the GST Act. This is a Surviving Clause.

24.2. The Seller represents and warrants that it is registered or is required to be registered under the GST Act. This is a Surviving Clause.

24.3. The Seller agrees that it will carry on the conduct of the Business as a going concern until the Completion of this Sale of the Business. This is a Surviving Clause.

24.4. The parties have entered into this Agreement on the basis that the supply is GST free and the consideration is exclusive of GST. This is a Surviving Clause.

24.5. If for any reason this Sale is not accepted by the ATO as GST free as the supply of a going concern then the Buyer agrees to pay to the Seller, within fourteen (14) days after the Seller's liability for GST on this sale is confirmed by correspondence or an assessment from the ATO, the amount of the GST. The Seller in that event will deliver to the Buyer, as a precondition to such payment, a tax invoice in a form which complies with the GST Act and the regulations. This is a Surviving Clause.

24.6. The parties acknowledge that all payments made under or pursuant to the terms of this Agreement are exclusive of GST. To the extent that any supply made under or in connection with this Agreement is a taxable supply or is assessed as a taxable supply, the consideration for that supply ("**primary amount**") must be increased by an amount ("**GST amount**") equal to the primary amount multiplied by the rate at which GST is imposed in respect of that supply. The recipient of the supply must pay the GST amount to the supplier at the same time and in the same manner as the primary amount is payable under this Agreement, or if the primary amount has already been paid on demand, subject to the receipt of a tax invoice. Any party who enforces the terms of this clause must first issue a tax invoice to the recipient of the supply in relation to a supply to which this clause applies. This is a Surviving Clause.

25. LEGAL ADVICE

25.1. Each party has taken its own separate and independent legal advice prior to entering into this Agreement and has satisfied itself as to the terms of this Agreement. The

Seller and the Buyer each expressly represent to each other that they have each considered all the rights and obligations affecting them in this Agreement and satisfied themselves that they can meet all of their obligations as and when they are required to be so met. This is a Surviving Clause.

26. JOINT STATEMENT

26.1. The parties on Completion will jointly publish and the Buyer will distribute a joint statement to Employees, Customers and Suppliers informing those Persons of the change in the ownership of the Business to the Buyer. This is a Surviving Clause.

27. GOVERNING LAW

27.1. This Agreement shall be governed by and construed in accordance with the laws of the State or territory in which the Business is primarily conducted.

Executed by the parties as an Agreement on the day and year first mentioned.

SIGNED BY

Company Pty Ltd)
ACN 111 222 333 pursuant to)
Section 127 of the *Corporations Act 2001*)
in the presence of:)

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SIGNED BY

ABC import Pty Ltd)
ACN 222 555 666 pursuant to)
Section 127 of the *Corporations Act 2001*)
in the presence of:)

Director
Print Name:

Signature of Witness
Print Name:

Director/Secretary
Print Name:

SCHEDULE TWELVE

Warranties

PART A – BUSINESS AND ASSETS OF THE BUSINESS

1. The Business and the Assets of the Business and each and every part thereof will on Completion:
 - (a) be the sole property of the Seller;
 - (b) be in possession of the Seller or in the case of some Raw Materials or Work in Progress in the possession of third parties that are contractually obligated to deal with those Raw Materials or Work In Progress as directed by the Seller;
 - (c) be transferred by the Seller to the Buyer both in law and in equity free of all Encumbrances, and other interests whatsoever.
2. The Seller has full power to sell the Business and the Assets of the Business and every part thereof to the Buyer and the Buyer will on Completion acquire the full legal and beneficial ownership of the Business and the Assets of the Business free and clear of any Encumbrances or other third party rights.
3. This Agreement has been duly executed by the Seller and the Buyer and is a legal, valid and binding agreement enforceable against both the Seller and the Buyer in accordance with the terms of the Agreement.
4. The Business and the Assets of the Business and every part thereof will on Completion be quietly received, held, enjoyed and taken by the Buyer and the benefit thereof will be received and taken accordingly without any interruption or disturbance by the Seller or any Person claiming by, through or under the Seller.
5. No statutory or contractual Notices have been served on the Seller in respect of any item of the Assets of the Business which might materially impair, prevent or otherwise interfere with the use of or proprietary rights in that item or give rise to any right to terminate any deed or agreement included in the Assets of the Business.
6. All Intellectual Property owned by the Seller and used in the Business is included in this Sale. As far as the Seller is aware, it is the sole and exclusive owner of all that Intellectual Property and the Seller is not aware of any adverse claim or circumstance that might give rise to an adverse claim by any third party in respect of the Intellectual Property forming part of the Sale.
7. The Seller does not and nor do any of its directors conduct any other business similar to the Business. Neither do they have any interest in or intend to acquire any interest

- in or have any relationship with any Person which carries on any other business which is competitive with the Business after Completion save in respect of any shares owned or to be owned by any of them in a company listed on the Australian Stock Exchange.
8. There are no facts or circumstances known to the Seller which might reasonably be expected to materially and adversely affect the financial position, operations, profitability and prospects of the Business other than facts and circumstances affecting as a whole the industry in which the Business is carried on and matters, facts or circumstances set out in the Disclosed Information.
 9. All sales records, purchasing records, accounts, books, ledgers, financial records and other material records of every kind whatsoever of the Seller concerning the Business and the Assets of the Business are and have been kept and have been substantially completed so as to comply with all material legal requirements and show in all material respects a true, correct and fair view of the affairs of the Business, including the trading transactions, financial and contractual position of the Business.
 10. The Accounts have been properly prepared by reference to and in accordance with the applicable accounting standards and show a true and fair view of all the profits and losses of the Business as at the date they were prepared up to.
 11. The Seller is the exclusive proprietor of all Business Names used in the Business.
 12. The Seller has been carrying on its operations and has conducted the Business in the ordinary and usual course at the Premises.
 13. The Seller is the Lessee of the Premises Lease and the Premises Lease is current, in good standing and is transferable subject to the lessor's Consent.
 14. The Plant and Equipment comprise all of the plant and equipment used in and for the continuing conduct of the Business. All the Plant and Equipment and other Assets of the Business:
 - (a) have been maintained and serviced;
 - (b) are in good order, condition and repair, fair wear and tear excepted; and
 - (c) are, where applicable, in satisfactory working order, suitable and capable of doing the work for which they were designed and purchased for;
 - (d) are located at the Premises; and
 - (e) are not subject to any warranty claims.
 15. The Seller will promptly after Completion change its name and will not register any business names and/or company names in Australia which name(s) incorporate any words used in its current Company Name or the Business Names.

16. The Seller is not a party to any agreement or arrangement under the terms of which any other party is, by reason of any change in the beneficial ownership of the Business or the Assets of the Business or by reason of compliance with any provision of this Agreement, entitled:
 - (a) to terminate that agreement or arrangement earlier than it would have been but for that change; or
 - (b) to require the adoption of terms less favourable to the Seller than those subsisting in the absence of change.
17. As at the date hereof, all agreements including the Key Agreements between the Seller and third parties that relate to the Business or any of the Assets of the Business are in good standing.
18. The Seller is not a party to any agreement or arrangement the benefit of which is included in the Business or the Assets of the Business of which it or any other party is in material default or, but for the requirements of any notice or lapse of time or both, would be in material default. The Seller will not, between the date hereof and Completion, do or omit to do anything that could result in a default under any agreements or arrangements, and further agrees and undertakes to notify the Buyer promptly of:
 - (a) any facts and/or circumstances which might lead to a default under any agreements or arrangements; and/or
 - (b) any default by any other party to any such agreements or arrangements.
19. All agreements or arrangements relating to the conduct of the Business have been negotiated at arms length and have been concluded in the ordinary and usual course of the conduct of the Business. As far as the Seller is aware, no agreement entered into by the Seller with any Customer is likely to result in a material loss to the Business if performed.
20. The Seller has not made any offers, tenders or quotations which are still outstanding and capable of giving rise to a contract by the unilateral act of a third party, other than in the ordinary and usual course of business and on normal and usual terms.
21. No business agreement requires a payment in or calculated by reference to an amount of foreign currency.
22. The Seller is not a party to any contract, agreement or arrangement which restricts the freedom of the Business to engage in any activity or business in any area.

23. The Seller has not received any communication or notice which might affect any rights of the Seller or the Buyer or the exercise of any rights by the Seller or the Buyer in respect of any agreement relating to the Business.
24. The Inventory is all:
 - (a) of good and merchantable quality; and
 - (b) fit for the purpose for which it is intended.
25. The Seller will not between the date hereof and Completion do or omit to do any act which would or could materially and adversely affect the Business.
26. The Seller has Licences from all Regulatory Authorities that are necessary to enable the Seller to carry on the Business at the Premises in the manner in which it is currently conducted and in respect of those Licences:
 - (a) all fees due have been paid;
 - (b) all conditions have been duly complied with; and
 - (c) the Licences are current and in good standing.
27. Between the date hereof and Completion the Business will be conducted by the Seller in the ordinary and usual course of business.
28. Between the date hereof and Completion the Seller will not acquire, dispose of or create an Encumbrance over any of the Assets of the Business other than Products which must only be sold in the ordinary course of Business and on normal terms, conditions and prices.
29. Between the date hereof and Completion the Seller will process all Work-in-Progress in a timely manner.
30. Between the date hereof and Completion the Seller will not enter into or place any orders for Raw Materials other than on usual terms in the ordinary course of carrying on the Business.
31. There have been no Insurance Claims nor are there any circumstances known to the Seller which could give rise to an Insurance Claim in respect of any item of Plant and Equipment or any of the other Assets of the Business. The Seller agrees and undertakes to notify the Buyer promptly between exchange and Completion of any events, facts and/or circumstances which may give rise to any such claim.
32. The Leased Assets are all subject to current lease arrangements and are assignable by the Seller as lessee subject to the lessor's Consent, and the Seller is not in breach of any of the terms of the leases of the Leased Assets.

33. The Motor Vehicles are all either owned by the Seller or are part of the Leased Assets. All of the Motor Vehicles have been properly maintained and are in good working order.
34. The Assets of the Business which are of an insurable nature are fully insured in the name of the Seller against loss or damage by fire, storm and other usual risks for their full replacement value and will continue to be so insured until Completion.
35. All Unfulfilled Orders are deliverable within nine (9) months of Completion.
36. All Schedules and Business Documents that contain information about the Business or other Assets of the Business that have been provided by the Seller pursuant to this Agreement will be accurate, complete and not misleading as at Completion.
37. To the extent any of the activities of the Business are regulated by any Environmental Laws, the Seller warrants to the Buyer that:
 - (a) the Seller is not aware of any breach of any of those Environmental Laws;
 - (b) the Seller holds all necessary permits required under those Environmental Laws in order to carry on the Business;
 - (c) the Seller has not been charged with any offence under any Environmental Laws; and
 - (d) the Seller is not aware of any circumstance, activity or practice in the Business that is reasonably likely to lead to a pollution event or any future breach of any Environmental Laws.

PART B - CUSTOMERS

38. The List of Customers provided by the Seller to the Buyer on Completion is a true, complete and accurate list of such Customers immediately prior to the date of this Agreement. The Seller is not aware of any circumstance or event that could cause any Customer between now and Completion to cease being a Customer or to substantially reduce its orders with the Seller.
39. There are no major Customer complaints, Claims, Litigation or prosecutions pending that in any way relate to the Business or any of the Assets of the Business.
40. The Seller is not aware of any circumstances and has no reason to believe that any of the Customers will cease using the services of the Business upon the Buyer acquiring the Business.
41. All Unfulfilled Orders will be in good standing as at Completion.
42. As and from Completion the Buyer will be entitled to hold itself out to all of the Customers of the Business both past and present, to all of the Suppliers both past and

present, and to all other Persons with whom the Seller has previously had dealings in connection with the Business as the Seller's successor to the Business and the Assets of the Business.

43. After Completion if requested by the Buyer, the Seller will introduce the Buyer to all such Persons and will do all such things reasonably necessary to be done by it in order to ensure that the Goodwill will pass to the Buyer and the Seller will, if required, join with the Buyer in sending a public notice informing Customers and Suppliers of the Sale of the Business in such form as the Buyer may reasonably require.
44. On Completion, the Seller will pass on to the Buyer all Customer orders, Customer enquiries and all other Customer correspondence and Customer communications which the Seller has received and after Completion the Seller will promptly pass on all such communications which it receives to the Buyer.
45. On Completion, the Seller will provide a list of all Advanced Payments received by the Seller before Completion. The Seller warrants that the Advanced Payments as set out in that list are all the Advanced Payments received by it and held for Unfulfilled Orders from Customers.
46. All Creditors have been paid in accordance with the usual terms of payment and there are no disputes with them that have not been disclosed.
47. The Seller warrants to the Buyer that:
 - (a) all Customer Contracts are in good standing and that the Seller is not aware of any circumstances that might reasonably cause the Customer not to pay or be unable to pay any amount when due under the Customer Contracts;
 - (b) all Customer Goods have been properly, safely and securely stored and packaged;
 - (c) all Product Warranty Claims made by Customers under Customer Warranties have been disclosed and the Seller has also disclosed whether there is any outstanding unfulfilled obligation as at Completion in respect of any Customer Warranty Claim.

PART C – LIABILITIES AND SOLVENCY

48. The Seller is not aware of any act or omission on its part that could constitute a breach of any provisions of the *Trade Practices Act 1974* (Cth) or any equivalent State or Territory *Fair Trading Act* or the requirements of any consumer product safety standard or consumer product information standard prescribed by Law in connection

with its conduct of the Business which might be expected to have a material adverse effect on the Business or on any of the Assets of the Business.

49. The Seller has:
- (a) not gone into liquidation;
 - (b) not passed any resolution to be wound up;
 - (c) not entered into any schemes of arrangement;
 - (d) not received any demand under Section 459E of the *Corporations Act* 2001 (Cth) that has not been satisfied in full; or
 - (e) not received a Summons for the winding up of the Seller; and
 - (f) not become insolvent.
50. There are no long term contracts or arrangements binding upon the Seller (including arrangements with Transferring Employees) or relating to or affecting the Business or any of the Assets of the Business that have not been fully Disclosed to the Buyer and there are no contracts or arrangements subsisting at Completion relating to or affecting the Business containing any onerous or unusual or other materials relevant to an intending purchaser of the Business that have not been fully Disclosed.
51. No summons has been issued or is threatened to be issued against the Seller to wind it up and no action has been taken or is threatened to be taken to seize or take possession of any of the Assets of the Business.
52. There are no unsatisfied judgments against the Seller nor has any writ of execution been issued against the Seller or any of the Assets of the Business.
53. The Seller is not subject to administration pursuant to Part 5.3A of the *Corporations Act* 2001 (Cth).
54. No receiver or receiver and manager has been appointed to any part of the Business, the Assets of the Business or any other of the assets of the Seller and there are no circumstances justifying such an appointment.
55. The Seller is not:
- (a) a party to any Litigation or arbitration in respect of the Business, the Assets of the Business or the Transferring Employees;
 - (b) subject to any administrative or governmental investigation in respect of the Business, the Assets of the Business or the Transferring Employees;
 - (c) being prosecuted by or a party to any Litigation brought by any Regulatory Authority.

56. The Seller is not in breach of any material duties or obligations imposed on it under any Act or regulation in respect of the Business or the Employees.
57. All Taxes which have been assessed or imposed upon the Seller in relation to the Business and Assets of the Business:
 - (a) which are due and payable have been paid by the final date for payment by the Seller; or
 - (b) which are not yet payable but become payable in respect of activities of the Seller prior to Completion will be paid by the due date.
58. As far as the Seller is aware neither ATO nor any other State or Federal fiscal authority is, as at the date hereof, conducting any investigation into all or any part of the Business nor does the Seller have any reason to believe that, between the date hereof and Completion, any such investigation will be conducted. The Seller agrees and undertakes to notify the Buyer promptly between the date hereof and Completion if it becomes aware of any such investigation and/or any events, facts and/or circumstances which may give rise to any such investigation.
59. The Key Agreements are all current and in good standing. The Seller is not aware of any breach of them.
60. All stamp duties and other State or Territory taxes payable in respect of any agreements for which the Seller is liable to pay Stamp Duty or other taxes have as far as the Seller is aware been correctly and fully paid.
61. All agreements with Contractors are in good standing and there is no Litigation or threatened Litigation in respect of those Contractors.
62. All Information Technology has been properly maintained and is, insofar as it forms part of the Assets of the Business, suitable and capable of performing its required functions in the conduct of the Business.

PART D – TRANSFERRING EMPLOYEES

63. The Seller has made such employer statutory contributions to a complying superannuation fund in respect of the Transferring Employees in respect of their period of employment or period of holding office to ensure that there is not and will not at Completion be any statutory superannuation obligation shortfall. Further, the Seller has met all its contractual obligations to Transferring Employees to make non statutory superannuation contributions.
64. The name, salary Employee benefits and period of accrued Annual Leave (including any loadings), personal leave and Long Service Leave accrued for each Employee of

- the Seller as at the date hereof is correctly recorded in the books and records of the Seller in respect of all Transferring Employees and all employment related records have been properly maintained as required by all applicable Legislation.
65. No amounts other than those reflected in the Seller's records will be owing to the Transferring Employees as at Completion other than the amounts accrued between the date hereof and Completion.
 66. The Seller has complied with all of its material obligations and duties to the Transferring Employees imposed under any agreement, award, Legislation or otherwise and all Employee Entitlements have been paid when due.
 67. Except as has been Disclosed to the Buyer, the Seller has not given any commitment (whether legally binding or not) to increase, supplement or vary the wages, salaries, Annual Leave, leave loading, long service leave, personal leave or any other remuneration, compensation or benefits of any Transferring Employee beyond the amount and entitlements shown in the Seller's records.
 68. As at the date hereof, none of the Transferring Employees have given to the Seller or received from the Seller any notice of termination of employment or are in the process of being dismissed, nor does the Seller have any reason to believe that, between the date hereof and Completion, any of the Employees will give any such notices or will be dismissed. The Seller agrees and undertakes to notify the Buyer promptly between the date hereof and Completion of any such notices and/or any events, facts and/or circumstances which might give rise to any disciplinary proceedings against any Transferring Employee.
 69. Except as has been Disclosed to the Buyer, none of the Transferring Employees have been the subject of any warnings or disciplinary action in respect of which the Seller intends to institute a process of dismissal or any disciplinary action by the Seller in respect of their employment.
 70. As at the date hereof and apart from Employee Claims (including workers compensation and/or common law claims) identified in the Disclosure Letter, the Seller is not aware of any Claims or facts, circumstances or events that could give rise to any Claims brought or which could be brought by any Employee or Past Employee relating to his/her employment in the Business.
 71. Unless Disclosed to the Buyer, the Seller has not agreed to any share incentive scheme, share option scheme, bonus scheme, profit sharing scheme or other

Employee incentive scheme in respect of the Business with any Transferring Employees.

72. The Seller is not a party to any written employment or service agreements with any of the Transferring Employees except those that have been Disclosed to the Buyer.
73. The Seller is not involved in and is not aware of any present circumstances which are likely to give rise to any industrial or trade dispute or any dispute or negotiation regarding a Claim of material importance with any trade union or association of trade unions or organisation or body of Employees.
74. As far as the Seller is aware it has complied with all of its material obligations under any agreement, statute, industrial award or code of conduct in respect of the Transferring Employees.
75. The Seller has maintained all material records and all statutory records required in respect of the employment of each Transferring Employee.
76. The Seller is not a party to any agreement with a union or industrial organisation in respect of the Transferring Employees.
77. Between the date hereof and Completion the Seller will not engage any new Employee or change the terms (including remuneration) of any of the Transferring Employees unless the Buyer first consents in writing.
78. Any Claim which might be made against the Seller by an Employee or Past Employee or third party in respect of any accident or injury is covered by Insurance for the full amount required by Legislation and has been promptly notified to the relevant insurer.
79. The Seller has maintained proper and compliant O H & S procedures, practices and records, all of which are in accordance with all applicable O H & S Legislation.

GENERAL

80. The facts, statements and reports referred to or set out in the Recitals and Schedules to this Agreement will be true and correct in all material respects on Completion.
81. Between the date hereof and Completion the Seller will not do or omit to do anything as a result of which any of the Warranties would not be true on Completion.