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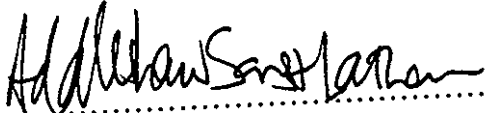
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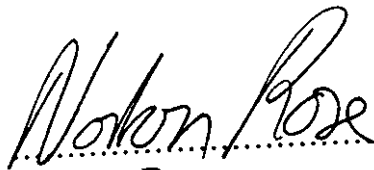
ACE/LEADING

PLACING AGREEMENT dated 23<sup>rd</sup> May 1996 made  
between API Group plc (1) and  
Credit Lyonnais Securities ("the Placing Agreement")

\_\_\_\_\_  
This document is in the agreed form for  
the purposes of the Placing Agreement:

ACQUISITION AGREEMENT  
\_\_\_\_\_

  
Addleshaw Sons & Latham

  
Norton Rose

" A "

DATED MAY 1996

PETER ANTHONY BROWN AND OTHERS (1)

and

API GROUP PLC (2)

---

**AGREEMENT**

for the sale and purchase of the issued share  
capital of LEAROYD GROUP LIMITED and  
the issued and outstanding capital stock of  
LEAROYD PACKAGING (USA) INC.

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Addleshaw Sons & Latham  
Manchester

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1997 Group Budget

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**THIS AGREEMENT** is made on

May 1996 **BETWEEN:**

- (1) **THOSE PERSONS** whose names and addresses are set out in column (1) of schedule 1 ("the Vendors"); and
- (2) **API GROUP PLC** registered in England and Wales (Company No: 169249) whose registered office is at Silk House, Park Green, Macclesfield, Cheshire SK11 7NU ("the Purchaser").

**NOW IT IS HEREBY AGREED** as follows:

**1     Definitions and interpretation**

1.1     In this Agreement unless the context otherwise requires:

"Accounts" means the UK Group Company Accounts and the US Company Accounts;

"1997 Accounts" means the 1997 UK Accounts and the 1997 US Accounts;

"the Accounts Date" means 30 April 1996;

"the 1997 Accounts Date" means 30 April 1997;

"Agreed Proportion" means in respect of any of the Vendors, the proportion set against that Vendor's name in column (6) of schedule 1;

"Actual Taxation Liability" means a liability to make an actual payment of, or of an amount in respect of, Taxation whether or not such Taxation is also or alternatively chargeable against or attributable to any other person;

"**the Auditors**" means the auditors of the UK Group Companies on the date hereof, namely Binder Hamlyn, Chartered Accountants, of Bank House, 9 Charlotte Street, Manchester M1 4EU;

"**Mr Beaumont**" means Nicholas John Beaumont, one of the Vendors;

"**Mr Peter Brown**" means Peter Anthony Brown, one of the Vendors;

"**Mr Roland Brown**" means Roland Brown, one of the Vendors;

"**the Business**" means any and all of the businesses carried on by any Group Company as at the date of this Agreement;

"**Business Day**" means a day on which clearing banks are open generally for the transaction of normal banking business in the City of London;

"**CA 1985**" means the Companies Act 1985, as amended;

"**the Companies**" means the UK Company and the US Company and  
"**Company**" means either of them;

"**Completion**" means completion of this Agreement in accordance with clause 7.3;

"**Completion Date**" means the date on which Completion takes place;

"**Conditions**" means the pre-conditions specified in part A of schedule 3 and any reference to "Condition 1", "Condition 2" etc., means whichever of such pre-conditions is so numbered in that part of that schedule;

"**Confidential Information**" means any and all trade secrets and information equivalent to them (including but not limited to formulae, processes, methods

and knowledge) in connection with any products manufactured, produced, distributed or sold or any services supplied by any Group Company together with details of any customers or suppliers of any Group Company and also including the Know-How;

**"Consideration Shares"** means the UK Consideration Shares and the US Consideration Shares;

**"Deferred UK Sale Shares"** means all the issued deferred shares of £1 each in the capital of the UK Company;

**"Disclosure Letter"** means the letter of the same date as this Agreement from the Vendors to the Purchaser relating to the Warranties and which has been delivered to the Purchaser immediately before the execution of this Agreement;

**"Earn-Out Add-Back Amount"** means the amount (if any) by which the aggregated profits relevant for the 1997 PBT shall have been reduced (if such be the case) by reason of:

- (a) the aggregate audit fee payable by the Group Companies in respect of the preparation and audit of the 1997 UK Accounts and the 1997 USA Accounts exceeding by more than 5% the aggregate audit fee payable by the Group Companies in respect of the Accounts; or
- (b) any of the following where the same shall have arisen by virtue of the acts, directions or omissions of the Purchaser or another Purchaser Group Company or any of their representatives on the board of any Group Company and where in any such case the same had not been consented to by Mr Peter Brown (on behalf of the Vendors):



- (i) any contract or agreement being entered into during the Earn-Out Period by one of the Group Companies other than on arm's length commercial terms;
- (ii) any Group Company during the Earn-Out Period providing credit or making any loan to the Purchaser or any other Purchaser Group Company other than on arm's length commercial terms;
- (iii) any tax liability, cost or expense incurred or otherwise arising as a result of the disposal of any part of the share capital of any Group Company to a member of the Purchaser's Group or to another member of the Group;
- (iv) any Group Company making, during the Earn-Out Period, any gift or entering into any other transaction at an undervalue;
- (v) any Group Company during the Earn-Out Period, entering into any transaction outside the ordinary course of its business;
- (vi) any payment or demand being made under or any other liability, cost or expense incurred in respect of any guarantee, surety or indemnity given by any member of the Group for the benefit of any member of the Purchaser's Group;
- (vii) the Purchaser preventing any member of the Group from supplying or purchasing goods or services in the course of its respective business;
- (viii) any Group Company, during the Earn-Out Period, entering into a transaction within the ordinary course of its business<sup>3</sup> which it was not reasonable to enter into having regard to the nature,

manner and extent of carrying on such business before the date of this Agreement;

**"Earn-Out Deduction Amount"** means the amount (if any) by which the aggregated profits relevant for the 1997 PBT shall have been increased (if such be the case) by reason of the Vendors or any of them having taken action leading to any Group Company conducting its business outside the ordinary course, including without limit in manner or extent not contemplated by the 1997 Group Budget (including a material increase in the level of finished stocks or work in progress held over that contemplated by the 1997 Group Budget save where the increased stock or work-in-progress is capable of sale in the ordinary course by reference to then usual stock turnover rates) and (save in the case of such finished stocks or work-in-progress as aforesaid) where in any such case such action has not been consented to by the Purchaser;

**"Earn-Out Period"** means the period beginning on 1 May 1996 and ending on the 1997 Accounts Date;

**"Enabling Resolution"** shall have the meaning given in paragraph 2 of Part A of Schedule 3;

**"Environmental Claim"** means any claim, notice of violation, prosecution, demand, action, official warning, abatement or other order or notice (conditional or otherwise), relating to any Environmental Matter and any notification or order requiring compliance with the terms of any Environmental Licence or Environmental Law;

**"Environmental Law"** includes all or any law, statute, ordinance, code, legislation, rule, regulation, treaty, convention, directive, direction, by-law, code of practice, circular, guidance note, order, notice, demand, decision of the courts or anything like any of the foregoing of any governmental authority or agency or any regulatory body or any government or private court, tribunal,

alternative dispute resolution system, arbitration panel, special prosecutor or investigatory committee or any other body whatsoever in any jurisdiction or the European Community relating to Environmental Matters applicable for the time being to any Group Company and/or the business carried on by any Group Company;

**"Environmental Licence"** means any permit, licence, authorisation, consent, certificate, regulatory plan, compliance schedule or other approval obtained or which ought to have been obtained at any time by any Group Company and/or in relation to the business carried on by any Group Company pursuant to any Environmental Law;

**"Environmental Matters"** includes any of the following: (1) any generation, deposit, disposal, keeping, treatment, transportation, transmission, handling, emission, discharge, release, threatened release, creation, storage or manufacture of any Relevant Substance; (2) any nuisance, noise, defective premises, health and safety at work or elsewhere; (3) the carrying out of any development (as defined in section 55(1) of the Town and Country Planning Act 1991); and (4) the pollution, conservation or protection of the environment (which includes natural resources whether pertaining to life or not, such as air, water, soil, fauna and flora and the interactions between the same factors and also the built environment) or of man or any living organisms supported by the environment or any other matter whatsoever affecting the environment or any part of it;

**"Escrow Condition"** shall have the meaning given in clause 7.3;

**"Escrow Letter"** means the letter in the agreed form from the Vendors' Solicitors to the Purchaser's Solicitors (to be countersigned by the Vendors and the Purchaser) relating to the certificates, deeds and documents delivered at Pre-Completion being held in escrow;

**"Event of Default"** means a Relevant Breach or a Relevant Event or a matter which would give rise to a claim under either of the Taxation Deeds and which in any such case in the Purchaser's reasonable opinion acting in good faith is or will or is reasonably likely to be material and adverse to any or all of: the value of the Sale Shares; the value of the business or assets of the Group taken as a whole; and the continuing operation of the Business;

**"Executive Directors"** means Mr Peter Brown and Mr Beaumont;

**"Executive Warrantors"** means Mr Peter Brown, Mr Roland Brown and Mr Beaumont;

**"Filmcast"** means Filmcast Extrusions Limited, registered in England and Wales (Company No: 2683570) whose registered office is at Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ;

**"Filmcast Accounts"** means the audited balance sheet of Filmcast as at the Accounts Date and the audited profit and loss account of Filmcast for the financial year ended on the Accounts Date, together with the notes thereto and the directors' and auditors' reports thereon;

**"FSA"** means the Financial Services Act 1986, as amended;

**"Further Consideration"** means the further consideration (if any) for the Ordinary UK Sale Shares and the US Sale Shares calculated and determined as provided in clause 9;

**"Group"** means the Companies and the Subsidiaries;

**"1997 Group Budget"** means the budget and cash flow and capital expenditure projections for the Group in the agreed form;

**"Group Company"** means each and any body corporate in the Group;

**"Guarantee"** means any guarantee, indemnity, suretyship, letter of comfort or other assurance, security or right of set-off given or undertaken by a person to secure or support the obligations (actual or contingent) of any third party and whether given directly or by way of counter-indemnity to any third party who has provided a Guarantee;

**"ICTA"** means the Income and Corporation Taxes Act 1988;

**"Initial Consideration"** means the consideration referred to in clause 5.1(a);

**"Intellectual Property Rights"** means all patents, registered designs, trade marks and service marks (whether registered or not), copyright, design rights, and any similar property rights, including (without limitation) those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, confidential information, business or brand names, goodwill or the style of presentation of goods or services and in applications for protection of any of the above;

**"Interim Period"** means the period commencing on and including the date hereof and ending on the earlier of Completion and lapse, rescission or termination of some or all of this Agreement pursuant to clause 2.4, clause 6.1 or clause 7.2;

**"Know-How"** means industrial, commercial and technical information, confidential information, business and strategic studies, unregistered inventions and techniques, including data, drawings, formulations, test and technical reports, operating and testing procedures, instruction manuals, tables of operating conditions and procedures, machinery designs, raw materials or production specifications, feasibility studies and the results of research and

development work, in each case relevant to any Group Company or the Business or any part thereof;

**"Listing Rules"** means the listing rules for the time being made under section 142 FSA;

**"the London Stock Exchange"** means London Stock Exchange Limited;

**"the Long Form Report"** means the long form report on the Group prepared for the Purchaser by the Reporting Accountants;

**"the Long Stop Date"** means 12 July 1996 (or such later date as Mr Peter Brown on behalf of the Vendors, and the Purchaser, may agree);

**"Morris"** means Morris Plastics Limited, registered in England and Wales (Company No. 436008) whose registered office is at Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ;

**"Morris Accounts"** means the audited balance sheet of Morris as at the Accounts Date and the audited profit and loss account of Morris for the financial year ended on the Accounts Date, together with the notes thereto and the directors' and auditors' reports thereon;

**"Netherwood"** means Netherwood Engineering Limited, registered in England and Wales (Company No: 3036858) whose registered office is at Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ;

**"Netherwood Accounts"** means the balance sheet of Netherwood as at the Accounts Date, together with any notes thereto and any directors' reports thereon;

**"New Purchaser Shares"** means the shares in the Purchaser the subject of the Placing and Open Offer, including but not limited to the Consideration Shares;

**"Ordinary UK Sale Shares"** means all the issued ordinary shares of AUS\$0.01 each in the UK Company;

**"Packaging"** means Learoyd Packaging Limited, registered in England and Wales (Company No. 474936) whose registered office is at Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ;

**"Packaging Accounts"** means the audited balance sheet of Packaging as at the Accounts Date, and the audited profit and loss account of Packaging for the financial year ended on the Accounts Date, together with the notes to such accounts and the directors' and auditors' reports thereon;

**"1997 PBT"** means the aggregated 1997 UK PBT and 1997 US PBT certified in accordance with schedule 8, (losses being expressed as negative figures);

**"the Pensions Deeds"** means the deeds in the agreed form relating to the retirement and appointment of trustees of the Pension Schemes;

**"Pension Schemes"** means:

- (a) The Learoyd Packaging Limited Staff Retirement Benefit Scheme established by Declaration of Trust dated 23 March 1987;
- (b) The Learoyd Packaging Limited Works Retirement Benefits Scheme established by Declaration of Trust dated 23 March 1987;
- (c) The Learoyd Packaging Limited Retirement Benefits Scheme established by Declaration of Trust dated 30 June 1976; and

(d) The Learoyd Packaging Limited (1985) Retirement Benefits Scheme established by Declaration of Trust dated 19 September 1985;

(e) The Morris Plastics Limited Executive Benefits Plan,

and shall be deemed to include, where the context so admits, reference to any of such schemes;

**"Permitted Security Interest"** means any:

(a) right of retention of title or lien over goods which is implied by law or custom of trade or is incorporated in the standard terms of contract of another contracting party and which arises in any such case in the ordinary course of trading;

(b) right of set off in respect of goods arising by operation of law in the ordinary course of trading;

**"the Placing Agreement"** means the agreement of even date made between the Purchaser and the Underwriter, relating, inter alia, to the Placing and Open Offer;

**"the Placing and Open Offer"** means the placing and open offer of shares in the Purchaser as described in the Prospectus;

**"Pre-Completion"** means pre-completion of this Agreement in accordance with clause 7.1 (and, if applicable, clause 7.2) and on and subject to the terms and conditions of the Escrow Letter;

**"the Pre-Completion Date"** means such day within 3 Business Days following the day on which the last of Conditions 1, 2 and 3 shall be fulfilled as may be



agreed between the parties or, in default of such agreement the third Business Day following such day;

**"Primary Vendors"** means the following Vendors: Roland Brown, Peter Anthony Brown, Nicholas John Beaumont, Ann Elizabeth Alice Yates and Alan Richard Gatward;

**"the Prohibited Area"** means the United Kingdom, Germany, Italy, the Netherlands, Norway, the Republic of Ireland, Portugal and Sri Lanka and any part or parts of any such countries;

**"the Properties"** means the properties, details of which are set out in schedule 4;

**"the Prospectus"** means the prospectus, a draft of which is in the agreed form, comprising a prospectus relating to the Purchaser prepared in compliance with the Listing Rules and the FSA, to be sent to the shareholders of the Purchaser;

**"Purchaser's Group"** means the Purchaser, any subsidiary of the Purchaser for the time being, any holding company of the Purchaser for the time being and any subsidiary for the time being of any such holding company, but not including any Group Company;

**"the Purchaser's Solicitors"** means Addleshaw Sons & Latham of Dennis House, Marsden Street, Manchester M2 1JD;

**"Relevant Breach"** means any event, matter or circumstance which is, or will at Completion be, inconsistent with or contrary to or which constitutes, or will at Completion constitute, a breach of, or which renders, or will at Completion render, untrue or misleading any of the Warranties;

**"Relevant Clause 9.3 Counsel"** means a Counsel of not less than 5 years' standing with experience relating to unfair and wrongful dismissal claims which Counsel either is agreed upon between the Executive Directors and the Purchaser within 7 days of the Purchaser requesting efforts to be made to reach such agreement or, failing such agreement, is appointed on the application of the Purchaser or Mr Peter Brown by the Chairman of the Bar Council in England and Wales for the time being;

**"Relevant Counsel"** means a Counsel of not less than 5 years' standing with experience relating to contractual disputes concerning breaches of warranty or, as appropriate, claims under taxation indemnities, in share sale transactions which Counsel either is agreed upon between the Executive Directors and the Purchaser within 7 days of the Purchaser requesting efforts to be made to reach such agreement or, failing such agreement, is appointed on the application of the Purchaser or Mr Peter Brown by the Chairman of the Bar Council in England and Wales for the time being;

**"Relevant Event"** means any fire, flood, accident, computer failure or other calamity relevant to any Group Company or the business or assets thereof;

**"Relevant Post-Exchange Breach"** means a Relevant Breach of any of the Specified Post-Exchange Warranties which has occurred or arisen, or which will with the passage of time or the giving of notice occur or arise, following the date of this Agreement but before Completion;

**"Relevant Resolutions"** shall have the meaning given in paragraph 2 of Part A of Schedule 3;

**"Relevant Substance"** means any substance whatsoever (whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) or any waste (as defined in section 1 of the Environmental Protection Act 1990, as amended) wherever situated which

is capable of causing harm to man or any other living organism supported by the environment (which includes natural resources whether pertaining to life or not, such as air, water, soil, fauna and flora and the interaction between the same factors and also the built environment), or damaging the environment or public health or welfare;

**"Relief"** means any loss, relief, allowance, exemption, set-off, deduction, credit or other relief relating to any Taxation or to the computation of income, profits or gains for the purposes of any Taxation;

**"the Reporting Accountants"** means Ernst & Young, Chartered Accountants, of Lowry House, 17 Marble Street, Manchester M2 3AW;

**"Restricted Business"** shall have the meaning given in clause 13.1;

**"the Sale Shares"** means the UK Sale Shares and the US Sale Shares;

**"Secondary Vendors"** means the following Vendors: David Robert Aitken, Trevor Bernard Nigel Henson and Terence Arthur Goodyear;

**"Security Interest"** means any mortgage, equity, lien, pledge, charge, hypothecation, encumbrance, claim, restriction on use, conditional sale or title retention agreement, capital lease or the filing of any financing statement or other notice under the lien notice records or other similar or analogous legislation of any jurisdiction or any other security interest whatsoever (or an agreement or commitment to create any of them);

**"Service Agreements"** means the service agreements in the agreed form to be entered into at Completion between the UK Company and each of Mr Peter Brown and Mr Beaumont respectively;

**"Specified Post-Exchange Warranties"** means those Warranties set out in the following paragraphs or sub-paragraphs of Part A of schedule 6: 3.2(b), 3.5, 6.7(c), 7.5, 7.6, 8.3, 8.4, 11.5, 11.6, 11.12, 12.13, 12.19(b), 13.9(c), 13.11, 13.13, 13.14(c), 14.3, 16.7, 16.9 and 17.1;

**"the Subsidiaries"** means Packaging, Morris, Filmcast and Netherwood;

**"Taxation"** means:

- (a) any form of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the United Kingdom, the United States of America or any part thereof or elsewhere, payable to or imposed by any Taxation Authority and includes, without limitation, income tax (including income tax or amounts equivalent to or in respect of income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, stamp duty, stamp duty reserve tax, capital duty, value added tax, sales tax, use tax, employment tax, development land tax, withholding tax, rates, property tax, ad valorem tax, franchise tax, customs and excise duties, national insurance and social security and other similar liabilities or contributions and any other taxes, levies, duties, charges, imposts, fees, assessments, deductions or withholdings similar to, corresponding with, or replacing or replaced by any of the foregoing; and
- (b) all charges, interest, penalties and fines, incidental or relating to any Taxation falling within the immediately preceding paragraph (a);

**"Taxation Authority"** means the Inland Revenue, H.M. Customs & Excise, the Internal Revenue Service or any other revenue, customs, fiscal, governmental, statutory, state, provincial, federal, local governmental or municipal authority,

body or person, whether of the United Kingdom, the United States of America or any part thereof or elsewhere;

**"Tax Warranties"** means the Warranties set out in Part B of schedule 6;

**"the Taxation Deeds"** means the deeds relating to Taxation in the agreed form;

**"TCGA 1992"** means the Taxation of Chargeable Gains Act 1992;

**"the Transaction Documents"** shall have the meaning given in clause 18.1;

**"the 1997 UK Accounts"** means the audited (if required by schedule 8) consolidated balance sheet of the UK Group Companies as at the 1997 Accounts Date and the audited (if required by schedule 8) consolidated profit and loss account of the UK Group Companies for the period from 1 May 1996 to the 1997 Accounts Date, prepared in accordance with clause 9 and schedule 8;

**"the UK Company"** means Learoyd Group Limited, incorporated in England and Wales (Company No: 3037060) whose registered office is at Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ;

**"the UK Company Accounts"** means the individual audited balance sheet of the UK Company as at the Accounts Date, the audited consolidated balance sheet of the UK Company and its subsidiaries as at such date, the audited consolidated profit and loss account of the UK Company and its subsidiaries for the financial year ended on the Accounts Date and the cash flow statement of the UK Company and its subsidiaries for such year, together with the notes to such accounts and the directors' and auditors' reports thereon;

**"UK Group Companies"** means the Group Companies other than ~~the~~<sup>the</sup> US Company;

"the UK Consideration Shares" means such number of new ordinary shares of 25 pence each in the capital of the Purchaser as shall have an aggregate gross issue price under the Placing and Open Offer of £19,500,000;

"the UK Group Company Accounts" means the UK Company Accounts, the Packaging Accounts, the Morris Accounts, the Filmcast Accounts and the Netherwood Accounts;

"1997 UK PBT" means the consolidated profits (less losses) of the UK Group Companies from ordinary activities before taxation for the Earn-Out Period as derived from the 1997 UK Accounts, before taking into account any extraordinary or exceptional items, without taking account of profits or losses of a capital nature to the extent, in either case, that such profits or losses exceed £50,000 in aggregate, but after adding back any Earn-Out Add-Back Amount and after deducting any Earn-Out Deduction Amount;

"the UK Sale Shares" means all of the issued shares in the capital of the UK Company as at Completion;

"the Underwriter" means Credit Lyonnais Securities of Broadwalk House, 5 Appold Street, London EC2A 2DA;

"the 1997 US Accounts" means the audited (if required by schedule 8) balance sheet of the US Company as at the 1997 Accounts Date and the audited (if required by schedule 8) statement of profit and loss of the US Company for the period from 1 May 1996 to the 1997 Accounts Date, prepared in accordance with clause 9 and schedule 8;

"the US Company" means Learoyd Packaging (USA) Inc., a corporation incorporated in the State of Georgia, USA (Corporation No: 9214327) whose principal office is at 1080 Cambridge Square, Suite D, Alpharetta, Georgia, 30201 USA;

"the US Company Accounts" means the balance sheet of the US Company as at the Accounts Date and the statement of profit and loss of the US Company for the financial year ended on the Accounts Date together with the notes thereto;

"the US Consideration Shares" means such number of new ordinary shares of 25 pence each in the capital of the Purchaser as shall have an aggregate gross issue price under the Placing and Open Offer of £500,000;

"the US Non-Compete Agreement" means the agreement in the agreed form relating to restrictive covenants relevant to the USA;

"1997 US PBT" means the profits (less losses) of the US Company from ordinary activities before taxation for the Earn-Out Period as derived from the 1997 US Accounts, before taking into account any extraordinary or exceptional items, without taking account of profits or losses of a capital nature to the extent, in either case, that such profits or losses exceed in aggregate £50,000, but after adding back any Earn-Out Add-Back Amount and after deducting any Earn-Out Deduction Amount;

"the US Sale Shares" means all of the issued and outstanding capital stock of the US Company as at Completion;

"Vendors' Solicitors" means Halliwell Landau of St. James's Court, Brown Street, Manchester M2 2JF; and

"Warranties" means the representations and warranties contained in, and given pursuant to, clause 10 and schedule 6 (including without limit the same as are or will be repeated immediately before Completion under clause 10.1 and/or clause 10.2).

1.2 In this Agreement unless the context otherwise requires:

- (a) a document expressed to be "**in the agreed form**" means a document in a form which has been agreed by the parties contemporaneously with or before the execution of this Agreement and which has, for the purposes of identification, been signed or initialled by them or by the Vendors' Solicitors and the Purchaser's Solicitors on their behalf;
- (b) references to a clause or schedule are to a clause, of or a schedule to, this Agreement, references to this Agreement include its schedules and references in a schedule or part of a schedule to a paragraph are to a paragraph of that schedule or that part of that schedule;
- (c) references to this Agreement or any other document or to any specified provision of this Agreement or any other document are to this Agreement, that document or that provision as in force for the time being and as altered from time to time in accordance with the terms of this Agreement or that document or, as the case may be, with the agreement of the relevant parties;
- (d) a person shall be treated as "connected with" another person for the purposes of this Agreement if he would be so treated under Section 839 ICTA;
- (e) words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;
- (f) the contents table and the descriptive headings to clauses, schedules and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of this Agreement;



- (g) the word "company", except where used in reference to a Company, shall be deemed to include any partnership, undertaking or other body of persons, whether incorporated or not incorporated and whether now existing or hereafter to be formed;
- (h) the words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;
- (i) where any statement (including, without limitation, any of the Warranties) is qualified by the expression "so far as the Vendors are aware" or "to the best of the Vendors' knowledge and belief" or any similar expression that statement or expression shall be deemed to include an additional statement that it has been made after due and careful enquiry. The knowledge, information, belief or awareness of one of the Vendors shall be deemed to be and to include the knowledge, information, belief or awareness of all of the Vendors; and
- (j) references to a Company shall be deemed to include, where the context so admits, references to any Group Company.

1.3 In this Agreement, unless the context otherwise requires:

- (a) "**enactment**" means any statute or statutory provision (whether of the United Kingdom or elsewhere), subordinate legislation, as defined by section 21(1) Interpretation Act 1978, and any other subordinate legislation made under any such statute or statutory provision; and
- (b) a reference to any enactment shall be construed as including a reference to:

- (i) any enactment which that enactment has directly or indirectly replaced (whether with or without modification); and
- (ii) that enactment as re-enacted, replaced or modified from time to time, whether before, on or after the date hereof,

save to the extent only that any such replacement, re-enactment, modification or amendment shall impose any additional liabilities or increase any existing liability of any party hereto.

- 1.4 In any Transaction Document, unless expressly stated to the contrary, all obligations, indemnities, warranties or undertakings given, entered into or assumed by the Vendors of whatever nature created by or pursuant to any Transaction Document when given by, entered into or assumed by more than Vendor shall be their several obligations. The Purchaser may, however, release or compromise the liability of any of the Vendors under any Transaction Document or grant to any Vendor time or other indulgence without affecting the liability of any other Vendor.

## **2 Purpose of this Agreement and Conditions Precedent**

- 2.1 This is an agreement for the sale and purchase of the Sale Shares.
- 2.2 Pre-Completion is conditional upon the fulfilment of Conditions 1, 2 and 3 on or before the Long Stop Date.
- 2.3 Completion is conditional upon Pre-Completion having taken place and thereafter upon the fulfilment of the Escrow Condition on or before the time and date specified in clause 7.3.
- 2.4 If any of Conditions 1, 2 and 3 shall not have been satisfied, or waived in writing by all the parties, on or before the Long Stop Date, or if, following Pre-

Completion, the Escrow Condition shall not have been satisfied by the time and date specified in clause 7.3, this Agreement and any allotments, agreements, deeds or other documents or matters whatsoever effected or executed pursuant hereto shall be of no effect save that this clause 2.4 and clauses 1 and 15 to 23 inclusive of this Agreement shall remain in full force and effect.

### 3 The Interim Period

3.1 The Vendors shall during the Interim Period procure that:

- (a) no Group Company shall, and the Vendors shall not, solicit, start or progress any negotiations with any person other than the Purchaser relating to the acquisition or disposal of any shares or other securities in any Group Company or relating to the acquisition or disposal of any material part of the business, undertaking and assets of any Group Company and/or no Group Company shall, and the Vendors shall not, enter or come to any agreement with any person other than the Purchaser as a result of any such negotiations or relating to any such acquisition or disposal;
- (b) the Purchaser and its authorised representatives are given full access to the Properties and to all of the books and records of each Group Company and that the directors and employees of each Group Company are instructed to give promptly all such information and explanations with respect to the business and affairs of each Group Company as the Purchaser or its authorised representatives may reasonably request and after the Purchaser having given Mr Peter Brown reasonable notice of such request;
- (c) the Purchaser is provided with copies of all board papers and management reports and accounts relating to each Group Company produced during the Interim Period together with such other information

relating thereto as the Purchaser may reasonably require and after the Purchaser having given Mr Peter Brown reasonable notice of such request;

- (d) each Group Company complies with the restrictions in part B of schedule 3.

3.2 The Vendors hereby undertake with the Purchaser that they will forthwith give notice in writing and reasonable details to the Purchaser of:

- (a) any event, matter or circumstance of which any Vendor is aware before Completion and which:
  - (i) is a Relevant Breach, or would (with the giving of notice or lapse of time) constitute a Relevant Breach upon the Warranties being repeated immediately prior to Completion, or would had it occurred on or before the date of this Agreement constitute a Relevant Breach; or
  - (ii) would give rise to a claim under either of the Taxation Deeds if it were executed at Completion; or
  - (iii) constitutes a breach of clause 3.1(d) by any Vendor,

Provided that no Vendor shall be obliged to give notice pursuant to this clause 3.2(a) of any event, matter or circumstance which in the reasonable opinion of such Vendor is or is reasonably likely to be only immaterial to all of: the value of the Sale Shares, the value of the business or assets of the Group taken as a whole, and the continuing operation of the Business; and

- (b) any Relevant Event of which any Vendor is aware before Completion.

- 3.3 The Vendors acknowledge and agree that during the Interim Period senior representatives of the Purchaser shall be entitled, in conjunction with the Executive Directors, to have access to the customers of the Group referred to in Warranty 8.3 and together the Executive Directors and the Purchaser shall endeavour to arrange such access.

#### 4 Sale of the Sale Shares

- 4.1 Each of the Vendors shall sell to the Purchaser with full title guarantee save for those Vendors selling as trustees who shall sell with limited title guarantee, but in any event in each such case free from all Security Interests and third party interests whatsoever, and the Purchaser (relying, as each of the Vendors hereby acknowledges, on the representations, warranties, undertakings and indemnities of the Vendors contained in this Agreement, the US Non-Compete Agreement and the Taxation Deeds), shall purchase from each of the Vendors the number of Sale Shares (if any) set out against the name of the relevant Vendor in columns (2) and (if any) (3) of schedule 1.
- 4.2 Title to, ownership of, and any risk attaching to, the Sale Shares shall pass on Completion, and the Sale Shares shall be sold and purchased together with all rights and benefits now attached or accruing to them (including the right to receive all dividends, distributions or any return of capital declared, paid or made by either Company).
- 4.3 The Purchaser shall not be obliged or entitled to complete the purchase of any of the Sale Shares unless the purchase of all the Sale Shares is completed simultaneously.
- 4.4 Each of the Vendors hereby waives any rights of pre-emption or similar rights conferred on him by the Articles of Association, Articles of Incorporation or other constitutional document of either Company or any shareholders agreement relating thereto or in any other way over any of the Sale Shares.

## 5 Consideration

5.1 The consideration for the sale of the Sale Shares shall be:

(a) the Initial Consideration, being:

- (i) in respect of the sale of the Deferred UK Sale Shares, the payment of £1 to each of the Vendors;
- (ii) in respect of the sale of the Ordinary UK Sale Shares, the unconditional allotment and issue of the UK Consideration Shares, credited as fully paid; and
- (iii) in respect of the sale of the US Sale Shares, the unconditional allotment and issue of the US Consideration Shares, credited as fully paid; and

(b) the Further Consideration.

5.2 The UK Consideration Shares and the US Consideration Shares shall be unconditionally allotted and issued at Completion to such persons (not including any of the Vendors) as shall be nominated by the Underwriter on or before Pre-Completion or, failing such nomination, to the Underwriter (as principal).

5.3 The Consideration Shares shall rank *pari passu* in all respects with the ordinary shares of 25 pence each in the capital of the Purchaser in issue immediately prior to Completion save that they will not rank for any interim dividend in respect of the Purchaser's current financial year.

## **6      Rescission**

6.1      If at any time before Completion the Purchaser becomes aware of an Event of Default, whether in consequence of a notice given under clause 3.2 or otherwise (not being an Event of Default which is both capable of remedy and is remedied prior to Pre-Completion without, in the Purchaser's reasonable opinion acting in good faith, there being, or there being reasonably likely to be, any current or future material cost to or material adverse effect on the Group), the Purchaser shall be entitled to rescind this Agreement on or before Completion by notice to the Vendors' Solicitors without any liability on its part. If the Purchaser shall so rescind, it shall have no further claim against the Vendors whatsoever, save pursuant to clause 22.

6.2      Any failure or omission by the Purchaser to exercise its right of rescission under clause 6.1 shall not in any way prejudice or be construed as a waiver of any of its rights under this Agreement to claim damages, compensation or indemnity under the Warranties, the US Non-Compete Agreement, either of the Taxation Deeds or otherwise in respect of any loss, liability or damage resulting from the Event of Default save only in relation to an Event of Default of which the Purchaser becomes aware before Completion and which is also a Relevant Post-Exchange Breach of the Warranties set out in the following paragraphs of part A of schedule 6: 8.3, 8.4, 11.5 and 11.12.

## **7      Pre-Completion and Completion**

7.1      Pre-Completion shall take place on the Pre-Completion Date at the offices of the Purchaser's Solicitors or at such other place as the parties may agree when all (but, subject to clause 7.2, not part only unless each of the parties shall so agree) of the following business shall be transacted, subject in the case of each item of business (other than the matters specified in clauses 7.1(a) and ~~7.1~~(d)(i)) to the fulfilment of Condition 4 and the payment of the aggregate sum of

£20 million by the time and date specified in clause 7.3 and on and subject to the terms and conditions of the Escrow Letter:

- (a) the Vendors shall procure the delivery to the Purchaser's Solicitors of the Escrow Letter duly signed by the Vendors' Solicitors and dated and countersigned by the Vendors by way of confirmation of and agreement to the terms and conditions of the Escrow Letter;
- (b) the Vendors shall deliver to the Purchaser's Solicitors:
  - (i) transfers in respect of the Deferred UK Sale Shares (and, if such be the case, any other UK Sale Shares in registered form) duly executed and completed in favour of the Purchaser, together with the definitive certificates therefor (or an indemnity satisfactory to the Purchaser in the case of any missing share certificates) and certified copies of any duly executed powers of attorney or other authorities under which any of the transfers have been executed;
  - (ii) the share warrants to bearer representing the Ordinary UK Sale Shares (and, if such be the case, any other UK Sale Shares not in registered form);
  - (iii) transfers in respect of the US Sale Shares duly executed in favour of the Purchaser or as it may direct, together with the definitive certificates therefor (or an indemnity satisfactory to the Purchaser in the case of any missing certificates) and certified copies of any duly executed powers of attorney or other authorities under which any of the transfers have been executed;
  - (iv) such other documents as may reasonably be required to give a good title to any of the Sale Shares and to enable the Purchaser



or its nominees to become the registered holder or holders thereof;

- (v) (as agent for each Group Company) in relation to each Group Company, all its statutory and minute books written up to date to the time that is immediately before Pre-Completion and its Common Seal, (if any), Certificate of Incorporation, any Certificate or Certificates of Incorporation on Change of Name, and true and up-to-date copies of its Memorandum and Articles of Association, Articles of Incorporation and Bylaws or other constitutional documents (having attached thereto copies of all such resolutions are by law required to be attached hereto);
- (vi) each of the Taxation Deeds duly executed by each of the Vendors expressed to be a party thereto;
- (vii) duly executed releases of any Security Interests affecting or which may affect any of the Sale Shares;
- (viii) all deeds and documents of title relating to each of the Properties listed in the agreed form schedule;
- (ix) confirmations and acknowledgements under seal in the agreed form in favour of each Group Company and the Purchaser, duly executed by each Vendor, confirming and acknowledging that no such Vendor has any claim on any account against any Group Company save in respect of accrued but unpaid salary and other expenses (not exceeding the figure stated in the relevant confirmation and acknowledgement) properly due and owing to the relevant Vendor in respect of his employment by a Group Company;

- (x) share certificates for all of the shares in each of the Subsidiaries registered in the name of any Group Company; and
  - (xi) transfers in respect of any shares in any Subsidiary not registered in the name of any Group Company, duly executed and completed in favour of the Company, together with the definitive certificate therefor (or an indemnity in a form reasonably satisfactory to the Purchaser in the case of any missing share certificates) and a certified copy of any duly executed power of attorney or other authority under which any of the transfers have been executed; and
  - (xii) the US Non-Compete Agreement duly executed by each of the Vendors expressed to be a party thereto;
  - (xiii) the Pensions Deeds duly executed by each person expressed to be a party thereto other than Mr Dennis Holt;
- (c) the Vendors shall:
- (i) cause the transfers mentioned in clauses 7.1(b)(i), (iii) and (xi) to be resolved to be registered (subject only to their being duly stamped) notwithstanding any provision to the contrary in the Articles of Association or other constitutional documents of any Group Company;
  - (ii) cause the persons named in part A of schedule 5 to be validly appointed as additional directors of each UK Group Company (save that R Merrick shall not be appointed as an additional director of any Subsidiary), the person named in Part B of schedule 5 to be validly appointed as Secretary of each UK

Group Company, and Mr M J Smith to be appointed Chairman of each Group Company;

- (iii) cause such persons as the Purchaser may nominate to be appointed to such offices of the US Company as the Articles of Incorporation and/or Bylaws of the US Company may require to be held;
- (iv) cause the person named in part C of schedule 5 to cease to be Secretary of each Group Company in which he holds such office and further cause such person to deliver to the Purchaser written resignations of his respective offices in each Group Company in the agreed form (executed as deeds) acknowledging that they have no claim outstanding for compensation for loss of office;
- (v) procure that the Service Agreements shall be entered into between the Company and each of the persons named in part D of schedule 5;
- (vi) procure that new Articles of Association in the agreed form shall be adopted by each UK Group Company and that new Articles of Incorporation and Bylaws in the agreed form shall be adopted by the US Company;
- (vii) procure that the accounting reference date of each UK Group Company is changed to 30 September so that in each case the current accounting reference period will end on 30 September 1997;
- (viii) procure that a board meeting and an extraordinary~~y~~ general meeting of each UK Group Company is held at which shall be transacted, and that unanimous board consents and shareholder

consents in lieu of meeting are executed in respect of the US Company to transact, (as appropriate), subject to and conditionally upon Completion taking place, the business referred to in the preceding provisions of this clause 7 and such other business as the Purchaser may reasonably require;

- (ix) repay to each Group Company, or procure the repayment thereto of, all (if any) indebtedness outstanding at Completion from any director of any Group Company or any person connected with any such director to any Group Company; and
  - (x) procure that the original and copy documents relating to each of the Pension Schemes under the possession or control of the Vendors or the Group Companies shall be handed over to the Purchaser or otherwise made available to the Purchaser at the Properties; and
- (d) the Purchaser shall:
- (i) procure the delivery to the Vendors' Solicitors of a copy of the Escrow Letter duly signed by the Purchaser's Solicitors and dated and countersigned by the Purchaser by way of confirmation of and agreement to the terms and conditions of the Escrow Letter;
  - (ii) conditionally allot the Consideration Shares credited as fully paid to such persons (not including any of the Vendors) as shall be nominated by the Underwriter on or before Pre-Completion or, failing such nomination, to the Underwriter (as principal); and
  - (iii) deliver to the Vendors' Solicitors a counterpart of each of the Taxation Deeds duly executed by the Purchaser; and

- (iv) deliver to the Vendors' Solicitors a counterpart of the US Non-Compete Agreement duly executed by the Purchaser.

7.2 If the Vendors shall fail or be unable to comply with any of their respective obligations under the preceding provisions of this clause 7 on the Pre-Completion Date, the Purchaser may:

- (a) defer Pre-Completion to a date not more than 28 days after that date (in which case the provisions of this clause 7.2 shall apply to Pre-Completion as so deferred); or
- (b) proceed to Pre-Completion so far as practicable but without prejudice to the rights of the Purchaser (whether under this Agreement generally or under this clause 7.2) to the extent that the Vendors shall not have complied with their obligations under this Agreement; or
- (c) rescind this Agreement

without prejudice however to any claim by the Purchaser in respect of any prior breach of the terms of this Agreement by the Vendors (or any of them).

7.3 Subject to Pre-Completion having taken place in accordance with the terms set out in clause 7.1 (or, as appropriate, clause 7.2) above, Completion shall be conditional only upon, and shall take place automatically upon, Condition 4 being fulfilled and the Purchaser procuring the payment or itself paying to the Vendors' Solicitors the aggregate sum of £20 million by way of telegraphic transfer to the following account in each case before 11.00 a.m. on or before the fifth Business Day following the day on which Pre-Completion takes place:

Account name:	Halliwell Landau Client Account
Bank:	The Royal Bank of Scotland plc
Branch:	38 Mosley Street, Manchester

Sort Code: 16-00-01  
Account Number: 12661336,

("the Escrow Condition").

The Purchaser shall procure the payment or shall itself pay to the Vendors' Solicitors as aforesaid the said aggregate sum of £20 million on the day Condition 4 shall be so fulfilled (if such be the case). The receipt in such account of such transfer shall constitute a complete discharge to the Purchaser in respect of its obligations to pay or procure payment under this clause 7.3.

- 7.4 Upon Completion all transfers, certificates, deeds, documents, allotments and payments delivered or made in escrow pursuant to clause 7.1 shall thereby be unconditionally delivered and released to the persons entitled thereto and shall become effective and, in the case of deeds and documents, shall be dated accordingly.

## 8 Post-Completion matters

- 8.1 Notwithstanding and without prejudice to the provisions of clause 7 and the Warranties, the Vendors shall:

- (a) use their best endeavours to secure as soon as is reasonably practicable after Completion the release of each Group Company without cost to each Group Company from any and all Guarantees and other contingent liabilities given or undertaken by any Group Company to secure or support the obligations of any director of any Group Company, any of the Vendors or any person connected with any of them (including, if required, offering their own Guarantee or liability on the same terms, *mutatis mutandis*, as and in substitution for the existing Guarantee or other liability of any Group Company); and

- (b) indemnify and keep indemnified the Purchaser (which takes the benefit of this indemnity for itself and as trustee for each Group Company) against all actions, proceedings, losses, costs, claims, damages, liabilities and expenses which any or all of the Purchaser and the Group Companies may suffer or incur in respect of any claim or demand made under any such Guarantees or other contingent liabilities.

8.2 Notwithstanding and without prejudice to the provisions of clause 7 and the Warranties, the Purchaser shall:

- (a) use its best endeavours to secure, as soon as is reasonably practicable after it becoming aware of the relevant Guarantees or other contingent liabilities, the release of any of the Vendors from any and all Guarantees and other contingent liabilities given or undertaken by any such Vendor to secure or support the obligations of any Group Company (including, if required, offering its own Guarantee or liability on the same terms, *mutatis mutandis*, as and in substitution for the existing Guarantee or other liability of such Vendor); and
- (b) indemnify and keep indemnified any such Vendor against all actions, proceedings, losses, costs, claims, damages, liabilities and expenses which such Vendor may suffer or incur in respect of any claim or demand made under any of or all the Guarantees and other contingent liabilities described in clause 8.2(a) after Completion.

8.3 Each of the Vendors shall execute or, so far as each is able, procure that any necessary third party shall execute all such documents and/or do or, so far as each is able, procure the doing of such acts and things as the Purchaser shall after Completion reasonably require in order to give effect to this Agreement and to give to the Purchaser the full benefit of all of the provisions of this Agreement provided that, if such documents and/or acts and things are so required as a result of the negligence of the Purchaser's advisers in connection

with the preparation and negotiation of this Agreement, the same shall be executed, done or procured, as the case may require, at the Purchaser's cost.

- 8.4 Mr Roland Brown, one of the Vendors, shall, no later than 31 October 1996, resign as a director of each Group Company of which he is a director and shall no later than such date (unless Mr Peter Brown and the Purchaser shall otherwise agree his services as an employee are still required) resign as an employee of each Group Company of which he is an employee.

## 9 Further Consideration

- 9.1 The Vendors shall use their reasonable endeavours to procure that the Auditors comply with the provisions of schedule 8.
- 9.2 Subject to clause 9.3, further consideration shall be due to the Vendors for the Sale Shares if (but not otherwise), before the date that is 12 months after the Completion Date neither Mr Peter Brown nor Mr Beaumont has given notice to terminate his employment (whether or not such notice has expired or become effective) and neither Mr Peter Brown nor Mr Beaumont has ceased to be employed by any Group Company in any of the circumstances set out in clause 9.3 in which case:
- (a) further consideration of £1,000,000 shall be payable on the date that is 12 months following the Completion Date or, if such date is not a Business Day, on the next Business Day thereafter; and
  - (b) if the finally certified 1997 PBT is equal to or exceeds £3,000,000, additional further consideration of £1,000,000 shall be payable on or before the date that is 10 Business Days following the 1997 PBT being certified pursuant to schedule 8.



Any such further consideration for the Sale Shares shall be satisfied as provided in clause 9.4 and shall be apportioned between the Ordinary UK Sale Shares and the US Sale Shares in the same proportions as the number of UK Consideration Shares bears to the US Consideration Shares.

9.3 The circumstances referred to in clause 9.2 are where:

- (a) the cessation of employment takes place by reason of voluntary resignation, or Mr Peter Brown or Mr Beaumont has given notice, in any such case in circumstances which would not constitute constructive and/or unfair and/or wrongful dismissal of Mr Peter Brown or Mr Beaumont (as the case may be); and
- (b) the cessation of employment or giving of notice takes place in circumstances which would allow valid summary termination of employment in accordance with Mr Peter Brown's or Mr Beaumont's (as the case may be) service agreement or terms of employment for the time being, in any such case in circumstances which would not constitute constructive and/or unfair and/or wrongful dismissal of Mr Peter Brown or Mr Beaumont (as the case may be).

9.4 Any Further Consideration shall be payable in cash and shall be apportioned between the Vendors in the proportions set out in columns (4) and (if any) (5) of schedule 1. The Purchaser shall satisfy any Further Consideration on the due date by telegraphically transferring such amount to an account of the Vendors' Solicitors notified to the Purchaser by the Vendors' Solicitors for such purpose. Receipt of such amount in such account shall be an absolute, valid and effectual discharge in full for the Purchaser in respect of its liability in respect of the Further Consideration.

9.5 Subject to the provisions of clauses 9.6 and 9.7, in the event that any claim for constructive and/or unfair and/or wrongful dismissal has been made by Mr Peter

Brown or Mr Beaumont before the date on which Further Consideration otherwise would be due, (meaning for this purpose that a notice of such a claim shall have been given to the Purchaser on or before such due date for any payment of Further Consideration (and such claim has not been agreed by the Purchaser in writing, nor has a judgment been obtained in respect thereof in relation to which the time for appeal shall have expired without an appeal having been made)) ("**Undetermined Clause 9.3 Claim**"), then, provided that there shall have been obtained a written opinion of Relevant Clause 9.3 Counsel to the effect that, in the opinion of Relevant Clause 9.3 Counsel, the Undetermined Clause 9.3 Claim would, on the basis of the information before Relevant Clause 9.3 Counsel, on the balance of probabilities be more likely than not to succeed the Purchaser shall on the due date for payment pay the amount of Further Consideration due and payable at that date, into an interest-bearing joint account ("**the Clause 9.3 Joint Account**") with The Royal Bank of Scotland plc in the joint names of the Purchaser's Solicitors and the Vendors' Solicitors.

- 9.6 The Purchaser undertakes to irrevocably authorise the Purchaser's Solicitors and the Vendors undertake to irrevocably authorise the Vendors' Solicitors, subject to clauses 9.10 and 9.14 inclusive, to make payments out of the Clause 9.3 Joint Account from any payment paid into such account pursuant to clause 9.5 within 5 Business Days of resolution of the relevant Undetermined Clause 9.3 Claim (whether by withdrawal or dismissal of the claim or otherwise) to reflect appropriately the resolution of such claim and the operation of clauses 9.2 and 9.3 accordingly.

- 9.7 In connection with an Undetermined Clause 9.3 Claim:

- (a) Relevant Clause 9.3 Counsel shall give the Executive Directors and the Purchaser at least 14 days' written notice (as if the same were a notice under this Agreement) of the last day on which the Executive Directors or the Purchaser may make written submissions and/or deliver evidence to Relevant Clause 9.3 Counsel for his consideration, with any

submissions or evidence made or delivered after such last day to be discounted by Relevant Clause 9.3 Counsel save that Relevant Clause 9.3 Counsel shall, if he wishes, be entitled to question either of the Executive Directors or the Purchaser upon the evidence submitted and/or delivered by such party or any other party and shall consider any responses to any such questions received by him within 14 days of such questions being served on relevant parties (as if the same were notices under this Agreement) (but with any later responses to be discounted); and

- (b) Relevant Clause 9.3 Counsel shall act as expert and not as arbitrator, his costs shall be borne as he may direct and his decision shall be final for the purposes of this clause in relation to such Undetermined Clause 9.3 Claim.

9.8 In order to protect and safeguard the Vendors potential entitlement to the Further Consideration that may become due under clause 9.2(b), the Purchaser hereby agrees and undertakes with the Vendors that during the Earn-out Period (save with the prior consent of Mr Peter Brown, such consent not to be unreasonably withheld or delayed, or save where the relevant matter occurs by virtue of the acts or omissions of one of the Vendors and such acts or omissions are not under the direction or instructions of the Purchaser):

- (a) the business of the Group will be under the day to day management control and direction of the Executive Directors for so long as they remain directors of the Companies (to which clause 9.8(b)(iii) and 9.8(h) applies) but subject to the reasonable directions of the boards of the Companies from time to time;
- (b) the Purchaser will not take any action or omit to take any action which action or omission is calculated or intended to cause any reduction to such Further Consideration, and without prejudice to the generality of

the foregoing, the Purchaser shall procure that no member of the Group shall (save with the prior consent of Mr Peter Brown, such consent not to be unreasonably withheld or delayed, or save where the relevant matter occurs by virtue of the acts or omissions of one of the Vendors and such acts or omissions are not under the direction or instructions of the Purchaser):

- (i) reduce or repay any of its share capital; or
  - (ii) part with or dispose of or licence or otherwise alienate the whole or any substantial part of its undertaking, property or assets or any interest in such whole or such substantial part, whether by a single transaction or a series of transactions, but this paragraph shall not apply to any disposal, licensing or alienation in the normal and ordinary course of business; or
  - (iii) cause any of the Executive Directors to be removed from office as a director save following (if such be the case) lawful termination of his employment in accordance with his Service Agreement or by voluntary resignation;
- (c) no change will be made to the trading name of any member of the Group and no change will be made in the nature of the business of any member of the Group;
- (d) no part of the share capital of any member of the Group shall be disposed of to any person not being a member of the Purchaser's Group or another member of the Group, whether by a single transaction or by a series of transactions;

- (e) each member of the Group will remain a wholly-owned subsidiary of, and will not be controlled by anyone other than the Purchaser, another member of the Purchaser's Group or another member of the Group;
- (f) unless the relevant member of the Group is insolvent, no member of the Purchaser's Group will take any action to pass any resolution to wind up any member of the Group or to cause any member of the Group to cease carrying on any part of its business, and no receiver, administrative receiver or administrator shall be appointed by any Purchaser Group Company over the whole or any part of the assets or undertaking of any member of the Group;
- (g) no member of the Group will enter into any agreement or undertake any action to acquire the whole or any part of the share capital, business, undertaking or assets of any person, firm or company other than in the normal and ordinary course of business;
- (h) the Service Agreements will not be terminated by the Purchaser or any Group Company in breach thereof or unfairly;
- (i) save pursuant to any policies generally applicable to the Purchaser's Group, the Purchaser will not prevent any member of the Group from supplying or purchasing goods or services in the course of its respective business;
- (j) the Purchaser shall not impose any requirement on any member of the Group to buy or sell goods to any particular person or to provide or receive services at any particular price;
- (k) the Purchaser shall not procure or seek to procure that any member of the Group will remunerate or offer any incentive to any employee, agent or consultant of any member of the Group whether by salary, pension or

otherwise (other than pursuant to the arrangements applicable immediately before or with effect from Completion);

- (l) no member of the Purchaser's Group shall procure or seek to procure that any member of the Group waives or fails to exercise any right to enforce any contract entered into in the normal course of business;
- (m) no Purchaser Group Company shall entice away or endeavour to entice away from any member of the Group any person who is employed by any member of the Group, or any customer, manufacturer or supplier to any member of the Group, whether or not such a person would commit a breach of their contract with that any member of the Group in so doing;
- (n) no employee, officer or consultant of or to the Group (other than any who are, as at the date hereof, employees, officers or consultants of or to any Purchaser Group Company) shall be seconded, transferred or otherwise engaged in the business of any Purchaser Group Company;
- (o) the Purchaser will make available, or procure that there is made, available, to the Group, on normal arm's length terms, working capital to fund the reasonable working capital and capital expenditure requirements of the Group, as contemplated by the 1997 Group Budget.

9.9 The Vendors shall not be entitled to any remedy by way of injunction for breach of clause 9.8.

9.10 In the event that the amount of any claim under the Warranties or either of the Taxation Deeds by the Purchaser or any of the Group Companies under any Transaction Document is agreed in writing to be due and payable or a judgment has been obtained in respect thereof (that is to say, a judgment in respect of which the time for appeal shall have expired without an appeal having been

made by the Vendors) (a "Determined Claim"), the Purchaser shall be entitled (subject to the provisions of clause 10 and schedule 7) by notice in writing to the Vendors to have satisfied all or any amount of the Determined Claim (to the extent available and on a pound for pound basis) by exercising a right of set-off against any Further Consideration payable by the Purchaser as and when the same falls due.

- 9.11 In the event that any Determined Claim or Claims (either individually or when aggregated together) will not be satisfied in full by the exercise of the Purchaser's right of set-off under clause 9.10 the Purchaser shall be entitled (subject to the provisions of schedule 7) to claim immediate payment of any unsatisfied amount in the usual way.
- 9.12 Subject to the provisions of clauses 9.10 and 9.11, in the event that any claim has been made under the Warranties or either of the Taxation Deeds by the Purchaser or any of the Group Companies under any Transaction Document (meaning for this purpose that a notice of claim shall have been given by the Purchaser or the relevant Group Company on or before the due date for any payment of Further Consideration (and such claim has not become a Determined Claim)) ("**Undetermined Claim**"), then, provided that there shall have been obtained a written opinion of Relevant Counsel to the effect that in the opinion of Relevant Counsel the Undetermined Claim would, on the basis of the information before Relevant Counsel, on the balance of probabilities be more likely than not to succeed and which opinion also includes Relevant Counsel's estimate of the amount recoverable pursuant to the Undetermined Claim ("**Opinion Amount**"), the Purchaser shall on the due date for payment pay into or retain in an interest-bearing joint account (the "Joint Account" (which may be the Clause 9.3 Account)) with The Royal Bank of Scotland plc in the joint names of the Purchaser's Solicitors and the Vendors' Solicitors at least the lesser of an amount equal to:

- (a) the Opinion Amount (together with a reasonable estimate of costs associated with the Undetermined Claim); and
- (b) the amount of Further Consideration due and payable at that date (if any),

or, if such be the case, the amount payable into a joint account pursuant to clause 9.5.

The balance of the Further Consideration (if any) due and payable at that date shall (save to the extent that clauses 9.5 to 9.7 inclusive apply) be paid forthwith to the Vendors free and clear of any withholding or set-off or other encumbrance.

9.13 The Purchaser undertakes to irrevocably authorise the Purchaser's Solicitors and the Vendors undertake to irrevocably authorise the Vendors' Solicitors to make payments out of the Joint Account from any payment paid into such account pursuant to clause 9.12 within 5 Business Days of resolution of the relevant Undetermined Claim (whether by withdrawal or dismissal of the claim or the claim becoming a Determined Claim or otherwise) as follows:

- (a) an amount equal to the Undetermined Claim (to the extent that it becomes a Determined Claim) together with any award of costs shall be paid to the Purchaser together with interest accrued in the Joint Account on such aggregate amount; and
- (b) (subject to there being no other outstanding claims under the Warranties or either of the Taxation Deeds then made in accordance with schedule 7 and subject to clause 9.6) the balance of any sums standing to the credit of the Joint Account (including interest) shall be paid to the Vendors as provided in clause 9.4.



9.14 In connection with an Undetermined Claim:

- (a) Relevant Counsel shall give the Executive Directors and the Purchaser at least 14 days' written notice (as if the same were a notice under this Agreement) of the last day on which the Executive Directors or the Purchaser may make written submissions and/or deliver evidence to Relevant Counsel for his consideration, with any submissions or evidence made or delivered after such last day to be discounted by Relevant Counsel save that Relevant Counsel shall, if he wishes, be entitled to question any of the Vendors or the Purchaser upon the evidence submitted and/or delivered by such party or any other party and shall consider any responses to any such questions received by him within 14 days of such questions being served on relevant parties (as if the same were notices under this Agreement) (but with any later responses to be discounted); and
- (b) Relevant Counsel shall act as expert and not as arbitrator, his costs shall be borne as he may direct and his decision shall be final for the purposes of this clause in relation to such Undetermined Claim.

10 Warranties

- 10.1 In addition and without prejudice to clause 10.2, and in consideration of the Purchaser entering into this Agreement, the Executive Warrantors hereby acknowledge, subject to schedule 7, that they have jointly and severally represented to the Purchaser in the terms set out in schedule 6 and the Executive Warrantors also hereby jointly and severally warrant and undertake to the Purchaser in the terms set out in schedule 6 and that the terms so warranted and undertaken shall be deemed to be repeated immediately before Completion with reference to the facts and circumstances then prevailing.

10.2 In addition and without prejudice to clause 10.1, in consideration of the Purchaser entering into this Agreement each of the Vendors hereby acknowledges that he has severally represented to the Purchaser in the terms set out in schedule 6 and each of the Vendors also hereby severally warrants and undertakes to the Purchaser in the terms set out in schedule 6 and that the terms so warranted and undertaken shall be deemed to be repeated immediately before Completion with reference to the facts and circumstances then prevailing.

10.3 (a) The Warranties are qualified by and to the extent, but only by and to the extent, of:

(i) those matters fully and accurately disclosed in the Disclosure Letter; and

(ii) schedule 7.

For this purpose "fully and accurately disclosed" means accurately disclosed in such manner and in such detail as to enable a reasonable purchaser to make an informed and accurate assessment of the matter concerned, its nature and effect.

(b) Each of the paragraphs in schedule 6:

(i) shall be construed as a separate and independent representation, warranty and undertaking, as shall the representations, warranties and undertakings given in or pursuant to clauses 10.1 and 10.2; and

(ii) save as expressly otherwise provided in this Agreement, shall not be limited by reference to any other paragraph in schedule 6 or by any other provision of this Agreement or either of the Taxation Deeds or the US Non-Compete Agreement or any other

matter whatsoever and the Purchaser shall have a separate claim and right of action in respect of every Relevant Breach.

10.4 Without prejudice to clause 10.1 or 10.2, each of the Vendors severally agrees that he shall, so far as he is able, procure that (except only to such extent as may be necessary to give effect to this Agreement) neither he nor any Group Company shall:

- (a) do or procure any act or omission before Completion which would constitute a breach of any of the Warranties if they were given at Completion or which would make any of the Warranties inaccurate or misleading in any respect if they were so given; or
- (b) permit any act or omission before Completion which would constitute a material breach of any of the Warranties if they were given at Completion or which would make any of the Warranties materially inaccurate or misleading in any respect if they were so given, "material" in this paragraph (b) meaning material to any or all of: the value of the Sale Shares; the value of the business, or assets of the Group taken as a whole; and the continuing operation of the Business.

10.5 Neither the Warranties nor any rights in respect of them shall in any respect be extinguished or affected by Completion.

10.6 Each of the Vendors severally acknowledges and agrees with the Purchaser (for itself and as trustee for each Group Company and each Group Company's directors, employees, agents and advisers):

- (a) that the giving by each Group Company and/or any of the directors, employees, agents or advisers of such Group Company to the Vendors or their agents or advisers of any information or opinion in connection with the Warranties, the US Non-Compete Agreement or either of the

Taxation Deeds or the Disclosure Letter or otherwise in relation to the business or affairs of any Group Company or in connection with the negotiation and preparation of this Agreement, the US Non-Competition Agreement, either of the Taxation Deeds, or the Disclosure Letter, shall not be deemed a representation, warranty or guarantee to any of the Vendors, such agents or advisers of the accuracy of such information or opinion;

- (b) to waive any right or claim which he may have against any Group Company and/or any of the directors, employees agents or advisers of such Group Company for any error, omission or misrepresentation in any such information or opinion; and
- (c) that any such right or claim shall not constitute a defence to any claim by the Purchaser under or in relation to this Agreement (including the Warranties), the US Non-Compete Agreement or either of the Taxation Deeds.

## 11 Vendor Warranties

11.1 Each Vendor which is expressed to be acting in its capacity as trustee of a trust hereby acknowledges that it has represented to the Purchaser in relation to that trust, and each such Vendor hereby warrants in relation to that trust, as follows:

- (a) that trust is a duly constituted trust;
- (b) the entry into and performance by that trustee of this Agreement and any other Transaction Document to which it is a party does not and will not conflict with any law or regulation or judicial or official order affecting that trust or conflict with the constitutional documents of that trust or conflict with any document which is binding upon it as trustee of that trust;

- (c) no litigation, arbitration or other proceedings are current or pending or threatened in relation to that trust; and
- (d) all information supplied by it to the Purchaser in relation to that trust is true, complete and accurate,

and each such Vendor hereby specifically undertakes to the Purchaser as follows:

- (i) to retain as assets of that trust, in cash or easily liquidated assets, until 12 months following Completion, not less than:
  - (A) 75% of its Agreed Proportion of £20,000,000; plus
  - (B) 75% of its Agreed Proportion of the Further Consideration (if then received); plus
  - (C) to the extent the same exceeds the amount to be retained pursuant to sub-paragraphs (i)(A) and (B), the aggregate of its Agreed Proportion of the amount of all undischarged Determined Claims and its Agreed Proportion of all Opinion Amounts for all Undetermined Claims in respect of which payment has not been made into the joint account pursuant to clause 9.12 and which shall have been notified by the Purchaser before the date that is 12 months following Completion, to the extent such claims are still outstanding;
- (ii) during the period from the date that is 12 months following Completion to the date that is two years following Completion to retain as assets of that trust, in cash or easily liquidated assets, no less than
  - (A) 50% of its Agreed Proportion of £20,000,000; plus

- (B) 50% of its Agreed Proportion of the Further Consideration; plus
  - (C) to the extent the same exceeds the amount to be retained pursuant to sub-paragraphs (ii)(A) and (B), the aggregate of its Agreed Proportion of the amount of all undischarged Determined Claims and its Agreed Proportion of all Opinion Amounts for all Undetermined Claims in respect of which payment has not been made into the joint account pursuant to clause 9.12 and which shall have been notified by the Purchaser before the date that is two years following Completion, to the extent that such claims remain outstanding;
- (iii) during the period from the date that is two years following Completion to the date that is three years following Completion to retain as assets of that trust, in cash or easily liquidated assets, no less than
- (A) 25% of its Agreed Proportion of £20,000,000; plus
  - (B) 25% its Agreed Proportion of the Further Consideration; plus
  - (C) to the extent the same exceeds the amount to be retained pursuant to sub-paragraphs (iii)(A) and (B), the aggregate of its Agreed Proportion of the amount of all undischarged Determined Claims and its Agreed Proportion of all Opinion Amounts for all Undetermined Claims in respect of which payment has not been made into the joint account pursuant to clause 9.12 and which shall have been notified by the Purchaser before 31 January 1999, to the extent that such claims remain outstanding;

Provided that, in any event:

- (aa) the minimum amount to be retained pursuant to paragraph (ii) or (iii) above shall not exceed the minimum amount to be retained pursuant to the immediately preceding paragraph at the end of the period that is relevant to such preceding paragraph;
- (bb) the determination of each relevant percentage of each Agreed Proportion of £20,000,000 shall be after deducting from the relevant Agreed Proportion the costs or fees incurred by the relevant trust for the purposes of the sale of its UK Sale Shares and the amount due from that relevant trust to the Inland Revenue on account of Taxation arising by virtue of that sale.

For the purposes of clause 11.1, it is agreed that easily liquidated assets comprise investments which are capable in the ordinary course of realisation into cash of the requisite value within a period of six months and for the avoidance of doubt shall include such investments comprising real estate property investment and insurance bonds.

11.2 No Vendor acting as a trustee of any trust shall appoint or permit to be appointed another trustee (whether new, additional or substituted) of that trust, unless the new trustee shall have delivered a duly executed deed of accession to the Purchaser (agreeing to become a party to this Agreement and each Taxation Deed and any other relevant Transaction Document) as a trustee of that trust and assuming the obligations of the relevant trustee under such documents in form and terms reasonably satisfactory to the Purchaser and unless the new trustee is either an established professional trustee company incorporated in the Channel Islands, the Isle of Man or the United Kingdom, or in the case of an individual is a duly qualified lawyer or chartered accountant who is resident and entitled to practise in the Channel Islands, the Isle of Man or the United Kingdom.

11.3 Each of the Vendors hereby acknowledges that he or it has represented to the Purchaser that, and each of the Vendors hereby warrants to the Purchaser that,

this Agreement and each of the other Transaction Documents to which such Vendor is, or is to be, a party constitutes or, upon execution, and at Completion will constitute legal, valid and binding obligations of such Vendor who is a party thereto enforceable in accordance with its respective terms.

11.4 Each of the Primary Vendors and the Secondary Vendors hereby acknowledges that he or it has represented to the Purchaser that, and each of such Vendors hereby warrants to the Purchaser that, the execution and delivery of, and the performance by such Vendor of his or its respective obligations under, and compliance with the provisions of, this Agreement and each of the other Transaction Documents to which such Vendor is, or is to be, a party by such Vendor will not:

- (a) result in a breach of, or constitute a default under, any instrument to which such Vendor is a party or by which such Vendor is bound; or
- (b) result in a violation of any law or regulation in any jurisdiction having the force of law or of any order, judgment or decree of any court or governmental agency or agreement to which such Vendor is a party or by which such Vendor is bound.

## 12 Claims for breach of Warranty

12.1 The rights and remedies conferred on the Purchaser under this Agreement, are, save as otherwise expressly provided herein cumulative and additional to, and not exclusive of, any rights or remedies provided by law or otherwise available at any time to the Purchaser.

12.2 Save as provided in clause 10.3(a) in relation to the Warranties:

- (a) the Purchaser shall be entitled to make a claim or exercise any right of action after Completion in respect of any Relevant Breach or under either



of the Taxation Deeds or the US Non-Compete Agreement, whether or not the matter giving rise to the claim or right was known to or discoverable by the Purchaser before Completion;

- (b) the Purchaser's right or ability to claim damages, compensation or other relief in respect of any Relevant Breach or to claim under either of the Taxation Deeds or the US Non-Compete Agreement shall not be affected or limited, and the amount recoverable shall not be reduced, on the grounds that the Purchaser may before Completion have had actual, constructive or implied knowledge of the matter giving rise to the claim; and
- (c) without prejudice to the generality of clause 12.2(a) and 12.2(b) the rights and remedies of the Purchaser shall not be affected or limited in any way by any investigation made by or on behalf of the Purchaser into any Group Company or any report on any Group Company prepared at the instance of or made available to the Purchaser.

12.3 The provisions of schedule 7 shall apply.

### 13 Restrictive covenants

13.1 Each of the Vendors who are not trustees hereby severally undertake with the Purchaser (for itself and also as trustee for each UK Group Company) that following Completion (except with the prior written consent of the Purchaser):

- (a) no Primary Vendor shall, whether by himself, his employees or his agents or otherwise howsoever:
  - (i) for a period of 3 years from the Completion Date carry on or be interested or concerned directly or indirectly with any business or any person, company or firm carrying on any Restricted Business

in any Prohibited Area Provided that, in the case of Alan Richard Gatward, this shall not prevent or restrict him being interested or concerned in the business of Trendex (Bermuda) Limited or its wholly owned subsidiary Curzon Designs Limited as described in the letter to the Vendors' Solicitors from R M Walkden & Co. Limited dated 14 May 1996 and in the brochure annexed to the Disclosure Letter;

- (ii) for a period of 3 years from the Completion Date in respect of any Restricted Business directly or indirectly solicit custom or business from any person, firm or company who or which is at the Completion Date or has at any time within 2 years prior to the Completion Date been a customer of any UK Group Company or attempt to discourage any such person, firm or company from dealing with any UK Group Company Provided that, in the case of Alan Richard Gatward, this shall not prevent him or Trendex (Bermuda) Limited or Curzon Designs Limited dealing with customers of such companies;
  - (iii) for a period of 12 months after the first date on which such Vendor is no longer employed by any UK Group Company directly or indirectly solicit or endeavour to solicit for employment any of the employees employed by any UK Group Company from continuing to be so employed whether or not such person would commit any breach of his contract of employment by reason of his leaving the service of any UK Group Company;
- (b) no Secondary Vendor shall, whether by himself, his employees or his agents or otherwise howsoever:
- (i) (in consideration additionally as provided in clause 13.2) during the period ("**Relevant Period**") beginning on the Completion

Date and ending on the earlier of 3 years from the Completion Date and 12 months after the first date on which such Vendor is no longer employed by any UK Group Company, carry on or be interested or concerned directly or indirectly with any business or any person, company or firm carrying on any Restricted Business in any Prohibited Area;

- (ii) before the earlier of 3 years from the Completion Date and 12 months after the first date on which such Vendor is no longer employed by any UK Group Company, in respect of any Restricted Business directly or indirectly solicit custom or business from any person, firm or company who or which is at the Completion Date or has at any time within 2 years before the Completion Date been a customer of any UK Group Company or attempt to discourage any such person, firm or company from dealing with any UK Group Company;
  - (iii) for a period of 12 months after the first date on which such Vendor is no longer employed by any UK Group Company directly or indirectly solicit or endeavour to solicit for employment any of the employees employed by any UK Group Company from continuing to be so employed whether or not such person would commit any breach of his contract of employment by reason of his leaving the service of any UK Group Company;
- (c) no Primary or Secondary Vendor shall, whether by himself, his employees or his agents or otherwise howsoever, otherwise than in the proper course of his employment by a Group Company:
- (i) at any time hereafter make use of any business names used in the Business;

- (ii) at any time hereafter make use of or disclose to any third party the Confidential Information or any part or parts of it (other than any that comes into the public domain otherwise than by reason of a breach of this clause) or any Intellectual Property Rights used in the Business or any part or parts of it; or
- (iii) at any time hereafter use any corporate name or trade name or mark used by any UK Group Company or any other name intended or likely to be confused therewith.

"Restricted Business" means any business which is for the time being competitive with the Business.

13.2 By way of additional consideration for the covenants and undertakings given pursuant to clause 13.1(b)(i), the Purchaser hereby agrees that, should the relevant Secondary Vendor not be employed by any UK Group Company during the whole or any part of the Relevant Period (as defined in clause 13.1(b)(i)), the Purchaser will pay or procure that there is paid to the relevant Secondary Vendor either such net of tax amounts, and at such intervals, as would have been received by such relevant Secondary Vendor pursuant to his service agreement (including, for the avoidance of doubt, compensation for the loss of use of car and petrol) had he been so employed during the period of the Relevant Period during which he was not so employed, or an aggregate amount equal to the sum of such net amounts, or an amount that may come to be agreed with such relevant Secondary Vendor to be paid in settlement of amounts due or liabilities to such relevant Secondary Vendor pursuant to his service agreement, terms of employment or in respect of the breach thereof, (but Provided, for the avoidance of doubt, that any liability for the Purchaser to procure to be paid or to pay an amount hereunder shall be satisfied to the extent (if any) that such amount is paid by the relevant Group Company as employer or former employer of such relevant Secondary Vendor).

- 13.3 Nothing herein contained shall prevent the Primary Vendors, the Secondary Vendors or any of them from being the holder of or beneficially interested in any class of securities in any company if such class of securities is listed or dealt in on the London Stock Exchange or any other recognised stock or investment exchange and, taken together, the Primary Vendors and the Secondary Vendors do not hold nor are they beneficially interested in more than 3% in aggregate of such class.
- 13.4 Each of the undertakings contained in each of the paragraphs of clause 13.1 shall be and is a separate undertaking and shall be enforceable by the Purchaser (for itself or as trustee on behalf of each UK Group Company) independently of its right to enforce any one or more of the other undertakings contained in such clause.
- 13.5 The Primary Vendors and the Secondary Vendors agree with the Purchaser (for itself and as trustee for each UK Group Company) that clauses 13.1 to 13.3 inclusive are reasonable and necessary for the protection of the value of the UK Sale Shares and each UK Group Company and that having regard to that fact those covenants do not operate harshly and are not unduly restrictive.
- 13.6 (a) The Vendors hereby acknowledge that each of them has had the opportunity to take independent advice on the provisions of clauses 13.1 to 13.3 inclusive.
- (b) While these provisions are considered by the parties to be reasonable in all the circumstances, it is agreed that if any of these provisions, by themselves or taken together, shall be adjudged to go beyond what is reasonable in all the circumstances for the protection of the interests of the Purchaser and any UK Group Company but would be adjudged reasonable if part or parts of the wording thereof were deleted or amended or qualified or the periods thereof were reduced or the area dealt with were thereby reduced in scope, then the relevant provision or

provisions shall apply with such modification or modifications as may be necessary to make it or them valid and effective.

**14     Continuing effects of this Agreement**

14.1 Where this Agreement (including for the purpose of this clause any other agreement or arrangement of which it forms part) is subject to registration pursuant to the Restrictive Trade Practices Act 1976, no restriction (as defined in the said Act) contained in this Agreement shall come into effect until the day after particulars thereof have been furnished to the Director General of Fair Trading pursuant to Section 24 of the said Act. The parties shall use their respective best endeavours to ensure that, if in the opinion of any party hereto this Agreement is subject to such registration, all necessary particulars are furnished to the Director General of Fair Trading within the time limit provided in the said Act for doing so.

14.2 Subject to clause 14.1, all provisions of this Agreement shall so far as they are capable of being performed or observed continue in full force and effect notwithstanding Completion except in respect of those matters then already performed and Completion shall not constitute a waiver of any of the Purchaser's rights in relation to this Agreement or either of the Taxation Deeds or the US Non-Competition Agreement.

**15     Announcements and circulars**

15.1 The Vendors hereby undertake with the Purchaser to provide, and to use their best endeavours to procure that there is provided all such information known to them or which on reasonable enquiry ought to be known to them and relating to any Group Company or otherwise as the Purchaser may reasonably require for the purpose of complying with any requirements of law or of the London Stock Exchange.

15.2 Save for the Prospectus and save as required by law or by the London Stock Exchange, all announcements and circulars by or on behalf of any of the parties hereto relating to the sale and purchase hereunder shall be in terms to be agreed between the parties in advance of issue in writing (such agreement not to be unreasonably withheld or delayed).

16 Releases, waivers etc.

16.1 Neither the single or partial exercise or temporary or partial waiver by the Purchaser of any right, nor the failure by the Purchaser to exercise in whole or in part any right or to insist on the strict performance of any provision of this Agreement, either of the Taxation Deeds or the US Non-Compete Agreement nor the discontinuance, abandonment or adverse determination of any proceedings taken by any party to enforce any right or any such provision shall (except for the period or to the extent covered by any such temporary or partial waiver) operate as a waiver of, or preclude any exercise or enforcement or (as the case may be) further or other exercise or enforcement by the Purchaser of, that or any other right or provision. All references in this clause to any right shall include any power, right or remedy conferred by this Agreement, either of the Taxation Deeds or the US Non-Compete Agreement on, or provided by law or otherwise available to, the Purchaser and any failure to do something shall include any delay in doing it.

16.2 The giving by the Purchaser of any consent to any act which by the terms of this Agreement, either of the Taxation Deeds or the US Non-Compete Agreement requires such consent shall not prejudice the right of the Purchaser to withhold or give consent to the doing of any similar act.

17 Notices

17.1 Any notice required to be given hereunder shall be in writing and shall be deemed duly served:

- (a) if to be served upon the Purchaser, if left at or sent by pre-paid first class post addressed to the registered office for the time being of the Purchaser;
- (b) if to be served upon any of the Vendors, if left at or sent by pre-paid first class post addressed to the Vendor's Solicitors at the address specified in clause 1.1 or at such other address as may be notified in writing to the Purchaser for this purpose.

Any notice sent by post shall be deemed to have been served 2 Business Days after despatch and in proving service it shall be sufficient to show that the envelope containing the notice was duly addressed stamped and posted. Any notice delivered by hand shall be deemed to be served at the time of delivery.

## 18 Entire Agreement

- 18.1 This Agreement (together with all documents which are in the agreed form and all documents which are required by the terms of this Agreement or any such document to be entered into by the parties or any of them and all other documents entered into by the parties or any of them in connection with this Agreement or any such document (this Agreement and all other such documents being together "**the Transaction Documents**")) sets out the entire agreement and understanding between the parties or any of them in connection with the sale and purchase described herein.
- 18.2 Without prejudice to the generality of clause 18.1, this Agreement shall supersede the heads of agreement between the parties by way of letter dated 21 March 1996 and such heads of agreement shall hereafter be of no further force or effect.



**19     Alterations**

- 19.1 No purported alteration of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each party hereto.

**20     Severability**

- 20.1 Each provision of this Agreement is severable and distinct from the others and, if any provision is or at any time becomes to any extent or in any circumstances invalid, illegal or unenforceable for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Agreement but (except to that extent or in those circumstances in the case of that provision) the validity, legality and enforceability of that and all other provisions of this Agreement shall not be affected or impaired, it being the parties' intention that every provision of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

**21     Counterparts**

- 21.1 This Agreement may be entered into in the form of two or more counterparts each executed by one or more of the parties and, provided that all the parties so enter into the Agreement, each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but, taken together, they shall constitute one instrument.

**22     Payment of costs**

- 22.1 Subject to clauses 22.2 and 22.3, each of the parties shall be responsible for his or its own respective legal and other costs incurred in relation to the negotiation, preparation and completion of this Agreement and any other Transaction Documents.

- 22.2 If the Purchaser shall rescind this Agreement under clause 6.1 (save only where the same is as a result of a Relevant Post-Exchange Breach of any of the Warranties set out in paragraphs 8.3, 8.4, 11.5 and 11.12) or under clause 7.2, the Vendors shall on demand reimburse to the Purchaser all out-of-pocket expenses (including legal and other professional costs and expenses, and any VAT on all such expenses which is not recoverable by the Purchaser) incurred by the Purchaser in relation to the review or investigation of the Group Companies or any of them and/or the negotiation and preparation of any Transaction Document up to a maximum amount of £200,000.
- 22.3 If this Agreement shall cease to be of effect in accordance with and subject as provided in clause 2.4, the Purchaser shall on demand reimburse to the Vendors all out-of-pocket expenses (including legal and other professional costs and expenses, and any VAT on all such expenses which is not recoverable by the Vendors) incurred by the Vendors in relation to the negotiation and preparation of any Transaction Document and their tax advice in respect of the proposed sale and purchase up to a maximum amount of £200,000.

## 23 General

- 23.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 23.2 For the benefit of the Purchaser the parties agree to submit to the non-exclusive jurisdiction of the courts of England and Wales in respect of all claims, disputes and matters arising out of or in connection with this Agreement.
- 23.3 Each of the Vendors severally irrevocably appoints the Vendors' Solicitors as his or its agent to receive service of process in respect of any proceedings commenced by the Purchaser in the courts of England and Wales. Service of such process upon the Vendors' Solicitors at their address given in this Agreement or elsewhere within the jurisdiction pursuant to the Rules of Court

for the time being in force shall constitute good service on each of the Vendors. Each of the Vendors undertakes not to contest in any court in any jurisdiction the enforcement in that jurisdiction of any judgment of the courts of England and Wales against him or it on the ground that the courts of England and Wales did not have jurisdiction over him or it or that service of process (being service in accordance with this clause) was invalid or ineffective or resulted in his or it not having due or adequate notice of the proceedings.

- 23.4 This Agreement shall be binding on and shall enure for the benefit of the successors in title of each party. Neither this Agreement nor any part thereof may be assigned by any party without the consent of the Purchaser in the case of assignment by any of the Vendors or the consent of either of the Executive Directors in the case of assignment by the Purchaser, Provided that the Purchaser may assign this Agreement or any part thereof to any member of the Purchaser's Group or any Group Company on condition that should the assignee no longer be a member of the Purchaser's Group or a subsidiary of the Purchaser such assignee shall then re-assign this Agreement or part thereof to the Purchaser or another member of the Purchaser's Group.

IN WITNESS whereof this Agreement has been duly executed by the parties or their duly authorised representatives the day and year first above written.

# Schedule 1

## The Vendors

(1) Name & Address	(2) No. of UK Sale Shares	(3) No. of US Sale Shares	(4) % Further Consideration attributable to the Ordinary UK Sale Shares	(5) % Further Consideration attributable to the US Sale Shares	(6) Agreed Proportions
1 Roland Brown of 14 Park Avenue, Burnley, Lancashire BB11 4RH	123,050 ordinary shares of AUS\$0.01 each and 123,050 deferred shares of £1 each	1,300	7.36	0.65	8.01
2 Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Roland Brown No. 1 Life Interest Settlement	100,000 ordinary shares of AUS\$0.01 each and 100,000 deferred shares of £1 each	-	5.98	-	5.98
3 Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Roland Brown No. 2 Life Interest Settlement	40,000 ordinary shares of AUS\$0.01 each and 40,000 deferred shares of £1 each	-	2.39	-	2.39

4	Roland Brown, Peter Anthony Brown and Ian Richard Shuttleworth of 14 Park Avenue, Burnley, Lancashire BB11 4RH in their capacity as the trustees of the Roland Brown No.1 Grandchildren's Settlement	120,000 ordinary shares of AUS\$0.01 each and 120,000 deferred shares of £1 each	-	7.18	-	7.18
5	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Roland Brown wife's life interest settlement	136,000 ordinary shares of AUS\$0.01 each and 136,000 deferred shares of £1 each	-	8.13	-	8.13
6	Peter Anthony Brown of Overtown House, Greycliffe Lane, Cliviger, Nr. Burnley, Lancashire BB10 4TJ	138,950 ordinary shares of AUS\$0.01 each and 138,950 deferred shares of £1 each	1,950	8.31	0.975	9.285
7	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Peter Anthony Brown No. 1 Life Interest Settlement	140,000 ordinary shares of AUS\$0.01 each and 140,000 deferred shares of £1 each	-	8.37	-	8.37

8	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Peter Anthony Brown No. 2 Life Interest Settlement	100,000 ordinary shares of AUS\$0.01 each and 100,000 deferred shares of £1 each	-	5.98	-	5.98
9	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Peter Anthony Brown No. 3 Life Interest Settlement	80,000 ordinary shares of AUS\$0.01 each and 80,000 deferred shares of £1 each	-	4.79	-	4.79
10	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Peter Anthony Brown No. 4 Life Interest Settlement	60,000 ordinary shares of AUS\$0.01 each and 60,000 deferred shares of £1 each	-	3.59	-	3.59
11	Peter Anthony Brown, Roland Brown and Ian Richard Shuttleworth of Overtown House aforesaid in their capacity as the trustees of the Peter (Anthony Brown No.1 Children's Settlement	80,000 ordinary shares of AUS\$0.01 each and 80,000 deferred shares of £1 each	-	4.79	-	4.79

12	Nicholas John Beaumont of 5 Mayfield Road, Bramhall, Stockport, Cheshire SK7 1JU	80,000 ordinary shares of AUS\$0.01 each and 80,000 deferred shares of £1 each	1,000	4.79	0.5	5.29
13	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Nicholas John Beaumont No. 1 Life Interest Settlement	30,000 ordinary shares of AUS\$0.01 each and 30,000 deferred shares of £1 each	-	1.79	-	1.79
14	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Nicholas John Beaumont No. 2 Life Interest Settlement	30,000 ordinary shares of AUS\$0.01 each and 30,000 deferred shares of £1 each	-	1.79	-	1.79
15	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Nicholas John Beaumont Wife's Life Interest Settlement	20,000 ordinary shares of AUS\$0.01 each and 20,000 deferred shares of £1 each	-	1.20	-	1.20

16	Nicholas John Beaumont, Ronald Anthony Beaumont and Ian Richard Shuttleworth of 5 Mayfield Road aforesaid in its capacity as the trustee of the Emma and Hannah Accumulation and Maintenance Settlement	40,000 ordinary shares of AUS\$0.01 each and 40,000 deferred shares of £1 each	-	2.39	-	2.39
17	Mrs Ann Elizabeth Yates of 26 Harrogate Crescent, Burnley BB10 2NX	80,000 ordinary shares of AUS\$0.01 each and 80,000 deferred shares of £1 each	250	4.79	0.125	4.915
18	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Ann Yates No. 1 Life Interest Settlement	50,000 ordinary shares of AUS\$0.01 each and 50,000 deferred shares of £1 each	-	2.99	-	2.99
19	Curzon Secretaries & Trustees Limited of Seaton House, Seaton Place, St. Helier, Jersey JE1 1BG in its capacity as the trustee of the Ann Yates No. 2 Life Interest Settlement	70,000 ordinary shares of AUS\$0.01 each and 70,000 deferred shares of £1 each	-	4.19	-	4.19



20	Alan Richard Gatward of 120 E34, 19K, New York, NY 10016, USA	80,000 ordinary shares of AUS\$0.01 each and 80,000 deferred shares of £1 each	-	4.79	-	4.79
21	David Robert Aitken of 6 Leys Close, Wiswell, Clitheroe BB7 9DA	11,000 ordinary shares of AUS\$0.01 each and 11,000 deferred shares of £1 each	250	0.66	0.125	0.785
22	Trevor Bernard Nigel Henson of 152 Talbot Drive, Briercliffe, Burnley BB10 2RT	11,000 ordinary shares of AUS\$0.01 each and 11,000 deferred shares of £1 each	250	0.66	0.125	0.785
23	Terence Arthur Goodyear of 49 Crowwood Avenue, Burnley, BB12 0JG	10,000 ordinary shares of AUS\$0.01 each and 10,000 deferred shares of £1 each	-	0.59	-	0.59
Total		1,630,000	5,000	97.5%	2.5%	100%

Schedule 2  
Part A  
The Companies  
Part 1

Name:	Learoyd Group Limited
Date and place of incorporation:	England and Wales
Registered number:	3037060
Registered office:	Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ
Authorised share capital:	£10,000,000 and Aus\$16,300 divided into 10,000,000 deferred shares of £1 each and 1,630,000 ordinary shares of AUS\$0.01 each
Issued share capital:	£1,630,000 and AUS\$16,300 divided into 1,630,000 deferred shares of £1 each and 1,630,000 ordinary shares of AUS\$0.01 each
Directors:	Peter Anthony Brown Roland Brown Nicholas John Beaumont David Robert Aitken
Secretary:	David Robert Aitken
Auditors:	Binder Hamlyn, Chartered Accountants, Bank House, 9 Charlotte Street, Manchester M1 4EU
Bankers:	Barclays Bank PLC
Accounting reference date:	30 April
Status:	Not dormant

Charges:

All monies debenture dated 6 June 1995 in favour of Barclays Bank PLC creating fixed and floating charges over the undertaking and all property and assets, present and future, including goodwill, book debts, uncalled capital, buildings, fixtures, fixed plant and machinery.

The Companies  
Part 2

Name:	Learoyd Packaging (USA) Inc.
Date and place of incorporation:	Georgia, USA
Corporation number:	9214327
Federal Tax Identification number:	582004778
Principal office:	1080 Cambridge Square Suite D Alpharetta Georgia
Registered Office:	1409 Peachtree Street Atlanta Georgia 30309 Fulton County
Registered Agent:	Thomas J Harrold
Authorised capital stock:	1,000,000 shares, no par value
Issued capital stock:	5,000 shares
Directors:	Peter Anthony Brown David Robert Aitken Nicholas John Beaumont W Wesley Devoto Roland Brown Trevor Bernard Henson
Officers:	President - Peter Anthony Brown Vice-President (Sales) - Nicholas John Beaumont Vice-President (Production) - Trevor Bernard Henson Chairman - Roland Brown Secretary/Treasurer - David Robert Aitken Assistant Secretary - Thomas J Harrold Jr.

Part B  
The Subsidiaries

1.     Packaging

Date and place of incorporation:	12 November 1949 - England and Wales
Registered number:	474936
Registered office:	Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ
Authorised share capital:	£2,000,000 divided into 2,000,000 ordinary shares of £1 each
Issued share capital:	£1,600,000 divided into 1,600,000 ordinary shares of £1 each
Shareholders:	Learoyd Group Limited - 1,600,000 shares
Directors:	Peter Anthony Brown Roland Brown Nicholas John Beaumont David Robert Aitken Trevor Bernard Henson Antony Flanagan
Secretary:	David Robert Aitken
Auditors:	Binder Hamlyn, Chartered Accountants, Bank House, 9 Charlotte Street, Manchester M1 4EU
Bankers:	Barclays Bank PLC
Accounting reference date:	30 April
Status:	Not dormant
Charges:	None

2. Morris

Date and place of incorporation:	30 May 1947 - England and Wales
Registered number:	436008
Registered office:	Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ
Authorised share capital:	£250,000 divided into 250,000 ordinary shares of £1 each
Issued share capital:	£100,000 divided into 100,000 ordinary shares of £1 each
Shareholders:	Learoyd Group Limited - 100,000 shares
Directors:	Peter Anthony Brown Roland Brown Nicholas John Beaumont David Robert Aitken John Beard Charles Roger White
Secretary:	David Robert Aitken
Auditors:	Binder Hamlyn, Chartered Accountants, Bank House, 9 Charlotte Street, Manchester M1 4EU
Bankers:	Barclays Bank PLC
Accounting reference date:	30 April
Status:	Not dormant
Charges:	None

3. Filmcast

Date and place of incorporation:	3 February 1992 - England and Wales
Registered number:	2683570
Registered office:	Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ
Authorised share capital:	£250,000 divided into 250,000 ordinary shares of £1 each
Issued share capital:	£100,000 divided into 100,000 ordinary shares of £1 each
Shareholders:	Learoyd Group Limited - 100,000 shares
Directors:	Peter Anthony Brown Roland Brown Nicholas John Beaumont David Robert Aitken Alan Cox
Secretary:	David Robert Aitken
Auditors:	Binder Hamlyn, Chartered Accountants, Bank House, 9 Charlotte Street, Manchester M1 4EU
Bankers:	Barclays Bank PLC
Accounting reference date:	30 April
Status:	Not dormant
Charges:	None

4. Netherwood

Date and place of incorporation:	23 March 1995 - England and Wales
Registered number:	3036858
Registered office:	Heasandford Mill, Netherwood Road, Burnley, Lancashire BB10 2EJ
Authorised share capital:	£250,000 divided into 250,000 ordinary shares of £1 each
Issued share capital:	£100 divided into 100 ordinary shares of £1 each
Shareholders:	Learoyd Group Limited - 100 shares
Directors:	Peter Anthony Brown Roland Brown Nicholas John Beaumont David Robert Aitken Terence Arthur Goodyear Trevor Henson
Secretary:	David Robert Aitken
Auditors:	Binder Hamlyn, Chartered Accountants, Bank House, 9 Charlotte Street, Manchester M1 4EU
Bankers:	Barclays Bank PLC
Accounting reference date:	30 April
Status:	Dormant
Charges:	None



### Schedule 3

#### Conditions, related undertakings and Pre-Completion restrictions

##### Part A - The Conditions

- 1 The Placing Agreement having become and remaining unconditional in all respects (save only as to fulfilment of the conditions in clauses 2.1(e) and 2.1(h) of the Placing Agreement) and the Placing Agreement not having been terminated by the time of such unconditionality;
- 2 There having been passed at an extraordinary general meeting of the Purchaser a resolution of the kind and in the terms of resolution 1 in the notice of the extraordinary general meeting of the Purchaser set out in the Prospectus ("**Relevant Resolution**"), or such other or amended resolution as is necessary to enable the Purchaser to complete this Agreement without breach of the Listing Rules or any law, rule or regulation or the Purchaser's memorandum or articles of association ("**Enabling Resolutions**");
- 3 The London Stock Exchange having admitted the New Purchaser Shares to the Official List of the London Stock Exchange subject only to allotment ("**Admission**"); and
- 4 Admission having become effective by the announcement of the decision of the London Stock Exchange to admit the New Purchaser Shares to listing being made pursuant to paragraph 7.1 of the Listing Rules and the Placing Agreement not having been terminated by the time of such effective Admission.

### Part B - Pre-Completion restrictions

During the Interim Period (except with the prior written consent of the Purchaser) the Vendors shall procure that no Group Company shall:

- (a) resolve to change its name or to alter its Memorandum or Articles of Association, Articles of Incorporation or Bylaws or other constitutional document;
- (b) allot or issue or agree to allot or issue any shares or loan capital or any securities or grant or agree to grant rights which confer on the holder any right to acquire any shares or loan capital or other securities;
- (c) declare, pay or make any dividend or other distribution, save that this shall not prevent the payment of bonuses to employees aggregating £14,000 in total as provided in the Accounts;
- (d) repay, redeem or purchase any of its share capital or stock;
- (e) reduce its share capital;
- (f) resolve to be voluntarily wound up or dissolved or to merge with or into any other person;
- (g) pass any resolution or obtain any consent from its members or any class of its members except so as to give effect to this Agreement or any Transaction Document;
- (h) make any material change (including any change by the incorporation, acquisition or disposal of a subsidiary or a business) in the nature, extent or terms of its business;

- (i) depart in any material respect from continuing its business in its ordinary and proper course;
- (j) save as provided in the 1997 Group Budget, agree to an increase in the emoluments of any its employees or officers or make any other material change in the terms or conditions of employment or engagement of any of its;
- (k) enter into any transaction with or for the benefit of any of the Vendors or any director of any Group Company or of any person who is connected with any such person:
  - (i) except in the usual course of its business; and
  - (ii) on terms which are in no respect less favourable to it than normal arm's length terms;
- (l) appoint new auditors or remove its existing auditors;
- (m) fail to complete and keep proper accounting records which adequately reflect all its dealings and transactions;
- (n) enter into any borrowing, factoring or other financing or any lending commitments; or
- (o) dispose of or enter into any lease, hire or hire-purchase agreement or agreement for payment on deferred terms (other than normal trade credit or bill of sale) in respect of, or create any Security Interest (other than a Permitted Security Interest) over, any of its fixed or loose plant, machinery, furniture, fixtures, fittings, equipment and vehicles or other assets; and
- (p) otherwise than in the ordinary course of business and in accordance with the 1997 Group Budget or pursuant to any of the Transaction Documents, except in

the case of Filmcast in relation to the purchase of the property described in part 3 of schedule 4 for £425,000:

- (i) incur or agree to incur in any transaction any liability (whether as principal or surety) for a principal amount which itself, or which when added to the aggregate of all other liabilities incurred or agreed to be incurred in all other related transactions, exceeds or could exceed £10,000;
- (ii) create or agree to create any Security Interest over the whole or any part of its business and undertaking or all or any of its assets;
- (q) permit or allow any of its assets to be depleted by any unlawful act on the part of any person;
- (r) commit or omit to do any act or thing the commission or (as the case may be) the omission of which is in contravention of any applicable law, order or regulation and which would have a material adverse effect on the business or financial condition of any Group Company;
- (s) fail to keep in place its existing insurance cover and shall, following consultation with the Purchaser procure that any insurance claim arising in respect of any asset or liability of or any other matter relating to each Group Company is made as soon as practicable;
- (t) fail to maintain the confidentiality of its customer and supplier information and of its other proprietary information;
- (u) exercise any power under any of the Schemes to augment or provide any benefit which would not otherwise have been augmented or provided;

- (v) appoint any additional director or corporate officer other than D Hoy who may be appointed a director of Filmcast;
- (w) commit or omit to do any act or thing the commission or (as the case may be) the omission of which makes or is liable to make any of its policies of insurance void or voidable; or
- (x) compromise or settle any legal or arbitration proceedings commenced by any Group Company or against any Group Company other than in relation to the collection of debts in the ordinary course.

Schedule 4  
The Properties

1     Morris

Property:     Freehold interest in land and buildings lying on the north-west of Burnley Road, Warley, Halifax and registered at H M Land Registry under Title Nos WYK334740 and WK 306374.

2     Packaging

Property:     Leasehold interest in land and buildings lying to the north of Netherwood Road and registered at H M Land Registry under:

- (a)     Title Number LA 334779 pursuant to a lease details of which are as follows:

<u>Date</u>	<u>Parties</u>	<u>Term</u>
31.12.1904	(1) Sir John Ormerod Scarlett Thursby	999 years from 1.4.1903
	(2) The Heasandford Manufacturing Company Limited	

- (b)     Title Number LA 199518 pursuant to leases details of which are as follows:

<u>Date</u>	<u>Parties</u>	<u>Term</u>
31.12.1946	(1) Sir Ralph Cockayne Assheton and others	959 years from 1.4.1943
	(2) The Heasandford Manufacturing Company Limited	

31.12.1904	(1) Sir John Ormerod Scarlett Thursby	999 years from 1.4.1903
	(2) The Heasandford Manufacturing Company Limited	
7.3.1904	(1) Sir Ralph Cockayne Assheton and others	953 years from 1.4.1949
	(2) The Heasandford Manufacturing Company Limited	

(c) Title Number LA 49443 pursuant to leases details of which are as follows:

<u>Date</u>	<u>Parties</u>	<u>Term</u>
31.12.1904	(1) Sir John Ormerod Scarlett Thursby	999 years from 1.4.1903
	(2) The Heasandford Manufacturing Company Limited	
31.12.1946	(1) Sir Ralph Cockayne Assheton, George Southern Richie and Hugh Murchison Clowes	959 years from 1.4.1943
	(2) The Heasandford Manufacturing Company Limited	
7.3.1949	(1) Sir Ralph Cockayne Assheton, George Southern Richie and Hugh Murchison Clowes	953 years from 1.4.1949
	(2) The Heasandford Manufacturing Company Limited	

Property: Leasehold interest in land and buildings to the south east of Queen Victoria Road, Burnley and registered at H M Land Registry under Title No. LA 728157 pursuant to a lease details of which are as follows:

<u>Date</u>	<u>Parties</u>	<u>Term</u>
21.10.1993	(1) The Council of the Borough of Burnley (2) Packaging	125 years from 27.7.1993

### 3 Filmcast

Property: Leasehold interest in land and buildings at Lindred Road, Lomeshaye Industrial Estate, Nelson pursuant to a lease details of which are as follows:

<u>Date</u>	<u>Parties</u>	<u>Term</u>
14.6.1993	(1) Leslie Ames (2) Filmcast (3) Packaging	9 years from 14.6.1993

### 4 US Company

Property: Usufruct interest in office premises known as Suite D, 1080 Cambridge Square, Alpharetta, Georgia 30201, USA, pursuant to a Lease Agreement the details of which are as follows:

<u>Date</u>	<u>Parties</u>	<u>Term</u>
18.5.1995	(1) Alpharetta Properties, L.P. (2) Learoyd Packaging (USA) Inc.	2 years from 1.6.1995

Property: Usufruct interest in office premises known as Apartment 107, Rosemont Court, Roswell, Georgia USA, pursuant to an Apartment Rental Agreement the details of which are as follows:

<u>Date</u>	<u>Parties</u>	<u>Term</u>
21.11.1995	(1) FPI Rosemont Ltd. d/b/a Rosemont Apartments (2) John D. Kent and Learoyd Packaging USA Inc	12 months from 1.1.1996



Schedule 5

Directors and employees

Part A - Additional Directors

M J Smith

D J Holt

R Merrick

Part B - New Secretary

T K Johnston

Part C - Retiring Secretary

David Robert Aitken

Part D - Persons to receive Service Agreements

Mr Peter Brown

Mr Beaumont

## Schedule 6

### Part A - General

#### **1 Factual statements**

- 1.1 The information set out in schedules 1 (as regards the number and denominations of Sale Shares held) and 3 is correct, accurate and not misleading.

#### **2 Constitution**

- 2.1 Each UK Group Company is a private company limited by shares incorporated in England.
- 2.2 The US Company is a corporation duly incorporated with limited liability, and which validly exists with good standing, under the laws of the State of Georgia, USA.
- 2.3 The issued shares or stock of each Group Company referred to in schedule 2 constitute the entire issued share capital or stock of each Group Company and all the other information set out in schedule 2 is complete and accurate in all respects and not misleading in any respect.
- 2.4 No Group Company has any:
- (a) (save for the Subsidiaries) interest in the share capital of, or other investment in, any body corporate;
  - (b) interest in any partnership, joint venture, consortium or other unincorporated association or arrangement for sharing profit; or

- (c) (save, in relation to the US Company, as disclosed in the Disclosure Letter) branch, agency, place of business or permanent establishment outside the United Kingdom ("overseas branch") or substantial assets outside the United Kingdom;

and no Group Company has any outstanding obligation to acquire any such interest or overseas branch or in respect of any such interest or overseas branch formerly owned by it or agreed to be acquired by it.

2.5 Copies of the Memorandum and Articles of Association, Articles of Incorporation and Bylaws or other constitutional documents of each Group Company (having attached thereto copies of all such resolutions as are by law required to be attached thereto) and any agreement between the shareholders or any of them in connection with any Group Company are attached to the Disclosure Letter.

2.6 There is no shadow director of any Group Company.

### 3 Compliance with legal requirements

3.1 Compliance has been made in all material respects with all legal and procedural requirements and other formalities in relation to each Group Company concerning:

- (a) its Memorandum and Articles of Association, Articles of Incorporation and Bylaws or other constitutional documents (including all resolutions passed or purported to have been passed);
- (b) the filing of all documents required by CA 1985 to be filed at Companies House or by the Georgia Business Corporation Code to be filed with the Secretary of State of Georgia;

- (c) issues of shares, stock, debentures or other securities; and
  - (d) payments of dividends and the making of other distributions.
- 3.2
- (a) Each Group Company has obtained all licences, permissions, consents and other approvals required for the carrying on of its business in the places and in the manner in which the business is now carried on by that Group Company.
  - (b) Such licences, permissions, consents and approvals are valid and in full force and effect and have been complied with in all material respects.
  - (c) So far as the Vendors are aware (no enquiry having been made outside the Group) there are no circumstances which indicate that any of such licences, permissions, consents, or approvals will or may be revoked or not renewed or which may confer a right of revocation.
- 3.3
- All registers and minute books required to be kept by each Group Company have been properly written up in accordance with law and contain an accurate and complete record of the matters which should be dealt with therein and no Group Company has received any application or request for rectification of its statutory registers or any notice or allegation that any of them is incorrect.
- 3.4
- (a) Each Group Company is conducting and has at all times conducted its business in all material respects in accordance with all applicable laws and regulations.
  - (b) So far as the Vendors are aware no Group Company has any liability for any act committed by any other person.
- 3.5
- No Group Company has received notification that any investigation or enquiry is being or has been conducted by any governmental or other body in respect of

its affairs and the Vendors are not aware of any circumstances which are likely to give rise to such investigation or enquiry.

3.6 There are attached to the Disclosure Letter copies of all:

- (a) charges not being Permitted Security Interests in the case of the UK Group Companies; and
- (b) other Security Interests not being Permitted Security Interests in the case of the US Company,

in any such case created by, or in favour of, any Group Company and currently in force and all such charges have been registered (if and as appropriate) under Part XII CA 1985 or any Uniform Commercial Code in the State of Georgia, USA, or elsewhere and so far as the Vendors are aware are valid and fully enforceable.

#### 4 Accounts

4.1 Each of the UK Group Company Accounts:

- (a) comply with the requirements of CA 1985;
- (b) comply with all current statements of standard accounting practice ("SSAP's") and financial reporting standards ("FRS's") applicable to a company incorporated in the United Kingdom and have been prepared in accordance with the historical cost convention, on a recognised and consistent basis and on the same basis and in accordance with the same accounting policies as the corresponding accounts for the preceding three financial years;

- (c) give a true and fair view of the state of affairs of each UK Group Company as at the Accounts Date and of its assets and liabilities as at the Accounts Date and its profit/loss for the financial year ended on that date.

4.2 (Without limiting paragraph 4.1 above) insofar as required by CA 1985, SSAP's and FRS's:

- (a) adequate provision has been made in each of the UK Group Company Accounts:

- (i) for depreciation of assets;
- (ii) in valuing work-in-progress and stock for any foreseeable losses which may arise on completion or realisation;
- (iii) for any foreseeable liabilities in relation to the disposal of any assets; and
- (iv) for bad or doubtful debts; and

- (b) stock and work-in-progress have been valued in the UK Group Company Accounts at the lower of cost and net realisable value.

4.3 The US Company Accounts:

- (a) comply with all current statements of standard accounting practice and financial reporting standards applicable to a company incorporated in the United Kingdom and have been prepared in accordance with the historical cost convention, on a recognised and consistent basis and on the same basis and in accordance with the same accounting policies as the corresponding accounts for the preceding three financial years;

- (b) fairly present the financial condition of the US Company as at the Accounts Date and the results of its operations for the financial year ended on that date.

4.4 (Without limiting paragraph 4.3 above) insofar as would be required by CA 1985, SSAP's and FRS's:

- (a) adequate provision has been made in the US Company Accounts:
  - (i) for depreciation of assets;
  - (ii) in valuing work-in-progress and inventory for any foreseeable losses which may arise on completion or realisation;
  - (iii) for any foreseeable liabilities in relation to the disposal of any assets; and
  - (iv) for bad or doubtful accounts receivable;
- (b) inventory of finished goods, raw materials and work-in-progress have been valued in the US Company Accounts at the lower of cost and net realisable value.

4.5 The results shown by the audited accounts for each of the three financial periods of each Group Company immediately preceding the financial year ended on the Accounts Date were not (save as disclosed therein) affected by any extraordinary, exceptional or non-recurring item or by any other factor rendering such results for all or any part of such periods unusually high or low.

4.6 The accounting records of each Group Company have been properly written up on a consistent basis and accurately present and reflect in accordance with generally accepted accounting principles and standards consistently applied all

the transactions to which the relevant Group Company has been a party and contain accurate details of the business activities of the relevant Company and of all matters required by CA 1985 (or corresponding overseas legislation or regulation applicable to the US Company) to be entered in them.

- 4.7 Other than as contained in the audited accounts, there have been no reports concerning any Group Company by accountants or by financial or management consultants within the three years prior to the date hereof.
- 4.8 No Group Company has factored or discounted any of its debts or engaged in financing of a type which would not be required to be shown or reflected in the Accounts.
- 4.9 Each Group Company has made adequate provision in respect of those debts due to it and which are considered to be or are likely to become bad or doubtful. The Group's policies in respect of provisions for bad and doubtful debts are described accurately in the Disclosure Letter and the Disclosure Letter contains details of those debts considered bad and doubtful at the date of this Agreement.

## **5 Share capital**

- 5.1 There is no option, right to acquire, mortgage, charge, pledge, lien or other form of Security Interest or encumbrance on, over or affecting any of the Sale Shares, there is no agreement or commitment to give or create any of the foregoing and no person has made any claim against the Vendors to be entitled to any of the foregoing.
- 5.2 No share, stock or loan capital of any Group Company is now under option or is agreed or resolved conditionally or unconditionally to be created or issued or put under option.



- 5.3 No Group Company has at any time purchased or redeemed or repaid or agreed to purchase, redeem or repay any share capital.
- 5.4 No Group Company has within the last 7 years made and no Group Company is proposing to make any distribution except out of profits available for the purpose.

**6 Ownership and condition of assets**

- 6.1 The fixed and loose or moveable plant, machinery, furniture, fixtures, fittings, equipment, vehicles and all other assets used in relation to the business of any Group Company are the property of the relevant Group Company free from any hire or hire-purchase agreement or agreement for payment on deferred terms or other Security Interest (not being a Permitted Security Interest) and have at all material times been and are in the possession of or under the control of the relevant Group Company.
- 6.2 Each Group Company owns or has the right to use all assets and rights that it needs to carry on its Business as carried on by that Group Company immediately prior to the date hereof.
- 6.3 The trading stock and inventory (including raw materials) held by each Group Company is good marketable stock and any obsolete, obsolescent, slow-moving, damaged, unusable, unsaleable or excessive stock has been adequately written down to reflect such circumstances.
- 6.4 All plant, machinery, vehicles and equipment owned or used by any Group Company is, in the reasonable opinion of the Executive Directors, in satisfactory working order and repair given its use or intended use, it complies with appropriate safety regulations and none is, or is likely to be, in the reasonable opinion of the Executive Directors, dangerous or in need of renewal or replacement within the next 6 months.

- 6.5 Each Group Company keeps an up to date plant register of the fixed assets used by it in its business, a copy of which is attached to the Disclosure Letter, and such register is complete and accurate.
- 6.6 There has been no exercise or purported exercise of any Security Interest over any of the fixed or other assets of any Group Company and there is no dispute directly or indirectly relating to any such assets.
- 6.7 In respect of all plant and machinery held by any Group Company under any hire-purchase, conditional sale, leasing or rental agreement:
- (a) true and accurate particulars of all such hire-purchase and conditional sale agreements, leases and rental agreements are attached to the Disclosure Letter;
  - (b) the amount of the last rental expressed in the Disclosure Letter to be payable by the relevant Group Company is the amount currently payable under such hire-purchase, conditional sale, leasing or rental agreement;
  - (c) no notification has been received by any Group Company from the lessor or the owner to terminate any such hire-purchase, conditional sale, leasing or rental agreement and so far as the Vendors are aware, no circumstances exist which would give rise to such entitlement.

## **7 Insurance**

- 7.1 An accurate summary of all material terms and conditions of all insurances effected by each Group Company are annexed to the Disclosure letter.
- 7.2 In respect of policies insuring the leasehold property where any Group Company is responsible for maintaining the insurance the policy conforms in all respects to the requirements of the relevant lease.

7.3 (a) All premiums due on the policies in respect of the Group's insurance cover ("**the Policies**") have been paid.

(b) All of the other conditions of the Policies have been performed and observed by the Group Companies in all material respects.

(c) None of the Policies has or will or is likely to become void or voidable as a result of an act or omission of any Group Company.

7.4 The Policies, together with the receipts for the latest premiums payable in respect thereof, are in the possession of the Group Companies.

7.5 No claim is outstanding either by any Group Company, or so far as the Vendors are aware by the insurer, under any of the Policies and so far as the Vendors are aware no claim against any Group Company by any third party is outstanding in respect of any risk covered by any of the Policies or by any policy previously held by any Group Company.

7.6 So far as the Vendors are aware there are no circumstances which would or are likely to entitle any Group Company to make a claim under any of the Policies or which would or are likely to be required under any of the Policies to be notified to the insurers.

7.7 No Group Company has any keyman insurance or equivalent insurance with respect to any of its directors or employees.

## 8 **Trading**

8.1 A copy of the standard terms of business of each Group Company which is not dormant is annexed to the Disclosure Letter. 5

- 8.2 Save for any warranty implied by law or contained in its standard terms of business, no Group Company has given any warranty or guarantee, or made any representation, in respect of goods or services supplied or agreed to be supplied by it.
- 8.3 No part of the business of any Group Company has been materially and adversely affected by the loss during the 3 years ended on the Accounts Date of any important customer or source of supply, (being a customer or supplier which over a period of 3 months or more during those 3 years has accounted for 5 per cent. or more in value of the goods or services supplied by or to the Group during that period or being any of the following customers: Eclipse/Vertika; Warburtons; Robinsons; Next; C & A; J H Harland; Wells Fargo; any other Group Company), and no such customer or supplier has given notice to any Group Company of an intention to cease or reduce trading with or supplies to any Group Company.
- 8.4 So far as the Vendors are aware having made no enquiries outside the Group:
- (a) neither this Agreement nor Completion is likely to cause any person who normally does business with any Group Company not to continue to do so on the same basis; and
  - (b) the attitude or actions of customers, suppliers, employees and other persons with regard to any Group Company will not be otherwise prejudicially affected by the execution of this Agreement or Completion.
- 8.5 No Group Company has committed any material breach of any agreement or arrangement to which it is a party.
- 8.6 The Group Companies' liabilities:

- (a) to replace or remedy defects in any goods previously supplied or agreed to be supplied under any contract; or
- (b) to service, repair, maintain, take back or otherwise do or not do anything in respect of goods previously delivered,

do not exceed the Group Companies' normal level of liabilities in respect of any such matters.

8.7 No Group Company is a party to any confidentiality or secrecy agreement or undertaking or other arrangement which may restrict its use or disclosure of any information.

8.8 Each Group Company has exclusive ownership (free of any lien or other third party right) of and direct control of and access to:

- (a) all documents of title relating to its assets;
- (b) all subsisting written agreements to which it is a party;
- (c) all records, systems, data and information held by it or on its behalf which are recorded, maintained, stored or otherwise wholly or partly dependent on any system (including, without limitation, any electronic, mechanical or photographic process whether computerised or not) whether operated by such Group Company or not.

8.9 No part of the business of any Group Company is carried on under the agreement or consent of a third party, nor is there any agreement which significantly restricts the fields in which any Group Company carries on business.

- 8.10 There are not now outstanding any agreements or arrangements (whether by way of guarantee, indemnity, warranty, representation or otherwise) under which any Group Company is under a prospective or contingent liability or other obligation in respect of any disposal by any Group Company of the whole of its assets or business or any substantial part thereof.

## 9 Transactions since the Accounts Date

### 9.1 Since the Accounts Date:

- (a) the assets of no Group Company have been depleted by any unlawful act on the part of any person;
- (b) there has been no materially adverse change in the financial or trading position, or so far as the Vendors are aware (not having made enquiries of third parties) prospects, of any Group Company and the business of each Group Company has been carried on in the ordinary, usual and proper course and in the same manner as immediately before the Accounts Date;
- (c) no loan or loan capital has been repaid by any Group Company in whole or in part or has become liable to be so repaid;
- (d) there has been no resolution of or consent by the members or any class of members or shareholders of any Group Company;
- (e) each Group Company has paid its creditors (whenever arising) within the time limits agreed with such creditors; and
- (f) no Group Company has offered price reductions or discounts or allowances on sales of trading stock or inventory or services or provided

them at less than cost to an extent that may materially affect its profitability.

## 10 Financial Matters

10.1 Details of all bank accounts maintained or used by any Group Company (including, in each case, the name and address of the bank with whom the account is kept and the number and nature of the account) and statements showing the balance on each account as at the close of business on a date not being more than seven days prior to the date of this Agreement are attached to the Disclosure Letter. Since the date of each statement no payment out of any of the accounts has been made, except for routine payments in the ordinary course of trading and the present balances are not substantially different from those shown in the statement.

10.2 The only Security Interests not being Permitted Security Interests affecting any of the assets or undertaking of any Group Company and the only overdraft, loan and other financial and leasing facilities available to any Group Company are described in the Disclosure Letter and in relation to each such Security Interest and each such facility:

- (a) correct details and copies of all documents relating thereto are attached to the Disclosure Letter;
- (b) there has been no material contravention of or material non-compliance with any provision of any such document;
- (c) so far as the Vendors are aware no steps for the enforcement of any encumbrances have been taken or threatened;
- (d) there has not been any alteration (other than insignificant alterations) in the terms and conditions of any of the said arrangements or facilities;

- (e) nothing has been done or omitted to be done by any Group Company or Vendor whereby the continuance of the said arrangements and facilities in full force and effect will or is likely to be affected or prejudiced by virtue of such arrangements (or, so far as the Vendors are aware, otherwise) in any material respect; and
- (f) none of the arrangements is dependent on the guarantee or indemnity of, or on any security provided by, a third party.

10.3 The total amount borrowed by any Group Company:

- (a) from its bankers does not exceed its overdraft facilities; or
- (b) from whatsoever source does not exceed any limitation on borrowing contained in the Articles of Association, Articles of Incorporation or other constitutional document or any debenture or loan instrument or other deed or document binding on it.

10.4 Save for the borrowings referred to in paragraphs 10.2 and 10.3, no Group Company:

- (a) has outstanding any loan capital;
- (b) has incurred or agreed to incur any borrowing which it has not repaid or satisfied;
- (c) has lent or agreed to lend any money which has not been repaid to it;
- (d) owns the benefit of any debt present or future (other than debts due to it in respect of the sale of trading stock in the normal course of trading);
- (e) is a party to or has any obligation under:



- (i) any loan agreement, debenture, acceptance credit facility, bill of exchange, promissory note, finance lease, debt or inventory financing, discounting or factoring arrangement or sale and lease back arrangement; or
- (ii) any other arrangement the purpose of which is to raise money or provide finance or credit.

- 10.5 No event has occurred or been alleged which is or, with the passage of a time and/or the giving of any notice, certificate, declaration or demand, would become an event of default under, or a material breach of any of, the terms of any loan capital, borrowing, debenture or financial facility of any Group Company or would entitle any third party to call for repayment prior to normal maturity.
- 10.6 No Group Company is a party to, nor has any Group Company any liability (including, without limitation, any prospective or contingent liability) under, any guarantee, indemnity or other agreement to secure or support an obligation of a third party.
- 10.7 Completion of this Agreement will not result in the creation, crystallisation or enforcement of any Security Interest over any asset of any Group Company.
- 10.8 The Disclosure Letter contains details of each grant or subsidy or other financial assistance received or receivable by any Group Company from any state, governmental, quasi-governmental or other authority and no Group Company has not done, or omitted to do, any act which could result in all or part of any such assistance becoming repayable early or being forfeited or withheld and the Vendors have no reason to expect that Completion of this Agreement will give rise thereto.

## 11 Employees

11.1 There is attached to the Disclosure Letter a schedule showing the following information in relation to each employee of any Group Company namely:

- (a) name;
- (b) age;
- (c) job description;
- (d) emoluments (including any bonus or commission arrangements and any other benefits of any description);
- (e) date of commencement of employment or of any previous employment with which such employment is continuous;
- (f) notice period required to be given by the relevant Group Company and the employee; and
- (g) date of last increase in salary

and such information is correct in all material respects.

11.2 True, up-to-date and complete copies of all contracts of employment between any Group Company and its senior employees, and of specimens of the contracts or terms of employment relevant to all other employees of any Group Company and any other documents (or specimens thereof) currently in force relating to the employment of the employees, are attached to the Disclosure Letter together with copies of all consultancy agreements currently in force to which any Group Company is a party.

- 11.3 Since the Accounts Date no change has been made in the terms of employment by any Group Company of any employee and, save as provided in the 1997 Group Budget, no negotiation for such a change, is due or expected by the Vendors within 6 months from the date of this Agreement.
- 11.4 Each Group Company has maintained adequate up to date records as required by law regarding the service of each of its employees (including details of terms of employment, payments of statutory or other sick pay, statutory or other maternity pay, disciplinary and health and safety matters, income tax and social security contributions and termination of employment). Copies of all underlying documentation or summaries of the material terms relating to any schemes operated by any Group Company in connection with statutory or other sick pay and statutory or other maternity pay are attached to the Disclosure Letter and no Group Company is proposing to adopt any new scheme in relation to any such matters.
- 11.5 Since the Accounts Date, no employee has given notice terminating his contract of employment or is under notice of dismissal and no amount due to or in respect of any employee or former employee is in arrear and unpaid other than his salary for the month current at the date of this Agreement and in respect of the reimbursement of expenses.
- 11.6 No Group Company is involved in any dispute with its employees or any of them affected by (or in any negotiation under or affected by), and each Group Company has complied in all material respects, to the extent the same are applicable, with, any of the Employment Protection Act 1975, the Employment Protection (Consolidation) Act 1978 (as amended) ("EPCA"), the Employment Acts 1980, 1982, 1983, 1989 and 1990, the Equal Pay Act 1970, the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976, the Wages Act 1986 and the Trade Union and Labour Relations (Consolidation) Act 1992 and any other statute, regulation or law (other than one relating to Taxation to which the Tax Warranties apply) relating to wages, hours, health and safety,

payment of social security, maintenance of workers' compensation insurance, labour and employment relations or employment discrimination, and so far as the Vendors are aware there are no present circumstances (including Completion) which are likely to give rise to any such dispute or non-compliance.

11.7 Within a period of one year preceding the date of this Agreement:

- (a) no Group Company has given notice of any redundancies to the Secretary of State for Employment or started consultations with any independent trade union or unions under Part VI EPCA or otherwise and no Group Company has failed to comply with any obligation under such Part VI or otherwise; and
- (b) no Group Company (other than the US Company) has been a party to any relevant transfer as defined in the Transfer of Undertakings (Protection of Employment) Regulations 1981 and no Group Company has failed to comply with any duty to inform and consult any independent trade union.

11.8 No gratuitous payment has been made or promised by any Group Company within the last 3 years in connection with the actual or proposed termination, breach, suspension or variation of any employment or engagement of any present or former director, officer or employee of or consultant to any Group Company; and there is no outstanding obligation or ex gratia arrangement for any Group Company to pay any compensation to any present or former director, officer, employee or consultant.

11.9 There is no collective bargaining agreement or other arrangement (whether binding or not) between any Group Company and any trade union or other body representing its employees.

- 11.10 No Group Company has and no Group Company is proposing to introduce any share incentive scheme, share option scheme or profit sharing bonus or other incentive scheme for any director, officer or employee.
- 11.11 There are no training schemes arrangements or proposals in existence nor have there been any such schemes or arrangements at any material time in the past in respect of which a levy may become payable by any Group Company.
- 11.12 So far as the Vendors are aware having made no enquiry of third parties neither this Agreement nor Completion will or is likely to cause any director, officer or senior employee to terminate his engagement or employment with any Group Company.
- 11.13 The US Company is not a party to any agreement of any kind which deals with wages, conditions of employment, benefits or other matters affecting the employer/employee relationship with any union, labour organisation or employee group. There are no controversies pending, or so far as the Vendors are aware, threatened, between the US Company and any union, labour organisation or employee group representing, or seeking to represent, any of its employees, and there has been no attempt by any union, labour organisation or employee group to organise any of the US Company's (or its predecessors's) employees at any time in the past five years.

## 12 Contracts

- 12.1 There is no contract or agreement to which any Group Company is a party, nor, so far as the Vendors are aware (enquiry not having been made outside the Group) is there any other material arrangement relevant to any Group Company which, in accordance with its terms, will or could be varied (except with the consent of such Group Company), avoided, repudiated or rescinded, or prematurely determined or declared to be invalid in either case by virtue of a right or remedy operating or arising by reference to a change of control in any

such Group Company or similar circumstance, or which, in accordance with its terms, will or could give any other party the right to impose any new or additional obligation on any Group Company by reference to a change of control or similar circumstance.

12.2 No Group Company is a party to any distributorship, agency, or licensing agreement (whether as principal or as agent).

12.3 No liability in respect of any claim against any Group Company arising out of any defect in design, material or workmanship of any goods or supplied by such Group Company before Completion or out of any error or omission on the part of such Group Company in the supply of any service before Completion (not being a liability to replace, remedy, take back etc. as referred to in Warranty 8.6) will exceed in amount the limit of insurance cover in force for the benefit of such Group Company against such a claim.

12.4 No Group Company is a party to any contract, obligation or arrangement which:

- (a) was entered into outside the ordinary course of business;
- (b) is of a long term nature (that is, unlikely to have been fully performed in accordance with its terms within 6 months after the date on which it was entered into or undertaken); or
- (c) is incapable of termination by such Group Company in accordance with its terms on no more than 3 months' notice; or
- (d) gives any party an option to acquire or dispose of any asset or requires another person to do so; or
- (e) in the Executive Directors' reasonable opinion, is likely to result in a loss to such Group Company on completion or performance; or

- (f) cannot readily be fulfilled or performed by such Group Company on time without undue or unusual expenditure of money, effort or personnel; or
- (g) involves payments by or to such Group Company by reference to fluctuations in any index of retail prices, any other index, the rate of exchange for any currency or the cost or value of any raw material or commodity; or
- (h) (or in relation to which) any relevant requirements of section 319 Companies Act 1985 have not been complied with; or
- (i) other than in the ordinary course and together with any other such contracts, obligations or arrangements, involves or is likely to involve outstanding expenditure by such Group Company of more than £25,000 in aggregate; or
- (j) involves or is likely to involve the supply of goods or services the aggregate sales value of which will represent in excess of 2 per cent. of the turnover of such Group Company for the preceding financial year; or
- (k) is a contract for hire or rent, hire-purchase or purchase by way of credit or instalment payment or for maintenance of such Group Company's assets,

and no Group Company has any offer, bid, tender or proposal outstanding which, by the acceptance or other act of some other person only, would give rise to any such transaction.

- 12.5 There are no powers of attorney or other authorities (express or implied) which are still outstanding or effective to or in favour of any person to enter into any contract or commitment or to do anything on behalf of any Group Company

(other than on such authority of directors or of employees as either is ostensible or is implied to enter into routine contracts in the normal course of their duties).

12.6 No Group Company is a party to any agreement or arrangement or under any obligation under which it is or may become liable to make any investment (as defined in section 1(1) of the Financial Services Act 1986) with, or to deposit any money with or to provide any loan or financial accommodation or credit (other than normal trade credit) to, any person or to subscribe, convert, acquire, dispose of or underwrite any investment.

12.7 With the exception of the Pension Schemes there are not in existence:

- (a) any enforceable agreements or arrangements for the provision by any UK Group Company of any retirement or other benefit (including any pension, annuity, lump sum, gratuity or other like benefit to be given on retirement or in anticipation of retirement or after retirement in connection with past service or to be given on or in anticipation of or in connection with any change in the nature of the service of the person in question) for any officer or any employee or former officer or employee of any of the UK Group Companies or for any dependants of any such person; or
- (b) any informal or ex-gratia pension arrangements or scheme involving any of the UK Group Companies.

12.8 The material details of the Pension Schemes have been given to the Purchaser in the form of:

- (a) copies of all current Trust Deeds and Rules governing or relating to the Pension Schemes;



- (b) copies of current explanatory booklets and any announcements relating to benefits or contributions issued to members of the Pension Schemes; and
- (c) a copy of the funding review as at 1 May 1995, prepared by the Scottish Life Assurance Company of the Learoyd Packaging Limited Retirement Benefits Scheme.

12.9 No discretion or power has been exercised under the Pension Schemes in respect of employees, directors, former employees or former directors of any of the UK Group Companies to:

- (a) augment benefits thereunder;
- (b) admit to membership thereof a director or employee who would not otherwise have been eligible for admission to membership thereof;
- (c) provide thereunder in respect of a member thereof a benefit which would not otherwise be provided thereunder in respect of such member; or
- (d) pay a contribution thereto which would not otherwise have been paid.

12.10 So far as the Vendors are aware, all benefits (other than refunds of contributions and monies standing to the credit of a member's individual account) payable under the Pension Schemes on the death of a member of the Pension Schemes or during periods of sickness or disability of a member of the Pension Schemes are at the date hereof insured under a policy effected with an insurance company of good repute and each member thereof has been covered for such insurance by such insurance company at its normal rates and on its normal terms for persons in good health.

- 12.11 With the exception of payments or repayments made under a mistake of fact or law (including contributions and expenses) no payment or repayment of any of the assets of the Pension Schemes has been made to any of the UK Group Companies in circumstances where a tax charge on such payments or repayments has been levied on the relevant Pension Schemes Administrator.
- 12.12 The Pension Schemes hold no securities issued by any Group Company or properties leased to or occupied by any Group Company, and have made no loans which are outstanding to any Group Company.
- 12.13 So far as the Vendors are aware, there are no actions, suits or claims outstanding, pending or threatened against any UK Group Company or the trustees of the Pension Schemes in respect of any act, event, omission or other matter arising out of or in connection with the Pension Schemes in relation to any of the members of the Pension Schemes.
- 12.14 There will not on Completion be any contributions to the Pension Schemes in respect of members of the Pension Schemes (including contributions payable by such members themselves) which have fallen due but have not been tendered to the appropriate recipient and since the date of the last funding review referred to above, contributions made to the Learoyd Packaging Limited Retirement Benefits Scheme in respect of its members have been at the rates recommended in such review.
- 12.15 Each of the Pension Schemes is approved by the Board of Inland Revenue for the purpose of Chapter I of Part XIV of ICTA 1988 and the Vendors are not aware of any circumstances which might give the Inland Revenue reason to withdraw such approval.
- 12.16 So far as the Vendors are aware, the Pension Schemes have been administered materially in accordance with:

- (a) the preservation requirements within the meaning of Section 63 of the Social Security Act 1973; and
- (b) the equal access requirements of Part IV of the Social Security Pensions Act 1975,

and all other relevant pension schemes legislation and subject thereto the Vendors have no reason to believe that operation of the Pension Scheme has not been in accordance with the trusts, powers and provisions of the Pension Schemes and overriding legislation including, without limiting the generality of the foregoing, the Treaty of Rome and any regulations and directions issued or judgments made thereunder.

12.17 The Disclosure Letter lists all practices, commitments, arrangements and agreements pursuant to which the US Company provides, directly or indirectly, any benefits for employees, including pensions, bonus, medical, insurance, profit sharing or any other employee benefits, under any agreement or law. The US Company does not now, and did not at any time in the past, sponsor, maintain or contribute to any employee pension benefit plan within the meaning of Paragraph 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"). The US Company is not required to contribute, and has never been required to contribute, to any multi-employer plan within the meaning of Section 3(37)(A) of ERISA.

12.18 The Disclosure Letter lists separately all employee welfare benefit plans within the meaning of Section 3(1) of ERISA maintained by the US Company or to which the US Company contributes or is required to contribute (collectively, "**ERISA Plans**"). True, correct and complete copies of all ERISA Plans, together with related trusts, insurance contracts, summary plan descriptions, annual reports and Form 5500 filings for the past three years, have been delivered to the Purchaser.

- 12.19 (a) Each ERISA Plan has been operated and administered in accordance with applicable laws, including, without limitation, ERISA and the Internal Revenue Code of 1986, as amended ("the Code"). Neither the US Company, any other Group Company, the Vendors nor any of their directors, officers, employees or agents, nor so far as the Vendors are aware, any "party in interest" or "disqualified person" (as such terms are defined in Section 3(14) of ERISA and Section 4975 of the Code) has been engaged in or been a party to any "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code).
- (b) Each ERISA Plan that is a group health plan within the meaning of Section 607(1) of ERISA and Section 4980B of the Code is in compliance with the continuation coverage requirements of Section 601 of ERISA and Section 4980B of the Code. There are no pending claims or, so far as the Vendors are aware, threatened claims by or on behalf of any ERISA Plan, by any employee or beneficiary covered under such ERISA Plan or by any government or otherwise involving such ERISA Plan or any of its fiduciaries (other than for routine claims for benefits). The US Company has not entered into any pay arrangement, plan or program which is an ERISA Plan.
- 12.20 The US Company is not bound to provide, and does not provide, benefits, including, without limitation, death, health or medical benefits (whether or not insured), with respect to current or former employees of the US Company beyond their retirement or other termination of service with the US Company other than:
- (a) coverage mandated by applicable law;
- (b) deferred compensation benefits accrued as liabilities on the balance sheet included in the US Company Accounts; or

- (c) benefits, the full cost of which is borne by the current or former employee or his or her beneficiary.

12.21 Neither this Agreement nor any transaction contemplated hereby will:

- (a) entitle any current or former employee, officer or director of the US Company to severance pay, unemployment compensation or any similar or other payment; or
- (b) accelerate the time of payment or vesting, or increase the amount of compensation or benefits due any such employee, officer or director.

### 13 The Properties and other interests in land

- 13.1 In relation to each of the Properties, the Group Company specified in schedule 4 as its proprietor is the legal and beneficial owner of such Property and the Properties comprise all of the properties owned or occupied by any Group Company or in which any Group Company has any right or interest or for which any Group Company is under any continuing or contingent liability. The information set out in schedule 4 is true and accurate at the date hereof.
- 13.2 The title to each of the Properties situated in the United Kingdom is good and marketable and the title to each of the Properties is properly constituted by documents of title which are (if relevant) properly stamped and are in the possession and under the control of the Group. The title to each of the Properties is as set out in schedule 4.
- 13.3 All the documents relating to the use of and title to the Properties and any derivative interests have been produced to the Purchaser's Solicitors.
- 13.4 Each of the Properties is free from any mortgage, charge, rent-charge, lien, or other third party right in the nature of security.

- 13.5 The Group has vacant possession of each of the Properties and there are no circumstances known to the Vendors which would entitle or require any landlord or any other person to exercise any powers of entry or right to forfeiture or right to take possession or which would otherwise restrict or terminate the continued sole and exclusive possession or occupation of any of the Properties by any Group Company.
- 13.6 The documents of title do not reveal any, nor have the Vendors granted, nor are the Vendors aware of, any option, right over, interest in, right of pre-emption, first refusal, surrender or determination relating to any Property. All options or rights enjoyed by any Group Company have been properly protected by the appropriate registration where necessary and all appropriate notices have been properly served where any such option or right has become exercisable.
- 13.7 There is no covenant, restriction, easement, right of way, exception, reservation, grant, condition, agreement or declaration adversely affecting any Property or its use nor is there any subsisting or alleged breach of any of the said matters and no notice of the breach of any covenant relating to any Property has been received by the Vendors or any Group Company.
- 13.8 No Property is subject to the payment of any outgoings other than general or water rates.
- 13.9 (a) No Group Company has any outstanding liability in respect of any licence fee or other outgoing which has become due in respect of any Property.
- (b) So far as the Vendors are aware, each Group Company has performed and observed all its obligations under all covenants (whether affecting the freehold or leasehold titles), conditions, agreements, statutory requirements, planning consents, byelaws, orders and regulations

affecting any Property, its use and any business of any Group Company there carried on.

- (c) No notice of any breach of any such matter referred to in paragraph 13.9(b) has been received by any Group Company.
- (d) So far as the Vendors are aware, no use of any Property contravenes any of such covenants, conditions and agreements.

13.10 The actual use of each Property is specified in schedule 4 and is of right or permitted under the Town and Country Planning legislation. There is no existing contravention of any of the provisions of the Town and Country Planning legislation and no notice of the same has been received by any Group Company. There are no outstanding enforcement notices, Stop Notices, enforcement proceedings or appeals (whether against refusal, deemed or otherwise, conditions or enforcement). So far as the Vendors are aware no user is stated to be temporary or personal. No planning permission is suspended or remains unimplemented in whole or in part. No planning application has been submitted by any Group Company which awaits determination.

13.11 So far as the Vendors are aware, there are no outstanding orders or notices affecting any Property and so far as the Vendors are aware there are no proposals of any Local or other authority (involving compulsory acquisition or requisition or otherwise) or any other circumstances which may result in any such order or notice being made or served or which may otherwise adversely affect any Property.

13.12 So far as the Vendors are aware, there are not in force or required to be in force any licences which apply to any Property or to the business carried on therein.

13.13 No Group Company has received notice of nor is it aware of any dispute relating to any Property.

13.14 (a) Where any Property is not occupied by the Group, details of the present sub-tenants or other occupiers of that Property or any part of that Property are set out in the relevant part of schedule 4 and such sub-tenants or occupiers occupy those parts of that Property shown against their names.

(b) Written particulars (including copies of all documents where requested) of all sub-leases, sub-tenancies and licences for occupation of any Property or any part of parts thereof and of all variations and proposed variations thereof or derivative interests therein and of the grant or proposed grant of any licences pursuant to the provisions of any such documents have been supplied to the Purchaser.

(c) There is no claim or dispute expected, either by or with the Company or by or with any such sub-lessee, licensee or occupier.

13.15 No Group Company has elected to waive the exemption from Value Added Tax in relation to any supply made in relation to any Property.

13.16 The written replies given by or on behalf of the Vendors to enquiries raised by the Purchaser's Solicitors in respect of the Properties, are true and accurate.

13.17 Since the Accounts Date no Group Company has acquired or disposed of or agreed to acquire or dispose of the whole or any part of any land or buildings or any interest therein.

## **14 Environmental Matters**

14.1 Each Group Company:



- (a) in its carrying on of business or operations at any of the Properties, complies and has at all times complied in all material respects with all relevant Environmental Laws and all Environmental Licences as are properly required;
- (b) in its carrying on of business or operations at any of the Properties, has obtained and maintained in full force and effect all Environmental Licences, and so far as the Vendors are aware (no enquiry having been made outside the Group) there are no conditions, facts or circumstances arising from its carrying on of business or operations at any of the Properties entitling any such Environmental Licence to be revoked, suspended, amended, varied, withdrawn or not renewed or which would prevent compliance with any Environmental Licence;
- (c) is not and is not reasonably likely to be required by any Environmental Licence or any Environmental Law or as the result of any Environmental Claim, in any such case as a result of the carrying on of its business or operations at any of the Properties, to incur any expenditure or to desist from taking any action which would or might have a material adverse effect on the Company's financial condition or business.

14.2 There are attached to the Disclosure Letter complete copies of all material Environmental Licences and all material orders, notices, directions, applications, appeals, amendments and reports and any other material communications relating to or in connection with any Environmental Licence which are relevant to the operation of the Business at the Properties.

14.3 So far as the Vendors are aware (no enquiry having been made outside the Group) no Environmental Claim has been made or threatened or is pending against any Group Company or any of its past or present directors, secretary or senior employees in their capacity as such or any occupier of any property owned or leased by any Group Company and the Vendors do not have any

reason to believe that any Group Company or any of its officers has or is likely to have any liability in relation to any such Environmental Claim.

14.4 No Relevant Substance has been deposited, disposed of, kept, treated, imported, exported, transported, processed, manufactured, used, collected, sorted or produced at any time by any Group Company in the carrying on of its business or operations at any of the Properties. No Relevant Substance is present in the environment (whether or not on property owned, leased, occupied or controlled by any Group Company) in circumstances, and there is nothing which will or is likely to result in an Environmental Claim against any Group Company, or which would entitle any authority to bring an Environmental Claim against any Group Company or which would have a material adverse effect on the use of any property owned, leased, occupied or controlled by any Group Company or on the value of the Group, in any such case referred to in this sentence arising from the carrying on of its business or operations at any of the Properties.

14.5 There are attached to the Disclosure Letter all material details (including, where appropriate copies of relevant reports or other documents) of any inspections, investigations, studies, audits, tests, reviews or other analyses in relation to Environmental Matters relating to any Group Company or to any of the Properties which have been undertaken by or on behalf of any Group Company.

14.6 For the purposes of paragraphs 14.1 to 14.5 inclusive is it hereby confirmed that the following are the relevant dates on which the following Group Companies commenced carrying on business or operations:

Packaging	-	1 July 1976;
Morris	-	31 July 1989;
Filmcast	-	14 June 1993;
US Company	-	26 July 1992;
UK Company	-	1 May 1995.

## **15     Insider Matters**

15.1    There is not, nor so far as the Vendors are aware during the six years prior to the date hereof has there been, any agreement, arrangement, loan, quasi-loan or undertaking (save for service agreements) to which any Group Company is a party and in which any Vendor or any other person beneficially interested in the share capital of any Group Company at that time or (except for service agreements) any director of any Group Company or any person associated with any of them within the meaning of section 435 Insolvency Act 1986 is or has been interested.


15.2    No Group Company has been party to any transaction falling within section 320 Companies Act 1985 (substantial property transactions).

15.3    No Group Company has transferred any asset to any director of any Group Company or any person associated with any such director (within the meaning of section 435 Insolvency Act 1986), except at market value.

## **16     Intellectual Property Rights**

16.1    Accurate particulars of all Intellectual Property Rights of which any Group Company is, or has applied to be, registered as proprietor are set out in the Disclosure Letter.

16.2    All Intellectual Property Rights used or required by any Group Company in connection with its business are not subject to any application for cancellation or amendment or licence of right or compulsory licence and are vested in and beneficially owned solely by such Group Company free from and clear of any restrictions or encumbrances and so far as the Vendors are aware none of the trade or service marks forming part of the Intellectual Property Rights-used or owned by any Group Company is associated with any trade or service marks held by a proprietor other than a Group Company.

- 16.3 So far as the Vendors are aware no Group Company has infringed the Intellectual Property Rights of any other person.
- 16.4 No Group Company has granted and no Group Company is obliged to grant any licences under any Intellectual Property Rights owned by it or licensed to it or to furnish know-how to any person.
- 16.5 No Group Company has been granted any licence or right under or in respect of any Intellectual Property Rights of a third party and by carrying on business in the ordinary course no Group Company is and so far as the Vendors are aware no Group Company will become liable to pay any royalty or like fee.
- 16.6 No disclosure has been made to any person other than the Purchaser of any of the Confidential Information except properly and in the ordinary course of business and on the footing that such disclosure is to be treated as being of a confidential nature.
- 16.7 So far as the Vendors are aware there has occurred no act, omission or event which would entitle any authority or person to cancel, forfeit or modify any Intellectual Property Rights owned or used by any Group Company. There is no litigation or other proceedings (whether legal or administrative) pending or threatened involving any of such Intellectual Property Rights or any of the Confidential Information nor so far as the Vendors are aware are there any circumstance likely to give rise to any such proceeding and no person has made any claim adverse to the continuing enjoyment by any Group Company of the Intellectual Property Rights used or owned by it or any of the Confidential Information.
- 16.8 Since the Accounts Date no Group Company has sold or otherwise disposed of any Intellectual Property Rights owned by such Group Company. 

- 16.9 So far as the Vendors are aware there exists no actual or threatened infringement (including misuse of confidential information) or any event likely to constitute an infringement or breach by any third party of any of the Intellectual Property Rights held or used by any Group Company or any of the Confidential Information.
- 16.10 No Group Company uses or otherwise carries on its business under any name other than its corporate name and its letters, invoices and order forms comply with all applicable legislation.
- 16.11 All application, renewal and other official statutory and regulatory fees rendered to and received by any Group Company prior to the date hereof relating to the administration of Intellectual Property Rights or for the protection or enforcement thereof have been duly paid.
- 16.12 All inventions made by any employees of any Group Company and used or enjoyed by any Group Company were made in the course of the normal duties of the employee concerned and no claim for compensation under section 40 Patents Act 1977 or otherwise in respect of such inventions has been made against any Group Company nor so far as the Vendors are aware is any such claim likely to be made.
- 16.13 The back-up systems utilised by or for each Group Company ensures that in the event of any fault in any computer system used by any Group Company, no more than one day's data might be lost. No such faults in any such computer system which have involved the loss of more than one day's data have occurred in the last 12 months.
- 16.14 No person is entitled to assert any moral or similar right in respect of any Intellectual Property Rights owned by any Group Company.

## 17 Litigation

- 17.1 Apart from the collection of debts in the ordinary course of business no Group Company nor any person for whose acts any Group Company currently is or currently may become vicariously liable is engaged in any capacity in any litigation, arbitration, prosecution or other legal proceedings or in any proceedings or hearings before any statutory or Governmental body, department, board or agency; so far as the Vendors are aware no such matters are pending or threatened; and the Vendors are not aware of any circumstances which are likely to give rise to any such matter.
- 17.2 There is no outstanding judgment, order, decree, arbitral award or decision of any court, tribunal, arbitrator or governmental agency against any Group Company or any person for whose acts any Group Company currently is or currently may become vicariously liable.
- 17.3 No Group Company is a party to any subsisting undertaking given to any court or third party arising out of any proceedings of the kind described in paragraph 17.1.

## 18 Insolvency

- 18.1 No order has been made and no resolution has been passed for the winding up or dissolution of any Group Company or for a provisional liquidator to be appointed in respect of any Group Company and no petition has been presented and no meeting has been convened for the purpose of winding up any Group Company.
- 18.2 No administration order has been made and no petition for such an order has been presented in respect of any Group Company.

- 18.3 No receiver (which expression shall include an administrative receiver) has been appointed in respect of any Group Company or in respect of all or any part of the assets of any Group Company.
- 18.4 No voluntary arrangement has been proposed under section 1 Insolvency Act 1986 in respect of any Group Company nor has the US Company sought protection from creditors under any bankruptcy or insolvency law.
- 18.5 No Group Company is insolvent or unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or other applicable enactment and has not stopped paying its debts as they fall due.
- 18.6 No third party has taken any action to exercise any rights under any Security Interest and no distress, execution or other process has been levied or threatened in respect of any asset of any Group Company which has not been discharged in full.
- 18.7 No composition in satisfaction of the debts of any Group Company or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors and/or members or any class of its creditors and/or members, or assignment for the benefit of creditors, has been proposed, sanctioned or approved.
- 18.8 No circumstances have arisen which are likely to result in:
- (a) a material transaction to which any Group Company is a party being set aside; or
  - (b) a third party claim involving any asset owned or used by any Group Company being made under section 238 or 339 (Transactions at an undervalue) or sections 239 or 340 (Preferences) Insolvency Act 1986 or other applicable similar or analogous enactment.

19     EC/Competition matters

19.1   Each Group Company conducts, and has conducted its business in all material respects in accordance with the requirements of all competition laws (whether of the UK, EEC, USA, any part of any such territory or any other jurisdiction) applicable to its business activities and has not infringed such requirements nor been investigated for any alleged non-compliance or infringement nor given any undertakings in connection therewith.

19.2   For the purposes of paragraph 19.1 the term "competition laws" includes any applicable rules dealing with anti-trust matters, fair trade practices, state aid, public procurement, or anti-dumping, and the requirements of any special regulatory regime to which any Group Company may be subject in any area of its activities.

20     The Circular

20.1   The factual information concerning the Group and the businesses of the Group contained in the extracts of the Prospectus annexed hereto ("Extracts") is true and accurate in all material respects and not misleading in any material respect and the activities of each Group Company are fairly and accurately described in the Extracts.

20.2   In the opinion of the Vendors, having made all reasonable enquiries, the opinions expressed by the Purchaser in the Extracts relating to the Group, any Group Company or the business of any Group Company are fair and reasonable.

21     Miscellaneous

21.1   All information contained in the Disclosure Letter (including any of its attachments, save for the Accounts to which Warranties 4.1 to 4.4 inclusive relate, the Long Form Report to which Warranty 21.5 relates and the other



accounting and budgetary information to which Warranties 21.3 and 21.4 relate) was when given and remains true and accurate in all material respects, and is not misleading in any material respect because of any omission or ambiguity or for any other reason.

- 21.2 No-one is entitled to receive from any Group Company any finder's fee, brokerage or commission or other benefit in connection with the sale of the Sale Shares.
- 21.3 The cash flow and working capital and other projections relating to the Group which form part of the bases of the Purchaser's working capital and indebtedness review in connection with the Prospectus have been properly and carefully compiled on the basis of the assumptions set out in the projections (and no other material assumptions) and such assumptions are fair and reasonable and there are no material facts known to the Vendors which have not been taken into account in the preparation of such projections and which would reasonably be expected to have a material effect thereon.
- 21.4 The following information supplied by or on behalf of any Group Company to the Purchaser or any of its advisers for the purpose of their examination and review of the Group's working capital and indebtedness position in connection with the Prospectus has been compiled on the basis of fair and reasonable assumptions or information supplied or available to the Group:
- (a) the 1997 Group Budget, incorporating individual company budgets, and accompanying assumptions;
  - (b) Group cashflow projections (incorporating individual company projections) for the 5 months ending 30 September 1997 and accompanying assumptions;

- (c) Group's capital expenditure budget for 1996/97 and capital expenditure estimate for the 5 months ending 30 September 1997;
- (d) analysis of other capital payments and receipts in the 1996/97 budget and the cashflow projections for the 5 months ending 30 September 1997;
- (e) details of intercompany trading in the 1996/97 budget and the cashflow projections for the 5 months ending 30 September 1997;
- (f) bank reconciliations as at 26 April 1996 and 30 April 1996;
- (g) copies of letters from Barclays Bank plc confirming the Group's bank facilities as at 30 April 1996 and the duration of existing facilities..

21.5 All statements of fact contained in the Long Form Report are true and accurate in all material respects, no fact has been omitted therefrom (or information withheld) the omission of which would make any statement of fact therein misleading in any material respect and the expressions of opinion, expectation and intention attributed to any director of any Group Company or any Vendor therein are honestly held and either fairly based on facts which are within their knowledge (having made all reasonable enquiries) or made on reasonable grounds.

## Part B - Taxation and social security

1.1 The returns or computations which ought to have been made by or in respect of each Group Company for any Taxation purposes, including (without limitation):

- (a) returns under section 203 ICTA and the Income Tax (Employments) Regulations 1993 (PAYE) and regulations governing the deduction of national insurance contributions; and
- (b) returns of distributions and of income tax and advance corporation tax under section 234(5)-(9) and Schedules 13 and 16 ICTA

have been duly made; all such returns and any other notices (including notification of chargeability to corporation tax under section 10(1) Taxes Management Act 1970), accounts and information supplied to the Inland Revenue or H.M. Commissioners of Customs and Excise ("Customs") or other fiscal authority concerned for any such purposes have been made on a proper basis; none of such returns, notices, accounts or information is disputed in any material respect by the fiscal authority concerned and there is no fact known to the Vendors or any of them which might give rise to any such dispute or to any liability to Taxation not provided for in the Accounts in respect of any Accounting Period (as defined in section 12 ICTA) ending on or before the Accounts Date.

1.2 In all computations submitted to the Inland Revenue proper adjustment has been made for any disallowable expenditure by reason of section 577 ICTA.

1.3 All Taxation for which any Group Company is liable and which ought to have been paid has been paid and, without prejudice to the generality of the foregoing, all income tax deductible and payable under the PAYE-system (including, but not limited to, income tax in relation to the sub-contractor's tax deduction scheme, casual labour and employee benefits) has so far as required

been deducted from all payments made by the relevant Group Company; all amounts due to be paid to the Inland Revenue in respect of such income tax have been paid, and all deductions and payments required to be made by any Group Company in respect of National Insurance contributions (including employer's contributions) have been made.

- 1.4 No Group Company is liable, and no Group Company has within three years prior to the date hereof been liable, to pay any penalty, fine, surcharge or interest in connection with any Taxation.
- 1.5 All payments required to be made by any Group Company by way of statutory sick pay pursuant to section 151 Social Security Contributions and Benefits Act 1992 and the regulations made thereunder have been duly made; no such payment or decision not to make a payment of statutory sick pay is under dispute or is likely to be disputed either by an employee (or any person acting on his behalf) or by the Secretary of State for Social Services; and no recovery of statutory sick pay paid by any Group Company has been denied, whether by reason of section 158 Social Security Contributions and Benefits Act 1992 or otherwise.
- 1.6 No payment has been made by any Group Company to or in respect of any of its directors (including, but not limited to, pension contributions) which will not be deductible for corporation tax purposes, either in computing its income profits or in computing the corporation tax payable by it.
- 1.7 The provisions included in the Accounts are sufficient to cover all Taxation in respect of all accounting periods ended on or before the Accounts Date for which any Group Company was then or might at any time thereafter become or have become liable including (without limitation) Taxation:

- (a) on or in respect of or by reference to the profits, gains or income earned or accrued or deemed for Taxation purposes to be earned or accrued for any period ended on or before the Accounts Date; or
  - (b) in respect of distributions made and interest and charges on income paid on or before the Accounts Date.
- 1.8 Disclosure has been made in the Disclosure Letter of any material differences between the accounting and the taxation treatment of any items in the Accounts.
- 1.9 Disclosure has been made in the Disclosure Letter of all matters relating to Taxation in respect of which any Group Company has an outstanding entitlement under any Taxation Statute to make:
  - (a) any claim, disclaimer or election for relief from Taxation;
  - (b) any election for an alternative basis or method of Taxation;
  - (c) any appeal against any assessment to Taxation; or
  - (d) any application for postponement of Taxation.
- 1.10 Each Group Company has sufficient records to determine the Taxation consequences which would arise on any disposal or on the realisation of any asset owned at the Accounts Date or acquired since that date and to determine the Taxation consequences of any restriction on set-off of pre-entry losses pursuant to Schedule 7A TCGA 1992.
- 1.11 The amount of Taxation chargeable on each Group Company during any accounting period ending on or within six years before the Accounts<sup>5</sup> Date has not, to any material extent, depended on any concession, agreement or other formal or informal arrangement with any revenue authority.

1.12 Each Group Company is a close company within the terms of section 414 ICTA.

1.13 No assessment for the purposes of sections 423 and 424 ICTA has ever been made or threatened against any Group Company.

1.14 Since the Accounts Date:

- (a) no Group Company has made or agreed to make any such loan or advance or released or written off any such debt as is within sections 419 to 422 ICTA (inclusive);
- (b) no dividend has been declared or paid on, and no distribution of capital made in respect of, any share capital and no loan or loan capital has been paid in whole or in part;
- (c) no Group Company has made any claim under section 279(1)-(6) or sections 152 or 153 or 154 TCGA 1992 or section 175 TCGA 1992;
- (d) no Group Company has done or agreed to do anything as a result of which any investment grant paid to such company is or may be liable to be refunded in whole or in part;
- (e) no expenditure has been incurred nor any rents, interest, annual payments or any other sums have been paid or are liable to be paid by any Group Company which are wholly or partly disallowable as a deduction or a charge on income in computing profits for the purposes of Corporation Tax;
- (f) no event has occurred which will result in any Group Company becoming liable to pay or bear a Taxation liability directly or primarily chargeable against or attributable to another person, firm or company;

- (g) no accounting period (as defined in section 12 ICTA) of any Group Company has ended as referred to in section 12(3) ICTA;
- (h) no disposal has taken place or other event occurred which will or may have the effect of crystallising a liability to Taxation which should have been but was not included in the provisions for deferred taxation contained in the Accounts if such disposal or other event had been considered likely to arise in the foreseeable future at the Accounts Date;
- (i) no Group Company has paid any Taxation after its due date for payment and does not owe any Taxation the due date for payment of which has passed or will arise in the 30 days after the date of this Agreement; and
- (j) no Group Company has been involved in any transaction which has given or may give rise to a liability to Taxation on any Group Company (or would have given or is reasonably likely to give rise to such a liability but for the availability of any relief) other than Taxation in respect of normal trading income or receipts of such company arising from transactions entered into by it in the ordinary course of business.

1.15 No Relief has been claimed by and/or given to any Group Company, or taken into account in determining or eliminating any provision for Taxation or deferred taxation in the Accounts, which could be withdrawn, postponed, restricted or otherwise lost as a result of any event or circumstance occurring or arising at any time after Completion.

1.16 During the 3 years before the date hereof:

- (a) there has been no major change in the nature or conduct of a trade carried on by any Group Company; and

- (b) the scale of activities of any trade carried on by any Group Company has not been small or negligible within the meaning of sections 245 or 768 ICTA.
- 1.17 Full disclosure has been made in the Disclosure Letter of all capital expenditure qualifying for capital allowances and all balancing adjustments pursuant to the Capital Allowances Act 1990 and Chapter I Part XIII ICTA in respect of any accounting period (as defined in section 12 ICTA) of each Group Company ended in the six years before the Accounts Date.
- 1.18 In respect of all plant and machinery held by any Group Company under any lease, hire purchase or conditional sale agreement, such plant and machinery is and has at all times been used for a qualifying purpose in the requisite period in accordance with Chapter V, Part II Capital Allowances Act 1990.
- 1.19 Since the Accounts Date no Group Company has done or omitted to do or agreed to do or permitted to be done any act as a result of which there may be made either a balancing charge in respect of such capital expenditure within the provisions referred to in paragraph 1.17 above or any recovery of excess relief within section 47 Capital Allowances Act 1990.
- 1.20 No balancing charge in respect of any capital allowances claimed or given will arise if any assets of any Group Company or the plant or machinery taken as a whole were to be realised for a consideration equal to the amount of the book value thereof as shown or included in the Accounts, except to the extent that such charge is fully provided for in the Accounts.
- 1.21 Disregarding any Relief (including indexation relief) available to any Group Company (other than amounts allowable under section 38 TCGA) no chargeable gain would arise if any asset of any Group Company (other than trading stock) were to be realised for a consideration equal to the book value thereof as shown or included in the Accounts.



- 1.22 All chargeable assets of each Group Company currently owned by it were acquired at market value at the time of acquisition and there are no circumstances giving rise or which may give rise to liability or loss under or pursuant to any of sections 139, 140, 178, 179, 176 and 177 TCGA 1992 or section 30 or 17 TCGA 1992 and no loss falls to be restricted under section 18 TCGA 1992 as a result of the proposed sale of the Sale Shares or of any other transaction.
- 1.23 No Group Company has on or after 6 April 1965:
- (a) repaid, redeemed or purchased or agreed to repay, redeem or purchase any of its share capital; or
  - (b) capitalised or agreed to capitalise in the form of shares or debentures, any profits or reserves of any class or description, or otherwise issued or agreed to issue share capital otherwise than for new consideration (as defined in section 254 ICTA).
- 1.24 No Group Company has made any disposals to which section 35 TCGA applies (1982 rebasing).
- 1.25 Each Group Company has made all deductions and retentions of or on account of Taxation as it was or is obliged or is entitled to make and all such payments of or on account of Taxation as should have been made to any tax authority in respect of such deductions or retentions.
- 1.26 Except as provided for in the Accounts and the previous audited accounts of each Group Company no distribution (within the meaning of sections 209 and 210 ICTA) has been made by any Group Company during the 6 years ended on the Accounts Date.

1.27 No Group Company is nor could it be treated as, thinly capitalised for any tax purpose. So far as the Vendors are aware, there are no circumstances which could cause any tax authority to deny relief for interest paid by any Group Company, and no such relief has been denied in fact.

1.28 No Group Company is entitled to any "qualifying debts" within the meaning of section 61 Finance Act 1993.

1.29 No Group Company is liable for any Taxation owed by any other company which has been sold out of the same group of companies as such Group Company in respect of accounting periods beginning before such sale.

1.30 No Group Company has been concerned in any transaction in which the following provisions have been or could be applied except where all applicable clearances (based on full disclosure of material facts and circumstances) have been obtained:

section 139 or section 140 TCGA 1992;

sections 703 and 704 ICTA;

section 765, 766 and 767 ICTA;

section 770 ICTA;

section 776 ICTA;

sections 779 to 786 (inclusive) ICTA;

sections 135, 136 and 137 TCGA 1992;

section 192 TCGA 1992 and sections 213 to 218 (inclusive) ICTA;

sections 219 to 299 (inclusive) ICTA.

1.31 No Group Company has received notice of any direction made by the Inland Revenue under section 747 ICTA and no circumstances exist which would entitle the Inland Revenue to make such a direction and to apportion to any Group Company any profits of a controlled foreign company pursuant to section 752 ICTA.

- 1.32 No circumstances exist by virtue of which the provisions of Chapter V of Part XVII ICTA could apply to a disposal of an asset by any Group Company.
- 1.33 Details of all claims by any Group Company for group relief under Chapter IV Part X ICTA and for the surrender of advance corporation tax under section 240 ICTA for the six years ended on the Accounts Date are attached to Disclosure Letter. No Group Company is liable to make any payment for group relief or advance corporation tax surrendered to it under those provision. No Group Company is liable to surrender any group relief or advance corporation tax under those provisions. There are no arrangements whereby any Group Company may become liable to repay any sums paid to it for the surrender of any group relief or advance corporation tax under these provisions.
- 1.34 No Group Company is liable for any Taxation as the agent of any other person or business and does not constitute a permanent establishment of any other person, business or enterprise for any Taxation purposes.
- 1.35 Each UK Group Company is and has at all times been resident in the UK for tax purposes and is not and has not been treated as resident in any other jurisdiction for any Taxation purposes (including any double taxation agreement).
- 1.36 In relation to Value Added Tax ("VAT"):
- (a) each UK Group Company is a registered and taxable person for the purposes of the Value Added Tax Act 1994 ("VATA") and has complied in all material respects with VATA and any statutory modification or re-enactment thereof and all orders, provisions, directions or other conditions made or imposed thereunder or under any other law relating to VAT;

- (b) no UK Group Company has applied to Customs under section 43 VATA to be treated as nor have two or more such companies been treated as a group for VAT purposes;
- (c) all amounts due to be paid to Customs prior to Completion will have been paid at the date thereof, no dispute exists between any Group Company and Customs and there are no present circumstances which are likely to give rise to any such dispute;
- (d) on all invoices issued by any Group Company VAT at the percentage rate which at the time of the relevant supply was chargeable thereon has been so charged;
- (e) all statutory records required to be kept by each Group Company have been properly kept and all statutory returns required to be made by each Group Company have been correctly made up to the date hereof, no defaults have been suffered under the default surcharge provisions of section 59 VATA 1994 and all amounts claimed by way of input tax have been properly and rightly claimed;
- (f) the Disclosure Letter contains details of any claim for bad debt relief made by any Group Company under section 36 VATA 1994 and the regulations thereunder;
- (g) no Group Company has made nor does it make exempt supplies for VAT purposes (except such exempt supplies as may be disregarded in calculating the amount of input tax for which such company may claim a credit or repayment under section 24 VATA);
- (h) no Group Company has made an election pursuant to paragraph 2, Schedule 10 VATA;

- (i) no asset of any Group Company is a capital item the input tax on which may be subject to adjustment in accordance with the provisions of Part VA of the Value Added Tax (General) Regulations 1985;
- (j) no Group Company is nor has it at any time been liable, nor has any Group Company taken any action likely to make it liable, to a self-supply charge under paragraph 6, Schedule 10 VATA;
- (k) no Group Company is required to make payments on account of VAT for which it may become liable in a prescribed accounting period (pursuant to The Value Added Tax (Payments on Accounts) (No. 2) Order and Regulations 1992);
- (l) no Group Company has been required by Customs to give security under paragraph 5, Schedule 11 VATA;
- (m) no circumstances exist whereby any Group Company would or might become liable for VAT as an agent or otherwise by virtue of section 47 VATA;
- (n) all VAT due and payable upon the importation or acquisition of goods and all customs and excise duties due and payable to Customs in respect of any assets (including trading stock) imported or owned by any Group Company have been paid in full;
- (o) no Group Company has been appointed as a tax representative by any person pursuant to section 48 VATA;
- (p) no Group Company is registered, nor is it required to register, for VAT purposes in any country other than the United Kingdom.

- 1.37 No claim has been made by any Group Company under section 42 Finance Act 1930 during the 12 months before the date hereof.
- 1.38 All documents in the possession of any Group Company or to the production of which any Group Company is entitled and which attract stamp or transfer duty in the United Kingdom or elsewhere have been duly stamped.
- 1.39 No Group Company has been party to any transaction whereby such company is or could become liable to stamp duty reserve tax.
- 1.40 Neither the Inland Revenue nor Customs nor any other fiscal authority has at any time within three years prior to the date hereof carried out or is at present conducting any review, audit or investigation into the business or affairs of any Group Company (or any aspect thereof) and the Vendors, having made all reasonable enquiries, know of no reason why any such investigation should be initiated.
- 1.41 No Group Company has registered or applied to register a profit-related pay scheme with the Inland Revenue.
- 1.42 Pay and File Warranties
- (a) No accounting period of any Group Company has terminated since the Accounts Date.
- (b) No notice has been given to the Inland Revenue which includes any Group Company as the surrendering or recipient company under section 102 Finance Act 1989 (surrender of company tax refund within group).

- (c) No Group Company is included in any special arrangements for group relief purposes under which a group of companies makes joint amended returns covering companies in the arrangement.
  - (d) All corporation tax due and payable in respect of accounting periods ending on or after 31 December 1993 has been paid within nine months of the end of each accounting period and no liability for interest or penalties has arisen or is now accruing.
  - (e) No estimated assessments or determinations are under discussion, or are a matter of dispute, with the Inland Revenue, or are the subject of an appeal.
  - (f) All corporation tax returns that should have been filed pursuant to notices served on any Group Company under section 11 Taxes Management Act 1970 have been filed within the relevant time limits so that no penalties or interest have arisen or are accruing for late filing. The returns have been complete and accurate in all respects and have not included any estimated figures.
- 1.43 The US Company has made or caused to be made all proper returns required to be made, and has supplied or caused to be supplied all information required to be supplied, to any Taxation Authority. All Taxation shown upon such returns to be owing has been paid by the US Company.
- 1.44 There is no dispute or disagreement outstanding, nor is any contemplated at the date of this Agreement, with any Taxation Authority regarding liability or potential liability to any Taxation (including penalties or interest) and there are no circumstances which make it likely that any such dispute or disagreement will commence.

- 1.45 The US Company has not waived any statute of limitations in respect of any Taxation or agreed to any extension of time with respect of a Taxation assessment or deficiency with any Taxation Authority.
- 1.46 The US Company is not a party to any Taxation allocation or sharing agreement.
- 1.47 The US Company has not been a member of an affiliated group of corporations filing a consolidated federal income tax return.
- 1.48 The US Company is not and has not been a "United States real property holding corporation" within the meaning of Section 897 of the Internal Revenue Code.



## Schedule 7

### Provisions for the protection of the Vendors

- 1.1 The liability of the Vendors under or in respect of the Warranties and/or the covenants on their part contained in clause 2 of either of the Taxation Deeds ("the Indemnities") shall be limited as follows:
- (a) no claim under the Warranties or the Indemnities ("a relevant claim") may be made against any Vendor unless written notice of the claim concerned has been given to any Vendor before the seventh anniversary of Completion in the case of the Indemnities and the Tax Warranties or before 31 January 1999 in any other case;
  - (b) no Vendor shall be liable in respect of any relevant claim (not being a claim relating to a Relevant Post-Exchange Breach) unless and until the aggregate amount of all relevant claims exceeds £150,000, although once such limit is exceeded the full amount of all such claims shall be recoverable;
  - (c) the maximum amount recoverable by the Purchaser in respect of any relevant claim shall be the sum that is equal to £20,000,000 plus the amount of the Further Consideration;
  - (d) a Vendor shall have no liability under any such relevant claim (other than under the Indemnities) which may have been notified pursuant to paragraph 1.1(a) above (unless it has been previously satisfied, settled or withdrawn) unless proceedings in respect thereof shall have been both issued and served on such Vendor before the expiration of 6 months from the date of the said notice;
  - (e) the maximum amount recoverable by the Purchaser in respect of the Warranties acknowledged in or given pursuant to clause 10.1 shall be

£4,400,000 (although, for the avoidance of doubt, this paragraph 1.1(e) shall not limit the amount recoverable by the Purchaser in respect of the Warranties acknowledged in or given pursuant to clause 10.2 although the limit in paragraph 1.1(c) shall apply in any event);

- (f) those Vendors who do not sell any US Sale Shares to the Purchaser shall have no liability in respect of any relevant claim to the extent that such liability relates to any fact or circumstance relating to the US Company;
- (g) the Purchaser shall not be entitled to recover in respect of any claim for a Relevant Post-Exchange Breach (not being one relating to any of the Warranties set out in paragraphs 8.3, 8.4, 11.5 and 11.12 of Part A of schedule 6) unless and until the aggregate amount of all such claims exceeds £750,000 although once such limit is exceeded the full amount of all such claims shall be recoverable;
- (h) the Purchaser shall not be entitled to recover pursuant to a relevant claim for a Relevant Post-Exchange Breach relating to any of the Warranties set-out in paragraphs 8.3, 8.5, 11.4 and 11.12, which Relevant Post-Exchange Breach, for the avoidance of doubt, shall be relevant only for the purposes of clause 6.1 and clause 3.2.

1.2 The Purchaser shall be entitled to claim both under the Warranties, and under more than one Warranty and under the Indemnities by reference to the same subject matter, but any payment in respect of a breach of Warranty or under the Indemnities shall to such extent satisfy and discharge any claim made by the Purchaser under any other Warranty or under the Indemnities in respect of the same subject matter and vice versa.

1.3 For the avoidance of any doubt nothing contained in the Disclosure Letter shall limit any claim under either of the Taxation Deeds or under the US Non-Compete Agreement.

- 1.4 For the avoidance of doubt, in respect of a relevant claim made pursuant to clause 10.2 the liability of the Vendors shall be several and accordingly each Vendor shall only be liable for his Agreed Proportion of such claim.
- 1.5 First written notice from the Purchaser to any Vendor of any relevant claim under the Warranties shall include, so far as reasonably practicable at such time, reasonable details of the nature of the relevant claim and the amount claimed in respect thereof.
- 1.6 Any payment made by the Vendors in respect of a relevant claim shall, save for the purposes of paragraph 1.1(c) above, be deemed to take effect as a reduction to the total consideration for the Sale Shares other than the Deferred UK Sale Shares.
- 1.7 The Purchaser shall not be able to recover an amount in respect of any relevant claim (other than under the Indemnities):
- (a) to the extent that the liability on the part of any Vendor to pay such amount would not have arisen but for any voluntary act or transaction of the Purchaser or of any Group Company or any of their successors in title after Completion where:
    - (i) the act or transaction concerned is not in the ordinary course of its business and it is neither carried out by or under the direction of any Vendor nor as a consequence of any act or omission on or before Completion of any of the Vendors or any member of the Group or any shareholder or officer thereof or any associate or connected person of all or any of the foregoing nor pursuant to any legally binding obligation entered into on or before Completion; and

- (ii) the Purchaser was aware (in any such case otherwise than through the knowledge of any Vendor or any present director office or employee of any member of the Group), or ought reasonably to have been so aware, that such act or transaction would give rise to the relevant claim concerned;
- (b) to the extent that the amount relates to any loss or damage for which the Purchaser or any Group Company is indemnified by any insurance in force for the time being (but provided that the Vendors shall reimburse the relevant member of the Group and/or the Purchaser in respect of any excess or any increased premium or other insurance costs resulting from such indemnity);
- (c) to the extent that the liability on the part of any Vendor to pay such amount arises or is increased as a result of an increase in rates of taxation after the Accounts Date, or the passing of any legislation (or making of any subordinate legislation) in any such case after Completion with retrospective effect;
- (d) to the extent that specific provision for the liability to which the relevant claim relates is included in the Accounts;
- (e) to the extent that the liability on the part of any Vendor to pay such amount arises as a result of any change in the accounting policy or practice or in the accounting reference date of any Group Company after Completion.

1.8 Where the Purchaser or any member of the Group is legally entitled to recover from some other person (not being any of the others of them, another member of the Purchaser's Group, or any employee or officer thereof or any<sup>5</sup> Vendor) any sum in respect of any matter the subject of a claim under the Warranties whether or not the Vendors shall have previously irrevocably and

unconditionally satisfied in full such claim under the Warranties, the Purchaser or the relevant Group Company (as appropriate) shall (subject first to being indemnified and secured to its or their reasonable satisfaction against all costs, liabilities and expenses which it or they may reasonably incur thereby) take all reasonable steps to enforce such recovery, (keeping the Vendors informed of the progress of any action taken):

- (a) if such Warranty claim shall previously have been satisfied in full, the Purchaser shall account to the Vendors originally satisfying the claim (in the same proportions as they satisfied the claim) for in aggregate an amount ("**Relevant Recovered Amount**") equal to the net amount received by the Purchaser on such recovery after deducting any costs and expenses reasonably incurred by the Purchaser or any member of the Group in recovering such sum from the third party (including any Taxation payable by reason of the receipt thereof) but not in any event exceeding the amount originally paid to the Purchaser in respect of the claim concerned; and
- (b) if such Warranty claim shall not have been previously satisfied in full, the Relevant Recovered Amount shall reduce the amount of the relevant Warranty claim accordingly.

1.9 No party shall in relation to the sale hereunder of the Sale Shares be liable in respect of any representations or warranties or similar assurances which are not contained or expressly given or assumed by them in this Agreement or the Disclosure Letter or any other Transaction Document.

1.10 Any breach of any of the Warranties or any other provision of this Agreement or the Taxation Deeds by the Vendors shall not entitle the Purchaser to rescind this Agreement following Completion.

- 1.11 Nothing in this Agreement shall be deemed to relieve the Purchaser and/or the relevant Group Company from its common law duty to mitigate its loss or damage.
- 1.12 Where any of the Vendors are stated in schedule 1 to be trustees and are selling their holdings of the Sale Shares in that capacity their liability under the Transaction Documents shall be further limited to the value for the time being of the assets of the relevant trust or settlement (after taking account of any outstanding amounts due from them to the Inland Revenue on account of taxation arising by virtue of the sale of the Sale Shares by the relevant Trust or settlement and any outstanding costs or fees incurred for the purposes of such sale).
- 1.13 Upon the Purchaser becoming aware that matters have arisen which in its reasonable opinion acting in good faith will or are likely to give rise to a relevant claim under the Warranties, the Purchaser will as soon as reasonably practicable notify the Vendors in writing of the potential claim and provide reasonable details of the matters which in the Purchaser's reasonable opinion acting in good faith will or are likely to give rise to such claim and (subject to the Purchaser and/or any relevant Group Company being indemnified by the Vendors to the reasonable satisfaction of the Purchaser against all costs, liabilities and expenses which it or they may incur thereby):
- (a) take such action as the Vendors may reasonably require to avoid, resist, contest or compromise the potential claim or the matters which will or are likely to give rise to such claim provided that the relevant time limits under this Agreement for the issuing of proceedings by the Purchaser in respect of such claim shall be extended by a period equivalent to that for which the claim is required by the Vendors to be dealt with under this paragraph; and

- (b) supply the Vendors with such information as they may reasonably require for the purposes of considering the action they would require to be taken.

1.14 If a relevant claim under the Warranties shall arise by reason of some liability of any of the Group Companies which, at the time the breach is notified to the Vendors, is contingent only, the Vendors shall not be under any obligation to make any payment to the Purchaser thereunder until such time as the contingent liability shall become an actual liability (but the Purchaser shall nevertheless be entitled to give notice of such claim pursuant to paragraph 1.1(a), shall not lose its remedy by virtue of paragraph 1.1(d) and shall be entitled to pursue such claim, although not enforce judgment for payment, in any event).

1.15 Nothing in this Agreement or in either of the Taxation Deeds or in the US Non-Compete Agreement or otherwise shall limit the liability of any Vendor where such Vendor has been fraudulent or wilfully deceptive or has deliberately or recklessly failed to disclose to the Purchaser information known to or readily discoverable by him.

## Schedule 8

### The 1997 Accounts

- 1 The Vendors shall procure that the 1997 UK Accounts and the 1997 US Accounts are prepared as soon as reasonably practicable following the 1997 Accounts Date and in any event no later than 3 months following such date. Mr Peter Brown (on behalf of the Vendors) and the Purchaser shall (unless they otherwise agree in writing) instruct the Auditors to audit the 1997 UK Accounts and the 1997 US Accounts as soon as practicable thereafter and no later than 20 Business Days after completion of such audit to prepare a 1997 PBT Statement and to deliver a copy of the same to the Vendors and the Purchaser as soon as practicable thereafter. If Mr Peter Brown (on behalf of the Vendors) and the Purchaser shall so agree that no audit is necessary they shall nevertheless instruct the Auditors to prepare a 1997 PBT Statement as soon as practicable after preparation of the 1997 Accounts and no later than 20 Business Days after such preparation and to deliver a copy of the same to the Vendors and the Purchaser as soon as practicable thereafter. "1997 PBT Statement" means a statement certifying to each of the Vendors and the Purchaser, in the Auditors' opinion, the 1997 UK PBT, the 1997 US PBT and the 1997 PBT.
- 2 The 1997 UK Accounts and the 1997 US Accounts, shall be prepared in accordance with the bases, policies and principles set out in part A of schedule 9 and subject thereto in accordance with accounting bases, policies, principles, practices and procedures generally accepted in the UK as if (whether or not such is actually the case) the 1997 Accounts Date were the last day of an accounting reference period of each Group Company but Provided that, unless the Purchaser so requires, there shall be no requirement for the 1997 UK Accounts or the 1997 US Accounts to be accompanied by a directors' report or auditors' report thereon, a cash flow statement or any notes thereto.



- 3 The 1997 PBT shall be determined by aggregating the 1997 UK PBT and the 1997 US PBT in accordance with the bases, policies and principles set out in part B of schedule 9.

**Schedule 9**  
**Accounting Policies and Principles**

**Part A - Preparation of the 1997 Accounts**

1     Accounting convention

The 1997 Accounts shall be prepared under the historical cost convention and in accordance with applicable accounting standards except for the treatment of the US Company as noted in Part B below.

2     Turnover

Turnover shall represent the value of sales invoiced to external customers, excluding trade discounts and value added tax.

3     Tangible fixed assets and depreciations

Depreciation shall be calculated to write off the cost of tangible fixed assets by equal annual instalments over the expected useful lives of the assets concerned.

The principal depreciation rates to be used are:

Freehold buildings	-	2%
Short leasehold improvements	-	Lease term
Long leasehold buildings	-	2%
Plant and machinery	-	5%, 10% and 20%
Office equipment	-	10% and 20%
Motor vehicles	-	20%, 25% and 33.3%

Labour costs directly attributable to the manufacture of certain specialised machinery for use within the business shall be capitalised and charged to the

profit and loss account over the same period as the assets to which they relate provided that the machinery is producing or capable of producing Learoyd Group products cost effectively and for the avoidance of doubt such machinery referred to in this proviso would include machinery in the process of development, and capital equipment manufactured, in any such case for the purpose of future production of such products as are intended to be sold by the Group.

#### 4 Stocks

Stocks shall be valued at the lower of costs and net realisable value. Cost shall be arrived at as follows:

Raw materials and goods for resale	-	purchase cost on a first-in, first-out basis.
Work in progress and finished goods	-	raw materials and direct labour plus overheads attributable to the production of stock.

#### 5 Deferred taxation

Deferred taxation shall be provided under the liability method, at appropriate rates of taxation where, in the opinion of the directors, a liability is expected to arise in the foreseeable future.

#### 6 Pensions

The costs of the Group's defined benefit pension scheme shall be charged to the profit and loss account over the remaining service lives of the scheme members as calculated by a qualified actuary. The costs of the Group's defined

contribution pension schemes shall be charged to the profit and loss account on the basis of contributions payable in respect of the accounting period.

7 Leases and hire purchase commitments

Assets obtained under hire purchase contracts shall be capitalised as tangible fixed assets and depreciated in accordance with the Group's fixed assets accounting policy. The corresponding obligation for the capital element shall be included in creditors and the interest element, which shall be calculated on the basis of the amount of obligations outstanding, shall be charged against profits over the primary period of the agreement.

Rentals paid under operating leases shall be charged to the profit and loss accounts as incurred.

8 Foreign currencies

Transactions in foreign currencies shall be recorded at the rate of exchange at the date of the transactions or, if covered by a foreign exchange contract, at the average rates relevant for that contract. Assets and liabilities in foreign currencies are translated into sterling at the rate ruling at the balance sheet date. All exchange differences shall be taken to the profit and loss account.

9 Government grants

Grants shall be credited to deferred revenue. Grants towards capital expenditure shall be released to the profit and loss account over the expected useful life of the assets. Grants towards revenue expenditure are released to the profit and loss account as the related expenditure is incurred.

## **Part B - Aggregation of the 1997 UK PBT and the 1997 US PBT**

Notwithstanding the fact that the US Company is not a subsidiary of the UK Company, the aggregation to determine the 1997 PBT, referred to in paragraph 3 of schedule 8, shall be effected by way of a consolidation in accordance with the relevant provisions of schedule 4A to CA 1985 (as if the US Company were a subsidiary of the UK Company) and which for the avoidance of doubt, shall take place as follows:

- 1 as if the US Company had always been a subsidiary of the UK Company
- 2 in order to eliminate the financial effect of trading between Group Companies, and to eliminate intra-Group balances
- 3 in order to eliminate Group management fees
- 4 in order to eliminate any unrealised profits in stock at the 1997 Accounts Date arising on sales between Group Companies.