

BASIC COMPANY LAW - 1985

CHAPTER 8

PURCHASE OF SHARES OF A BUSINESS

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CHAPTER 8

PURCHASE OF SHARES OF A BUSINESS

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PURCHASE OF SHARES OF A BUSINESS

GENERAL

The following comments and document are put forth from a purchaser's prospective more so than the vendor's. The actual closing of a share purchase transaction is usually straight forward and simple. The solicitor's key role in a share purchase is the identification of the appropriate things to be checked into prior to the signing of the purchase agreement, making provision for such in the agreement and ensuring the appropriate matters are checked prior to closing which usually involves investigation by the purchaser's accountants as well as the purchaser's own people. With this in mind I have included a share purchase agreement for a recently done transaction, which agreement is not intended to be exhaustive and deals with a business which involved leased real property as opposed to company owned real property. Following this is a checklist regarding various matters to be considered prior to doing a share purchase agreement. Below are some general comments regarding share purchase transactions.

PRINCIPLE ASSETS

When shares of a company are being purchased it is important to identify the key assets of the company which are critical to its ongoing business operations to ensure that such assets will be in place and usable in the manner anticipated by the purchaser of the shares. For example, if inventory is a significant part of the assets being purchased I believe it is of absolute paramount importance that a condition of closing be that the purchaser and its representatives will have an opportunity to physically verify the existence of the inventory in good merchantable condition. Where there is significant inventory as a general rule I do not think any other method is acceptable other than a physical verification of the existence of such inventory in merchantable condition as in far too many cases the vendors legitimately believe they have more inventory than is in fact in existence.

LEASES, FRANCHISES AND LICENSES

It is not unusual for many leases, franchises and licenses to provide in them (particularly licenses and franchises) that at the option of the lessor, franchisor, or licensor, they will no longer be of effect when there is a change in control of the holder. These of course can vary quite widely and will become more evident on examination of the business with different rules applying for such things as liquor licenses for perhaps a diningroom in a motel or the appropriate motor carrier licenses for commercial transport businesses.

NON-COMPETITION COVENANTS

When this is important to the purchaser, it is my experience that it is often more difficult to get agreement with your own client as to what is appropriate than it is with the vendor. While I have never found the cases entirely clear on this matter I believe it is well accepted that on a prima facie basis a non-competition clause is a restraint of trade and therefore voidable as being against public policy unless it can be shown that it is reasonable under the circumstances and sufficiently non-injurious to the public as to be justified for the purposes of the circumstances surrounding the giving of the covenant. There are a number of cases in the area and different fact situations will justify different levels of restraint. Invariably when a non-competition covenant is to be drafted there is little or no time to consult the cases and even if there is, it is my experience they are only of limited assistance. A non-competition covenant deals with three basic elements: (1) the nature of business being restrained, (2) the length of time the covenant will apply, and (3) the geographical territory in respect to which the covenant will apply.

As a general rule it is my practice to restrict the time and geography covered by the covenant to the lowest possible period acceptable to my client. Generally I am very uncomfortable with a covenant that extends beyond three to five years and believe in no circumstances should a covenant extend beyond the principal or key market areas of the existing business. This is to be contrasted with any possible expansion plans of the client which I do not think are relevant.

If a non-competition clause is important to a client, then it is trite to say that it is important that such covenant be enforceable, and more particularly that most solicitors on reviewing it would easily agree with such. As a result I think solicitors should error in making the time period and geography covered shorter and smaller than perhaps is generally justifiable to ensure in the near term the purchaser will obtain the necessary protection until they become established in the business they are about to acquire.

PENSIONS

Where there are a significant number of employees covered by a pension plan it has been my experience that this can be an area of quite bitter dispute between the parties. This is usually complicated by the fact that neither the clients nor the solicitor (and I include myself in that category) have a good understanding of the matter.

In general there are two principal aspects to this matter. First, if there is a pension plan for the employees of the company being acquired which relates solely to them, then normally the plan would continue on. It is important from the purchaser's point of view to ensure that the plan is properly funded to meet future obligations, if under the terms of the plan, a shortfall in funding would require further contributions by the company. Where there are significant amounts involved, it is not unusual for vendors to sometimes arrange for payments out of pension plans prior to closings. While it would seem that agreeing on appropriate funding should be simple this is not usually the case. The second aspect of this usually arises in a context where the employees are part of a larger plan involving employees of other companies or groups and as a result may result in payout of the existing pension plan into either a new pension plan for the employees of the company being acquired or a payment directly to the employees. While such a payment may well be within the terms of the existing pension plan it may be that such payment when considered from the employees perspective is unfair and as a result of such payout and the creation of a new pension plan the employees of the company being purchased will be disadvantaged. This of course can lead to difficulties between the new shareholder and the employees of the company.

It is my practice, when significant amounts are at stake, to recommend to a client that they retain a pension specialist to review the matter.

LEVERAGED BUYOUT - 96(5)

In many share purchases, it is not unusual for the purchaser to require the use of the assets of the company being purchased to better secure a loan being obtained from a financial institution to make the purchase of the shares. In the case of Nova Scotia companies, one must direct their attention to section 96(5) of the Companies Act which provides that it shall not be lawful for a company to give, whether directly or indirectly, whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purchase of or in connection with a purchase made or to be made by any person, other than the company, of any shares in the company where there are reasonable grounds for believing that (a) the company is, or after giving the financial assistance, would be unable to pay its liabilities as they become due, or (b) the realizable value of the company's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the company's liabilities and paid up capital of all classes. In respect to federal companies reference should be made to section 42 of the Canada Business Corporations Act.

The prohibition contained in Section 96(5) can be avoided by the following methods:

(a) compliance with the so called "solvency tests" set out in subparagraphs (a) and (b) of Section 96(5);

(b) change the share purchase into an asset purchase with the necessary adjustments in price to put the vendor in the same after tax position he would have been through the share purchase;

(c) when the company in respect to which the shares are being purchased has sufficient equity, then the company can borrow funds from the bank and pay them out by way of dividends to the purchaser, which usually would be a corporation. (However, consideration must be given to any tax on the payment of such dividends for small business corporations.)

(d) assuming the "solvency tests" of the Companies Act can be complied with, the company could borrow funds from the bank and use it to re-purchase the shares being acquired by the purchaser.

(e) the purchaser could create a holding company which would borrow funds from the bank and use them to purchase the shares from the vendor. Following the acquisition of the shares the company would then be merged with the holding company through a wind-up or amalgamation and the assets then used to secure the loan.

CHECKLIST TO BE USED
WHEN PURCHASING SHARES

September 3, 1985

1. Minute Books to be reviewed.
2. Share Register to be reviewed.
3. Review records at Companies Office.
4. Income Tax Considerations
 - (a) Latest Returns
 - (b) Loss carry forwards
 - (c) Prior tax rollovers
 - (d) Outstanding reassessments or potential reassessments
5. Financial Statements: Review
6. Inventory Valuation Procedure
7. Employment Matters
 - (a) Collective Agreements
 - (b) Outstanding Grievances
 - (c) Terms of Employment for Staff
 - (d) Outstanding Problems
 - (e) Pension Plans: Funding and Payout
 - (f) Other Benefit Plans
8. Guarantees to Bank by Vendor
9. Asset Searches
 - (a) Registry - Real Property
 - (b) Registry - Chattels
 - (c) Companies Office
 - (d) Section 178 of the Bank Act
 - (e) Book Debts
 - (f) Judgments
 - (g) Executions
10. Directors and Officers
 - (a) Resignation and Release from existing officers and directors
 - (b) Appointment of New Officers and Directors
 - (c) Minutes to reflect changes
11. Franchises and Licenses: Obtain Consents
12. Lease
 - (a) Consents
 - (b) Estoppel Certificate
13. Insurance: Check Adequacy

14. Municipal
 - (a) Zoning
 - (b) Occupancy Permits
15. Material Contracts: Review
16. Banking and Finance Arrangments
17. Closing Documents

SHARE PURCHASE AGREEMENT

BETWEEN:

VENDOR

- and -

PURCHASER

- and -

COMPANY

WITNESSETH THAT in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto respectively covenant and agree as hereinafter set out.

Dated: _____, 1985.

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SCHEDULES

A:	Lease
B:	Promissory Note
C:	Employment Terms (i) Union (ii) Non-Union
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I. DEFINITIONS

1.01 In this Agreement:

- (a) "Closing" means the closing described in Part VI of this Agreement and "Time of Closing" means the time more particularly described in paragraph 6.1 of this Agreement;
- (b) "Closing Statements" means the financial statements of the Company described in paragraph 2.6 of this Agreement;
- (c) "Company" means _____*, a body corporate, incorporated under the laws of _____*;
- (d) "Company's Legal Counsel" means _____*, barristers and solicitors, of _____*;
- (e) "Landlord" means the landlord described in the Lease;
- (f) "Lease" means the lease, a true copy of which is annexed hereto as Schedule "A";
- (g) "Promissory Note" means the promissory note in the form annexed hereto as Schedule "B";
- (h) "Purchaser" means _____* _____*;

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- (i) "Purchaser's Legal Counsel" means _____*, barristers and solicitors, of _____*;
- (j) "Shareholder's Loan" means a loan of the Vendor to the Company in the amount of _____*;
- (k) "Shares" means the common shares of the par value of \$1.00 each of the Company;
- (l) "Statements" means the audited financial statements of the Company for the period ending _____*, as prepared by _____*, Chartered Accountants, and delivered to the Purchaser;
- (m) "Vendor" means _____*, _____*;

II. AGREEMENT OF PURCHASE AND SALE, PRICE AND PAYMENT, AND STATEMENTS

2.1 Subject to the warranties, representations, terms and conditions set out in this Agreement the Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Shares.

2.2 The Purchaser agrees to pay and the Vendor agrees to accept for the Shares an aggregate purchase price of \$ ____*_____.

2.3 The purchase price shall be paid by certified cheques or the equivalent payable at par in lawful money of Canada, in the following manner:

- (a) The sum of \$ ____*_____ herewith by the Purchaser, as a deposit by cheque payable to _____*_____ in trust, (the "Trustee"), to be held in trust by the Trustee pending completion or other termination of this Agreement and to be credited on account of the purchase price on closing. The parties hereto hereby authorize and direct the Trustee to invest such deposit monies in an interest bearing trust account with a Canadian chartered bank or trust company or to utilize same to purchase from a Canadian chartered bank or trust company a guaranteed investment certificate or term deposit receipt pending the Closing Date or termination of this Agreement. If this transaction closes in accordance with the provisions of this

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Agreement, all accrued interest thereon shall be credited to the Purchaser on the Closing Date. If there is not a Closing on the Closing Date, the Trustee shall promptly return to the Purchaser the deposit plus accrued interest unless the failure to close is due to the Purchaser's failure without good legal cause to carry out and complete its obligations under this Agreement in which case the deposit plus accrued interest shall be forfeited by the Purchaser to the Vendor as liquidated damages;

(b) The Purchaser shall pay the balance of the Purchase Price to the Vendor at the Time of Closing.

2.4 Purchaser will cause _____ * _____ Bank to return to the Vendor at the Time of Closing any guarantees and other collateral security, (not being an asset of the Company) if any, of the Vendor held by _____ * _____ Bank;

2.5 Purchaser will cause the Shareholder Loan, in an amount not to exceed \$ _____ * _____ to be paid to the Vendor in _____ * _____ equal monthly installments commencing one month after the Closing and at the Closing the Purchaser shall give to the Vendor _____ * _____ post-dated cheques for this purpose.

2.6 Immediately following execution of this Agreement if not before the Purchaser will cause, at the Purchaser's expense, _____ * _____, Chartered Accountants to prepare with the mutual assistance of the staff of the Company and the Purchaser for the Company a

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statement of income for the period of _____ * _____ to _____ * _____, a statement of changes in financial position for the period of _____ * _____ to _____ * _____, a statement of retained earnings as at _____ * _____ and a balance sheet as at _____ * _____, all to be prepared in accordance with generally accepted accounting principles as provided for in the handbook of the Canadian Institute of Chartered Accountants. Such statements may be audited or prepared without audit as shall be determined by the Purchaser.

2.7 The Vendor may at any time prior to the Time of Closing, at the Vendor's expense, cause _____ * _____, Chartered Accountants, to review the Closing Statements.

2.8 In the event that _____ * _____ [Chartered Accountants referred to in paragraph 2.6] and _____ * _____ [Chartered Accountants referred to in paragraph 2.7] disagree as to the proper preparation of the Closing Statements they shall at the request of either the Vendor or the Purchaser jointly select another chartered accounting firm (and if they cannot agree then a Supreme Court Judge on application by either the Vendor or the Purchaser shall so select) for purposes of resolving any disagreements between _____ * _____ and _____ * _____. The expenses of such chartered accounting firm shall be shared jointly by the Vendor and the Purchaser.

2.9 For purposes of preparing the Closing Statements any accounts receivable outstanding for more than 90 days after the date the account was rendered shall be written off as bad debt expense. Any such accounts

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receivable so written off shall be assigned by the Company to the Vendor at the Time of Closing. The Closing Statements shall contain an appropriate allowance for doubtful accounts for all accounts receivable payable within 90 days of the date the account was rendered.

2.10 If the income statement forming part of the Closing Statements shows any profit for the period of _____ * _____ then the amount of such profit shall be paid at the Time of Closing to the Vendor as a management bonus.

2.11 If the income statement forming part of the Closing Statements shows a loss for the period of _____ * _____ then the Vendor shall be deemed to have forgiven such portion of his Shareholder's Loan as is equal to the loss and the amount set out in the Promissory Note shall be reduced by a like amount and a pro rata adjustment shall be made, in the amount of the monthly payments required to be made to pay the Shareholder's Loan.

2.12 As soon as reasonably possible, the Vendor shall cause the staff of the Company to provide to the Purchaser a complete list of all the Company's inventory, accounts receivable and accounts payable as of the close of business on _____ * _____.

3.1

III. REPRESENTATIONS AND WARRANTIES

3.1 The Vendor represents, warrants and covenants to the Purchaser that:

- (a) The Company is properly incorporated, validly existing and in good standing under the laws of _____ * _____;
- (b) The authorized capital of the Company consists solely of _____ * Shares of which _____ * are issued and outstanding, all of which Shares are now and will at the Time of Closing be outstanding as fully paid and non-assessable common shares in the capital stock of the Company without any restriction on transfer;
- (c) The Shares are now and will at the Time of Closing be owned by the Vendor as beneficial owner thereof, free of all liens, charges and encumbrances of any kind whatsoever;
- (d) No person, firm or corporation now has or at the Time of Closing will have, any agreement or option or right capable of becoming an agreement for the purchase of the Shares except for this Agreement;
- (e) No person, firm or corporation now has or at the Time of Closing will have, any agreement or option or any right capable of becoming an agreement for the purchase, subscription or issuance of any of the unissued Shares in the capital stock of the Company;

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- (f) The business of the Company has been carried on in a good prudent business-like manner since _____* and will continue to be carried on in a good and prudent business-like manner until the Time of Closing and the Company will not enter into any contracts other than in the normal course of business and until the Closing, the Company will consult with and respect the advice of the Purchaser in respect to any proposed material business transactions;

- (g) The Company now holds and at the Time of Closing shall hold all such contracts, licenses, permits and permissions as may be requisite for the carrying on of its business as _____* as now carried on;

- (h) No dividends or other distributions on any shares in the capital of the Company have been declared since _____* to the date hereof and no dividends or other distributions on any shares in the capital of the Company will be declared, paid or authorized after the date hereof to the Time of Closing;

- (i) No payments have been made or authorized since _____*, nor will be made or authorized to any officer, director or shareholder of the Company except to the employees of the Company in the ordinary course of business and at the current prevailing rates of salary, provided however

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no such payments shall be made to the Vendor;

- (j) No debts, obligations, accounts or payments are now, or will at the Time of Closing be, owing to the Company by any officer, director, shareholder or employee of the Company other than the Shareholder's Loan as described in this Agreement;
- (k) No capital expenditures have been authorized and not paid by the Company as of the date hereof and no capital expenditures will be authorized by the Company after the date hereof and up to the Time of Closing without the prior written permission of the Purchaser;
- (l) There are not now, and at the Time of Closing will not be, any injunctions, judgments, orders, legal actions or similar proceedings (whether or not purportedly by or on behalf of the Company) pending to the knowledge of the Vendor, threatened against or affecting the the Company at law or in equity or, before or by any federal, provincial, county, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, and which involves the possibility of any judgment or liability not fully covered by insurance of the Company;
- (m) The Company at the time of Closing will not be party or subject to any contract, lease, agreement or business arrangement which can

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materially adversely affect its business operations and the Company is now and at the Time of Closing will be, in good standing under all contracts and leases to which it is a party and the Company can terminate all material contracts and leases on not more than three months' notice except for the Lease and any contracts and leases disclosed in Schedule "D";

- (n) The accounting records of the Company correctly reflect all transactions of the Company and are kept in accordance with generally accepted accounting principles and will continue to do so until the Time of Closing;

- (o) The Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis, are true and correct as of the date thereof and accurately reflect the financial position of the Company as of such date. True and complete copies of the Statements have been delivered by the Company to the Purchaser. The financial position of the Company as of _____* shall be at least as good as disclosed on the balance sheet contained in the Statements as at _____*. Provided the retained earnings of the Company are not less than \$ _____* as of _____*, the financial position of the Company shall be deemed to be at least as good as

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disclosed on the balance sheet contained in the Statements as at _____*_____;

(p) The listing of inventory, accounts receivable and accounts payable described in paragraph 2.12 when delivered to the Purchaser will be true and correct;

(q) The Company is not now, nor will it at the Time of Closing:
(i) Be in arrears in filing any tax or other return required to be filed by it;
(ii) Have failed to satisfy any demand upon it by any governmental authority;
(iii) Have any outstanding liabilities for income tax, sales tax or any other form of tax, levy or charge; and
(iv) Have any contingent obligations with respect to any matter, cause or thing occurring prior to the Closing which can result in an obligation or liability arising with respect thereto after the Closing, except such matters arising in the ordinary course of its business;

(r) The Vendor is now and at the Time of Closing will be, a resident of Canada within the meaning of the Income Tax Act (Canada); and

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- (s) At the Time of Closing the Shareholder's Loan will be * .
- (t) That at the Time of Closing the Company will have good and marketable title to all the assets as reflected in the Statements and all assets substituted therefore each and every item of which will be owned by the Company free and clear from all mortgage liens, charges, pledges, leases and encumbrances except such liens, charges or encumbrances or restrictions of any kind whatsoever except as are disclosed in the Statements;
- (u) The Company has all its assets insured against loss or damage by all insurable hazards or risks on a replacement cost basis and has placed liability insurance to reasonable amounts and such insurance coverage will be continued in force and effect on the Closing Date and continuing thereafter in the ordinary course of business;
- (v) No expropriation proceedings have been commenced or threatened with respect to the Company by any governmental authority;
- (w) No broker, agent or other intermediary acted for the Vendor or the Company in connection with the sale herein provided for and the Vendor agrees to indemnify and save harmless the Purchaser and the Company from and against any claims whatsoever for any commission or

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other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Vendor or the Company;

(x) Other than the collective agreements annexed hereto as Schedule "C", the Company has not made any agreements with any labour unions or employee associations nor made commitments to or conducted negotiations with any labour union or employee association with respect to any future agreements;

(y) Other than as set out in Schedule "C" annexed hereto, there are no other written or verbal agreements or commitments, nor will there be at the Time of Closing of the Company with any person respecting past, present or future employment with the Company;

(z) There are no outstanding grievances, arbitrations, complaints, and claims of any nature, nor will there be at the Time of Closing, by or on behalf of or in relation to any employees, former employees or persons seeking employment with the Company;

3.2 In respect to the Lease the Vendor represents, warrants and covenants to the Purchaser that:

(a) The Lease is in good form duly and properly executed and is valid and enforceable in accordance with the laws of the Province of Nova Scotia;

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- (b) The Lease contains the entire agreement between the Company and the Landlord with respect to the premises described in the Lease and the Lease shall not be amended or varied prior to the Time of Closing;
- (c) There are no rents, common area charges or additional charges under the terms of the Lease which are in arrears;
- (d) All obligations of the Company in its capacity as tenant and the Landlord including obligations to complete, or fixture rental space, will have been observed and performed in all respects up to the Time of Closing;
- (e) The building or buildings housing the demised premises described in the Lease are zoned so as to permit their present use by the Company;
- (f) The Company and the Landlord are in good standing under the Lease and the Company has no knowledge of any demand by the Landlord or any item of default by the Company under the terms of the Lease;
- (g) There are no outstanding work orders, active building files or unanswered requisitions with respect to the premises described in the Lease from any government agency, authority, supplier of utilities or other authority or agency having jurisdiction;

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- (h) All services and utilities required to be installed whether pursuant to any agreement with any municipal or other governmental authority or otherwise have been fully installed and paid for and there is no unfulfilled requirement which would prohibit occupation of the premises described in the Lease;

- (i) The Company has not mortgaged, pledged, charged or in any way encumbered its interest as a tenant under the Lease.

3.3 [If relevant, insert specific clauses dealing with Pension Plans and the funding thereof.]

IV. CONDITIONS PRECEDENT

4.1 The Purchaser's obligations under this Agreement are conditional upon the performance of or compliance with the following conditions, each of which is inserted for the sole benefit of the Purchaser and which may be waived in writing, in whole or in part, by the Purchaser without limiting the Purchaser's right to rely on any of such that are not so waived by the Purchaser or any subsequent breach thereof concerning which a prior breach had been so waived:

- (a) The representations, warranties and covenants of the Vendor contained in this Agreement shall be true and correct at the Time of Closing and the Purchaser shall be furnished with such further evidence or assurances, reasonably requested, that the representations, warranties and covenants of the Vendor herein contained are true and correct as of the Time of Closing;
- (b) That all covenants and obligations of the Vendor to have been performed on or before the Time of Closing shall have been performed;
- (c) That the title of the Company to its assets and undertaking, the legality of the incorporation and organization of the Company, and all corporate proceedings of the Company, its shareholders and directors, and all other matters which, in the opinion of the Purchaser, are material in connection with the

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transaction herein contemplated shall be subject to the favourable opinion of the Purchaser's Legal Counsel and all relevant records and information shall be supplied to the Purchaser for that purpose;

- (d) The Purchaser and its representatives shall have had full access to the corporate records, financial records, the deeds, other title documents and the physical assets of the Company which shall furnish the Purchaser or its representatives with all information which the Purchaser may reasonably require with regard to the assets, operations and affairs generally of the Company, it being agreed that the exercise of such right of access and inspection by or on behalf of the Company shall not affect or mitigate the covenants, representations and warranties of the Vendor hereunder which shall continue in full force and effect as provided in this Agreement;
- (e) That all necessary steps and corporate proceedings as approved by the Purchaser's Legal Counsel shall be taken to permit the transactions herein contemplated to be duly carried out;
- (f) The accounting records of the Company since _____*_____ to the Time of Closing shall have been maintained in a satisfactory manner so as to properly reflect the business operations of the Company;

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- (g) The Purchaser shall have received from * a satisfactory opinion of all matters pertaining to the accounts of the Company which it may reasonably require, particularly respecting the valuation of inventories, accounts receivable and accounts payable;

- (h) That no material damage resulting from fire or other hazard to the physical assets of the Company shall have occurred prior to the Time of Closing;

- (i) If the Landlord's consent to the matters contemplated by this Agreement is required by the Lease then it shall have been obtained.

- (j) That at the Time of Closing the Vendor and each officer, director and employee of the Company whom the Purchaser may specify shall execute complete releases in such form as the Purchaser's Legal Counsel may reasonably request of all claims against the Company they may have as an officer, director, shareholder, employee or otherwise, except for the Shareholder's Loan.

5.1

V. SURVIVAL OF WARRANTIES - BREACH OF CONDITION

5.1 All covenants, agreements, representations, and warranties for the benefit of the Purchaser contained in this Agreement and contained in certificates or documents submitted pursuant to or in connection with the transaction herein provided for shall be deemed to have been relied upon by the Purchaser notwithstanding any investigation made by or on behalf of the Purchaser with respect thereto, and shall survive the Closing as herein contemplated and shall remain in full force and effect for the benefit of the Purchaser.

5.2 Notwithstanding anything else contained in this Agreement, if the performance of the covenants, agreements, or representations and warranties to be carried out or performed by the Vendor or the Company, do not depend upon the performance of a third party over which the Vendor does not have any reasonable control, the Purchaser may in addition to any other remedy it has, waive such covenant, agreement, representation or warranty as a condition precedent to the Closing of this Agreement and claim against the Vendor for any damages suffered by the Purchaser as a result of the Vendor's failure to perform or satisfy such covenant, agreement, representation or warranty.

6.1

VI. CLOSING

6.1 The Closing shall take place on _____ *
 _____, if the Closing Statements are completed in
 accordance with the terms of this Agreement prior to such
 time, and if not completed, then on the third business date
 following the completion of the Closing Statements in
 accordance with the terms of this Agreement such Closing to
 take place at the offices of _____ *
 _____, commencing at _____ *
 _____, local time, or at such other time
 and place as the parties may in writing agree, which earlier
 or later date shall be deemed to be the Time of Closing for
 purposes of this Agreement.

6.2 At the Time of Closing, inter alia:

- (a) The Vendor shall deliver to the Purchaser satisfactory evidence that the Company has taken all corporate steps necessary or in the opinion of the Purchaser's Legal Counsel desirable to authorize and effect the sale herein provided for including without restricting the generality of the foregoing, an opinion of the Company's Legal Counsel in a form satisfactory to the Purchaser's Legal Counsel.
- (b) The Vendor shall deliver to the Purchaser such assignments, transfers, assurances, consents and other documents as the Purchaser's Legal Counsel may reasonably require for the purpose of vesting in the Purchaser good title to the

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Shares being transferred to the Purchaser free and clear of all liens, charges, pledges, claims and encumbrances or restrictions of any kind whatsoever and for purposes of carrying out the transaction contemplated by this Agreement. Such documents shall be in such form as the Purchaser's Legal Counsel shall reasonably require and in particular the Vendor will deliver the certificates representing the Shares being transferred to the Purchaser duly endorsed for transfer to the Purchaser and will cause the transfer of such shares to be duly and regularly recorded in the name of the Purchaser in the corporate records of the Company;

- (c) The Vendor shall deliver to the Purchaser such evidence, if any, as the Purchaser may reasonably require, that all warranties, representations and covenants for the benefit of the Purchaser contained in this Agreement are true and correct to the Time of Closing and that all conditions precedent to the Closing contained in this Agreement for the benefit of the Purchaser have been met or complied with, which such evidence may, without restricting the generality of the foregoing, include such certificates or statutory declarations as the Purchaser may reasonably require;
- (d) The Vendor shall deliver to the Purchaser the resignations of all directors and officers of

6.3

the Company which shall take effect at the Time of Closing and the Vendor shall take such corporate steps as may be necessary to elect the nominees of the Purchaser as directors and officers of the Company;

- (e) The Purchaser will cause _____*_____ Bank _____ to return to the Vendor the guarantees and other collateral security, if any, referred to in paragraph 2.4 of this Agreement;
- (f) The Purchaser and the Company will deliver to the Vendor the Promissory Note in the amount of the Shareholderr's Loan duly executed together with the post-dated cheques referred to in paragraph 2.5 of this Agreement and pay the balance of the purchase price for the Shares;
- (g) The Company will deliver an assignment to the Vendor of all accounts receivable written off as bad debts expense for purposes of the Closing Statements;
- (h) If required, payment will be made to the Vendor by the Company of the Management Bonus provided for in paragraph 2.10 of this Agreement.
- (i) The Vendor will deliver to the Purchaser the releases provided for in paragraph 4.1(j).

7.1

VII. GENERAL

7.1 The Vendor covenants and agrees that he shall not individually or jointly without the prior written consent of the Purchaser at any time during a period of _____ * years following the Closing either individually or in partnership or jointly or in conjunction with any other person or persons, firm, association, syndicate, or corporation as principal, agent, shareholder or in any other manner whatsoever, carry on, be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of any person or persons, firm, association, syndicate or corporation engaged in or concerned with or interested in the business of a _____ * _____ in or about _____ * _____.

7.2 The Company joins in this Agreement for the purpose of acknowledging notice of the existence and contents of this Agreement and confirming its obligation as provided herein, and the Company hereby covenants and agrees to do all things necessary to carry out and comply with the provisions of this Agreement.

7.3 The parties mutually covenant each to the other that they shall from time to time hereafter upon every reasonable request so to do, make, do, execute and deliver, cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the reasonable opinion of either of them or their respective Legal Counsel in order to effectively implement and carry out the true intent and meaning of this Agreement.

7.2

7.4 Time shall be of the essence in this Agreement.

7.5 Any written notice or communication to be given or delivered by one party to the other shall be deemed to be duly given and delivered to the other party when delivered by hand, sent by telex, or sent by courier to the following address:

Vendor

- and -

Purchaser

Any party may at any time give notice in writing to the other party of any change of address of the party giving such notice and from and after the date of giving such notice the address therein specified shall be deemed to be the address of such party of the giving of notice hereof.

7.6 This Agreement constitutes the entire agreement between the parties. There are not and shall be deemed not to be any verbal statements, undertaking or other agreements between the parties. This agreement may only be amended in writing signed by the parties.

7.7 This Agreement is not assignable in whole or in part by any party without the prior written consent of the other parties.

7.3

7.8 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

VIII. EXECUTION

8.1 IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness

Vendor

Purchaser

Witness

By: _____

And: _____

The Company

Witness

By: _____

And: _____

DATED:

BETWEEN:

Vendor

- and -

Purchaser

- and -

The Company

SHARE PURCHASE AGREEMENT

Stewart, MacKeen & Covert (RPD)