

6619373

DATED 11th Dec 2008

I hereby certify that this copy is a true copy of
the original document which I have seen

Signed *[Signature]*
Name *[Signature]* Solicitor
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Date: 22.12.08

(1) JOHN MITCHELL

AND

(2) GAVIN LEWIS WRIGHT

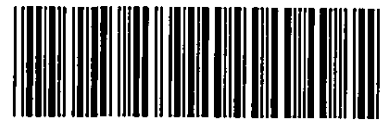
AND

(3) JM LOGISTICS LIMITED

**AGREEMENT RELATING TO
THE SALE AND PURCHASE OF CERTAIN SHARES; ASSETS & PROPERTY**

EMW Picton Howell LLP

TUESDAY



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COMPANIES HOUSE

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THIS AGREEMENT is dated the

17th

day of

December

2008

PARTIES

- (1) **MR JOHN MITCHELL** of 962 Warwick Road, Solihull, West Midlands, B91 3HN (**First Seller**);
- (2) **MR GAVIN LEWIS WRIGHT** of 570 Haslucks Green Road, Shirley, Solihull, B90 1DX (**Second Seller**); and
- (3) **JM LOGISTICS LIMITED** incorporated and registered in England and Wales with company number 6619373 whose registered office is at Seebeck House, One Seebeck Place, Knowlhill, Milton Keynes, MK5 8FR (**Buyer**).

BACKGROUND

- (A) The First Seller has agreed to sell and the Buyer has agreed to buy respectively the First Shares; the Assets and the Property subject to the terms and conditions of this agreement.
- (B) The Second Seller has agreed to sell and the Buyer has agreed to buy the Second Shares subject to the terms and conditions of this agreement.
- (C) The sale and purchase of respectively the Shares and the Property and the Assets shall be completed simultaneously.

AGREED TERMS

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Accounts means the written statements of the Company as at and to the Accounts Date, comprising the balance sheet, profit and loss account together with the notes thereon, and the reporting accountants and Directors' reports as required in accordance with Section 246 Companies Act 1985

Accounts Date means 30 September 2007

Assets means the motor vehicles comprised in the Business (other than the Excluded Assets) as listed in Schedule 7

Assets Warranties means the Warranties relating to the Assets referred to at Clause 10 and Schedule 7

Business means the business of the hiring out of the Assets carried on by the First Seller as at the date hereof

Buyer's Solicitors means EMW Picton Howell LLP of Seebeck House, One Seebeck Place, Knowlhill, Milton Keynes, MK5 8FR

CAA 2001 means the Capital Allowances Act 2001

Claim: a claim for breach of any of the Warranties relating to the First Shares

Substantiated Claim: a Claim or a claim under the Asset Warranties or a claim under the Tax Covenant in respect of which liability is admitted by the party against whom such claim is brought, or which has been adjudicated on by a Court of competent jurisdiction and no right of appeal lies in respect of such adjudication, or the parties are debarred by passage of time or otherwise from making an appeal

Company means JM Transport Services Limited a company incorporated and registered in England and Wales with company number 3245780 whose registered office is at Unit 3 Kings Road Industrial Estate, Tyseley, Birmingham, B11 2AX further details of which are set out in Schedule 1

Companies Acts means the Companies Act 1985 and the Companies Act 2006

Completion means completion of the sale and purchase of the Shares; the Assets and the Property in accordance with this agreement

Completion Date means the date of this agreement

Connected means in relation to a person, has the meaning contained in section 839 of the ICTA 1988

Contract means the unwritten agreement relating to the Business made between the First Seller (1) and the Company (2) prior to the date hereof relating to the hire of the Assets by the First Seller to the Company

(i) **Customs** means HM Revenue & Customs

(ii) **Demand** means any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty and proceeding

Director means each person who is a director or shadow director of the Company, the names of whom are set out in Part 1 of Schedule 1

Disclosed means fairly disclosed (with sufficient details to identify the nature and scope of the matter disclosed) in or under the Disclosure Letter

Disclosure Letter means the letter from the First Seller to the Buyer with the same date as this agreement and described as the disclosure letter, including the bundle of documents attached to it (**Disclosure Bundle**)

Effective Date means 30 November 2008

Encumbrance means any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security, interest, title, retention or any other security agreement or arrangement

Event means has the meaning given in Schedule 5

Excluded Assets means the assets and rights of the Business set out in clause 3

First Shares means the 950 Ordinary Shares of £1.00 each in the Company, registered in the name or (as the case may be) under the control of the First Seller, all of which have been issued and are fully paid

First Share Warranties means the Warranties relating to the First Shares referred to at Clause 8 and Schedule 3

First Seller's Solicitors means Standley and co solicitors of 1612 High Street Knowle Solihull West Midlands

Goodwill means the goodwill, custom and connection of the First Seller in relation to the Business, together with the exclusive right for the Buyer and its successors and assigns to carry on the Business under the name "JM Transport Services Limited" and to represent itself as carrying on the Business in succession to the First Seller

ICTA 1988 means the Income and Corporation Taxes Act 1988

IHTA 1984 means the Inheritance Tax Act 1984

Interest Rate means interest at a rate equal to 2½% per annum above the base lending rate from time to time of Lloyds TSB Bank plc

Lease means the lease as defined in Schedule 6

Management Accounts means the unaudited balance sheet and the unaudited profit and loss account of the Company [(including any notes thereon)] for the period of two months ended 30 November 2008 (a copy of which is attached to the Disclosure Letter)

Shareholders Agreement means the Shareholders Agreement in agreed form to be executed by each of the parties hereto on Completion of this Agreement

Previously-owned Land and Buildings means any property previously owned by the Company

Property has the meaning given in Schedule 6

Proceeds means the aggregate value of realisations from debtors of the Company after the Effective Date not discounted under the Invoice Discounting Agreement entered into by the Company with RBS Invoice Finance Limited on the Completion Date

Purchase Price means the purchase price for respectively the Shares; the Assets and the Property calculated and payable by the Buyer to the Sellers in accordance with clause 6

Records means all documents, papers and records relating to the Business or any of the Assets

Reporting Accountants means Financial Accounting Services Limited, Wellsbourne House, 1157 Warwick Road, Acocks Green, Birmingham, B27 6RG

Second Shares means the 50 Ordinary Shares of £1.00 each in the Company registered in the name of the Second Seller

Second Shares Warranties means the Warranties given by the Second Seller to the Buyer as set out at Clause 12

Sellers means together the First Seller and the Second Seller

Subsidiary means in relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 736 of the Companies Act 1985 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company

Tax or Taxation means has the meaning given in Schedule 5

Tax Covenant means the tax covenant as set out in Schedule 5

Tax Claim means has the meaning given in Schedule 5

Tax Warranties means the Warranties in Part 2 of Schedule 3

Taxation Authority has the meaning given in Schedule 5

Taxation Statute has the meaning given in Schedule 5

TCGA 1992 means the Taxation of Chargeable Gains Act 1992

TMA 1970 means the Taxes Management Act 1970

Transaction means the transaction contemplated by this agreement or any part of that transaction.

TULRCA means the Trade Union and Labour Relations (Consolidation) Act 1992

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 1981

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax

VAT Records means all records of the First Seller relating to the Business referred to in section 49 of the VATA 1994

VATA 1994 means the Value Added Tax Act 1994

Warranties means (as the context so admits or requires) either or both of the Asset Warranties and the First Share Warranties

- 1.2 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3 A **person** includes a corporate or unincorporated body.
- 1.4 Words in the singular include the plural and in the plural include the singular.
- 1.5 A reference to one gender includes a reference to the other gender.

- 1.6 A Claim is **connected** with another Claim or Substantiated Claim if they all arise out of the occurrence of the same event or relate to the same subject matter.
- 1.7 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force at the date of this agreement, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it. Provided that, as between the parties, no such amendment or re-enactment made after the date of this agreement shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.8 **Writing** or **written** includes faxes but not e-mail.
- 1.9 Documents in **agreed form** are documents in the form agreed by the parties or on their behalf and initialled by them or on their behalf for identification.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.11 References to this agreement include this agreement as amended or varied in accordance with its terms.

2 **SALE AND PURCHASE OF THE FIRST SHARES**

On the terms of this agreement, the First Seller shall sell or procure the sale of and the Buyer shall buy with effect from the Effective Date the First Shares with full title guarantee, free from all Encumbrances and together with all rights that attach (or may in the future attach) to them including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this agreement.

3 **SALE AND PURCHASE OF THE ASSETS**

- 3.1 On the terms of this agreement, the First Seller shall sell and the Buyer shall buy with effect from the Effective Date with full title guarantee and free from all Encumbrances:-
- 3.1.1 the Business and the Assets;
 - 3.1.2 the Goodwill;
 - 3.1.3 the Records;
 - 3.1.4 all (if any) of the other assets; property or rights of the Seller relating to or connected with, or belonging to or required for use in, the Business but not the Excluded Assets; and
 - 3.1.5 all of the Seller's rights against third parties relating to any of the Assets.
- 3.2 There shall be excluded from the sale under this agreement:-
- 3.2.1 all liabilities of the First Seller in relation to the Business and/or the Assets;

- 3.2.2 all contracts and arrangements relating to the Business entered into outside the ordinary course of business;
- 3.2.3 all the Seller's cash-in-hand or at the bank or at any other financial institution;
- 3.2.4 all book debts of the Business;
- 3.2.5 any Tax for which the First Seller is liable, whether or not then due, and any liability for financing charges relating to the Business;
- 3.2.6 the First Seller's accounts and accounting records which do not relate exclusively to the Business.

3.3 Nothing in this agreement shall pass to the Buyer, or shall be construed as acceptance by the Buyer of, any liability, debt or other obligation of the First Seller, (whether accrued, absolute, contingent, known or unknown) for anything done or omitted to be done before Completion in the course of or in connection with the Business or the Assets and the First Seller shall:

- 3.3.1 indemnify and hold the Buyer harmless against any and all obligations, liabilities and demands arising therefrom; and
- 3.3.2 perform any obligation falling due for performance or which should have been performed before Completion.

4 **SALE AND PURCHASE OF THE PROPERTY**

On the terms of this agreement, the First Seller shall sell and the Buyer shall buy, with effect from the Effective Date the Property with full title guarantee, free from Encumbrances, in accordance with the provisions of Schedule 6.

5 **SALE AND PURCHASE OF THE SECOND SHARES**

On the terms of this agreement, the Second Seller shall sell and the Buyer shall buy, with effect from the Effective Date the Second Shares with full title guarantee, free from all Encumbrances and together with all rights that attach (or may in the future attach) to them including, in particular, the right to receive all dividends and distributions declared, made or paid on or after the date of this agreement.

6 **PURCHASE PRICE**

6.1 The Purchase Price for the First Shares; the Assets and the Property is the aggregate sum of £1,020,000, payable as follows:-

6.1.1 as to £72,777.73; in cash at Completion;

6.1.2 as to £45,000 ; by ~~three~~ equal instalments of £15,000 each on each of 18 Jan; 18 Feb and 18 Mar 2009 together with Interest at the Interest Rate from time to time from the due date until date of payment and as well after as before judgement

6.1.3 as to the sum of £182,227 together with Interest at the Interest Rate from time to time

from the due date until date of payment and as well after as before judgement ("the Balance"); out of the Proceeds in accordance with the provisions of Clause 6.3 hereof;

6.1.3 as to £550,000 by the issue and allotment by the Buyer to the First Seller on Completion of 50 "B" Ordinary Shares of £1.00 each in the capital of the Buyer, credited as fully paid; and

6.1.4 as to £170,000 by the issue and allotment to the First Seller on Completion of £170,000 Redeemable Convertible Stock in the capital of the Buyer, credited as fully paid.

6.2 The Purchase Price payable to the First Sellers shall be apportioned as follows:-

6.2.1 as to £640,000; for the First Shares;

6.2.2 as to £80,000; for the Assets; and

6.2.3 as to £300,000 for the Property.

6.3 The Buyer undertakes with the First Seller as follows:

6.3.1 to procure payment of the Balance (together with Interest at the Interest Rate on the amount unpaid from time to time as soon as reasonably practicable after the Completion date; and

6.3.2 in any event to procure that the Company shall apply the full amount of the Proceeds (by means of an inter – company loan) in reduction of the Balance until the same is fully satisfied.

6.4 The Purchase Price payable by the Buyer to the Second Sellers for the Second Shares is £80,000 which amount (subject to the payment by the Second Seller of the sum of £50,000 in cash on Completion by way of subscription monies) shall be fully satisfied by the issue and allotment to the Second Seller on Completion of 50 "A" Ordinary Shares of £1.00 each in Buyer credited as fully paid.

6.5 In addition to payment to the First Seller of the Purchase Price the Buyer shall procure that:-

6.5.1 the Company shall repay the sum of £22,409 outstanding due by it to the First Seller by no later than the third anniversary date of Completion and in default then the Buyer shall pay Interest on the outstanding balance thereof from such date until the date of payment in full and as well after as before Completion ; and

6.5.2 the personal guarantee of the First Seller in favour of Svenska Handelsbanken shall be released on Completion.

7 COMPLETION

7.1 Completion shall take place on the Completion Date at the offices the First Sellers Solicitor.

7.2 At Completion the First Seller shall:

7.2.1 deliver or cause to be delivered the documents and evidence set out in Schedule 2;

- 7.2.2 procure that a board meeting of the Company is held at which the transfers of the Shares are approved (subject to stamping) for registration in the books of the Company; and
- 7.2.3 deliver any other documents referred to in this agreement as being required to be delivered by the First Seller.
- 7.3 At Completion the Second Seller shall deliver to the Buyer a duly executed stock transfer form in relation to the Second Shares together with the relative covering share certificate and shall pay the sum of £50,000 in cash by way of additional subscription for the 50 "A" Shares referred to at Clause 7.4.3 hereof.
- 7.4 At Completion the Buyer shall:
- 7.4.1 pay the sum of £ 72,777.73 by bank transfer in cleared funds to the First Seller's Solicitors (who are irrevocably authorised to receive the same on behalf of the First Seller) and otherwise in accordance with clause 6.1. Payment made in accordance with this clause shall constitute a valid discharge of the Buyer's obligations under clause 6.1.1;
- 7.4.2 procure the issue and allotment to the First Seller of 50 "B" Ordinary Shares of £1.00 each in the capital of the Buyer credited as fully paid together with the duly executed covering share certificate;
- 7.4.3 (subject to Clause 7.3) procure the issue and allotment to the Second Seller of 50 "B" Ordinary Shares of £1.00 each in the capital of the Buyer credited as fully paid together with the duly executed covering share certificate; and
- 7.4.4 procure the issue and allotment to the First Seller of the Redeemable Convertible Stock referred to in Clause 6.1.3 hereof credited as fully paid.
- 7.5 As soon as possible after Completion the First Seller shall deliver to the Buyer all records, correspondence, documents, files, memoranda and other papers relating to the Company and/or the Assets and the Business not required to be delivered at Completion and which are not kept at the Property.

8 **VALUE ADDED TAX**

- 8.1 The First Seller and the Buyer intend that article 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the sale of the Assets pursuant to this agreement and agree to use all reasonable endeavours to secure that the sale is treated as neither a supply of goods nor a supply of services under that article.
- 8.2 If nevertheless, any VAT is payable on the sale pursuant to this agreement and Customs have so confirmed in writing after full disclosure of all material facts, the First Seller shall promptly deliver to the Buyer a proper VAT invoice in respect of the VAT payable. Following receipt of the VAT invoice, the Buyer shall pay the First Seller the amount of the VAT immediately on:
- 8.2.1 recovery of that VAT by the Buyer from HM Revenue & Customs; or
- 8.2.2 payment of the VAT by the First Seller,
- 8.2.3 whichever is the earlier.

- 8.3 Subject to clause 8.2 if any VAT is chargeable on any supply by the First Seller to the Buyer under this agreement, the Buyer shall pay to the First Sellers the amount of that VAT against issue of a proper VAT invoice.

9 WARRANTIES RELATING TO THE FIRST SHARES

- 9.1 The Buyer is entering into this agreement on the basis of the First Share Warranties.
- 9.2 The First Seller warrants to the Buyer that each First Share Warranty is materially true, accurate and not misleading on the date of this agreement except as Disclosed.
- 9.3 The First Share Warranties qualified by the expression **so far as the Seller is aware** (or any similar expression) are deemed to be given to the best of the knowledge, information and belief of the First Seller after he has made reasonable enquiries and the information is not within the actual knowledge of the Second Seller.
- 9.4 Each of the First Share Warranties is separate and, unless otherwise specifically so provided, is not limited by reference to any other First Share Warranty or any other provision in this agreement.

10 WARRANTIES RELATING TO THE ASSETS

- 10.1 The Buyer is entering into this agreement on the basis of the Asset Warranties.
- 10.2 The First Seller warrants to the Buyer that each Asset Warranty is materially true, accurate and not misleading on the date of this agreement except as Disclosed.
- 10.3 Assets Warranties qualified by the expression **so far as the Seller is aware** (or any similar expression) are deemed to be given to the best of the knowledge, information and belief of the First Seller after he has made reasonable enquiries.
- 10.4 Each of the Assets Warranties is separate and, unless otherwise specifically so provided, is not limited by reference to any other Asset Warranty or any other provision in this agreement.

11 LIMITATIONS ON CLAIMS

- 11.1 This clause limits the liability of the First Seller in relation to any Claim and any claim under the Tax Covenant.
- 11.2 The liability of the First Seller for all Substantiated Claims and all claims under the Tax Covenant and all claims under the Asset Warranties when taken together shall not exceed the aggregate sum in cash actually paid by the Buyer to the First Seller (including all sums paid by way of redemption of Redeemable Convertible Stock and Redeemable Ordinary Stock) as at the date upon which such claim is agreed or determined Provided that the Buyer may set off any amounts still outstanding by way of redemption of stock as at such date against the amount by which aggregated Substantiated Claims exceeds the cash sum(s) paid.
- 11.3 The First Seller shall not be liable for a Claim or a claim under the Tax Covenant unless:
- 11.3.1 the amount of a Substantiated Claim, or of a series of connected Substantiated Claims of which that Substantiated Claim is one, exceeds £30,000]

- 11.3.2 the amount due in respect of a claim under the Tax Covenant exceeds £15,000; and
- 11.3.3 the amount of all Substantiated Claims and all claims under the Tax Covenant that are not excluded under clause 11.3.1 and clause 11.3.2 when taken together, exceeds £50,000, in which case the whole amount (and not just the amount by which the limit in this clause is exceeded) is recoverable by the Buyer.
- 11.4 The First Seller is not liable for any Claim to the extent that the Claim:
- 11.4.1 relates to matters Disclosed; or
- 11.4.2 relates to any matter specifically and fully provided for in the Accounts;
- 11.4.3 relates to any matter which is within the actual knowledge of the Second Seller or of which the Second Seller ought reasonably to be aware.
- 11.5 The First Seller is not liable for a Claim or a claim under the Tax Covenant unless the Buyer has given the First Seller notice in writing of the Claim or the claim under the Tax Covenant, summarising the nature of the Claim or claim under the Tax Covenant as far as it is known to the Buyer and the amount claimed:
- 11.5.1 in the case of a claim made under the Tax Warranties or the Tax Covenant, within the period of seven years beginning with the Completion Date; and
- 11.5.2 in any other case, within the period of twelve months beginning with the Completion Date,
- 11.6 Nothing in this clause 11 applies to a Claim or a claim under the Tax Covenant that arises or is delayed as a result of dishonesty, fraud, wilful misconduct or wilful concealment by the First Seller, its agents or advisers.
- 11.7 The First Seller shall not plead the Limitation Act 1980 in respect of any claims made under the Tax Warranties or Tax Covenant up to seven years after the Completion Date.
- 12 **WARRANTIES RELATING TO THE SECOND SHARES**
- 12.1 The Buyer is entering into this agreement on the basis of, and in reliance on, the Second Share Warranties.
- 12.2 The Second Seller warrants to the Buyer that each of the undermentioned statements is true, accurate and not misleading on the date of this agreement:
- 12.2.1 he has all requisite power and authority to enter into and perform this agreement in accordance with its terms; and
- 12.2.2 this agreement and the other documents referred to in it constitute (or shall constitute when executed) valid, legal and binding obligations on him in the terms of the agreement and such other documents; and
- 12.2.3 he is the sole legal and beneficial owner of the Shares, each of which is fully paid; and

12.2.4 the Second Shares are free from all Encumbrances and no commitment has been given to create an Encumbrance affecting the same.

12.3 Each of the Second Share Warranties is separate and, unless otherwise specifically provided, is not limited by reference to any other Second Share Warranty or any other provision in this agreement.

12.4 The liability of the Second Seller for all claims under the Second Share Warranties when taken together shall not exceed £50,000.

13 **TAX COVENANT**

The provisions of Schedule 6 apply in this Agreement.

14 **PROVISIONS RELATING TO THE SALE OF THE PROPERTY**

The provisions of Schedule 6 apply in this agreement.

15 **SHAREHOLDERS AGREEMENT**

15.1 The parties shall each execute and deliver the Shareholders Agreement in 3 originals on Completion.

16 **RESTRICTIONS ON THE SELLERS**

16.1 Each Seller covenants (on his own behalf and not jointly and severally with the other Seller) with the Buyer and as a separate covenant with the Company that he shall not:

16.1.1 at any time during the period of 3 years beginning with the Completion Date in the United Kingdom and 12 months after he shall cease to be engaged in the Business (whichever is the later), carry on or be employed, engaged or interested in any business which would be in competition with any part of any business carried on at the Completion Date by the Company; or

16.1.2 at any time during the period of 3 years beginning with the Completion Date and 12 months after he shall cease to be engaged in the Business (whichever is the later), deal with any person who is at the Completion Date, or who has been at any time during the period of 12 months immediately preceding that date, a client or customer of the Company; or

16.1.3 at any time during the period of 3 years beginning with the Completion Date and 12 months after he shall cease to be engaged in the Business (whichever is the later), canvass, solicit or otherwise seek the custom of any person who is at the Completion Date, or who has been at any time during the period of 12 months immediately preceding that date, a client or customer of the Company; or

16.1.4 at any time during the period of 3 years beginning with the Completion Date actively:

16.1.4.1 offer employment to, enter into a contract for the services of, or attempt to entice away from the Company, any individual who is at the time of the offer or attempt, and was at the Completion Date, employed directly or indirectly engaged in an executive or managerial position with the Company; or

- 16.1.4.2 procure or facilitate the making of any such offer or attempt by any other person; or
- 16.1.5 at any time after Completion, use in the course of any business:
 - 16.1.5.1 the words "JM Transport Services" or any colourable imitation thereof; or
 - 16.1.5.2 any trade or service mark, business or domain name, design or logo which, at Completion, was or had been used by the Company; or
 - 16.1.5.3 anything which is, in the reasonable opinion of the Buyer, capable of confusion with such words, mark, name, design or logo; or
 - 16.1.5.4 at any time during a period of 3 years beginning with the Completion Date, solicit or entice away from the Company any supplier to the Company who had supplied goods and/or services to the Company at any time during the 2 months immediately preceding the Completion Date, if that solicitation or enticement causes or would cause such supplier to cease supplying, or materially reduce its supply of, those goods and/or services to the Company.
- 16.2 The covenants in this clause 15 are intended for the benefit of the Buyer and the Company and apply to actions carried out by each of the Sellers in any capacity and whether directly or indirectly, on a Seller's own behalf or on behalf of any other person or jointly with any other person.
- 16.3 Nothing in this clause 15 prevents a Seller from holding for investment purposes only:
 - 16.3.1 any units of any authorised unit trust; or
 - 16.3.2 not more than 5% of any class of shares or securities of any company traded on the London Stock Exchange or the Alternative Investment Market.
- 16.4 Each of the covenants in this clause 15 is a separate undertaking by each Seller and shall be enforceable by the Buyer separately and independently of its right to enforce any one or more of the other covenants contained in this clause 15. Each of the covenants in this clause 15 is considered fair and reasonable by the parties, but if any restriction is found to be unenforceable, but would be valid if any part of it were deleted or the period or area of application reduced, the restriction shall apply with such modifications as may be necessary to make it valid and enforceable.
- 16.5 The consideration for the undertakings contained in this clause 15 is included in the Purchase Price.

17 FURTHER ASSURANCE

Each Seller shall (at his own expense) promptly execute and deliver all such documents, and do all such things, as the Buyer may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

18 WHOLE AGREEMENT

18.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.

18.2 Nothing in this clause 18 operates to limit or exclude any liability for fraud.

19 VARIATION AND WAIVER

19.1 Any variation of this agreement shall be in writing and signed by or on behalf of the parties.

19.2 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given and shall not prevent the party who has given the waiver from subsequently relying on the provision it has waived.

19.3 No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

19.4 No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.

19.5 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

20 COSTS

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this agreement, and any documents referred to in it, shall be borne by the party that incurred the costs.

21 NOTICE

21.1 A notice given under this agreement shall be in writing, sent for the attention of the person, and to the address stated above (or such other address as each party may notify to the others) and shall be delivered personally or sent by pre-paid first-class post or recorded delivery.

21.2 A notice is deemed to have been received:

21.2.1 if delivered personally, at the time of delivery; or

21.2.2 in the case of pre-paid first class post, recorded delivery, 3 Business days from the date of posting.

21.3 If deemed receipt under the previous paragraphs of this clause 21.2 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), then when business next starts in the place of receipt.

21.4 To prove service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

22 SEVERANCE

22.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23 AGREEMENT SURVIVES COMPLETION

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

24 THIRD PARTY RIGHTS

24.1 This agreement and the documents referred to in it are made for the benefit of the parties and are not intended to benefit, or be enforceable by, anyone else.

25 COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

26 GOVERNING LAW AND JURISDICTION

26.1 This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

26.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

This agreement has been entered into as a deed on the date stated at the beginning of it.

EXECUTED as a DEED and DELIVERED by)

JOHN MITCHELL in the presence of:)

.....
NAME

Signature:

Witness Name:

Witness Address:

.....

.....

25 **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

26 **GOVERNING LAW AND JURISDICTION**

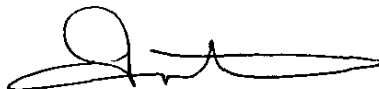
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26.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.


This agreement has been entered into as a deed on the date stated at the beginning of it.

EXECUTED as a DEED and DELIVERED by)

JOHN MITCHELL in the presence of:)



NAME

Signature: 

Witness Name: S. P. Gooden

Witness Address: 1612 High St

Witness Occupation: Solicitor

EXECUTED as a DEED and DELIVERED by)

GAVIN LEWIS WRIGHT in the presence of:)

NAME

Signature:

Witness Name:

Witness Address:

Witness Occupation:

Witness Occupation:

EXECUTED as a DEED and DELIVERED by)
GAVIN LEWIS WRIGHT in the presence of:)

.....
NAME

Signature:
Witness Name: S.B. Cottrell
Witness Address: Rose Cottage
Whelsham, HM Chesham
Bucks HP5 3RL
Witness Occupation: Accountant

EXECUTED as a DEED and DELIVERED by **JM**)
LOGISTICS LIMITED acting by two directors)
or one director and the company secretary:)

.....
Director
.....
Director / Secretary

SCHEDULE 1
PARTICULARS OF THE COMPANY

Name:	JM Transport Services Limited
Registration number:	3245780
Registered office:	Unit 3 Kings Road Industrial Estate, Tyseley, Birmingham, B11 2AX
Authorised share capital Amount: Divided into:	£1,000 1,000 Ordinary Shares of £1.00 each
Issued share capital Amount: Divided into:	£1,000 1,000 Ordinary Shares of £1.00 each
Registered Shareholders (and number of Shares held):	John Mitchell 950 Gavin Wright 50
Beneficial owners of Shares (if different) (and number of Shares beneficially owned):	As above
Directors and shadow directors:	Steven William Clarke Alan Robert Hill John Mitchell Gavin Lewis Wright
Secretary:	Alan Robert Hill
Reporting Accountants	Financial Accounting Services Limited
Registered charges	Debenture dated 21/05/2001 to Svenska Handelsbanken AB (PUBL)

SCHEDULE 2

Completion

- 1 At Completion, the First Seller shall deliver or cause to be delivered to the Buyer the following documents and evidence:
 - 1.1 transfers of the First Shares executed by the registered holders in favour of the Buyer;
 - 1.2 the share certificates for the First Shares in the names of the registered holders or an indemnity in the agreed form for any lost certificates;
 - 1.3 the statutory registers and minute books (written up to the time of Completion), the common seal, certificate of incorporation and any certificates of incorporation on change of name;
 - 1.4 the written resignation, executed as a deed and in the agreed form, of the undermentioned directors and secretary of the Company from their offices and employment with the Company:
 - 1.4.1 Stephen William Clarke; Alan Robert Hill and John Mitchell as Directors; and
 - 1.4.2 Alan Robert Hill as Secretary;
 - 1.5 all title deeds and other documents relating to the Property;
 - 1.6 evidence, in agreed form, that any indebtedness or other liability of the First Seller to the Company has been discharged;
 - 1.7 evidence, in agreed form, that the Company have been discharged from any responsibility for the indebtedness, or for the default in the performance of any obligation, of any other person.

SCHEDULE 3
WARRANTIES RELATING TO THE FIRST SHARES

PART 1
GENERAL WARRANTIES

1 POWER TO SELL THE COMPANY

- 1.1 The First Seller has all requisite power and authority to enter into and perform this agreement in accordance with its terms and the other documents referred to in it.
- 1.2 This agreement and the other documents referred to in it constitute (or shall constitute when executed) valid, legal and binding obligations on the First Seller in the terms of the agreement and such other documents.
- 1.3 Compliance with the terms of this agreement and the documents referred to in it shall not breach or constitute a default under any of the following:
 - 1.3.1 any agreement or instrument to which the First Seller is a party or by which it is bound;
or
 - 1.3.2 any order, judgment, decree or other restriction applicable to the First Seller.

2 SHARES IN THE COMPANY

- 2.1 The Shares together constitute the whole of the allotted and issued share capital of the Company and are fully paid
- 2.2 The First Seller is the sole legal and beneficial owner of the First Shares.
- 2.3 The Company has not now and has never had any Subsidiaries.
- 2.4 The First Shares are free from all Encumbrances and no commitment has been given to create an Encumbrance affecting the First Shares.
- 2.5 No right has been granted to any person to require the Company to issue any share capital and no Encumbrance has been created and no commitment has been given to create an Encumbrance in favour of any person affecting any unissued shares or debentures or other unissued securities of the Company.

3 INFORMATION

The particulars relating to the Company in this agreement are accurate and not misleading.

4 COMPLIANCE WITH LAWS

The Company has at all times materially conducted its business in accordance with its memorandum and articles of association and with all applicable laws and regulations.

5 LICENCES AND CONSENTS

- 5.1 The Company has all necessary licences, consents, permits and authorities necessary to carry on its business in the places and in the manner in which its business is now carried on, all of which are valid and subsisting.
- 5.2 There is no reason why any of those licences, consents, permits and authorities should be suspended, cancelled, revoked or not renewed on the same terms.

6 INSURANCE

- 6.1 The insurance policies maintained by or on behalf of the Company provide full indemnity cover against all losses and liabilities including business interruption and other risks that are normally insured against by a person carrying on the same type of business as the Company.
- 6.2 The particulars of those policies set out in the Disclosure Letter are accurate and not misleading.
- 6.3 There are no material outstanding claims under, or in respect of the validity of, any of those policies and so far as the First Seller is aware, there are no circumstances likely to give rise to any claim under any of those policies.
- 6.4 All the insurance policies are in full force and effect, are not void or voidable, nothing has been done or not done which could make any of them void or voidable and Completion will not terminate, or entitle any insurer to terminate, any such policy.

7 POWER OF ATTORNEY

There are no powers of attorney in force given by the Company and no person, as agent or otherwise, is entitled or authorised to bind or commit the Company to any obligation not in the ordinary course of the Company's business.

8 DISPUTES AND INVESTIGATIONS

8.1 Neither the Company nor any of their respective Directors nor any person for whom the Company is vicariously liable:

8.1.1 is engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or governmental body, department, board or agency (except for debt collection in the normal course of business); or

8.1.2 is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body; and

8.1.3 no such proceedings, investigation or inquiry as are mentioned in paragraph 8.1 of this Schedule 3 have been threatened or are pending and there are no circumstances likely to give rise to any such proceedings.

9 TRANSACTIONS WITH THE FIRST SELLER

9.1 There is no outstanding indebtedness or other liability (actual or contingent) and no outstanding contract, commitment or arrangement between the Company the First Seller or any person Connected with the Seller; or member or director.

9.2 Neither the First Seller, nor any person Connected with the First Seller, is entitled to a claim of any nature against the Company or has assigned to any person the benefit of a claim against the Company to which the First Seller or a person Connected with the First Seller would otherwise be entitled.

10 FINANCE AND GUARANTEES

10.1 No guarantee, mortgage, charge, pledge, lien, assignment or other security agreement or arrangement has been given by or entered into by the Company or any third party in respect of borrowings or other obligations of the Company or any other person.

10.2 The Company has no any outstanding loan capital, or has lent any money that has not been repaid, and there are no debts owing to the Company other than debts that have arisen in the normal course of business.

10.3 The Company has not:

10.3.1 factored any of its debts or discounted any of its debts or engaged in financing of a type which would not need to be shown or reflected in the Accounts; or

10.3.2 waived any right of set-off it may have against any third party.

10.4 Full particulars of all money borrowed by the Company (including full particulars of the terms on which such money has been borrowed) have been Disclosed.

11 ASSETS

11.1 The Company is the full legal and beneficial owner of, and has good and marketable title to, all the assets included in the Accounts, any assets acquired since the Accounts Date and all other assets

used by the Company except for those disposed of since the Accounts Date in the normal course of business and such assets are free from any Encumbrance.

- 11.2 None of the assets shown in the Accounts or acquired by the Company since the Accounts Date or used by the Company is the subject of any lease, lease hire agreement, hire purchase agreement or agreement deferred terms or is the subject of any licence or factoring arrangement.
- 11.3 The Company is in possession and control of all the assets included in the Accounts, or acquired since the Accounts Date and all other assets used by the Company, except for those Disclosed as being in the possession of a third party in the normal course of business.

12 DOMAIN NAME

The Company is the registrant of the Domain Name "JMTransport.co.uk" and has no legal or beneficial interest in and does not use in the course of its business any trademarks (registered or unregistered) other than the unregistered Trade Mark "JM Transport Services" or any other Domain Names.

13 INFORMATION TECHNOLOGY

The definitions in this paragraph apply in this agreement.

IT System: all computer hardware (including network and telecommunications equipment) and software (including associated preparatory materials, user manuals and other related documentation) owned, used, leased or licensed by or in relation to any business carried on [at Completion] by the Company.

- 13.1 The Company is the owner of the IT System, free from Encumbrances and all other rights exercisable by third parties. The Company has obtained all necessary rights from third parties to enable it to make exclusive and unrestricted use of the IT System.

14 EMPLOYMENT

The definitions in this paragraph apply in this agreement.

Employment Legislation: legislation applying in England and Wales affecting contractual or other relations between employers and their employees or workers, including but not limited to any legislation and any amendment, extension or re-enactment of such legislation and any claim arising under European treaty provisions or directives enforceable against the Company by any Employee or Worker.

Employee: any person employed by the Company under a contract of employment.

Worker: any person who personally performs work for the Company but who is not in business on their own account or in a client/customer relationship.

- 14.1 So far as the First Seller is aware, the Company has not made or agreed to make a payment or provided or agreed to provide a benefit to a present or former Director, officer, Employee or Worker or to their dependants in connection with the actual or proposed termination or suspension of employment or variation of an employment contract.
- 14.2 So far as the First Seller is aware, the Company has not offered, promised or agreed to any future variation in the contract of any Employee or Worker.
- 14.3 So far as the First Seller is aware, in respect of each Employee and Worker, the Company has:
- 14.3.1 performed all obligations and duties it is required to perform (and settled all outstanding claims), whether or not legally binding and whether arising under contract, statute, at common law or in equity or under any treaties including the EC Treaty or laws of the European Community or otherwise;
 - 14.3.2 complied with the terms of any relevant agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not); and
 - 14.3.3 maintained adequate, suitable and up to date records.

15 ENVIRONMENTAL

The definitions in this paragraph apply in this agreement.

Environment: air, water and land, all living organisms and natural or man-made structures.

Environmental Law: any law in so far as it relates to Environmental Matters.

Environmental Matters: the protection of human health, the protection and condition of the Environment, the condition of the workplace, the generation, transportation, storage, treatment, emission, deposit and disposal of any Hazardous Substance or Waste.

Hazardous Substance: any natural or artificial substance (whether solid, liquid or gas and whether alone or in combination with any other substance or radiation), capable of causing harm to any human or other living organism or the Environment.

Waste: all waste, including any unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value.

- 15.1 All permits, consents and licences required or issued under Environmental Law which are necessary for carrying on the business of the Company are in full force and effect and have been complied with and there are no circumstances (including, but not limited to, the sale of the First Shares to the Buyer) likely to give rise to the modification, suspension or revocation of, or lead to the imposition of unusual or onerous conditions on, or to prejudice the renewal of, any of those permits, consents or licences.
- 15.2 The Company has at all times materially complied with all Environmental Laws
- 15.3 There are no Hazardous Substances or Waste at any of the Property in circumstances which constitute a breach of Environmental Law or which may lead to a liability, obligation or duty being imposed under Environmental Law on the Company by any competent authority or third party.

16 ACCOUNTS

- 16.1 The Accounts have been prepared in accordance with the Companies Acts and with accounting standards, policies, principles and practices generally accepted in the UK and in accordance with the law and give a true and fair view of the state of affairs of the Company as at the Accounts Date and of the profit and loss of the Company, for the financial year ended on that date.
- 16.2 The Accounts:
- 16.2.1 make proper and adequate provision or reserve for all bad and doubtful debts for depreciation on fixed assets and for liabilities (including contingent liabilities) and Taxation (including deferred Taxation);
 - 16.2.2 do not overstate the value of current or fixed assets; and
 - 16.2.3 do not understate any liabilities (whether actual or contingent).
- 16.3 The Accounts have been prepared on a basis consistent with the audited accounts of, as the case may be, the Company, for the two prior accounting periods without any change in accounting policies used.
- 16.4 The Management Accounts have been prepared on a basis consistent with that employed in preparing the Accounts and fairly represent the assets and liabilities and the profits and losses of the Company as at and to the date for which they have been prepared.
- 16.5 All accounting, financial and other records of the Company (including the statutory books of the Company):
- 16.5.1 have been properly prepared, filed and maintained;
 - 16.5.2 constitute an accurate record of all matters required by law to appear in them;
 - 16.5.3 do not contain any material inaccuracies or discrepancies;
 - 16.5.4 are in the possession of the Company to which they relate; and
 - 16.5.5 comply with all applicable laws.

- 16.6 No notice has been received or allegation made that any of those records are incorrect or should be rectified.

17 CHANGES SINCE ACCOUNTS DATE

Since the Accounts Date:

- 17.1 the Company has not issued or agreed to issue any share or loan capital;
- 17.2 no dividend or other distribution of profits or assets has been, or agreed to be, declared, made or paid by the Company;
- 17.3 the Company has not borrowed or raised any money or taken any form of financial security and no capital expenditure has been incurred on any individual item by the Company in excess of £10,000 and the Company has not acquired, invested or disposed of (or agreed to acquire, invest or dispose of) any individual item by the Company in excess of £10,000; and
- 17.4 no shareholder resolutions of the Company have been passed other than as routine business at an annual general meeting;

18 RETIREMENT BENEFITS

- 18.1 The Company neither has nor may have any obligation (whether or not legally binding) to provide or contribute towards pension, lump sum, death, ill-health, disability or accident benefits in respect of its past or present officers and employees (Pensionable Employees) and no proposal has been made to any Employee or officer of the Company about the introduction, continuance, increase or improvement of, or the payment of a contribution towards, any pension, lump sum, death, ill-health, disability or accident benefit.
- 18.2 The Company has facilitated access for its Pensionable Employees to a designated stakeholder scheme as required by Section 3 of the Welfare Reform and Pensions Act 1999.

19 PREVIOUSLY OWNED LAND AND BUILDINGS

The Company has no subsisting obligations in relation to any land and/or buildings previously owned or occupied by it which now do or could give rise to a liability after the Completion Date.

PART 2

TAX WARRANTIES

1 GENERAL

- 1.1 All notices, returns (including any land transaction returns), reports, accounts, computations, statements, assessments and registrations and any other necessary information submitted by the Company to any Taxation Authority for the purposes of Taxation have been made on a proper basis, were submitted within applicable time limits, were accurate and complete when supplied and remain accurate and complete in all material respects. None of the above is, or is likely to be, the subject of any material dispute with any Taxation Authority.
- 1.2 All Taxation (whether of the UK or elsewhere), for which the Company has been liable or is liable to account for, has been duly paid (insofar as such Taxation ought to have been paid).
- 1.3 The Company has, within applicable time limits, maintained all records in relation to Taxation as they are required to maintain.
- 1.4 The Company has complied within applicable time limits with all notices served on them and any other requirements lawfully made of them by any Taxation Authority.
- 1.5 The Company has not paid, within the past seven years ending on the date of this agreement, nor will become liable to pay any penalty, fine, surcharge or interest charged by virtue of the TMA 1970 or any other Taxation Statute.
- 1.6 All Taxation and national insurance deductible and payable under the PAYE system and/or any other Taxation Statute has, so far as is required to be deducted, been deducted from all payments made (or treated as made) by the Company. All amounts due to be paid to the relevant Taxation Authority prior to the date of this agreement have been so paid, including without limitation all Tax chargeable on benefits provided for directors, employees or former employees of the Company or any persons required to be treated as such.
- 1.7 The Company is not involved in any dispute with any Taxation Authority and has not, within the past 12 months, been subject to any visit, audit, investigation, discovery or access order by any Taxation Authority. The Seller is not aware of any circumstances existing which make it likely that a visit, audit, investigation, discovery or access order will be made in the next 12 months.
- 1.8 The Disclosure Letter contains details of any concession, agreements or other formal or informal arrangement (that is, an arrangement which is not based on a strict interpretation of all relevant Taxation legislation, published extra-statutory concessions and published statements of practice) with any Taxation Authority.
- 1.9 The Disclosure Letter contains details of all transactions, schemes or arrangements in respect of which the Company has been a party or has otherwise been involved for which a statutory clearance application was made. The Disclosure letter also contains copies of all relevant applications for clearances and copies of all clearances obtained in connection with such transactions, schemes or arrangements. All such clearances have been obtained on the basis of full and accurate disclosure of all material facts and considerations relating thereto. All such transactions, schemes or arrangements have been implemented strictly in accordance with the terms of such clearances.

- 1.10 The Company is not nor will it become, liable to make to any person (including any Taxation Authority) any payment in respect of any liability to Taxation which is primarily or directly chargeable against, or attributable to, any other person (other than the Company).
- 1.11 The Accounts make full provision or reserve within generally accepted accounting principles for any period ended on or before the date to which they were drawn up for all Taxation assessed or liable to be assessed on the Company, or for which the Company is accountable at that date, whether or not the Company has (or may have) any right of reimbursement against any other person. Proper provision has been made and shown in the Accounts for deferred taxation in accordance with generally accepted accounting principles.

2 CHARGEABLE GAINS

The book value shown in, or adopted for the purposes of, the Accounts as the value of each of the assets of the Company, on the disposal of which a chargeable gain or allowable loss could arise, does not exceed the amount which on a disposal of such asset at the date of this agreement would be deductible, in each case, disregarding any statutory right to claim any allowance or relief other than amounts deductible under section 38 of TCGA 1992.

3 CAPITAL LOSSES

No capital loss has accrued to the Company that is a loss within the meaning of either section 8 or section 16A of TCGA 1992.

4 CAPITAL ALLOWANCES

- 4.1 If any asset of the Company were disposed of at Completion for its book value as shown in, or adopted for the purpose of, the Accounts, or for the value of consideration actually given for it on its acquisition (if such asset were acquired since the Accounts Date), no balancing charge under CAA 2001 (or any other legislation relating to capital allowances) or similar clawback of relief in jurisdictions outside the UK would be made on the Company.
- 4.2 No event has occurred since the Accounts Date (otherwise than in the ordinary course of business) whereby any balancing charge may fall to be made against, or any disposal value may fall to be brought into account, by the Company under CAA 2001 (or any other legislation relating to capital allowances) or similar legislation relating to relief for similar capital expenditure in jurisdictions outside the UK.
- 4.3 The Disclosure Letter contains full details of:
- 4.3.1 all expenditure incurred since the Accounts Date in respect of which allowances can be claimed under Parts 2 and 3 of CAA 2001;
 - 4.3.2 all capital allowances to which the Company is entitled under Chapter 14 of Part 2 of CAA 2001 (Fixtures);
 - 4.3.3 any claim for first-year tax credits (within the meaning of clause 76 of and Schedule 25 to the Finance Bill 2008 (first version, ordered to be printed on 18 March 2008); and
 - 4.3.4 all expenditure incurred on the provision of or replacement of integral features (within the meaning of clause 70 of the Finance Bill 2008 (first version, ordered to be printed on 18 March 2008).

5 DISTRIBUTIONS AND OTHER PAYMENTS

- 5.1 No distribution or deemed distribution, within the meaning of sections 209, 210 or 211 of ICTA 1988, has been made (or will be deemed to have been made) by the Company after 5 April 1965, except dividends shown in their audited accounts, and neither the Company is not bound to make any such distribution.
- 5.2 No rents, interest, annual payments or other sums of an income nature, paid or payable by the Company, or which the Company or any of the Subsidiaries is under an existing obligation to pay in the future, are or may be wholly or partially disallowable as deductions, management expenses or charges in computing taxable profits for Taxation purposes.
- 5.3 The Company has not, within the period of seven years preceding Completion, been engaged in, nor been a party to, any of the transactions set out in sections 213 to 218 (inclusive) of ICTA 1988, nor has it made or received a chargeable payment as defined in section 218(1) of ICTA 1988.

6 LOAN RELATIONSHIPS

All interests, discounts and premiums payable by the Company in respect of its loan relationships (within the meaning of section 81 of the Finance Act 1996) are eligible to be brought into account by the Company or the Subsidiaries as a debit for the purposes of Chapter II of Part IV of the

Finance Act 1996 at the time, and to the extent that such debits are recognised in the statutory accounts of the Company or the Subsidiaries.

7 CLOSE COMPANIES

- 7.1 No distribution within section 418 of ICTA 1988 has been made by the Company during the year ending at the Accounts Date, nor have such distributions been made between the Accounts Date and Completion.
- 7.2 Any loans or advances made, or agreed to be made, by the Company within sections 419 and 420 or 422 of ICTA 1988 have been disclosed in the Disclosure Letter. The Company has not released or written off, or agreed to release or write off, the whole or any part of any such loans or advances.

8 ANTI-AVOIDANCE

All transactions or arrangements made by the Company or any Subsidiary have been made on fully arm's length terms. There are no circumstances in which section 770A of, or Schedule 28AA to, ICTA 1988 or any other rule or provision could apply allowing any Taxation Authority to make an adjustment to the terms on which such transaction or arrangement is treated as being made for Taxation purposes, and no notice or enquiry has been made by any Taxation Authority in connection with any such transactions or arrangements.

9 INHERITANCE TAX

- 9.1 The Company has not:
- 9.1.1 made any transfer of value within sections 94 and 202 of IHTA 1984; or
 - 9.1.2 received any value such that liability might arise under section 199 of IHTA 1984; or
 - 9.1.3 been a party to associated operations in relation to a transfer of value as defined by section 268 of IHTA 1984.
- 9.2 There is no unsatisfied liability to inheritance tax attached to, or attributable to, the Shares or any asset of the Company. None of them are subject to any HM Revenue & Customs charge as mentioned in section 237 and 238 of IHTA 1984.
- 9.3 No asset owned by the Company, nor the Shares, are liable to be subject to any sale, mortgage or charge by virtue of section 212(1) of IHTA 1984.

SCHEDULE 4
WARRANTIES RELATING TO THE ASSETS

1 CAPACITY OF THE SELLER

The First Seller has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this agreement and all agreements and documents entered into, or to be entered into, pursuant to the terms of this agreement.

2 TITLE TO THE ASSETS

9.1 The Assets comprise all assets now used in the Business and that are necessary for the continuation of the Business as now carried on without assistance from any other person.

9.2 The First Seller has good and marketable title to each Asset (tangible and intangible), and each Asset is legally and beneficially owned by the First Seller. Subject as stated in the Disclosure Letter there are no Encumbrances over any of the Assets, and the First Seller has not agreed to create any Encumbrances over the Assets or any part of them.

3 THE CONTRACT

The Contracts is the only contract entered into by or on behalf of the First Seller in connection with the Business.

4 EMPLOYEES AND AGENTS

No person is employed or engaged in the Business (whether temporary or permanent and whether under a contract of service or contract for services) other than the First Seller.

5 STATUTORY RESTRICTIONS

- 9.3 The First Seller has committed or omitted to do any act or thing in relation to the Business which could give rise to any fine or penalty.
- 9.4 The First Seller has not, in relation to the Business, received notice of any breach by it of competition, anti-trust, anti-restrictive trade practice or consumer protection law, rule or regulation anywhere in the world or of any investigation, enquiry, report or order by or by reference to any regulatory authority under any such law, rule or regulation.

6 -LITIGATION

- 9.5 The First Seller is not engaged in, subject to or threatened by any:
- 9.5.1 litigation, administrative, mediation or arbitration proceedings (except for debt collection in the ordinary and usual course of business, details of which have been Disclosed) in relation to the Business or the Assets or any of them; or
- 9.5.2 is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body.

7 INSOLVENCY OF SELLER

The First Seller is solvent and able to pay his debts as they fall due.

8 COMPLIANCE

- 9.6 All legislation and all orders, provisions, directions and conditions relating to the Assets or the conduct of the Business (including VAT) have been duly complied with in all material respects.
- 9.7 All necessary licences, consents, permits, agreements, arrangements and authorities (public and private) have been obtained to enable the First Seller to carry on the Business effectively in the manner in which it is now carried on and all such licences, consents, permits, agreements, arrangements and authorities are valid and subsisting. The First Seller knows of no reason why any of them should be suspended, cancelled or revoked or the benefit of them should not continue to be enjoyed by the Buyer or other owner for the time being of the Business and the Assets or any part of them.

SCHEDULE 5
TAX COVENANT

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this paragraph apply in this Tax Covenant.

Buyer's Relief: means:

- (i) any Accounts Relief (as defined in paragraph (i) of the definition of Liability for Taxation) or Repayment Relief (as defined in paragraph (ii) of the definition of Liability for Taxation);
- (ii) any Post Accounts Date Relief of the Company (as defined in paragraph (iii) of the definition of Liability for Taxation); and
- (iii) any Relief, whenever arising, of the Buyer or any member of the Buyer's Tax Group other than the Company.

Event: includes (without limitation) the expiry of a period of time, the Company becoming or ceasing to be associated with any other person for any Tax purpose or ceasing to be or becoming resident in any country for any Tax purpose, the death or the winding up or dissolution of any person, and any transaction (including the execution and completion of all provisions of this agreement), event, act or omission whatsoever, and any reference to an Event occurring on or before a particular date shall include Events which, for Tax purposes, are deemed to have, or are treated or regarded as having, occurred on or before that date.

Liability for Taxation: any liability of the Company to make a payment of or in respect of Tax, whether or not the same is primarily payable by the Company and whether or not the Company has or may have any right of reimbursement against any other person or persons and shall also include:

- (i) the Loss of any Relief (**Accounts Relief**) where such Relief has been taken into account in computing and so reducing or eliminating any provision for deferred Tax which appears in the Accounts (or which, but for such Relief, would have appeared in the Accounts) or where such Relief was treated as an asset of the Company in the Accounts or was taken into account in computing any deferred Tax asset which appears in the Accounts (**Loss of an Accounts Relief**), in which case the amount of the Liability for Taxation shall be the amount of Tax which would (on the basis of Tax rates current at the date of such Loss) have been saved but for such Loss, assuming for this purpose that the Company had sufficient profits or was otherwise in a position to use the Relief;
- (ii) the Loss of any right to repayment of Tax (including any repayment supplement) (**Repayment Relief**) which was treated as an asset in the Accounts (**Loss of a Repayment Relief**), in which case the amount of the Liability for Taxation shall be the amount of the Loss of the right to repayment and any related repayment supplement;
- (iii) the set off or use against income, profits or gains earned, accrued or received or against any Tax chargeable in respect of an Event occurring on or before the Accounts Date of any Relief (**Post-Accounts Date Relief**) or right to repayment of Tax (including any repayment supplement) which is not available before the Accounts Date, but arises after the Accounts Date in circumstances

where, but for such set off or use, the Company would have had a liability to make a payment of or in respect of Tax for which the Buyer would have been able to make a claim against the Seller under this Tax Covenant (**Loss of a Post-Accounts Date OR Completion Relief**), in which case the amount of the Liability for Taxation shall be the amount of Tax saved by the Company as a result of such set off or use;

- (iv) any liability to repay in whole or in part any payment received or receivable by the Company or a liability of the Company to make any payment (other than to the Company) for the surrender of Group Relief pursuant to any arrangement or agreement entered into on or before Completion (save to the extent that such repayment or payment is reflected in the Accounts), in which case the amount of the Liability for Taxation shall be the amount of such liability (disregarding any set off);
- (v) the loss in whole or in part of any payment received or receivable by the Company or a liability of the Company to make any payment (other than to the Company) for the surrender of Group Relief pursuant to any arrangement or agreement entered into on or before Completion (save to the extent that such repayment or payment is reflected in the Accounts; in which case the amount of the Liability for Taxation shall be the amount taken into account in the Accounts; and
- (vi) any liability of the Company to make a payment pursuant to an indemnity, guarantee or covenant entered into before Completion under which the Company has agreed to meet or pay a sum equivalent to or by reference to another persons Tax liability, in which case the Liability for Taxation shall be equal to the amount of the liability.

Loss: any reduction, modification, loss, counteraction, nullification, utilisation, disallowance or clawback for whatever reason.

Relief: includes any loss, relief, allowance, credit, exemption or set off in respect of Tax or any deduction in computing income, profits or gains for the purposes of Tax and any right to a repayment of Tax.

Tax: all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of the UK or any other jurisdiction, and any penalty, fine, surcharge, interest, charges or costs relating thereto, and **Taxation** shall have the same meaning.

Tax Claim: any assessment (including self-assessment), notice, demand, letter or other document issued or action taken by or on behalf of any Taxation Authority from which it appears that the Buyer, the Company is or may be subject to a Liability for Taxation or other liability in respect of which the Seller is or may be liable under this Tax Covenant.

Taxation Authority: the Inland Revenue, HM Customs & Excise, HM Revenue & Customs, the Department of Social Security and any other governmental or other authority whatsoever competent to impose any Tax, whether in the United Kingdom or elsewhere.

Taxation Statute: any directive, statute, enactment, law or regulation wheresoever enacted or issued, coming into force or entered into and providing for or imposing any Tax and including orders, regulations, instruments, bye-laws or other subordinate legislation made under the relevant statute or statutory provision and any directive, statute, enactment, law, order, regulation or

provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same.

- 1.2 References to **gross receipts, income, profits or gains** earned, accrued or received shall include any gross receipts, income, profits or gains deemed pursuant to the relevant Taxation Statute to have been or treated or regarded as earned, accrued or received.
- 1.3 References to a **repayment of Tax** shall include any repayment supplement or interest in respect of it.
- 1.4 A reference to an **Event occurring on or before Completion** includes a series or combination of Events, the first of which occurred on or before Completion and was not in the ordinary course of business of the Company and any of which occurring after Completion were in the ordinary course of business of the Company.
- 1.5 Unless the contrary intention appears, words and expressions defined in this agreement have the same meaning in this Tax Covenant and any provisions in this agreement concerning matters of construction or interpretation also apply in this Tax Covenant.
- 1.6 For the avoidance of doubt, references to any Liability for Taxation of the Company which results from any gains earned or received on or before Completion or any Event on or before Completion include a reference to any Liability for Taxation of the Company resulting from the sale of the Shares pursuant to this agreement (including, without limitation, any liability arising under section 179 of TCGA 1992).

2 COVENANT

The First Seller covenants with the Buyer that, subject to the provisions of this Tax Covenant, the First Seller shall pay to the Buyer, to the extent possible, but not so as to limit the amount payable where not wholly possible, by way of repayment of the Purchase Price for the Shares, an amount equal to any:

- 2.1 Liability for Taxation resulting from or by reference to any Event occurring on or before Completion or in respect of any gross receipts, income, profits or gains earned, accrued or received by the Company on or before Completion;
- 2.2 Liability for Taxation which arises solely as a result of the relationship for Tax purposes of the Company with any person whensoever arising;
- 2.3 payment of interest or penalties for which the Company is liable as a result of the Company failing to make any instalment payment under the Corporation Tax (Instalment Payments) Regulations 1998 in any period ending on or before Completion sufficient to avoid such interest or penalties;
- 2.4 Liability for Taxation falling within paragraph (i) to paragraph (vi) of the definition of Liability for Taxation; and
- 2.5 costs and expenses referred to in paragraph 15.

3 PAYMENT DATE AND INTEREST

- 3.1 Where the First Seller is liable to make any payment under paragraph 9 (including any payment pursuant to paragraph 9.5), the due date for the making of that payment (**Due Date**) shall be the earlier of the date falling seven days after the Buyer has served a notice on the First Seller demanding that payment and in a case:
 - 3.1.1.1 that involves an actual payment of Tax by the Company (including any payment pursuant to paragraph 9.5), the date on which the Tax in question would have had to have been paid to the relevant Taxation Authority in order to prevent a liability to interest or a fine, surcharge or penalty from arising in respect of the Liability for Taxation in question; or
 - 3.1.1.2 that falls within paragraph (i) of the definition of Liability for Taxation, the last date on which the Tax is or would have been required to be paid to the relevant Taxation Authority in respect of the period in which the Loss of the Relief occurs (assuming for this purpose that the Company had sufficient profits or was otherwise in a position to use the Relief); or
 - 3.1.1.3 that falls within paragraph (ii) of the definition of Liability for Taxation, the date on which the repayment was due from the relevant Taxation Authority; or
 - 3.1.1.4 that falls within paragraph (iii) of the definition of Liability for Taxation, the date on which the Tax saved by the Company is or would have been required to be paid to the relevant Taxation Authority; or
 - 3.1.1.5 that falls within paragraph (iv) of the definition of Liability for Taxation or paragraph (vi) (liability for indemnity, guarantee or covenant payment) of the definition of Liability for Taxation, not later than the fifth day before the day on which the Company is due to make the payment or repayment.
- 3.2 Any dispute as to the amount specified in any notice served on the First Seller under paragraph 10.1.2 to paragraph 10.1.5 shall be determined by the auditors of the Company for the time being, acting as experts and not as arbitrators (the costs of that determination being shared equally by the First Seller and the Buyer).

- 3.3 If any sums required to be paid by the First Seller under this Tax Covenant are not paid on the Due Date then, except to the extent that the First Seller's liability under paragraph 9 compensates the Buyer for the late payment by virtue of it extending to interest and penalties, such sums shall bear interest (which shall accrue from day to day after as well as before any judgment for the same) at the rate of 2% per annum over the base rate from time to time of Lloyds Bank plc or (in the absence thereof) at such similar rate as the Buyer selects from the day following the Due Date up to and including the day of actual payment of such sums, such interest to be compounded quarterly.

4 EXCLUSIONS

The covenant contained in paragraph 9 shall not cover any Liability for Taxation to the extent that:

- 4.1 a provision or reserve in respect thereof is made in the Accounts; or
- 4.2 it arises as a result of a transaction in the ordinary course of business of the Company between the Accounts Date and Completion and is not an interest or penalty (which expression includes interest or penalties under the Corporation Tax (Instalment Payment) Regulations 1998), surcharge or fine in connection with Tax; or
- 4.3 it arises or is increased as a result only of any change in the law of Tax announced and coming into force after Completion (whether relating to rates of Tax or otherwise) or the withdrawal of any extra-statutory concession previously made by a Taxation Authority (whether or not the change purports to be effective retrospectively in whole or in part); or
- 4.4 it would not have arisen but for a change after Completion in the accounting bases on which the Company values its assets (other than a change made in order to comply with UK GAAP); or
- 4.5 the Buyer is compensated for any such matter under any other provision of this agreement; or
- 4.6 it would not have arisen but for a voluntary act or transaction carried out by the Buyer, the Company after Completion, being an act which:
 - 4.6.1 is not in the ordinary course of business; or
 - 4.6.2 could reasonably have been avoided; or
 - 4.6.3 the Company was not legally committed to do under a commitment that existed on or before Completion; and
 - 4.6.4 the Buyer was aware would give rise to the Liability for Taxation in question; or
 - 4.6.5 the Liability for Taxation is a Degrouping Charge which, whether by election or otherwise, is treated as accruing not to the Company but to the Seller or any member of the Retained Group.

5 SAVINGS

- 5.1 If (at the Seller's request and expense) the Accountants for the time being of the Company determine that the Company has obtained a Saving, the Buyer shall, as soon as reasonably practicable thereafter, repay to the Seller the lesser of:
 - 5.1.1 the amount of the Saving (as determined by the accountants) less any proper and reasonable costs incurred by, the Company; and
 - 5.1.2 the amount paid by the First Seller under paragraph 9 in respect of the Liability for Taxation which gave rise to the Saving less any part of that amount previously repaid to the Seller under any provision of this Tax Covenant or otherwise.

6 RECOVERY FROM THIRD PARTIES

- 6.1 Where the First Seller has paid an amount in full discharge of a liability under paragraph 9 in respect of any Liability for Taxation and the Buyer, the Company is or becomes entitled to recover

from some other person (not being the Buyer or the Company) any amount in respect of such Liability for Taxation, the Buyer shall or shall procure that the Company shall:

- 6.1.1 notify the First Seller of its entitlement as soon as reasonably practicable; and
- 6.1.2 if required by the First Seller and, subject to the Buyer or the Company being secured and indemnified by the First Seller against any Tax that may be suffered on receipt of that amount and any proper and reasonable costs and expenses incurred in recovering that amount, take or procure that the Company takes all reasonable steps to enforce that recovery against the person in question (keeping the First Seller fully informed of the progress of any action taken), provided that the Buyer shall not be required to take any action pursuant to this paragraph 7.1 which, in the Buyer's reasonable opinion, is likely to harm its or the Company's commercial relationship (potential or actual) with that or any other person.

6.2 If the Buyer, the Company recovers any amount referred to in paragraph 13.1, the Buyer shall account to the First Seller for the lesser of:

- 6.2.1 any amount recovered (including any related interest or related repayment supplement) less any Tax suffered in respect of that amount and any costs and expenses incurred in recovering that amount (save to the extent that amount has already been made good by the First Seller under paragraph 13.1.2); and
- 6.2.2 the amount paid by the First Seller under paragraph 9 in respect of the Liability for Taxation in question.

7 GROSSING UP

- 7.1 All sums payable by the First Seller to the Buyer under this Tax Covenant shall be paid free and clear of all deductions or withholdings whatsoever unless the deduction or withholding is required by law. If any deductions or withholdings are required by law to be made from any of the sums payable under this Tax Covenant, the First Seller shall pay to the Buyer such sum as will, after the deduction or withholding has been made, leave the Buyer with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.
- 7.2 If the Buyer incurs a taxation liability which results from, or is calculated by reference to, any sum paid under this Tax Covenant, the amount so payable shall be increased by such amount as will ensure that, after payment of the taxation liability, the Buyer is left with a net sum equal to the sum it would have received had no such taxation liability arisen.
- 7.3 If the Buyer would, but for the availability of a Buyer's Relief, incur a taxation liability falling within paragraph 14.2, it shall be deemed for the purposes of that paragraph to have incurred and paid that liability.

8 COSTS AND EXPENSES

The covenant contained in paragraph 9 of this Tax Covenant shall extend to all proper and reasonable costs and expenses incurred by the Buyer, the Company in connection with any matter

included under paragraph 9 of this Tax Covenant and the enforcement of rights under this Tax Covenant.

SCHEDULE 6
PROPERTY PROVISIONS

1 INTERPRETATION

1.1 The definitions in this paragraph apply in this schedule.

"Charge" means the charge appearing at entries 1 and 2 of the charges register of title number WM436341 as at 9 December 2008 timed at 09:40:56

"Lease" means the lease of the Property dated 15 February 1988 and made between Birmingham City Council (1) and Michael Buttifant and Judith Anne Buttifant (2) and every document varying or supplemental or collateral to it

"Management Information" means all documents, correspondence, notices, assessments, applications, contracts, memoranda, declarations, statutory declarations and other written communications or documentation relating to the Property or the Occupational Lease

"Occupational Lease" means the lease dated 11 May 2007 and made between John Alexander Mitchell (1) and West Midlands Fire and Rescue Authority (2) for a term of years commencing on 11 May 2007 and ending on 10 May 2010 and every document varying or supplemental or collateral to it and every licence or consent granted under it.

"Occupational Tenant" means West Midlands Fire and Rescue Authority

"Part 1 Conditions" means the conditions in Part 1 of the Standard Commercial Property Conditions (Second Edition) and **"Condition"** means any one of them

"Part 2 Conditions" means the conditions in Part 2 of the Standard Commercial Property Conditions (Second Edition)

"Property" means the leasehold property at 1 Auckland Road, Sparkbrook, Birmingham, B11 1RH as demised by the Lease and registered at HM Land Registry with title absolute under title number WM436341

"Purchase Price" means the price defined in clause 6.3.3 of this agreement.

"1994 Act" means Law of Property (Miscellaneous Provisions) Act 1994

"1995 Act" means Landlord and Tenant (Covenants) Act 1995.

1.2 Paragraph headings do not affect the interpretation of this Schedule.

2 SALE AND PURCHASE

2.1 The First Seller will sell and the Buyer will buy the residue of the term of years granted by the Lease for the Purchase Price on the terms of this agreement.

2.2 The Buyer cannot require the First Seller to:

2.2.1 transfer the Lease or any part of it to any person other than the Buyer; or

2.2.2 transfer the Lease in more than one parcel or by more than one transfer

3 CONDITIONS

3.1 The Part 1 Conditions are incorporated in this agreement so far as they:

3.1.1 apply to a sale by private treaty;

3.1.2 relate to leasehold property;

3.1.3 are not inconsistent with the other clauses in this agreement; and

3.1.4 have not been modified or excluded by any of the other clauses in this agreement.

3.2 The Part 2 Conditions are not incorporated into this agreement.

3.3 Condition 1.1.4(a) does not apply to this agreement.

4 RISK AND INSURANCE

4.1 With effect from the date of this agreement, the Property is at the Buyer's risk and the First Seller is under no obligation to the Buyer to insure the Property PROVIDED THAT the First Seller shall not, without the Buyer's consent, cancel any policy of insurance effected in accordance with the tenant's obligations under the Lease and the landlord's obligations under the Occupational Lease.

4.2 Condition 7 shall not apply to this agreement.

5 DEDUCING TITLE

5.1 The First Seller's title to the Lease has been deduced to the Buyer's Solicitors before the date of this agreement.

5.2 The Buyer is deemed to have full knowledge of the title and is not entitled to raise any enquiry, objection, requisition or claim in relation to it save for standard requisitions on title.

5.3 Conditions 6.1, 6.2 and 6.3.1 do not apply to this agreement.

6 TITLE GUARANTEE

6.1 The First Seller will transfer the Lease with full title guarantee.

6.2 Condition 6.6.2 does not apply to this agreement.

7 MATTERS AFFECTING THE PROPERTY

- 7.1 The First Seller will transfer the residue of the term of years granted by the Lease free from encumbrances other than:
- 7.1.1 any matters, other than the Charge, contained or referred to in the entries or records made in registers maintained by HM Land Registry as at 9 December 2008 timed at 09:40:56 under title number WM436341;
 - 7.1.2 the tenant covenants and all terms and conditions contained or referred to in the Lease;
 - 7.1.3 any matters discoverable by inspection of the Property before the date of this agreement;
 - 7.1.4 any matters which the First Seller does not and could not reasonably know about;
 - 7.1.5 any matters, other than the Charge, disclosed or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before entering into this agreement;
 - 7.1.6 public requirements;
 - 7.1.7 any matters which are unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002; and
 - 7.1.8 the Occupational Lease and all rights and obligations arising by virtue of it
- 7.2 Conditions 3.1.1, 3.1.2, 3.1.3 and 3.3 do not apply to this agreement.
- 7.3 The Buyer is deemed to have full knowledge of the matters referred to in paragraph 7.1 and will not raise any enquiry, objection, requisition or claim in respect of any of them.

8 TRANSFER

- 8.1 The transfer to the Buyer will be in the agreed form initialled by the parties and annexed to this agreement.
- 8.2 The Buyer and the First Seller will execute the transfer in duplicate.

9 COMPLETION

- 9.1 Completion will take place on the Completion Date.
- 9.2 Conditions 8.1 shall not apply.
- 9.3 Condition 8.4 is amended to add "(d) the other sums to be paid or allowed on completion that are mentioned in this agreement".
- 9.4 Condition 1.1.3(b) is amended to read: "in the case of the seller, even though a mortgage remains secured on the property, if the amount to be paid on completion enables the property to be transferred free of all mortgages, (except those to which the sale is expressly subject) or if the seller produces reasonable evidence that this is the case."

9.5 On completion, the First Seller will deliver to the Buyer (or to any other person as the Buyer has directed in writing to the First Seller before completion):

9.5.1 a rent authority letter addressed to the Occupational Tenant;

9.5.2 all of the following, if any, which are in the First Seller's possession or under its control (except any that are in the possession of the Occupational Tenant):

9.5.3 the health and safety file for the Property (including any copyright licences in favour of the Buyer);

9.5.4 manuals relating to the operation or maintenance of the building(s) and any plant, machinery or equipment at the Property;

9.5.5 buildings or services plans for the Property;

9.5.6 Management Information; and

9.5.7 Any other relevant documentation

10 APPORTIONMENT OF RENT PAYABLE UNDER THE LEASE

10.1 In this paragraph the following definitions apply:

"Lease Rent" means the annual rent reserved by the Lease and any VAT paid in respect of it

"Lease Rent Payment Day" means a day under the Lease for payment of the Lease Rent or an instalment of the Lease Rent.

10.2 The Lease Rent will be apportioned so that on completion the Buyer will pay or allow the First Seller:

$$\frac{A \times B}{365}$$
where:

A is the Lease Rent payable at the date of completion; and

B is the number of days from and including the day of completion to but excluding the next Lease Rent Payment Day.

11 APPORTIONMENT OF RENT DUE UNDER THE OCCUPATIONAL LEASE

11.1 In this paragraph the following definitions apply:

"Occupational Lease Rent" means the annual rent reserved by the Occupational Lease

"Occupational Lease Rent Payment Day" means a day under the Occupational Lease for payment of the Occupational Lease Rent or an instalment of the Occupational Lease Rent.

- 11.2 The Occupational Lease Rent will be apportioned so that on completion the First Seller will pay or allow the Buyer:

$$\frac{A \times B}{365}$$

where:

A is the Occupational Lease Rent at the rate payable at the day of completion; and

B is the number of days from and including the day of completion to but excluding the next Occupational Lease Rent Payment Day.

12 AMOUNTS DUE UNDER THE OCCUPATIONAL LEASES

- 12.1 The First Seller shall pay to the Buyer any amounts collected from the Occupational Tenant in accordance with clauses 1.2 to 1.6 of the Occupational Lease but which have not yet been paid out or incurred.
- 12.2 Conditions 8.3.7 and 8.3.8 do not apply to this agreement.

13 ARREARS DUE UNDER THE OCCUPATIONAL LEASES

- 13.1 In this paragraph, "**Arrears**" means all sums due from the Occupational Tenant to the First Seller before the date hereof but which have not been received by the Seller as cleared funds at least five working days before the date hereof.
- 13.2 On the date hereof the Buyer will pay to the First Seller an amount equal to the Arrears.
- 13.3 On the date hereof, the First Seller will assign to the Buyer all rights to the Arrears in respect of any of the Occupational Lease which are new tenancies under the 1995 Act in the form of the draft assignment set out at appendix 1 to this schedule.
- 13.4 If the First Seller receives any money in respect of the Arrears as cleared funds after the date hereof it will pay that money to the Buyer within two working days after the cleared funds have been received.

14 MANAGEMENT

- 14.1 The Seller shall promptly supply to the Buyer any Management Information to the extent not already supplied.
- 14.2 Conditions 4.1, 4.2 and 4.3 do not apply to this agreement.

15 RELEASE OF THE SELLER

The Buyer will promptly, on request and at the First Seller's cost, provide the First Seller with any information and assistance that the First Seller may reasonably require in connection with any application that the First Seller makes or may wish to make at any time, (whether to the Occupational Tenant or to a court) in accordance with section 8 of the 1995 Act.

16 BUYER'S ACKNOWLEDGEMENT OF CONDITION

The Buyer acknowledges that before the date of this agreement, the First Seller has given the Buyer and others authorised by the Buyer, permission and the opportunity to inspect, survey and carry out investigations as to the condition of the Property. The Buyer has formed its own view as to the condition of the Property and the suitability of the Property for the Buyer's purposes.

17 ENTIRE AGREEMENT

- 17.1 Condition 9.1.1 is varied to read, "If any plan or statement in the agreement or in written replies which the seller's conveyancer has given to any written enquiry raised by the buyer's conveyancer before the date of this agreement, is or was misleading or inaccurate due to an error or omission the remedies available are as follows."
- 17.2 Condition 1.3 does not apply to this agreement.

APPENDIX 1

FORM OF ASSIGNMENT OF ARREARS

THIS CONTRACT IS MADE THE DAY OF DECEMBER 2008

BETWEEN

- (1) John Alexander Mitchell of 962 Warwick Road, Solihull, West Midlands, B91 3HN ("**Seller**").
- (2) JM Logistics Limited incorporated and registered in England and Wales with company number 6619373 whose registered office is at Seebeck House, One Seebeck Place, Knowlhill, Milton Keynes, MK5 8FR ("**Buyer**")

RECITALS

- (A) By a transfer dated on the same date as this deed, the residue of the term granted by the Lease was transferred by the Seller to the Buyer subject to and with the benefit of the Occupational Lease.
- (B) There are sums which are due from the tenants under the Occupational Lease but which have not been received by the Seller.
- (C) The Occupational Lease creates a new tenancy within the meaning of section 1 of the Landlord and Tenant (Covenants) Act 1995 but the Seller and the Buyer have agreed that the right to the Arrears will be assigned to the Buyer on the terms of this deed.

AGREED TERMS

1 DEFINITION AND INTERPRETATION

- 1.1 The definitions in this clause apply in this deed.

"Arrears" means the sums due from the tenant under the Occupational Lease to the Seller before the date of this deed but which had not been received by the Seller as cleared funds at least five working days before the date of this deed

"Contract" means the agreement dated 12 December 2008 and made between the Seller (1), Gavin Lewis Wright (2) and the Buyer (3) for the sale of the Property

"Occupational Lease" means the lease dated 11 May 2007 and made between John Alexander Mitchell (1) and West Midlands Fire and Rescue Authority (2) for a term of years commencing on 11 May 2007 and ending on 10 May 2010 and every document varying or supplemental or collateral to it and every licence or consent granted under it.

"Lease" means the lease of the Property dated 15 February 1988 and made between Birmingham City Council (1) and Michael Buttifant and Judith Anne Buttifant (2) and every document varying or supplemental or collateral to it

"Property" means the leasehold property at 1 Auckland Road, Sparkbrook, Birmingham, B11 1RH as demised by the Lease and registered at HM Land Registry with title absolute under title number WM436341

1.2 The rules of interpretation in this clause apply in this deed.

1.3 Except where a contrary intention appears, a reference to a clause or Schedule is a reference to a clause of or Schedule to this deed.

1.4 Clause and Schedule headings do not affect the interpretation of this deed.

2 ASSIGNMENT

The Seller assigns the Arrears to the Buyer together with all rights to take any proceedings in the Seller's name that may be necessary to obtain payment of the Arrears and to give receipts or discharges for them. The Buyer will hold the Arrears and such rights absolutely.

3 ACKNOWLEDGEMENT

The Seller and the Buyer each acknowledge that the provisions of clause [] of the Contract (which provided for the Buyer and the Seller to enter into this deed) continue to apply and that they remain bound by them to the extent that the provisions have not been complied with on or before the date of this deed.

4 NOTICE

The Buyer will give written notice of this deed to the tenants under the Occupational Lease within five working days after the date of this deed.

**SCHEDULE 7
THE ASSETS**

Commercial Vehicles as follows:

Iveco Ford	18000kg	5861cc	V882 JAT	Diesel		03.12.99
Iveco Ford	18000kg	5861cc	P844 FOF	Diesel		19.12.96
Iveco Ford	7500kg	5861cc	V523 MKE	Diesel		01.09.99
Iveco Ford	18000kg	5861cc	W669 HBT	Diesel	Tail lift	11.07.00
Iveco Ford	7500kg	5861cc	T413 POA	Diesel		25.06.99
Iveco Ford	7500kg	5861cc	T706 TOA	Diesel		29.07.99
Volvo	26000kg	12130cc	V49 KOG	Diesel	Tractor unit	01.09.99
Iveco Ford	7500kg	5861cc	W148 SWP	Diesel		15.02.00
Foden	44000kg		YJ03 TEY	Diesel	Tractor unit tri-axle	01.04.03

Peugot Partner Diesel Van registration number VK52 WDC

Saab registration number OV53 AFF