

1. Interpretation

In this Schedule the following terms shall have the meanings set out opposite each respectively

“the Buyer’s Accountants”

the accountants named in the <<Insert firm's name>> of the <<Insert firm's name>>

“Buyer’s Group”

the Buyer and any company (wherever incorporated) which is a subsidiary of the Buyer or any company of which the Buyer is a subsidiary (its holding company) or any subsidiary of any such holding company in a group is a group;

“EBIT”

the Earnings Before Interest and Taxes of the Company as determined in accordance with the definition of Group to any company which will apply to the company in the event of a takeover;

“Earn-Out Period”

the period comprising the Company’s financial year ending on <<Insert range of years e.g. 2010 to 2012 (inclusive)>>

“Profits”

the Company’s EBIT shown by the Company’s relevant financial statements for the Earn-Out Period, and in each case in accordance with the definition of EBIT in this Schedule;

“the Seller(‘s)(s’) Accountants”

the accountants named in the <<Insert firm's name>> of the <<Insert firm's name>>

“Subsidiary”

any company wherever incorporated (whether or not a company) means a “subsidiary” as defined in section 1159 of the Companies Act 2006 or any other company which is a subsidiary (as so defined) of a company which is a subsidiary of such holding company;

In the event that the definition of Subsidiary to any company which will apply to the company in the event of a takeover.

2. Consideration

2.1 Purchase price

The purchase price shall comprise the Initial Consideration and the Deferred Consideration.

2.2 Initial Consideration

The Buyer shall pay to the Seller(s) a sum of £<<Amount in figures>> (<<Amount in words>> pence) by <<Insert>> Solicitors (on behalf of the Seller(s)) ("the Initial Consideration").

2.3 Deferred Consideration

The Deferred Consideration shall be an amount equal to the average Profits of the Seller(s) for the period, multiplied by <<Insert multiplier>>, less the amount of any such amount to be satisfied in cash.

2.4 Payment Date for Deferred Consideration

The Deferred Consideration shall be paid within 7 days of the Accounts for the last Earn-Out Period being agreed or determined (the "Payment Date").

2.5 Events where Deferred Consideration will not be paid (or only partially paid)

If <<Name(s)>> ceases to be employed by the Company or by any member of the Buyer's Group at any time during the Earn-Out Period:

2.5.1 If <<Name(s)>> ceases to be employed by the Company or by any member of the Buyer's Group at any time during the Earn-Out Period by reason of a redundancy or the termination of his service by the Buyer's Group (or by any member of the Buyer's Group) (other than a dismissal under such service agreement) <<Name(s)>> shall be entitled to the full Deferred Consideration set out in paragraph 2.3 above; and

2.5.2 If <<Name(s)>> ceases to be employed by the Company or by any member of the Buyer's Group at any time during the Earn-Out Period save as provided in paragraph 2.5.1 above the Seller(s) shall be entitled to the proportion of the Deferred Consideration set out in paragraph 2.3 above which is equal to the proportion of the Earn-Out Period in which <<Name(s)>> was/were employed. If <<Name(s)>> ceases to be employed it/they shall not be entitled to the Deferred Consideration to which it/they might otherwise be entitled.

2.6 Cap on Consideration

The maximum aggregate amount of the Initial Consideration and the Deferred Consideration to be paid shall not exceed <<Insert>>. Upon the Buyer having paid that amount the Buyer's obligation to pay the Initial Consideration and the Deferred Consideration shall cease. Notwithstanding to the provisions of this Agreement or voluntarily in writing the Buyer shall be liable to pay the Deferred Consideration shall be payable by the Buyer. The provisions of this Agreement relating to the Deferred Consideration shall cease to apply.

2.7 **Interest on Deferred**

If the Deferred Consideration is not paid within 105 days after the date of the Agreement, the Deferred Consideration shall accrue interest from such date at an annual rate per annum equal to << >> the base rate from time to time of the Bank.

not satisfied before the date falling due, the amount of the Deferred Consideration shall be increased to include interest on the actual payment at a rate per annum equal to << >> the base rate from time to time of the Bank.

2.8 **Method of Payment**

Unless otherwise specified, all payments required to be made by the Buyer to the Seller(s) shall be made by way of a [banker's draft] [banker's order] [banker's check] (whose receipt the Seller(s) shall acknowledge) [telegraphic transfer] [wire transfer] [credit transfer] [direct debit] [other method of payment]

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Bank: << >>

Branch: << >>

Sort Code: << >>

Account Name: << >>

Account Number: << >>

2.9 **Set Off**

Subject to Clause 6, the Buyer shall be entitled to set-off against the Deferred Consideration the amount of any claim under the Warranties or the Tax Covenant that is admitted or in respect of which judgment is obtained by the Seller(s), such that the Deferred Consideration shall be reduced accordingly.

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3. **Profits**

3.1 For the purpose of this Clause, the Buyer shall cause the Buyer's Accountants to prepare and deliver to each party and the Seller(s) draft Accounts as soon as practicable following the end of each Financial Year (respectively the "Buyer's Accounts" and the "Seller's Accounts")

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3.2 The Seller(s) shall, within 15 days after receipt of each of such draft Accounts, review and agree to the draft Accounts as a true and accurate representation of the EBIT shown by such draft Accounts as agreed between the Buyer and the Seller(s)

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3.3 The Buyer shall give, and each member of the Buyer's Accountants shall give, and each member of the Seller(s)' Accountants shall give, to the Seller(s), the independent professional valuer appointed pursuant to Clause 3.2, access during normal business hours to (and, in relation to tangible assets, copies of):

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- 3.3.1 the Buyer's Books, records, documents, papers; and
- 3.3.2 the Company's Books, records, documents, papers and relevant personnel for the purpose of preparing the Seller's Accounts as aforesaid save and except that the Seller's Accounts shall be confidential to any person (other than a member of the Seller's Group or the Buyer's Accountants) or are legally privileged.
- 3.4 The amount of EBITDA for the relevant period shall in each case in the absence of the service of a Dispute Notice ("Dispute Notice") within the relevant Agreement Period by the Seller(s) on the Buyer disputing the amount so determined constitute the final and binding agreement between the Seller(s) and the Buyer as to the amount of the Profits respectively.
- 3.5 In the event that the Seller(s) and the Buyer(s) have not been able to resolve a dispute within the relevant Dispute Notice, the determination of the amount of the Profits shall be referred to an independent professional valuer or, failing agreement, to the Institute of Chartered Accountants in England and Wales. Having appointed any such independent professional valuer, the parties shall have the right to make representations to the independent professional valuer as to the determination of the Profits. The independent professional valuer shall act as expert and not as arbitrator and his decision (in the absence of manifest error) be final and binding on the parties. The costs of the independent professional valuer appointed pursuant to clause 3.5 shall be borne between the Seller(s) and the Buyer(s) in the absence of any such agreement. Unless either the Seller(s) or the Buyer(s) has agreed to any relevant opening balance in the opening balance is agreed between the parties.
- 4. Earn Out Protection**
- 4.1 The business of the Seller(s) shall be conducted commercially with a view to maximising Profits consistent with the interests of the Seller(s).
- 4.2 No business shall, during the Earn-Out Period, be transferred from the Seller(s) to any member of the Buyer's Group without the consent of the Seller(s) (such consent not to be unreasonably withheld or delayed).
- 4.3 Goods and services of the Seller(s) shall be used only in the course of the business of the Seller(s) and not any other member of the Buyer's Group without the consent of the Seller(s) (such consent not to be unreasonably withheld or delayed).