



**UNIVERSITY OF JOHANNESBURG**

**FACULTY OF LAW (AUCKLAND PARK CAMPUS)**

**SUBMISSION OF FINAL EXAMINATION PAPERS**

**JANUARY/JANUARIE 2018(3<sup>rd</sup> Round)**

MODULE NAME: Law of Contract

MODULE CODE: KOR0000 & LCT 4140

LECTURER (S): Mrs KM Keen

HEAD OF DEPARTMENT: Prof MM Watney

EXIT MODULE: YES/ NO \_\_\_\_\_

FOR EXIT MODULES:  
EXTERNAL MODERATOR: \_\_\_\_\_

EXTERNAL MODERATOR FORM ATTACHED: \_\_\_\_\_

**INSTRUCTIONS:**

1. How many of the following items will be required per student?

Examination script (4 pages) \_\_\_\_\_

Scanner sheet \_\_\_\_\_

Other (please specify) \_\_\_\_\_

2. How many students are still attending lectures,  
(With a view to the number of examination papers required)? 11

**SIGNATURE OF LECTURER:**

DATE: 26.01.2018

**SIGNATURE AS HEAD OF DEPARTMENT/  
(AS INTERNAL MODERATOR)**

MM Watney

DATE: 26.01.2018

**FOR ADMINISTRATIVE PURPOSES:**

Noted: \_\_\_\_\_

Date: 26.01.2018



**UNIVERSITY OF JOHANNESBURG**  
**KINGSWAY CAMPUS**

**FACULTY OF LAW**

**SPECIAL EXAMINATION: 2018**

**SUBJECT NAME:** LAW OF CONTRACT  
**SUBJECT CODE:** KOR0000 / LCT41Y0

**DURATION:** 3 HOURS  
**MARKS:** 100

**EXAMINER:** MRS K M KERN

THIS PAPER RUNS TO 28 PAGES.

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**SECTION A:** MULTIPLE-CHOICE QUESTIONS

**INSTRUCTIONS**

- 1 Answer all of the questions on the multiple-choice answer sheet.
- 2 Indicate the correct statement.
- 3 There is only one correct statement in each question.
- 4 Each question counts 1 mark.

**QUESTION 1**

A term that is considered so obvious that the parties did not think about expressly agreeing to it is called a:

- (a) an imputed tacit term.
- (b) a consensual tacit term.
- (c) an assumption.
- (d) a resolutive time clause.
- (e) a resolutive condition.

SUBJECT NAME: LAW OF CONTRACT

**QUESTION 2**

The warranty against latent defects in a contract of purchase and sale is an example of:

- (a) *naturalia*.
- (b) *essentialia*.
- (c) *incidental*.
- (d) a condition.

**QUESTION 3**

A clause in a contract reads as follows: "*This contract of sale is subject to the Purchaser obtaining a suitable bond from a registered South African bank or financial institution, by no later than 15 December 2016.*". This clause is an example of a / an:

- (a) resolutive time clause.
- (b) suspensive time clause.
- (c) resolutive condition.
- (d) suspensive condition.
- (e) assumption.

**QUESTION 4**

A and B enter into a credit agreement in the form of a loan. Six months into the agreement, B experiences difficulty in making the repayments due to A under the loan. Bearing in mind all his financial means, prospects and obligations, B is unable to satisfy all his debts in a timely manner. Which of the following statements is correct?

- (a) B is over-indebted as envisaged under the National Credit Act.
- (b) B may approach a debt counsellor to assist him in being declared over-indebted by a court.
- (c) If B applies for debt review, he may still conclude further credit agreements while the debt review is pending.
- (d) All three the statements in (a), (b) and (c) are correct.
- (e) Only two of the statements in (a), (b) and (c) are correct.

SUBJECT NAME: LAW OF CONTRACT

QUESTION 5

The maxim *eiusdem generis* means:

- (a) if one matter is expressly included, other similar matters not expressly mentioned are excluded.
- (b) a word must be read in context.
- (c) general words refer to things that are similar to specific things that are mentioned.
- (d) if one matter is expressly regulated, the opposite applies to opposite matters.

QUESTION 6

The landmark judgment dealing with the *exceptio non adimpleti contractus* under South African law is:

- (a) *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 1 SA 391 (A).
- (b) *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (K).
- (c) *Sweet v Ragerguhara* 1978 1 SA 131 (D).
- (d) *Thoroughbred Breeders' Association v Price Waterhouse Coopers* 2001 4 SA 551 (SCA).

QUESTION 7

The remedy of \_\_\_\_\_ is regarded as the so-called "natural" remedy to breach of contract.

- (a) specific performance
- (b) a claim for damages
- (c) cancellation
- (d) the *exceptio non adimpleti contractus*

QUESTION 8

Matt owes KLM Bank R16 000. It is agreed that Calvin will repay the R16 000 to KLM Bank if Matt is unable to pay the debt. This form of security is called:

- (a) a mortgage.
- (b) a pledge.
- (c) a lien.
- (d) a hypothec.

**SUBJECT NAME: LAW OF CONTRACT**

- (e) suretyship.

**QUESTION 9**

A clause which provides that the pledgee may retain the pledged object as the owner thereof under circumstances where the pledgor fails to satisfy the secured debt is called a:

- (a) *pactum commissorium.*
- (b) *pactum antichresis.*
- (c) *pactum ancillary.*
- (d) *parate executie.*
- (e) *parate morgagie.*

**QUESTION 10**

The Consumer Protection Act, 2008 does not apply:

- (a) where the State acts as the supplier of goods or services.
- (b) to credit agreements regulated under the National Credit Act, 2005.
- (c) where a natural person supplier offers or supplies goods or services to a natural person consumer.
- (d) to banks registered as such under the Banks Act, 1990.

**QUESTION 11**

An agreement between parties to settle an existing dispute between them is referred to as a:

- (a) compromise.
- (b) merger.
- (c) novation.
- (d) release.
- (e) cession.

**QUESTION 12**

Laura is in the business of building houses. She orders 120 000 window-frames from David. In terms of the contract, David is required to deliver the window-frames to Laura's factory on Saturday, 19 November 2016, at precisely 14h00. David arrives at Laura's factory on Saturday, 19 November 2016 at 14h00, but he has only 108 000 window-frames with him. The form of breach of contract relevant to this set of facts is:

SUBJECT NAME: LAW OF CONTRACT

- (a) positive malperformance.
- (b) *mora creditoris*.
- (c) repudiation.
- (d) *mora debitoris*.
- (e) rendering performance impossible.

**QUESTION 13**

Take the facts set out in question 12 again. Assume that David sent an email to Laura on 18 November 2016, indicating that he (David) would not be in a position to deliver the frames to Laura owing to the fact that he would be tied up in Polokwane for the foreseeable future. The form of breach of contract relevant to this set of facts is:

- (a) positive malperformance.
- (b) *mora creditoris*.
- (c) repudiation.
- (d) *mora debitoris*.
- (e) rendering performance impossible.

**QUESTION 14**

The Consumer Protection Act, 2008:

- (a) has been repealed.
- (b) changed the way that business is conducted in South Africa.
- (c) protects only natural-person consumers.
- (d) means that the common law of contract has now been replaced.

**QUESTION 15**

A warranty in which an insured confirms the correctness or accuracy of a present or past factual situation is known as:

- (a) an affirmative warranty.
- (b) a promissory warranty.
- (c) an absolute warranty.
- (d) a disclosure warranty.
- (e) None of the above options is correct.

**SUBJECT NAME: LAW OF CONTRACT**

**QUESTION 16**

The following clause appears in an insurance contract concluded between Mrs Ndlovu and BDF Insurers: *"Where immediately prior to its loss or damage the market value of property insured hereunder is greater than the sum for which the property is insured, the insured shall be deemed to be his own insurer for the difference and the insurer's liability shall be limited to that sum of loss which bears the same proportion to the amount of the loss or damage, as the sum insured bears to the aforesaid value."* This clause is known as:

- (a) a disclosure clause.
- (b) an average clause.
- (c) an under-insurance clause.
- (d) a double-insurance clause.
- (e) a contribution clause.

**QUESTION 17**

Mr Venter concludes an insurance contract with WWW Insurers. In terms of the contract, which will remain in force for the lifespan of Mr Venter, WWW Insurers undertakes to pay R900 000 to Mr Venter (to Mr Venter's deceased estate) irrespective of the date on which Mr Venter dies. This type of life insurance is known as:

- (a) endowment insurance.
- (b) pure endowment insurance.
- (c) term insurance.
- (d) pure term insurance.
- (e) whole life insurance.

**QUESTION 18**

Jonathan rents the house that he stays in from Macey. Three months into the lease, Jonathan wakes up one morning to discover that the geyser in the house has burst during the night before. He immediately consults the Yellow Pages and calls a plumber to remedy the problem. The plumber arrives, repairs the geyser and presents Jonathan with a bill for R2 850, which Jonathan pays. Jonathan contacts Macey later that day and demands reimbursement of the R2 850. Which of the following statements is correct?

- (a) As landlord and owner of the house, Macey is obliged to reimburse Jonathan immediately for the expenses Jonathan has incurred.
- (b) Where Macey fails to reimburse Jonathan immediately for the expenses incurred, Jonathan is entitled to deduct R2 850 from the rent payable by Jonathan to Macey at the end of the month.

**SUBJECT NAME: LAW OF CONTRACT**

- (c) Where Macey fails to reimburse Jonathan immediately for the expenses incurred, Jonathan will be entitled to cancel the lease agreement forthwith, as such non-reimbursement represents a material breach of the lease contract.
- (d) None of the above statements is correct.
- (e) More than one of the above statements is correct.

**QUESTION 19**

Jonathan rents the house that he stays in from Macey. Seven weeks into the lease period, a street-vendor decides to take up residence in the house. Jonathan returns home from work one afternoon to find the street-vendor in his living room, and the street-vendor refuses to leave the house because he (the street-vendor) indicates that he has nowhere else to go. Which of the following statements is correct?

- (a) Macey, as owner of the house, will be able to make application to the court for the eviction of the street-vendor.
- (b) The provisions of section 26 of the Constitution and of the Prevention of Illegal Eviction and Occupation Act, 1998 will need to be considered under the circumstances.
- (c) Both of the above statements are correct.
- (d) Neither of the above statements is correct.

**QUESTION 20**

Jonathan rents the house that he stays in from Macey. Four months into the lease period, Jonathan decides to put up a large thatch lapa (shade cover) in the garden of the house. Jonathan intends to host karaoke evenings under the lapa for his friends. Jonathan does not inform Macey of his plans, but simply arranges for the lapa to be erected on the property at a cost of R32 000. On termination of the lease, Jonathan sends Macey an email indicating that he expects to be reimbursed by Macey for the costs of the lapa when he vacates the house. Which of the following statements is correct?

- (a) Macey is obliged to repay to Jonathan the costs that Jonathan incurred in having the lapa erected.
- (b) Jonathan may remove the lapa from the property as the lapa belongs to him, even if such removal causes damage to the property.
- (c) Jonathan may remove the lapa from the property provided that no damage is caused to the property by such removal.
- (d) Statements (a) and (c) are correct.
- (e) None of the above statements is correct.



SUBJECT NAME: LAW OF CONTRACT

QUESTION 21

Take the facts provided in question 20 again, but **assume** now that Jonathan called Macey prior to having the lapa erected and asked Macey whether she would agree to the erection of the lapa on the premises. Macey agreed to the erection of the lapa but nothing was mentioned during the call about the possibility of Macey reimbursing Jonathan for the costs incurred in the erection of the lapa. Which of the following statements is correct?

- (a) The construction of the lapa was a necessary expense and, accordingly, Macey is obliged to compensate Jonathan for the full cost of the lapa upon termination of the lease.
- (b) Macey is entitled to institute action against Jonathan for breach of contract as a result of the erection of the lapa.
- (c) The construction of the lapa was a luxurious expense and, accordingly, Macey is not obliged to compensate Jonathan at all for the lapa upon termination of the lease.
- (d) None of the above statements is correct.

QUESTION 22

Jonathan rents the house that he stays in from Macey. In terms of the lease contract between Jonathan and Macey, Jonathan is obliged to pay to Macey rent in advance in the sum of R7 000 per month, by the 5<sup>th</sup> day of each calendar month, for the duration of the 12-month lease period (1 April 2016 – 31 March 2017). By 13 September 2016, Macey has still not received the rent owed to her by Jonathan for the month of September. Which of the following statements is correct?

- (a) Macey can institute action against Jonathan for breach of the lease contract in the form of *mora creditoris*.
- (b) Macey has security under the circumstances.
- (c) Macey can institute action against Jonathan for breach of the lease contract in the form of *mora debitoris*.
- (d) None of the above statements is correct.
- (e) Only (b) and (c) are correct.

QUESTION 23

Tholinhlanhla purchases a house from Yogesh. One week prior to the sale, Yogesh repainted the house in order to hide the damp (note that “damp” is rising water, which is expensive to fix) in one of the bedrooms of the house. When Tholinhlanhla approaches you for legal advice under the circumstances, you should advise Tholinhlanhla to rely on \_\_\_\_\_ in an action against Yogesh:

SUBJECT NAME: LAW OF CONTRACT

- (a) the doctrine of the passing of risk.
- (b) the warranty against latent defects.
- (c) the warranty against eviction
- (d) the *nemo plus iuris* rule
- (e) the *huur gaat voor koop* rule

QUESTION 24

Ross purchases an engagement ring for his girlfriend from XZ Jewellers. The ring is too big and Ross accordingly agrees to leave the ring in the possession of XZ Jewellers who will then make the ring smaller. Delivery of the ring to Ross has taken place by means of:

- (a) *traditio longa manu*.
- (b) attornment.
- (c) *constitutum possessorium*.
- (d) symbolic delivery.
- (e) delivery by the short hand.

QUESTION 25

Jill sells her 10-speed bicycle to her friend, Darren. Darren pays R700 to Jill for the bicycle on Monday, and Jill agrees to deliver it to Darren the next day (Tuesday). **There are no other terms to the contract between Jill and Darren.** A freak Highveld thunderstorm strikes Johannesburg on Monday night and Jill discovers the next morning (Tuesday) that the bicycle has been washed away, despite the fact that it was placed safely in the garage where Jill has always kept it overnight. When Jill locates the bike, she finds that it has been damaged beyond repair. Which of the following statements is correct?

- (a) The doctrine of constructive notice is applicable.
- (b) Jill will have to reimburse Darren in the sum of R700.
- (c) Darren will be able to claim from Jill a partial reimbursement of the purchase price he has paid.
- (d) Jill is not liable to Darren at all.
- (e) None of the above statements is correct.

QUESTION 26

Luway owns a 2000 Golf GTi (registration number KJT 678 GP) ("**the vehicle**"). He sells the vehicle to Ian for a purchase price of R34 000 in terms of a simple verbal contract concluded on 9 November 2016, after Ian has taken the vehicle for a short test-drive. Luway and Ian agree that Luway will deliver the vehicle to

SUBJECT NAME: LAW OF CONTRACT

Ian on 11 November 2016 and that Ian will pay the entire purchase price to Luway on 31 December 2016. **Note that the parties do not agree to the inclusion of any terms other than those mentioned.** Which of the following statements is correct?

- (a) Ownership of the vehicle will pass to Ian on 9 November 2016.
- (b) Ownership of the vehicle will pass to Ian on 11 November 2016.
- (c) Ownership of the vehicle will pass to Ian on 31 December 2016.
- (d) Luway is not obliged to transfer ownership of the vehicle to Ian.
- (e) In terms of the *nemo plus iuris* rule, Ian can never become owner of the vehicle.

QUESTION 27

Take the facts in question 26 again. Assume that, one week after the delivery of the vehicle to Ian by Luway on 11 November 2016, a mechanic informs Ian that there is a major problem with the vehicle's gearbox. The mechanic offers to repair the vehicle's gearbox at a cost of R14 800. Ian approaches you for advice. You should advise Ian to:

- (a) claim damages from Luway in the amount of R14 800.
- (b) institute action against Luway for breach of contract in the form of positive malperformance.
- (c) accept that the gearbox defect is Ian's problem.
- (d) cancel the contract through an institution of the *actio quanti minoris*.

QUESTION 28

Take the facts in question 27 again. Assume that Ian accepts the mechanic's offer to repair the vehicle's gearbox at a cost of R14 800. The mechanic repairs the gearbox and notifies Ian that the vehicle may be collected. Upon his arrival at the mechanic's premises, Ian indicates that it has come to his attention that the mechanic down the street would have made the very same repairs to the vehicle's gearbox for only R12 000. On this basis, Ian refuses to pay the mechanic for the repairs. Which of the following statements is correct?

- (a) The mechanic has an *ex lege* hypothec over the vehicle under the circumstances.
- (b) The mechanic will have to release the vehicle to Ian without payment by Ian.
- (c) The mechanic enjoys a right of retention or lien based on unjustified enrichment over the vehicle under the circumstances.
- (d) The mechanic may institute action against Ian for breach of contract in the form of *mora creditoris*.

**SUBJECT NAME: LAW OF CONTRACT**

- (e) The mechanic may claim specific performance in terms of the contract under the circumstances.

**QUESTION 29**

The maxim "*noscitur a sociis*" means that:

- (a) an interpretation that renders a contract valid must be preferred over an interpretation that renders the contract invalid.
- (b) words are to be read in their context.
- (c) if one matter is expressly included, other similar matters not mentioned are excluded.
- (d) if one matter is expressly regulated, the opposite applies to opposite matters.
- (e) a term should not be presumed to be void for vagueness.

**QUESTION 30**

Prior to the promulgation of the National Credit Act, 2005, the credit industry in South Africa was:

- (a) completely unregulated.
- (b) regulated only under the Credit Agreements Act.
- (c) regulated only under the common law.
- (d) regulated under two separate pieces of legislation.

**QUESTION 31**

The body created by the National Credit Act, 2005 and which is comparable to a court in relation to matters within the NCA's scope is called the:

- (a) National Consumer Commission.
- (b) National Credit Regulator.
- (c) National Credit Tribunal.
- (d) National Credit Bureau.

**QUESTION 32**

A bond passed by a surviving spouse over specific immovable property bequeathed to a minor child in order to secure the child's inheritance is a:

- (a) covering bond.
- (b) *kinderbewys*.

**SUBJECT NAME: LAW OF CONTRACT**

- (c) *kustingsbrief.*
- (d) notarial bond.
- (e) hypothec.

**QUESTION 33**

Suretyship is an example of:

- (a) personal security.
- (b) real security.
- (c) cession.
- (d) mortgage.

**QUESTION 34**

Where a lessee sub-lets leased property in spite of a prohibition on sub-letting, the form of breach of contract committed by the lessee is:

- (a) *mora debitoris.*
- (b) *mora creditoris.*
- (c) positive malperformance.
- (d) repudiation.
- (e) rendering performance impossible.

**QUESTION 35**

In terms of the Consumer Protection Act, 2008, the maximum period for which a supplier may enter into a fixed-term agreement with a consumer is:

- (a) 12 months.
- (b) 36 months.
- (c) 6 months.
- (d) 24 months.

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**SUB-TOTAL: SECTION A**

**[35]**

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SUBJECT NAME: LAW OF CONTRACT

**SECTION B: WRITTEN QUESTIONS**

**INSTRUCTIONS**

- 1 Answer all of the questions in the answer booklet provided.
- 2 Please write legibly.

**QUESTION 1**

Compare the *ex lege* warranty against latent defects in relation to a contract of sale, on the one hand, with the contractual warranty against latent defects in relation to a contract of sale, on the other hand.

(10)

[10]

**QUESTION 2**

Discuss the concept of debt review, which was introduced under the National Credit Act, 2005, including the ways in which debt review can be initiated.

(7)

[7]

**QUESTION 3**

How did the Supreme Court of Appeal, in the matter of *Spearhead Property Holdings Ltd v E&A Motors (Pty) Ltd* 2010 2 SA 1 (SCA), expand on (or develop) the operation of the *huur gaat voor koop* principle under South African law?

(4)

[4]

**QUESTION 4**

Name any four of the **rights** given to a consumer under the National Credit Act, 2005. Do not discuss further.

(4)

[4]

SUBJECT NAME: LAW OF CONTRACT

**QUESTION 5**

Discuss the judgment handed down in *Bock v Dubororo Investments (Pty) Ltd* 2004 2 SA 242 (SCA). Do not discuss the facts.

(8)

[8]

**QUESTION 6**

On 17 November 2014, Mandisi Dube walked into the offices of AllHealth Insurers Ltd ("AllHealth") and indicated that he would like to apply for life insurance cover. On the same date, Mandisi duly completed AllHealth's standard application form. Question 4.19 of the application form read as follows: "*Have you ever received medical treatment for any heart condition or ailment?*". Mandisi indicated his answer to question 4.19 as "No".

After having considered the application form completed by Mandisi, AllHealth accepted Mandisi as an insured. Mandisi pays the premium due under the policy each month.

On 18 November 2016, Mandisi passes away after having suffered a heart attack, and a claim for the proceeds of the life insurance policy is duly lodged with AllHealth. Upon investigating the claim, AllHealth discovers that Mandisi had suffered two previous heart attacks, during July 2010 and December 2012 respectively.

AllHealth approaches you for advice and asks you whether it (AllHealth) is entitled to reject the claim that has now been lodged. Advise AllHealth as to its legal position. Your answer should make reference to applicable legislation.

(5)

[5]

**QUESTION 7**

List, in the form of a table, the differences between indemnity insurance, on the one hand, and non-indemnity (capital) insurance, on the other hand.

(8)

[8]

**QUESTION 8**

Langelihle Khoza and Lerato Khoza are brother and sister.

Langelihle has never gotten along well with Lerato but, in desperation, he asks Lerato, on 20 October 2016, to lend him R2 500. Lerato agrees to lend Langelihle the money, provided that Langelihle allows Lerato to keep his Sony

SUBJECT NAME: LAW OF CONTRACT

stereo system in her possession until such time as Langelihle is in a position to repay the debt. Langelihle and Lerato reach a verbal agreement to the effect that Langelihle will bring his Sony stereo to Lerato's home at 8pm on 21 October 2016 for this purpose, and Lerato hands Langelihle R2 500 in cash.

Pamela Parsons, a friend of Langelihle's, arrives at Langelihle's home at 9am on the morning of 21 October 2016, for breakfast. While Pamela is there, she shows interest in the Sony stereo system and offers to purchase the stereo from Langelihle. Langelihle agrees; Pamela pays Langelihle the full purchase price that the parties have agreed on and Pamela takes the stereo home with her after breakfast.

Answer the following questions:

- 8.1 What type of contract has been concluded between Langelihle Khoza and Lerato Khoza in relation to the Sony stereo system? (1)
- 8.2 Does Lerato have any real security under the circumstances? Answer yes or no, and explain your answer. (3)
- 8.3 Assume for the purposes of this question 8.3 only that Langelihle did not sell the Sony stereo to Pamela Parsons. Instead, Langelihle arrived at Lerato's house at 8pm sharp on 21 October 2016 to hand over the stereo to Lerato, but Lerato was not home. Langelihle tried to telephone Lerato and waited at Lerato's house until 8.45pm, but Lerato did not arrive. Langelihle accordingly took the Sony stereo back home with him. What form of breach of contract would you say is relevant here? (1)
- 8.4 Assume for the purposes of this question 8.4 only that all went according to plan and Langelihle handed the Sony stereo over to Lerato at 8pm on 21 October 2016, as agreed. Assume further that Langelihle attended a family function held at Lerato's house on 24 October 2016 and noticed that Lerato had the Sony stereo playing music throughout the function. Langelihle approaches you the next day and asks you whether this is acceptable behaviour on Lerato's part. Advise Langelihle. (3)
- 8.5 Name the specific remedy that you will advise Langelihle to make use of against Lerato, given Langelihle's unhappiness as described in question 8.4 above. (1)

[9]



SUBJECT NAME: LAW OF CONTRACT

**QUESTION 9**

**Please refer to the draft Sale of Shares Agreement that is attached to your examination question paper as Annexure A.**

- 9.1 Name four principles of sound contractual drafting. (4)
- 9.2 To which *naturale* of a contract of purchase and sale does clause 5.1 of the draft Sale of Shares Agreement relate? (4)
- 9.3 What Latin term would you use to describe clause 7 of the draft Sale of Shares Agreement? (1)
- 9.4 What name is given to the type of clause included as clause 9.2 of the draft Sale of Shares Agreement? (1)
- 9.5 When would the parties to a contract choose to include a Counterparts clause in a contract, like the one included as clause 13 of the draft Sale of Shares Agreement? (1)
- 9.6 Consider clauses 6, 8, 9, 10, 11, 12, 13, 14 and 15 of the draft Sale of Shares Agreement. What general term is used, in practice, to describe such clauses, collectively? (1)
- [10]**

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**SUB-TOTAL: SECTION B**

**[65]**

**TOTAL: 100**

**-oOo-**



## **SALE OF SHARES AGREEMENT**

in relation to

**COMP A**

and

**COMP B**

and

**COMP C**

entered into between

**COMPANY X LIMITED**

and

**COMPANY Y PROPRIETARY LIMITED**

## TABLE OF CONTENTS

1.	<b>Interpretation.....</b>	<b>3</b>
2.	<b>Sale of the Sale Shares .....</b>	<b>5</b>
3.	<b>Consideration for the Sale Shares.....</b>	<b>6</b>
4.	<b>Closing .....</b>	<b>6</b>
5.	<b>Warranties .....</b>	<b>6</b>
6.	<b>Costs .....</b>	<b>7</b>
7.	<b>Breach .....</b>	<b>7</b>
8.	<b>Cession.....</b>	<b>7</b>
9.	<b>Waiver, Forbearance and Variation .....</b>	<b>7</b>
10.	<b>Severability .....</b>	<b>8</b>
11.	<b>Dispute Resolution .....</b>	<b>8</b>
12.	<b>Whole Agreement .....</b>	<b>9</b>
13.	<b>Counterparts .....</b>	<b>9</b>
14.	<b>Governing Law and Jurisdiction.....</b>	<b>10</b>
15.	<b>Addresses for Legal Processes and Notices.....</b>	<b>10</b>

## PARTIES

- (1) Company X Limited, a public company with limited liability incorporated in the Republic of South Africa with registration number 1998/07104/06, with its registered address at Ground Floor, Parklane Village, 26 Mordell Street, Auckland Park, 2000, Republic of South Africa ("**the Seller**").
- (2) Company Y (Proprietary) Limited, a private company with limited liability incorporated in the Republic of South Africa with registration number 2003/02389/07, with its registered address at 48 Miller Lane, Brixton, 2001, Republic of South Africa ("**the Purchaser**").

## INTRODUCTION [/ PREAMBLE / RECITAL]

- (A) As at the Signature Date, Comp A has an authorised share capital of [•], divided into [•] ordinary shares of [•] each, of which [•] have been issued to, registered in the name of and are beneficially owned by the Seller.
- (B) As at the Signature Date, Comp B has an authorised share capital of [•], divided into [•] ordinary shares of [•] each, of which [•] have been issued to, registered in the name of and are beneficially owned by the Seller.
- (C) As at the Signature Date, Comp C has an authorised share capital of [•], divided into [•] ordinary shares of [•] each, of which [•] have been issued to, registered in the name of and are beneficially owned by the Seller.
- (D) The Seller now intends to sell the Sale Shares to the Purchaser and the Purchaser now intends to purchase the Sale Shares from the Seller on the terms and conditions set out in this Agreement.

## OPERATIVE PROVISIONS

### 1. Interpretation

- 1.1 In this agreement (which includes the Introduction [/ Preamble / Recital]) (the "**Agreement**"), the following expressions shall, unless the context otherwise requires, have the following meanings:

<b>Business Day</b>	any day other than a Saturday, a Sunday or a declared public holiday in the Republic of South Africa;
<b>Closing Date</b>	[•];
<b>Comp A</b>	Comp A, a company with limited liability incorporated in Switzerland under registration number [•];
<b>Comp A Sale Shares</b>	[•] ordinary shares of [•] each in Comp A, which shares are held and beneficially owned by the Seller as at the Signature Date;
<b>Comp B</b>	Comp B, a company with limited liability incorporated in the British Virgin Islands with the International Business Company registration number 43281;
<b>Comp B Sale Shares</b>	[•] ordinary shares of [•] in Comp B, which shares are held and beneficially owned by the Seller as at the Signature Date;
<b>Comp C</b>	a company with limited liability incorporated in Switzerland under registration number [•];
<b>Comp C Sale Shares</b>	[•] ordinary shares of [•] in Comp C, which shares are held and beneficially owned by the Seller as at the Signature Date;
<b>Companies</b>	collectively Comp A, Comp B and Comp C;
<b>Parties</b>	the Seller and the Purchaser (and "Party" shall mean either one of them as the context may require);
<b>Sale Shares</b>	collectively the Comp A Sale Shares, the Comp B Sale Shares and the Comp C Sale Shares; and
<b>Signature Date</b>	the date on which the last Party signs this Agreement.

- 1.2 Any reference to a statutory provision or enactment shall include references to any amendment, modification or re-enactment of such statutory provision or such enactment (whether before or after the Signature Date), to any previous enactment which has been replaced or amended and to any regulation or order made under such statutory provision or enactment.
- 1.3 References to "the Companies Act" are to the Companies Act, 1973 and references to "the Income Tax Act" are to the Income Tax Act, 1962.
- 1.4 Words and expressions defined in the Companies Act shall bear the same meanings in this Agreement, save as otherwise defined in this Agreement.
- 1.5 References to the Introduction and to clauses are, unless otherwise specified, references respectively to the Introduction and clauses to and of this Agreement.
- 1.6 Words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, words importing the whole shall be treated as including a reference to any part thereof, and expressions denoting a natural person shall be treated as denoting a juristic person and vice versa.
- 1.7 Clause headings are inserted for ease of reference only and shall not affect the construction and interpretation of this Agreement.
- 1.8 The rule of construction that provisions of an agreement are to be construed against the Party drafting an agreement or part of an agreement or on whose behalf an agreement or part thereof has been drafted shall not apply to this Agreement.
2. **Sale of the Sale Shares**
  - 2.1 The Seller agrees to sell the Sale Shares to the Purchaser and the Purchaser agrees to purchase the Sale Shares from the Seller on the terms set out in this Agreement.
  - 2.2 All risk in and benefits attaching to the Sale Shares shall pass to the Purchaser

unencumbered title to the Sale Shares to the Purchaser.

- 5.2 The Parties agree and record that at the Signature Date and at the Closing Date, the Seller gives no warranties other than the warranty contained in clause 5.1 to the Purchaser in relation to the Companies, their businesses, or their liabilities.

**6. Costs**

Each Party shall be responsible for its own costs, legal fees and other expenses incurred in the negotiation, preparation and execution of this Agreement.

**7. Breach**

Should either Party breach any of the provisions of this Agreement, the other Party shall be entitled to cancel the Agreement, subject to the provisions of clause 11 of this Agreement.

**8. Cession**

No Party shall cede, assign or transfer or purport to cede, assign or transfer to any person any of its rights or obligations in terms of this Agreement without the prior written consent of the other Party.

**9. Waiver, Forbearance and Variation**

- 9.1 The rights of any Party shall not be prejudiced or restricted by any indulgence or forbearance extended by such Party to another Party and no waiver by any Party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

- 9.2 No addition to, variation of or cancellation of any of the provisions of this Agreement or novation of any of the Parties to this Agreement shall be binding on the Parties unless such addition, variation, cancellation or novation is expressly agreed in writing by all the Parties and no waiver by any Party of any of its rights under this clause shall be of force and effect unless reduced to writing and expressly agreed to in writing by all the Parties.



## 10. Severability

If any provision of this Agreement is found by a court or other competent authority to be void or unenforceable such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

## 11. Dispute Resolution

11.1 Should any dispute arise between the Parties in regard to the interpretation of, the effect of, the Parties' respective rights or obligations under a breach of, the termination of or any matter arising out of the termination of this Agreement, such dispute shall be decided by arbitration in the manner set out in this clause 11.

11.2 The arbitrator shall be appointed by the Parties or, failing agreement between the Parties on the identity of the arbitrator, shall be nominated by the Arbitration Foundation of Southern Africa ("AFSA"). Should AFSA not be in existence at the time, nomination of the arbitrator shall be made by the Chairman for the time being of the Johannesburg Bar Council.

11.3 The arbitration shall be held at Johannesburg.

11.4 The arbitration shall be held in accordance with the formal rules of AFSA or, if AFSA is not in existence at the time, in accordance with the formalities and procedures settled by the arbitrator, which shall be of an informal and summary nature, that is, it shall not be necessary to observe the usual formalities or procedure or the strict rules of evidence, and the arbitration shall be otherwise subject to the provisions of the Arbitration Act, 1965.

11.5 The arbitrator shall be entitled to:

11.5.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;

11.5.2 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and

11.5.3 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.

11.6 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 20 (twenty) Business Days after it has been so demanded.

11.7 This clause 11 is severable from the rest of this Agreement and shall therefore remain in effect even if this Agreement is terminated.

11.8 This clause 11 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

## 12. Whole Agreement

12.1 This Agreement (together with any documents referred to in this Agreement) supersedes any previous agreement between the Parties in relation to the matters dealt with in this Agreement and represents the entire agreement between the Parties in relation to the matters dealt with in this Agreement.

12.2 No Party shall be bound by any term, representation, warranty, promise or the like not recorded in this Agreement.

## 13. Counterparts

This Agreement may be executed in more than one counterpart (and, for the avoidance of doubt, a counterpart may be a facsimile copy), each of which shall be deemed to constitute an original of this Agreement and which taken together shall constitute one and the same agreement.

#### 14. **Governing Law and Jurisdiction**

- 14.1 The validity of this Agreement, its interpretation, implementation, enforcement, the respective rights and obligations of the Parties and all other matters arising in any way out of it, or its expiration or earlier termination for any reason shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 14.2 The Parties hereby submit to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa for the purposes of any proceedings for urgent relief arising out of or in connection with this Agreement and for the purposes of enforcing any award made by an arbitrator under clause 11.

#### 15. **Addresses for Legal Processes and Notices**

- 15.1 The Parties choose for the purposes of this Agreement the following addresses and telefax numbers:

15.1.1                      The Seller        :        Attention: [•]

Ground Floor  
Parklane Village  
26 Mordell Street  
Auckland Park  
2000  
Republic of South Africa

Telephone Number: [•]

Telefax Number: [•];

15.1.2                      The Purchaser:        Attention: [•]

48 Miller Lane  
Brixton  
2001  
Republic of South Africa

Telephone Number: [•]

Telefax Number: [•];

- 15.2 Any legal process to be served on any of the Parties may be served on it at the address specified for such Party in clause 15.1 and each Party chooses such address specified in clause 15.1 as its domicilium citandi et executandi for all purposes under this Agreement.
- 15.3 Any notice or other communication to be given to any of the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided always that any notice given by telefax shall be regarded for this purpose as having been given in writing.
- 15.4 A notice to any Party which is sent by registered post in a correctly addressed envelope to the address specified for such Party in clause 15.1 shall be deemed to have been received (unless the contrary is proved) within 10 Business Days from the date it was posted, or which is delivered to the Party by hand at that address shall be deemed to have been received on the day of delivery, provided always that such envelope was delivered to a responsible person during ordinary business hours.
- 15.5 Each notice by telefax to a Party at the telefax number specified for it in clause 15.1 shall be deemed to have been received (unless the contrary is proved) within 24 hours of transmission if it is transmitted during normal business hours of the receiving Party or within 24 hours of the beginning of the next business day at the destination after it is transmitted, if it is transmitted outside those business hours.
- 15.6 Notwithstanding anything to the contrary in this clause 15, a written notice or other communication actually received by any Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 15.7 Notwithstanding anything to the contrary in this Agreement, this clause 15 shall not operate so as to invalidate the giving of or the receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause 15.

- 15.8 Any Party may by written notice to the other Parties change its address or telefax number for the purposes of clause 15.1 to any other address (other than a post office box number) provided that such change shall become effective on the fifth Business Day after the receipt of such notice.

SIGNED at

on

2009

For: **COMPANY X LIMITED**

\_\_\_\_\_  
Signatory:

Capacity:

Authority:

SIGNED at

on

2009

For: **COMPANY Y (PROPRIETARY) LIMITED**

\_\_\_\_\_  
Signatory:

Capacity:

Authority:



**UNIVERSITY OF JOHANNESBURG**

**FACULTY OF LAW (AUCKLAND PARK CAMPUS)**

**SUBMISSION OF FINAL EXAMINATION PAPERS**

**JANUARY/JANUARIE 2018**

MODULE NAME: Law of Contract (SSA Examination)

MODULE CODE: K02000 / CT4170

LECTURER (S): Ms Kuester Keen

HEAD OF DEPARTMENT: Prof Watney, M.M.

EXIT MODULE: YES/ NO No

FOR EXIT MODULES:

EXTERNAL MODERATOR: \_\_\_\_\_

EXTERNAL MODERATOR FORM ATTACHED: \_\_\_\_\_

**INSTRUCTIONS:**

1. How many of the following items will be required per student?

Examination script (4 pages) 55 Books

Scanner sheet \_\_\_\_\_

Other (please specify) \_\_\_\_\_

2. How many students are still attending lectures (with a view to the number of examination papers required)? 51 STUDENTS

**SIGNATURE OF LECTURER:** \_\_\_\_\_

DATE: 4.01.2018

**SIGNATURE AS HEAD OF DEPARTMENT/  
(AS INTERNAL MODERATOR)**

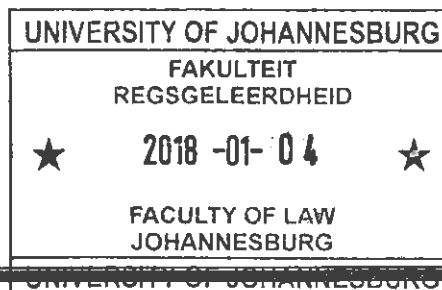
MA Watney

DATE: 4.01.2018

**FOR ADMINISTRATIVE PURPOSES:**

Noted: \_\_\_\_\_

Date: \_\_\_\_\_





**UNIVERSITY OF JOHANNESBURG**  
**KINGSWAY CAMPUS**

**FACULTY OF LAW**

**SUPPLEMENTARY EXAMINATION: 2018**

**SUBJECT NAME:** LAW OF CONTRACT  
**SUBJECT CODE:** LCT41Y0 / KOR0000

**DURATION:** 3 HOURS  
**MARKS:** 100

**EXAMINER:** MRS K M KERN

THIS PAPER RUNS TO 28 PAGES.

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**SECTION A:** MULTIPLE-CHOICE QUESTIONS

**INSTRUCTIONS**

- 1 Answer all of the questions on the multiple-choice answer sheet.
- 2 Indicate the correct statement.
- 3 There is only one correct statement in each question.
- 4 Each question counts 1 mark.

**QUESTION 1**

A term that is considered so obvious that the parties did not think about expressly agreeing to it is called a:

- (a) an imputed tacit term.
- (b) a consensual tacit term.
- (c) an assumption.
- (d) a resolute time clause.
- (e) a resolute condition.

SUBJECT NAME: LAW OF CONTRACT

**QUESTION 2**

The warranty against latent defects in a contract of purchase and sale is an example of:

- (a) *naturalia*.
- (b) *essentialia*.
- (c) *incidentalia*.
- (d) a condition.

**QUESTION 3**

A clause in a contract reads as follows: "*This contract of sale is subject to the Purchaser obtaining a suitable bond from a registered South African bank or financial institution, by no later than 15 December 2017.*". This clause is an example of a / an:

- (a) resolutive time clause.
- (b) suspensive time clause.
- (c) resolutive condition.
- (d) suspensive condition.
- (e) assumption.

**QUESTION 4**

A and B enter into a credit agreement in the form of a loan. Six months into the agreement, B experiences difficulty in making the repayments due to A under the loan. Bearing in mind all his financial means, prospects and obligations, B is unable to satisfy all his debts in a timely manner. Which of the following statements is correct?

- (a) B is over-indebted as envisaged under the National Credit Act.
- (b) B may approach a debt counsellor to assist him in being declared over-indebted by a court.
- (c) If B applies for debt review, he may still conclude further credit agreements while the debt review is pending.
- (d) All three the statements in (a), (b) and (c) are correct.
- (e) Only two of the statements in (a), (b) and (c) are correct.



SUBJECT NAME: LAW OF CONTRACT

**QUESTION 5**

The maxim *eiusdem generis* means:

- (a) if one matter is expressly included, other similar matters not expressly mentioned are excluded.
- (b) a word must be read in context.
- (c) general words refer to things that are similar to specific things that are mentioned.
- (d) if one matter is expressly regulated, the opposite applies to opposite matters.

**QUESTION 6**

The landmark judgment dealing with the *exceptio non adimpleti contractus* under South African law is:

- (a) *BK Tooling (Edms) Bpk v Scope Precision Engineering (Edms) Bpk* 1979 1 SA 391 (A).
- (b) *Mainline Carriers (Pty) Ltd v Jaad Investments CC* 1998 2 SA 468 (K).
- (c) *Sweet v Ragerguhara* 1978 1 SA 131 (D).
- (d) *Thoroughbred Breeders' Association v Price Waterhouse Coopers* 2001 4 SA 551 (SCA).

**QUESTION 7**

The remedy of \_\_\_\_\_ is regarded as the so-called "natural" remedy to breach of contract.

- (a) specific performance
- (b) a claim for damages
- (c) cancellation
- (d) the *exceptio non adimpleti contractus*

**QUESTION 8**

Matt owes KLM Bank R16 000. It is agreed that Calvin will repay the R16 000 to KLM Bank if Matt is unable to pay the debt. This form of security is called:

- (a) a mortgage.
- (b) a pledge.
- (c) a lien.
- (d) a hypothec.

SUBJECT NAME: LAW OF CONTRACT

- (e) suretyship.

**QUESTION 9**

A clause which provides that the pledgee may retain the pledged object as the owner thereof under circumstances where the pledgor fails to satisfy the secured debt is called a:

- (a) *pactum commissorium.*
- (b) *pactum antichresis.*
- (c) *pactum ancillary.*
- (d) *parate executie.*
- (e) *parate morgagie.*

**QUESTION 10**

The Consumer Protection Act, 2008 does **not** apply:

- (a) where the State acts as the supplier of goods or services.
- (b) to credit agreements regulated under the National Credit Act, 2005.
- (c) where a natural person supplier offers or supplies goods or services to a natural person consumer.
- (d) to banks registered as such under the Banks Act, 1990.

**QUESTION 11**

An agreement between parties to settle an existing dispute between them is referred to as a:

- (a) compromise.
- (b) merger.
- (c) novation.
- (d) release.
- (e) cession.

**QUESTION 12**

Laura is in the business of building houses. She orders 120 000 window-frames from David. In terms of the contract, David is required to deliver the window-frames to Laura's factory on Saturday, 19 November 2017, at precisely 14h00. David arrives at Laura's factory on Saturday, 19 November 2017 at 14h00, but he has only 108 000 window-frames with him. The form of breach of contract relevant to this set of facts is:

**SUBJECT NAME: LAW OF CONTRACT**

- (a) positive malperformance.
- (b) *mora creditoris*.
- (c) repudiation.
- (d) *mora debitoris*.
- (e) rendering performance impossible.

**QUESTION 13**

Take the facts set out in question 12 again. Assume that David sent an email to Laura on 18 November 2017, indicating that he (David) would not be in a position to deliver the frames to Laura owing to the fact that he would be tied up in Polokwane for the foreseeable future. The form of breach of contract relevant to this set of facts is:

- (a) positive malperformance.
- (b) *mora creditoris*.
- (c) repudiation.
- (d) *mora debitoris*.
- (e) rendering performance impossible.

**QUESTION 14**

The Consumer Protection Act, 2008:

- (a) has been repealed.
- (b) changed the way that business is conducted in South Africa.
- (c) protects only natural-person consumers.
- (d) means that the common law of contract has now been replaced.

**QUESTION 15**

A warranty in which an insured confirms the correctness or accuracy of a present or past factual situation is known as:

- (a) an affirmative warranty.
- (b) a promissory warranty.
- (c) an absolute warranty.
- (d) a disclosure warranty.
- (e) None of the above options is correct.

SUBJECT NAME: LAW OF CONTRACT

**QUESTION 16**

The following clause appears in an insurance contract concluded between Mrs Ndlovu and BDF Insurers: *"Where immediately prior to its loss or damage the market value of property insured hereunder is greater than the sum for which the property is insured, the insured shall be deemed to be his own insurer for the difference and the insurer's liability shall be limited to that sum of loss which bears the same proportion to the amount of the loss or damage, as the sum insured bears to the aforesaid value."* This clause is known as:

- (a) a disclosure clause.
- (b) an average clause.
- (c) an under-insurance clause.
- (d) a double-insurance clause.
- (e) a contribution clause.

**QUESTION 17**

Mr Venter concludes an insurance contract with WWW Insurers. In terms of the contract, which will remain in force for the lifespan of Mr Venter, WWW Insurers undertakes to pay R900 000 to Mr Venter (to Mr Venter's deceased estate) irrespective of the date on which Mr Venter dies. This type of life insurance is known as:

- (a) endowment insurance.
- (b) pure endowment insurance.
- (c) term insurance.
- (d) pure term insurance.
- (e) whole life insurance.

**QUESTION 18**

Jonathan rents the house that he stays in from Macey. Three months into the lease, Jonathan wakes up one morning to discover that the geyser in the house has burst during the night before. He immediately consults the Yellow Pages and calls a plumber to remedy the problem. The plumber arrives, repairs the geyser and presents Jonathan with a bill for R2 850, which Jonathan pays. Jonathan contacts Macey later that day and demands reimbursement of the R2 850. Which of the following statements is correct?

- (a) As landlord and owner of the house, Macey is obliged to reimburse Jonathan immediately for the expenses Jonathan has incurred.
- (b) Where Macey fails to reimburse Jonathan immediately for the expenses incurred, Jonathan is entitled to deduct R2 850 from the rent payable by Jonathan to Macey at the end of the month.

**SUBJECT NAME: LAW OF CONTRACT**

- (c) Where Macey fails to reimburse Jonathan immediately for the expenses incurred, Jonathan will be entitled to cancel the lease agreement forthwith, as such non-reimbursement represents a material breach of the lease contract.
- (d) None of the above statements is correct.
- (e) More than one of the above statements is correct.

**QUESTION 19**

Jonathan rents the house that he stays in from Macey. Seven weeks into the lease period, a street-vendor decides to take up residence in the house. Jonathan returns home from work one afternoon to find the street-vendor in his living room, and the street-vendor refuses to leave the house because he (the street-vendor) indicates that he has nowhere else to go. Which of the following statements is correct?

- (a) Macey, as owner of the house, will be able to make application to the court for the eviction of the street-vendor.
- (b) The provisions of section 26 of the Constitution and of the Prevention of Illegal Eviction and Occupation Act, 1998 will need to be considered under the circumstances.
- (c) Both of the above statements are correct.
- (d) Neither of the above statements is correct.

**QUESTION 20**

Jonathan rents the house that he stays in from Macey. Four months into the lease period, Jonathan decides to put up a large thatch lapa (shade cover) in the garden of the house. Jonathan intends to host karaoke evenings under the lapa for his friends. Jonathan does not inform Macey of his plans, but simply arranges for the lapa to be erected on the property at a cost of R32 000. On termination of the lease, Jonathan sends Macey an email indicating that he expects to be reimbursed by Macey for the costs of the lapa when he vacates the house. Which of the following statements is correct?

- (a) Macey is obliged to repay to Jonathan the costs that Jonathan incurred in having the lapa erected.
- (b) Jonathan may remove the lapa from the property as the lapa belongs to him, even if such removal causes damage to the property.
- (c) Jonathan may remove the lapa from the property provided that no damage is caused to the property by such removal.
- (d) Statements (a) and (c) are correct.
- (e) None of the above statements is correct.

SUBJECT NAME: LAW OF CONTRACT

QUESTION 21

Take the facts provided in question 20 again, but assume now that Jonathan called Macey prior to having the lapa erected and asked Macey whether she would agree to the erection of the lapa on the premises. Macey agreed to the erection of the lapa but nothing was mentioned during the call about the possibility of Macey reimbursing Jonathan for the costs incurred in the erection of the lapa. Which of the following statements is correct?

- (a) The construction of the lapa was a necessary expense and, accordingly, Macey is obliged to compensate Jonathan for the full cost of the lapa upon termination of the lease.
- (b) Macey is entitled to institute action against Jonathan for breach of contract as a result of the erection of the lapa.
- (c) The construction of the lapa was a luxurious expense and, accordingly, Macey is not obliged to compensate Jonathan at all for the lapa upon termination of the lease.
- (d) None of the above statements is correct.

QUESTION 22

Jonathan rents the house that he stays in from Macey. In terms of the lease contract between Jonathan and Macey, Jonathan is obliged to pay to Macey rent in advance in the sum of R7 000 per month, by the 5<sup>th</sup> day of each calendar month, for the duration of the 12-month lease period (1 April 2017 – 31 March 2018). By 13 September 2017, Macey has still not received the rent owed to her by Jonathan for the month of September. Which of the following statements is correct?

- (a) Macey can institute action against Jonathan for breach of the lease contract in the form of *mora creditoris*.
- (b) Macey has security under the circumstances.
- (c) Macey can institute action against Jonathan for breach of the lease contract in the form of *mora debitoris*.
- (d) None of the above statements is correct.
- (e) Only (b) and (c) are correct.

QUESTION 23

Tholinhlanhla purchases a house from Yogesh. One week prior to the sale, Yogesh repainted the house in order to hide the damp (note that "damp" is rising water, which is expensive to fix) in one of the bedrooms of the house. When Tholinhlanhla approaches you for legal advice under the circumstances, you should advise Tholinhlanhla to rely on \_\_\_\_\_ in an action against Yogesh:

SUBJECT NAME: LAW OF CONTRACT

- (a) the doctrine of the passing of risk.
- (b) the warranty against latent defects.
- (c) the warranty against eviction
- (d) the *nemo plus iuris* rule
- (e) the *huur gaat voor koop* rule

QUESTION 24

Ross purchases an engagement ring for his girlfriend from XZ Jewellers. The ring is too big and Ross accordingly agrees to leave the ring in the possession of XZ Jewellers who will then make the ring smaller. Delivery of the ring to Ross has taken place by means of:

- (a) *traditio longa manu*.
- (b) attornment.
- (c) *constitutum possessorium*.
- (d) symbolic delivery.
- (e) delivery by the short hand.

QUESTION 25

Jill sells her 10-speed bicycle to her friend, Darren. Darren pays R700 to Jill for the bicycle on Monday, and Jill agrees to deliver it to Darren the next day (Tuesday). **There are no other terms to the contract between Jill and Darren.** A freak Highveld thunderstorm strikes Johannesburg on Monday night and Jill discovers the next morning (Tuesday) that the bicycle has been washed away, despite the fact that it was placed safely in the garage where Jill has always kept it overnight. When Jill locates the bike, she finds that it has been damaged beyond repair. Which of the following statements is correct?

- (a) The doctrine of constructive notice is applicable.
- (b) Jill will have to reimburse Darren in the sum of R700.
- (c) Darren will be able to claim from Jill a partial reimbursement of the purchase price he has paid.
- (d) Jill is not liable to Darren at all.
- (e) None of the above statements is correct.

QUESTION 26

Luway owns a 2000 Golf GTi (registration number KJT 678 GP) ("the vehicle"). He sells the vehicle to Ian for a purchase price of R34 000 in terms of a simple verbal contract concluded on 9 November 2017, after Ian has taken the vehicle for a short test-drive. Luway and Ian agree that Luway will deliver the vehicle to

SUBJECT NAME: LAW OF CONTRACT

Ian on 11 November 2017 and that Ian will pay the entire purchase price to Luway on 31 December 2017. **Note that the parties do not agree to the inclusion of any terms other than those mentioned.** Which of the following statements is correct?

- (a) Ownership of the vehicle will pass to Ian on 9 November 2017.
- (b) Ownership of the vehicle will pass to Ian on 11 November 2017.
- (c) Ownership of the vehicle will pass to Ian on 31 December 2017.
- (d) Luway is not obliged to transfer ownership of the vehicle to Ian.
- (e) In terms of the *nemo plus iuris* rule, Ian can never become owner of the vehicle.

QUESTION 27

Take the facts in question 26 again. Assume that, one week after the delivery of the vehicle to Ian by Luway on 11 November 2017, a mechanic informs Ian that there is a major problem with the vehicle's gearbox. The mechanic offers to repair the vehicle's gearbox at a cost of R14 800. Ian approaches you for advice. You should advise Ian to:

- (a) claim damages from Luway in the amount of R14 800.
- (b) institute action against Luway for breach of contract in the form of positive malperformance.
- (c) accept that the gearbox defect is Ian's problem.
- (d) cancel the contract through an institution of the *actio quanti minoris*.

QUESTION 28

Take the facts in question 27 again. Assume that Ian accepts the mechanic's offer to repair the vehicle's gearbox at a cost of R14 800. The mechanic repairs the gearbox and notifies Ian that the vehicle may be collected. Upon his arrival at the mechanic's premises, Ian indicates that it has come to his attention that the mechanic down the street would have made the very same repairs to the vehicle's gearbox for only R12 000. On this basis, Ian refuses to pay the mechanic for the repairs. Which of the following statements is correct?

- (a) The mechanic has an *ex lege* hypothec over the vehicle under the circumstances.
- (b) The mechanic will have to release the vehicle to Ian without payment by Ian.
- (c) The mechanic enjoys a right of retention or lien based on unjustified enrichment over the vehicle under the circumstances.
- (d) The mechanic may institute action against Ian for breach of contract in the form of *mora creditoris*.



**SUBJECT NAME: LAW OF CONTRACT**

- (e) The mechanic may claim specific performance in terms of the contract under the circumstances.

**QUESTION 29**

The maxim "*noscitur a sociis*" means that:

- (a) an interpretation that renders a contract valid must be preferred over an interpretation that renders the contract invalid.
- (b) words are to be read in their context.
- (c) if one matter is expressly included, other similar matters not mentioned are excluded.
- (d) if one matter is expressly regulated, the opposite applies to opposite matters.
- (e) a term should not be presumed to be void for vagueness.

**QUESTION 30**

Prior to the promulgation of the National Credit Act, 2005, the credit industry in South Africa was:

- (a) completely unregulated.
- (b) regulated only under the Credit Agreements Act.
- (c) regulated only under the common law.
- (d) regulated under two separate pieces of legislation.

**QUESTION 31**

The body created by the National Credit Act, 2005 and which is comparable to a court in relation to matters within the NCA's scope is called the:

- (a) National Consumer Commission.
- (b) National Credit Regulator.
- (c) National Credit Tribunal.
- (d) National Credit Bureau.

**QUESTION 32**

A bond passed by a surviving spouse over specific immovable property bequeathed to a minor child in order to secure the child's inheritance is a:

- (a) covering bond.
- (b) *kinderbewys*.

SUBJECT NAME: LAW OF CONTRACT

- (c) *kustingsbrief.*
- (d) notarial bond.
- (e) hypothec.

**QUESTION 33**

Suretyship is an example of:

- (a) personal security.
- (b) real security.
- (c) cession.
- (d) mortgage.

**QUESTION 34**

Where a lessee sub-lets leased property in spite of a prohibition on sub-letting, the form of breach of contract committed by the lessee is:

- (a) *mora debitoris.*
- (b) *mora creditoris.*
- (c) positive malperformance.
- (d) repudiation.
- (e) rendering performance impossible.

**QUESTION 35**

In terms of the Consumer Protection Act, 2008, the maximum period for which a supplier may enter into a fixed-term agreement with a consumer is:

- (a) 12 months.
- (b) 36 months.
- (c) 6 months.
- (d) 24 months.

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**SUB-TOTAL: SECTION A**

**[35]**

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SUBJECT NAME: LAW OF CONTRACT

**SECTION B: WRITTEN QUESTIONS**

**INSTRUCTIONS**

- 1 Answer all of the questions in the answer booklet provided.
- 2 Please write legibly.

**QUESTION 1**

Compare the *ex lege* warranty against latent defects in relation to a contract of sale, on the one hand, with the contractual warranty against latent defects in relation to a contract of sale, on the other hand.

(7)  
[10]

**QUESTION 2**

Discuss the concept of debt review, which was introduced under the National Credit Act, 2005, including the ways in which debt review can be initiated.

(7)  
[7]

**QUESTION 3**

How did the Supreme Court of Appeal, in the matter of *Spearhead Property Holdings Ltd v E&A Motors (Pty) Ltd* 2010 2 SA 1 (SCA), expand on (or develop) the operation of the *huur gaat voor koop* principle under South African law?

(4)  
[4]

**QUESTION 4**

Name any four of the **rights** given to a consumer under the National Credit Act, 2005. Do not discuss further.

(4)  
[4]

SUBJECT NAME: LAW OF CONTRACT

**QUESTION 5**

Discuss the judgment handed down in *Bock v Dubororo Investments (Pty) Ltd* 2004 2 SA 242 (SCA). Do not discuss the facts.

(8)

[8]

**QUESTION 6**

On 17 November 2014, Mandisi Dube walked into the offices of AllHealth Insurers Ltd ("AllHealth") and indicated that he would like to apply for life insurance cover. On the same date, Mandisi duly completed AllHealth's standard application form. Question 4.19 of the application form read as follows: "Have you ever received medical treatment for any heart condition or ailment?". Mandisi indicated his answer to question 4.19 as "No".

After having considered the application form completed by Mandisi, AllHealth accepted Mandisi as an insured. Mandisi pays the premium due under the policy each month.

On 18 November 2017, Mandisi passes away after having suffered a heart attack, and a claim for the proceeds of the life insurance policy is duly lodged with AllHealth. Upon investigating the claim, AllHealth discovers that Mandisi had suffered two previous heart attacks, during July 2010 and December 2012 respectively.

AllHealth approaches you for advice and asks you whether it (AllHealth) is entitled to reject the claim that has now been lodged. Advise AllHealth as to its legal position. Your answer should make reference to applicable legislation.

(5)

[5]

**QUESTION 7**

List, in the form of a table, the differences between indemnity insurance, on the one hand, and non-indemnity (capital) insurance, on the other hand.

(8)

[8]

**QUESTION 8**

Langelihle Khoza and Lerato Khoza are brother and sister.

Langelihle has never gotten along well with Lerato but, in desperation, he asks Lerato, on 20 October 2017, to lend him R2 500. Lerato agrees to lend Langelihle the money, provided that Langelihle allows Lerato to keep his Sony

SUBJECT NAME: LAW OF CONTRACT

stereo system in her possession until such time as Langelihle is in a position to repay the debt. Langelihle and Lerato reach a verbal agreement to the effect that Langelihle will bring his Sony stereo to Lerato's home at 8pm on 21 October 2017 for this purpose, and Lerato hands Langelihle R2 500 in cash.

Pamela Parsons, a friend of Langelihle's, arrives at Langelihle's home at 9am on the morning of 21 October 2017, for breakfast. While Pamela is there, she shows interest in the Sony stereo system and offers to purchase the stereo from Langelihle. Langelihle agrees; Pamela pays Langelihle the full purchase price that the parties have agreed on and Pamela takes the stereo home with her after breakfast.

Answer the following questions:

- 8.1 What type of contract has been concluded between Langelihle Khoza and Lerato Khoza in relation to the Sony stereo system? (1)
- 8.2 Does Lerato have any real security under the circumstances? Answer yes or no, and explain your answer. (3)
- 8.3 Assume for the purposes of this question 8.3 only that Langelihle did not sell the Sony stereo to Pamela Parsons. Instead, Langelihle arrived at Lerato's house at 8pm sharp on 21 October 2016 to hand over the stereo to Lerato, but Lerato was not home. Langelihle tried to telephone Lerato and waited at Lerato's house until 8.45pm, but Lerato did not arrive. Langelihle accordingly took the Sony stereo back home with him. What form of breach of contract would you say is relevant here? (1)
- 8.4 Assume for the purposes of this question 8.4 only that all went according to plan and Langelihle handed the Sony stereo over to Lerato at 8pm on 21 October 2016, as agreed. Assume further that Langelihle attended a family function held at Lerato's house on 24 October 2016 and noticed that Lerato had the Sony stereo playing music throughout the function. Langelihle approaches you the next day and asks you whether this is acceptable behaviour on Lerato's part. Advise Langelihle. (3)
- 8.5 Name the specific remedy that you will advise Langelihle to make use of against Lerato, given Langelihle's unhappiness as described in question 8.4 above. (1)
- [9]**

SUBJECT NAME: LAW OF CONTRACT

**QUESTION 9**

**Please refer to the draft Sale of Shares Agreement that is attached to your examination question paper as Annexure A.**

- 9.1 Name four principles of sound contractual drafting. (4)
- 9.2 To which *naturale* of a contract of purchase and sale does clause 5.1 of the draft Sale of Shares Agreement relate? (2)
- 9.3 What Latin term would you use to describe clause 7 of the draft Sale of Shares Agreement? (1)
- 9.4 What name is given to the type of clause included as clause 9.2 of the draft Sale of Shares Agreement? (1)
- 9.5 When would the parties to a contract choose to include a Counterparts clause in a contract, like the one included as clause 13 of the draft Sale of Shares Agreement? (1)
- 9.6 Consider clauses 6, 8, 9, 10, 11, 12, 13, 14 and 15 of the draft Sale of Shares Agreement. What general term is used, in practice, to describe such clauses, collectively? (1)
- [10]**

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**SUB-TOTAL: SECTION B**

**[65]**

**TOTAL: 100**

-oOo-

**SALE OF SHARES AGREEMENT**

in relation to

**COMP A**

and

**COMP B**

and

**COMP C**

entered into between

**COMPANY X LIMITED**

and

**COMPANY Y PROPRIETARY LIMITED**

## TABLE OF CONTENTS

1.	Interpretation .....	3
2.	Sale of the Sale Shares .....	5
3.	Consideration for the Sale Shares .....	6
4.	Closing .....	6
5.	Warranties .....	6
6.	Costs .....	7
7.	Breach .....	7
8.	Cession .....	7
9.	Waiver, Forbearance and Variation .....	7
10.	Severability .....	8
11.	Dispute Resolution .....	8
12.	Whole Agreement .....	9
13.	Counterparts .....	9
14.	Governing Law and Jurisdiction .....	10
15.	Addresses for Legal Processes and Notices .....	10



## **PARTIES**

- (1) Company X Limited, a public company with limited liability incorporated in the Republic of South Africa with registration number 1998/07104/06, with its registered address at Ground Floor, Parklane Village, 26 Mordell Street, Auckland Park, 2000, Republic of South Africa ("**the Seller**").
- (2) Company Y (Proprietary) Limited, a private company with limited liability incorporated in the Republic of South Africa with registration number 2003/02389/07, with its registered address at 48 Miller Lane, Brixton, 2001, Republic of South Africa ("**the Purchaser**").

## **INTRODUCTION [/ PREAMBLE / RECITAL]**

- (A) As at the Signature Date, Comp A has an authorised share capital of [•], divided into [•] ordinary shares of [•] each, of which [•] have been issued to, registered in the name of and are beneficially owned by the Seller.
- (B) As at the Signature Date, Comp B has an authorised share capital of [•], divided into [•] ordinary shares of [•] each, of which [•] have been issued to, registered in the name of and are beneficially owned by the Seller.
- (C) As at the Signature Date, Comp C has an authorised share capital of [•], divided into [•] ordinary shares of [•] each, of which [•] have been issued to, registered in the name of and are beneficially owned by the Seller.
- (D) The Seller now intends to sell the Sale Shares to the Purchaser and the Purchaser now intends to purchase the Sale Shares from the Seller on the terms and conditions set out in this Agreement.

## **OPERATIVE PROVISIONS**

### **1. Interpretation**

- 1.1 In this agreement (which includes the Introduction [/ Preamble / Recital]) (the "**Agreement**"), the following expressions shall, unless the context otherwise requires, have the following meanings:

<b>Business Day</b>	any day other than a Saturday, a Sunday or a declared public holiday in the Republic of South Africa;
<b>Closing Date</b>	[•];
<b>Comp A</b>	Comp A, a company with limited liability incorporated in Switzerland under registration number [•];
<b>Comp A Sale Shares</b>	[•] ordinary shares of [•] each in Comp A, which shares are held and beneficially owned by the Seller as at the Signature Date;
<b>Comp B</b>	Comp B, a company with limited liability incorporated in the British Virgin Islands with the International Business Company registration number 43281;
<b>Comp B Sale Shares</b>	[•] ordinary shares of [•] in Comp B, which shares are held and beneficially owned by the Seller as at the Signature Date;
<b>Comp C</b>	a company with limited liability incorporated in Switzerland under registration number [•];
<b>Comp C Sale Shares</b>	[•] ordinary shares of [•] in Comp C, which shares are held and beneficially owned by the Seller as at the Signature Date;
<b>Companies</b>	collectively Comp A, Comp B and Comp C;
<b>Parties</b>	the Seller and the Purchaser (and "Party" shall mean either one of them as the context may require);
<b>Sale Shares</b>	collectively the Comp A Sale Shares, the Comp B Sale Shares and the Comp C Sale Shares; and
<b>Signature Date</b>	the date on which the last Party signs this Agreement.

- 1.2 Any reference to a statutory provision or enactment shall include references to any amendment, modification or re-enactment of such statutory provision or such enactment (whether before or after the Signature Date), to any previous enactment which has been replaced or amended and to any regulation or order made under such statutory provision or enactment.
- 1.3 References to "the Companies Act" are to the Companies Act, 1973 and references to "the Income Tax Act" are to the Income Tax Act, 1962.
- 1.4 Words and expressions defined in the Companies Act shall bear the same meanings in this Agreement, save as otherwise defined in this Agreement.
- 1.5 References to the Introduction and to clauses are, unless otherwise specified, references respectively to the Introduction and clauses to and of this Agreement.
- 1.6 Words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, words importing the whole shall be treated as including a reference to any part thereof, and expressions denoting a natural person shall be treated as denoting a juristic person and vice versa.
- 1.7 Clause headings are inserted for ease of reference only and shall not affect the construction and interpretation of this Agreement.
- 1.8 The rule of construction that provisions of an agreement are to be construed against the Party drafting an agreement or part of an agreement or on whose behalf an agreement or part thereof has been drafted shall not apply to this Agreement.

## 2. **Sale of the Sale Shares**

- 2.1 The Seller agrees to sell the Sale Shares to the Purchaser and the Purchaser agrees to purchase the Sale Shares from the Seller on the terms set out in this Agreement.
- 2.2 All risk in and benefits attaching to the Sale Shares shall pass to the Purchaser

on the Closing Date.

### 3. **Consideration for the Sale Shares**

3.1 The purchase price payable by the Purchaser to the Seller for the Sale Shares is ZAR37 500 000.00 (thirty-seven million five hundred thousand Rand) ("**the Purchase Price**"), which the Parties acknowledge and agree represents the fair market value of the Sale Shares.

3.2 The Purchaser shall pay the Purchase Price to the Seller in cash, by way of an electronic bank transfer, on the Closing Date, into the following bank account (or such other bank account as the Seller may advise in writing):

Name of account holder: [●]  
Name of Bank: [●]  
Branch: [●]  
Branch code: [●]  
Account number: [●]

### 4. **Closing**

4.1 On the Closing Date, the Parties shall meet at the offices of the Seller, where the Seller shall deliver to the Purchaser:

4.1.1 duly signed share certificates in respect of the Sale Shares; and

4.1.2 the share transfer forms in respect of the Sale Shares, currently-dated, duly completed and signed by the Seller.

4.2 The Seller's obligations in terms of clause 4.1 are subject to the Purchaser having complied with the Purchaser's obligations in respect of payment of the Purchase Price to the Seller as set out in clause 3.2.

### 5. **Warranties**

5.1 The Seller warrants to the Purchaser at the Signature Date that it is the legal and beneficial owner of the Sale Shares and that it is entitled to give free and

unencumbered title to the Sale Shares to the Purchaser.

- 5.2 The Parties agree and record that at the Signature Date and at the Closing Date, the Seller gives no warranties other than the warranty contained in clause 5.1 to the Purchaser in relation to the Companies, their businesses, or their liabilities.

**6. Costs**

Each Party shall be responsible for its own costs, legal fees and other expenses incurred in the negotiation, preparation and execution of this Agreement.

**7. Breach**

Should either Party breach any of the provisions of this Agreement, the other Party shall be entitled to cancel the Agreement, subject to the provisions of clause 11 of this Agreement.

**8. Cession**

No Party shall cede, assign or transfer or purport to cede, assign or transfer to any person any of its rights or obligations in terms of this Agreement without the prior written consent of the other Party.

**9. Waiver, Forbearance and Variation**

- 9.1 The rights of any Party shall not be prejudiced or restricted by any indulgence or forbearance extended by such Party to another Party and no waiver by any Party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

- 9.2 No addition to, variation of or cancellation of any of the provisions of this Agreement or novation of any of the Parties to this Agreement shall be binding on the Parties unless such addition, variation, cancellation or novation is expressly agreed in writing by all the Parties and no waiver by any Party of any of its rights under this clause shall be of force and effect unless reduced to writing and expressly agreed to in writing by all the Parties.

## 10. **Severability**

If any provision of this Agreement is found by a court or other competent authority to be void or unenforceable such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

## 11. **Dispute Resolution**

11.1 Should any dispute arise between the Parties in regard to the interpretation of, the effect of, the Parties' respective rights or obligations under a breach of, the termination of or any matter arising out of the termination of this Agreement, such dispute shall be decided by arbitration in the manner set out in this clause 11.

11.2 The arbitrator shall be appointed by the Parties or, failing agreement between the Parties on the identity of the arbitrator, shall be nominated by the Arbitration Foundation of Southern Africa ("AFSA"). Should AFSA not be in existence at the time, nomination of the arbitrator shall be made by the Chairman for the time being of the Johannesburg Bar Council.

11.3 The arbitration shall be held at Johannesburg.

11.4 The arbitration shall be held in accordance with the formal rules of AFSA or, if AFSA is not in existence at the time, in accordance with the formalities and procedures settled by the arbitrator, which shall be of an informal and summary nature, that is, it shall not be necessary to observe the usual formalities or procedure or the strict rules of evidence, and the arbitration shall be otherwise subject to the provisions of the Arbitration Act, 1965.

11.5 The arbitrator shall be entitled to:

11.5.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;

11.5.2 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and

11.5.3 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.

11.6 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 20 (twenty) Business Days after it has been so demanded.

11.7 This clause 11 is severable from the rest of this Agreement and shall therefore remain in effect even if this Agreement is terminated.

11.8 This clause 11 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

## 12. **Whole Agreement**

12.1 This Agreement (together with any documents referred to in this Agreement) supersedes any previous agreement between the Parties in relation to the matters dealt with in this Agreement and represents the entire agreement between the Parties in relation to the matters dealt with in this Agreement.

12.2 No Party shall be bound by any term, representation, warranty, promise or the like not recorded in this Agreement.

## 13. **Counterparts**

This Agreement may be executed in more than one counterpart (and, for the avoidance of doubt, a counterpart may be a facsimile copy), each of which shall be deemed to constitute an original of this Agreement and which taken together shall constitute one and the same agreement.





- 15.2 Any legal process to be served on any of the Parties may be served on it at the address specified for such Party in clause 15.1 and each Party chooses such address specified in clause 15.1 as its domicilium citandi et executandi for all purposes under this Agreement.
- 15.3 Any notice or other communication to be given to any of the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided always that any notice given by telefax shall be regarded for this purpose as having been given in writing.
- 15.4 A notice to any Party which is sent by registered post in a correctly addressed envelope to the address specified for such Party in clause 15.1 shall be deemed to have been received (unless the contrary is proved) within 10 Business Days from the date it was posted, or which is delivered to the Party by hand at that address shall be deemed to have been received on the day of delivery, provided always that such envelope was delivered to a responsible person during ordinary business hours.
- 15.5 Each notice by telefax to a Party at the telefax number specified for it in clause 15.1 shall be deemed to have been received (unless the contrary is proved) within 24 hours of transmission if it is transmitted during normal business hours of the receiving Party or within 24 hours of the beginning of the next business day at the destination after it is transmitted, if it is transmitted outside those business hours.
- 15.6 Notwithstanding anything to the contrary in this clause 15, a written notice or other communication actually received by any Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 15.7 Notwithstanding anything to the contrary in this Agreement, this clause 15 shall not operate so as to invalidate the giving of or the receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause 15.

- 15.8 Any Party may by written notice to the other Parties change its address or telefax number for the purposes of clause 15.1 to any other address (other than a post office box number) provided that such change shall become effective on the fifth Business Day after the receipt of such notice.

SIGNED at

on

2009

For: **COMPANY X LIMITED**

\_\_\_\_\_  
Signatory:

Capacity:

Authority:

SIGNED at

on

2009

For: **COMPANY Y (PROPRIETARY) LIMITED**

\_\_\_\_\_  
Signatory:

Capacity:

Authority: