

## SAMPLE AGREEMENT FOR THE SALE OF GOODS

In any given situation there's a minimum level of legal protection that an Agreement — or a clause — should provide. Falling below that level leaves a party overly exposed to business and legal risks. Below is a seller-friendly version of a simple business-to-business Agreement for the sale of goods to be used when there's no special reason to think that the agreement will be litigated.

### AGREEMENT FOR THE SALE OF GOODS

This Agreement for the sale of goods is between MINODUGU LIMITED, a limited liability company incorporated under the Companies Act, Chapter 486 of the Laws of Kenya (hereinafter referred to as "the **Seller**"), and MINDEKLE LIMITED, a limited liability company also incorporated under the said Act (hereinafter referred to as "the **Buyer**").

*[Insert background information about the transaction]*

THIS AGREEMENT WITNESSES AS FOLLOWS:

#### 1. Sale of Goods.

(1) The Seller shall sell to the Buyer and the Buyer shall purchase from the Seller the goods set forth in the Schedule appended herein below (hereinafter referred to as "the **Goods**") in the quantities and at the prices stated in the Schedule.

(2) Unless otherwise stated, the Buyer shall pay all taxes and third-party expenses imposed on, in connection with, or measured by the transaction contemplated by this agreement in addition to the prices set forth in the Schedule.

#### 2. Payment.

(1) Unless otherwise stated or otherwise agreed between the parties, payment for the Goods shall be due within thirty (30) days of

the date of delivery of the Goods by the Seller and subsequent delivery to the Buyer of the Seller's invoice.

(2) The Buyer shall pay a delinquency charge of the lesser of (1) 1% per month and (2) the highest rate allowed under applicable law on all overdue amounts until the amounts are paid.

#### 3. Delivery; Title; and Risk of Loss.

(1) Unless otherwise stated or otherwise agreed by the Parties, the Seller shall deliver the Goods FOB the Seller's facility in *Kandito, Asego County*, whereupon the title to and risk of loss of the Goods will pass to the Buyer.

(2) Any stated delivery dates are deemed to be approximate, within three (3) days before or thereafter.

(3) The Seller will not be liable for any losses, damages, penalties, or expenses for failure to meet any delivery date.

#### 4. Disclaimer of Warranty; Due Diligence.

(1) The Goods are being sold on "as is," basis and the Seller disclaims all warranties (other than the implied warranty of title), whether express or implied, including the warranties of merchantability and fitness for a particular purpose.

(2) The Buyer acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Goods and that no such statements or representations have been made.

(3) The Buyer acknowledges that it has relied solely on the investigations, examinations, and inspections as the Buyer has chosen to make and that the Seller has afforded the Buyer the opportunity for full and complete investigations, examinations, and inspections.

## **5. Limitation of Liability.**

(1) The Seller will not be liable for any indirect, special, consequential, or punitive damages (including lost profits) arising out of or relating to this agreement or the transactions it contemplates (whether for breach of agreement, tort, negligence, or other form of action) and irrespective of whether the Seller has been advised of the possibility of any such damage.

(2) In no event will the Seller's liability exceed the price the Buyer paid to the Seller for the specific Goods provided by the Seller giving rise to the claim or cause of action.

## **6. Limitation of Actions.**

No action arising out of or relating to this Agreement or the transactions it contemplates may be commenced against the Seller more than twelve (12) months after the reason or basis for such claim could reasonably have been discovered.

## **7. Governing Law and Designation of Forum.**

(1) The laws of Kenya shall govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance (including the details of performance), and enforcement.

(2) A party bringing a legal action or proceeding against the other party arising out of or relating to this Agreement or the transactions it contemplates must bring the legal action or proceeding in a Kenyan court.

(3) Each party to this Agreement consents to the exclusive jurisdiction of the Kenyan courts for the purpose of all legal actions and proceedings arising out of or relating to this Agreement or the transactions it contemplates.

## **8. Force Majeure.**

The Seller will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond the Seller's reasonable control.

## **9. Assignment; Delegation.**

(1) The Buyer may not assign any of its rights under this Agreement or delegate any performance under this Agreement, except with the prior written consent of the Seller.

(2) Any purported assignment of rights or delegation of performance in violation of this section is void.

## **10. Recovery of Expenses.**

In any adversarial proceedings between the parties arising out of this Agreement or the transactions it contemplates, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs, including legal fees and expenses.

## **11. Entire Agreement.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the parties.

## **12. Amendments.**

No amendment to this Agreement will be effective unless it is in writing and signed by both parties.

## **13. Effective Date.**

(1) This Agreement will become effective upon its due execution by both parties.

(2) The effective date of this Agreement shall be deemed to be the date when either party last signs the Agreement.

#### 14. Counterparts; Electronic Signatures.

(1) This Agreement may be signed in one or more counterparts, which together will form a single agreement.

(2) This Agreement may be signed electronically.

Signed at Kandito this .....day of .....2013  
by the Seller..... and Buyer.....before:

#### SCHEDULE

Goods	Quantity	Unit
Price	Total	
Price		