

DATED _____ 2020

**SUPPLY, DELIVERY AND INSTALLATION KITCHEN APPLIANCES
AGREEMENT**

BETWEEN

- AND -

Drawn by:

This Agreement is made as of this _____ day of _____, 2020 **BETWEEN:**

1. _____, a Private Company incorporated with Limited Liability Company incorporated in the Republic of Kenya and whose postal address is care of Post Office Box Number 10831 - 00400 Nairobi Kenya (hereinafter referred to as "the Contractor" which expression shall, where the context so requires, include the Company's successors in title and assigns) on the one part.

AND

2. _____, of Post Office Box Number P.O Box 81737 - 80100 Mombasa, Kenya (hereinafter referred to as "the Client" which expression shall, where the context so requires, include his personal representatives and assigns) of the other part.

The Client and the Contractor shall collectively be referred as the "Parties"

WHEREAS:

- (A) The Contractor carries on the business of selling, distributing and installing various appliances including kitchen appliances and wardrobes.
- (B) The Client wishes to enter into contract with the Contractor for the supply, delivery and installation of various appliances ("the Works") as more particularly described hereto in Annexure "A" ("Order Confirmation") on the terms and conditions set out in this Agreement.
- (C) The Contractor has agreed to offer the select goods and services as aforementioned in accordance to the terms and conditions set out in the Agreement herein.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein and the parties intending to be bound thereby, the Parties agree as follows:

1. SCOPE OF WORK

- 1.1 The Contractor shall supply, deliver and install all various kitchen appliances at the Client's residence in Karen, Nairobi County ("the

site”) as more particularly described hereto in Annexure “A” (“Order Confirmation”) (“the Project”).

2. CONSIDERATION

2.1 The Purchase Price payable by the Client to the Contractor for the Project shall be Kenya Shillings Nine Million Three Hundred and Seventy Six Thousand Five Hundred (Kshs 9,376,500) (“the Purchase Price” inclusive of VAT and all other taxes) which shall be payable as follows:

2.1.1 The Client shall make a down payment of 50% of the Purchase Price within seven (7) days of executing this Agreement.

2.1.2 30% of the Purchase Price shall be payable upon arrival of the goods to the site.

2.1.3 10% of the Purchase Price shall be payable while the works are in progress and before the Work top installation.

2.1.4 The remaining balance of 10% of the Purchase Price shall be payable within 30 days of completion.

3. COMPLETION TIME

3.1 The Contractor shall supply, deliver and install various appliances from the date of arrival of the goods at the Client’s residence and shall fully complete the scope of work within a maximum period of 30 days.

4. RISK

4.1 Notwithstanding the ownership of the goods, the risk in the goods shall pass from the Client upon delivery to the Client’s residence.

4.2 The Contractor is fully responsible for any damages incurred due to importing of the items to the site or delivery address or whilst fitting. This information would be recorded and item-recorded as a replacement. The Contractor does not take responsibility for the damages once items are installed in the Client’s residence.

5. DELIVERY

5.1 No responsibility whatsoever is accepted by the Contractor for any delay in delivery or installation unless the Contractor specifically undertakes in writing to guarantee delivery by a specific date under a penalty. Standard delivery time (from time of production) to arrival to

the site is 4-5 months. Fitting to install these items (goods arrive to Client site) is approximately 1 month. The Contractor does not take responsibility for the delivery time if delay is occurred due to shipping, SGS or inspection, clearing and transport from Mombasa to Nairobi.

6. SAMPLE AND DESCRIPTION

- 6.1 The samples given by the Contractor on the goods supplied, delivered or installed shall correspond with any sample, example or model and the provision on any description or illustration to the Client, is to provide him with a specification of the goods to be supplied, delivered or be installed by the Contractor. The Contractor gives 99% guarantee on the final finish chosen from the sample swatches at the time of order. The order confirmation records exact finish of doors samples chosen. The Contractor takes responsibility if door sample chosen in Contract does not match actual physical items delivered to the site. This clause shall be interpreted in line with the provisions of the Sales of Goods Act (CAP 31) in respect to the sale by sample and description as provided for thereto.

7. TERMINATION

- 7.1 In the event that there has been breach of any material representation, warranty, or covenant contained in this Agreement, Either party may terminate this Agreement with immediate effect by giving written notice to the other party

8. ASSIGNMENT

- 8.1 Save as otherwise provided for herein, this Agreement or any rights or benefits hereunder shall not be assignable, transferable or divisible in whole or in part by any of the parties without the prior written consent of all the other parties.

9. NOTICES

- 9.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and shall be delivered to the relevant party's address as set out hereinabove.

10. GOVERNING LAW AND JURISDICTION

- 10.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.
- 10.2 Any dispute, controversy or claim arising out of or relating to this Agreement or a termination hereof (including without prejudice to the generality of the foregoing, whether in its interpretation, application, implementation, existence, validity or termination) shall be resolved by way of consultation held in good faith between the parties. Such consultation shall begin immediately after one party has delivered to the others written request for such consultation. If within fifteen (15) Business Days following the date on which such notice is given the dispute cannot be resolved, the dispute, controversy or claim shall be submitted to mediation.
- 10.3 Should any dispute arise between any of the parties concerning this Agreement or a termination hereof (including, without prejudice to the generality of the foregoing, whether in its interpretation, application or implementation) and the consultation and mediation process referred to in clause 10.2 shall have not resolved such dispute, the dispute shall upon application by any party, be referred for arbitration to a single arbitrator appointed by agreement between the parties and in the absence of an agreement of the parties within fourteen (14) days of the notification of a dispute, upon the application of any party, by an arbitrator appointed by the Chairperson for the time being of the Kenya Branch of the Chartered Institute of Arbitrators. The provisions of the Arbitration Act, 1995 (as amended) shall apply to such arbitration proceedings. The arbitration proceedings shall be held in Nairobi and the language of arbitration shall be English. Notwithstanding the foregoing, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.
- 10.4 The determination of the arbitrators shall be final and binding upon the parties and, so far as the law permits, not subject to appeal.
- 10.5 Notwithstanding the foregoing, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from a court of competent jurisdiction pending the final award.

11. GENERAL

- 11.1 No failure to exercise and no delay in exercising on the part of either party of any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right,

power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

- 11.2 If either party shall waive any breach, default or omission hereunder, no such waiver shall apply to, or operate as, a waiver of similar breaches, defaults or omissions or be deemed a waiver of any such breach, default or omission hereunder.
- 11.3 The rights and remedies of each of the parties in connection herewith are cumulative and are not exclusive of any rights or remedies provided by law.
- 11.4 This Agreement contains the entire agreement and understanding between the parties and supersedes all prior discussions and agreements concerning the subject matter hereof.
- 11.5 No amendment, change or addition hereto shall be effective or binding on any party unless in writing and executed by all the parties.
- 11.6 If any one or more provisions contained in this Agreement become invalid, illegal or unenforceable, the other provisions herein contained shall remain in full force and effect and the parties shall substitute and negotiate in good faith, if necessary, new provisions under reasonable terms and conditions and in compliance with the intentions of the parties as contained herein.
- 11.7 This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Agreement by signing any such counterpart and each counterpart shall be as valid and effectual as if executed as an original. The date of this Agreement shall be the date on which the last party to sign the Agreement signs it.

IN WITNESS WHEREOF this Agreement has been duly executed by or on behalf of the parties as of the day and year first above written.

SEALED with the Common Seal of]

KITCHEN APPLIANCES FOR MAIN KITCHEN, UTILITY KITCHEN & LAUNDRY AREA				
MAIN KITCHEN				
Qty	Item	Description	Brand	Amount (Kshs)
	Cabinets	Carvier Range -8- Matt Titan White Lacquer	Miton	4,400,000.00
1				
1	Accessories	Caesarstone Worktop +Sink+Tap	Various	930,000.00
MAIN KITCHEN PRICE +VAT				5,330,000.00

UTILITY KITCHEN				
	Cabinets	Medea Range -5- Grigio Box Opaco	Miton	1,600,000.00
	Accessories	Caesarstone Worktop +Sink+Tap	Various	550,000.00
MAIN KITCHEN PRICE +VAT				2,150,000.00

LAUNDRY AREA				
	Cabinets	Pet Laster -2- Grigio Pietra Opaco	Miton	420,000.00
	Accessories	Caesarstone Worktop +Sink+Tap	Various	325,000.00
MAIN KITCHEN PRICE +VAT				745,000.00

TOTAL PROJECT COST - 3 X KITCHEN	8,225,000.00
VAT - 14%	1,151,500.00
TOTAL PROJECT COST-INC VAT-3 X KITCHEN	9,376,500.00