

AGREEMENT OF PURCHASE AND SALE

Between

CHRISTOPHER PETER VAN ZYL

and

AYESHA MAHOMED AYOB

(in their capacities as Joint Provisional Liquidators of)

**STEEL CUT SPIRITS (PTY) LTD
(IN LIQUIDATION)**

(hereinafter referred to as "THE COMPANY")

MASTER'S REFERENCE NO. C297/2020

(hereinafter referred to as the Seller)

and

REG. NO. _____

(hereinafter referred to as the Purchaser)

1. INTERPRETATION

- 1.1. In this document and in its annexures -
- 1.2. Clause headings shall not be used in its interpretation.
- 1.3. Unless the context clearly indicates a contrary intention.
 - 1.3.1. An expression which denotes -
 - 1.3.1.1 any gender includes the other genders.
 - 1.3.1.2 a natural person includes an artificial person and vice versa.
 - 1.3.1.3 a singular includes the plural and vice versa.
 - 1.3.2. Any word or expression not defined in this document shall -
 - 1.3.2.1. If defined in the Companies Act bear the meanings assigned thereto in the Companies Act.
 - 1.3.2.2. If defined in the Insolvency Act bear the meanings assigned thereto in the Insolvency Act.
 - 1.3.2.3. In the event that there is a conflict between the Companies Act and the Insolvency Act, the provisions of the Companies Act shall prevail.
- 1.4. Any reference to any legislation is to such legislation as at the signature date and as amended or re-enacted from time to time.
- 1.5. If any provision in a definition is a substantive provision conferring any right or imposing any obligation on any party, then, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in this agreement.
- 1.6. When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

DEFINITIONS

- 2.1 In this agreement, unless the context otherwise indicates, the following words and expressions shall have the meanings assigned to them and cognate words and expressions shall bear corresponding meanings -
 - 2.1.1 "the/this agreement" means the terms and conditions contained in this memorandum.
 - 2.1.2 "the company" means **STEEL CUT SPIRITS (PTY) LTD (IN LIQUIDATION)**.
 - 2.1.3 "the effective date" means the date on which this sale is accepted by the Sellers.
 - 2.1.4 "the included assets" shall mean
 - Stock in trade as per stock sheets
 - Fixed assets as per valuation
 - The trademarks for Sugarbird gin
 - Motor vehicle as per valuation
 - Recipes for Sugarbird gin
 - Liquor license together with the customs license
 - Facebook and Instagram passwords will be given to successful purchaser

2.1.5 "the premises" shall mean the premises at which the included assets are located being **UNIT E18 PRIME PARK, MOCKE ROAD, DIEP RIVER.**

2.1.6 "the purchase price" means the purchase price payable in respect of the included assets.

2.1.7 "the Purchaser" means _____.

2.1.8 "this sale" means the sale of the included assets recorded in this agreement.

2.1.10. "the seller" means Christopher Peter Van Zyl and Ayesha Mahomed Ayob in their capacities as joint provisional Liquidators of the company.

2.1.11. "the parties" means the Purchaser and Seller jointly.

2.1.12. "the signature date" means the date on which this agreement is last signed.

3 CONDITIONS PRECEDENT

3.1 This agreement is subject to the fulfillment of the following conditions precedent -

3.1.1 That notwithstanding confirmation of the sale ownership in and to the included assets per Annexure "A" will remain vested in the company until such time as the full purchase price plus VAT has been paid therefore as contemplated by paragraph 6.1.

3.1.2 The subject matter of the sale cannot and will not be removed from the premises until the full purchase price and VAT has been paid.

3.1.3 This sale is subject to the consent of the Master of the High Court, Cape Town and/or the High Court of South Africa (Western Cape Division, Cape Town) and/or creditors.

4. PURCHASE AND SALE

Subject to the fulfillment of the suspensive conditions recorded in clause 3 and the terms and conditions contained in this agreement, the Seller sells to the Purchaser who purchases the included assets with effect from the effective date.

5. PURCHASE PRICE

5.1. The purchase price payable by the Purchaser in respect of the included assets shall be the sum of R_____

(_____)

exclusive of 15% value added tax.

6. PAYMENT OF THE PURCHASE PRICE

6.1. The Purchaser shall pay to the Seller's representative (Michael James Organisation) the purchase price plus 15% value added tax by cash, electronic transfer or by bank guaranteed cheque within 3 (three) days from date of acceptance of this agreement by the Liquidator.

6.2. All amounts referred to in Clause 5 are exclusive of VAT.

7. DELIVERY AND ASSIGNMENT

7.1. The included assets shall be given to and accepted by the Purchaser upon payment of the purchase price as referred to in Clause 6 above at the premises.

8. RISK AND OWNERSHIP

- 8.1. Ownership in the included assets shall pass to the Purchaser only upon payment of the purchase price as provided for in Clause 6 above.
- 8.2. All risk and benefit in the subject matter shall be deemed to have passed to the Purchaser with effect from the effective date.

9. VOETSTOOTS AND EXCLUSION OF WARRANTIES

- 9.1. Subject to 9.2. below the included assets are sold by the Sellers *voetstoots* and in particular, but without limiting the generality of the foregoing -
 - 9.1.1. The Purchaser acknowledges that the Sellers have made no warranties, undertakings or representations of any nature whatsoever, express or implied, relating to the quality, conditions, quantity or whereabouts of the included assets and the Purchaser accepts the included assets and takes them with all faults and or shortages and accepts all risk of whatsoever nature arising herefrom.
 - 9.1.2. Should any of the included assets in this sale not be owned by the company as at the effective date or not be delivered, those articles shall be deemed to be excluded from the subject matter of the sale and the purchase price shall be reduced accordingly.
- 9.2. Whilst the condition of the assets is not warranted by the Seller to the Purchaser the assets sold will be free of any encumbrances.

10. DEFAULT

- 10.1. If any party commits a breach of this agreement and/or fails to comply with any of the provisions hereof ("the defaulting party"), then the remaining party ("the aggrieved party") shall be entitled to give the defaulting party 7 (seven) days notice in writing to remedy such breach and or failure, and if the defaulting party fails to comply with such notice, then the aggrieved party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the aggrieved party may have in law, including the right to claim damages -
 - 10.1.2. To cancel this agreement; or
 - 10.1.3. To claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.

11. NOTICES AND DOMICILIA

- 11.1 The parties hereto choose domicilia citandi et executandi for all purposes under this agreement at the following addresses -
 - 11.1.1 The Seller c/o **Mazars House, Rialto Road, Grand Moorings Precinct, Century City, 7441, Cape Town.**
 - 11.1.2 The Purchaser at:- _____.
- Any notices to any party shall be addressed to it's domicilium aforesaid and either sent by courier, delivered by hand or communicated by telex or telefax. In the case of any notice:
- 11.1.3 any notice sent by courier shall be deemed to have been received unless the contrary is proved, on the 5th (fifth) business day after the posting.
 - 11.1.4 any notice delivered by hand, it shall be deemed to have been received unless the contrary is proved, on the date of delivery, provided such date is a business day or otherwise on the next following business day.

- 11.1.5 any communication by telex, telefax or email it shall be deemed to have been received unless the contrary is proved 1 (one) hour after the hour of transmission.

12. GENERAL

- 12.1 No alternation, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all the parties to this Agreement or their duly authorised representatives.
- 12.2 This document contains the entire agreement between the parties relating to these presents and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 12.3 No indulgence, leniency, or extension of time which any party may grant or show to any other party, shall in any way prejudice such party or preclude such party from exercising any of its rights in the future.

13. VARIATION

This agreement constitutes the whole and only agreement between the Seller and the Purchaser and no alteration or variation of this agreement shall be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorised agents.

Any representations, warranties or undertakings made or given by the Seller or its agents other than those contained herein shall be of no force or effect whatsoever.

14. WAVER

Notwithstanding any express or implied provisions of this agreement to the contrary, any latitude or extension of time which may be allowed by the Seller in respect of any matter or thing that the Purchaser is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of the Seller's rights at any time, and without notice, to require strict and punctual compliance with each and every provision or term hereof.

15. SPECIAL CONDITIONS

- 15.1 This agreement is subject to the approval of the sale by the Master of the High Court in terms of Section 18(3) and/or Section 80(bis) of the Insolvency Act 24 of 1936. If such approval is not applicable, then subject to the Acceptance of the Agreement by the **LIQUIDATOR** upon the adoption of the Resolutions authorising him to do so at the Second Meeting of Creditors.
- 15.2 Should the Seller not accept the sale, this document is deemed *pro non scripto*. If the sale is accepted by the Master of the High Court, the **Liquidator** reserves the right to decline the offer, and will be under no obligation to accept such offer. No reason for this decision needs to be supplied, and the **Liquidator** further reserves the right to accept any other offer that may be received in respect of these assets.

PURCHASER:

MR/MRS/MS _____

(hereinafter referred to as the "PURCHASER")

OR

PURCHASER:

COMPANY/CLOSE CORPORATION/TRUST/OTHER: _____

(hereinafter referred to as the "PURCHASER")

ENTITY REGISTRATION NO: _____

REGISTERED ADDRESS: _____

TELEPHONE DETAILS: Business: _____

Fax: _____

Email: _____

Cell: _____

as chosen *domicilium citandi et executandi*

herein represented by _____

Identity Number: _____

who hereby warrants that he/she is duly authorised by resolution of the members/directors of the entity to act on its behalf, and who hereby binds himself as surety and co-principal debtor in solidum for and on behalf of the Purchaser to and in favour of the Seller under the terms and conditions contained in this agreement, and who further binds himself to due performance hereunder and for all amounts that may be due under this agreement, including damages, arising from whatever cause, and waive the benefits of excussion and division.

DATED at **on this** **day of** _____ **2020**

AS WITNESSES:

1. _____
FOR:
(who warrants that he is duly authorized)

2. _____

DATED at **on this** **day of** _____ **2020**

AS WITNESSES:

1. _____
C P VAN ZYL

2. _____
A M AYOB