



- AGREEMENT - SUBORDINATED LOAN

THE UNDERSIGNED:

The private limited liability companyB.V./S.A./..., having its registered office at....., represented by its director....., hereinafter referred to as the “**Lender**”;

The private limited liability company B.V./BVBA/..., having its registered office at....., represented by its director....., hereinafter referred to as the “**Borrower**”.

The Undersigned are hereinafter also jointly referred to as “**Parties**”.

WHEREAS:

- Lender is one of the shareholder’s/clients of Borrower;
Or:
- Lender has sold to Borrower by a contract of... (hereinafter referred to as: "**the Contract of Sale**") a part of its activities - including assets belonging to it - on payment of a purchase price to the amount of € (..... euro).
Or:
- Lender will be one of the Borrower’s financiers and shall therefore provide a subordinated loan;
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- Subject to the terms and conditions of this agreement the Lender will make available to the Borrower an amount of € (in words: euro) and the Borrower agrees to borrow said amount from the Lender;
- Parties wish to establish and put down in this agreement their mutual obligations and responsibilities with respect to the aforesaid subordinated loan.

HAVE AGREED AS FOLLOWS:

Article 1 **Principal sum**

Subject to the terms and conditions of this agreement, Lender will lend to the Borrower and the Borrower will borrow from the Lender the principal sum of € , hereinafter referred to as the “**Loan**”. The Loan will be provided on.....201... by transferring the amount to a bank account designated by Borrower.

Article 2 **Interest**

On the Loan or the remainder thereof Borrower shall owe to Lender an interest of% (..percent) on an annual basis, to be paid every quarter in arrear, for the first time on 201.. over the period then passed. The above-mentioned interest rate shall apply for the entire period to maturity of the Loan.



Article 3 Repayment

1. The repayment of the Loan shall be made in ... (..) equal instalments, to be paid every quarter in arrear, where the first instalment is to be paid on ... 201... . The repayment per instalment shall amount to € (..... euro).
2. Borrower is at all times authorised without owing any penalty in respect thereof, to full or partial early repayment of the Loan or the remainder thereof, provided that the bank and.....referred to in article 6.1 below give their consent.

Article 4 Payment

Payment of interest and repayment shall be made in Dutch currency, or upon request of Lender in Euro currency, by deposit into or transfer to the bankaccount to be stated by Lender, without settlement or deferment on any grounds whatsoever.

Article 5 Payability

The Loan due by Borrower or the remainder thereof as well as the interest due in respect thereof shall be immediately due and payable, without notice of termination, notice of default, or observance of any other formality in the following cases:

- (a) overdue or incomplete payment of the interest due or repayment on the maturity date in question, provided that the arrears amount to at least ten per cent (10%) of the principal sum;
- (b) bankruptcy of or a (provisional) grant of suspension of payments to Borrower, or otherwise loss of the free disposal by Borrower of a (substantial) part of its capital, including attachment in respect of substantial debts that remains in force for more than two months;
- (c) Borrower entering into a merger or implementing a division;
- (d) discontinuation of the operations carried out by Borrower or transfer of the company managed by Borrower or a substantial part thereof to a third party;
- (e) dissolution of Borrower.

Article 6 Subordination

1. The claims from Lender on Borrower by virtue of this contract shall be subordinated to all claims, that thebank (hereinafter referred to as: "**the Bank**") and.....have or shall obtain on Borrower on any grounds whatsoever.
2. Without permission from the Bank andLender shall not be entitled to require full or partial payment of what Borrower owes to Lender under this contract nor to accept full or partial payment thereof, unless it has been established that Borrower is capable of paying the claims of the Bank andreferred to in article 6.1.
3. Nor is Lender entitled to transfer the claims on Borrower by virtue of this contract completely or in part to a third party or to perform any (legal) act in respect of those claims, which (could) limit the Bank's and..... rights or means of recovery.
4. Creditor is not entitled to require from Debtor any security for the fulfilment of his



obligations by virtue of this contract or to exercise for that purpose security rights granted or established by Debtor, if and insofar as that restricts/can restrict the Bank's rights or means of recovery.

Optional :

Article 7 Security

1 Borrower is obliged at Lender's first request, in a shape and form so required by it, to provide security or to supplement the security provided, insofar as Borrower is authorised thereto or no obligations from Borrower towards the Bank and..... stand in the way thereof.

or:

1. As security for the payment of what Lender owes or shall owe by virtue of this contract, the following securities will be provided by Borrower to Lender by private deed(s):
 - (a) a silent pledge(stil pandrecht) by second charge on the current and future operating assets of the company managed by Borrower;
 - (b) a silent pledge(stil pandrecht) by second charge on the current and future stocks of the company managed by Borrower;
 - (c) a silent pledge(stil pandrecht) by second charge on the current and future claims that Borrower has or shall have as part of the company managed by her.
2. Borrower is not authorised without prior written consent from Lender to encumber her current and/or future goods with a mortgage right, pledge or any other security right, nor to stand surety, issue guarantees or warrant performance by third parties or assume joint and several liability for third parties, except and insofar as Borrower is thereto obliged towards the Bank and.....
3. In deviation from the provisions in the articles 6 and ... Lender is not authorised to require from Borrower any security for the fulfilment of his obligations by virtue of this contract or to exercise thereto security rights granted or vested by Borrower, if and insofar as that restricts or can restrict the Bank's and..... rights or means of recovery .

Article 8 Dividend

Borrower shall undertake not to pay out any (interim)dividend for the duration of this contract, if Borrower's (consolidated) equity capital (because of that) does not at least amount to 35% of the total assets, to be determined on each occasion on the basis of Borrower's last adopted balance sheet.

Article 9 Investments

Without permission from Lender Borrower is not authorised to perform any legal acts the interest or value of which exceeds for an amount of € (..... euro).

Article 10 Information and audit

1. For the duration of this contract Borrower shall undertake to provide Lender in time with the same information - including liquidity forecasts, quarterly figures and annual accounts - as which she is obliged to towards the Bank and.....



2. For the duration of this contract Lender is authorised to have the annual accounts of Borrower audited by an auditor to be designated by Lender. The costs of that audit shall be borne by Borrower, in case it fails in the fulfilment of its obligations arising from this contract.

Article 11 Proof

Borrower is subject to the books and statements of Lender with regard to (the amount of) what Borrower owes to Lender under the terms of this contract, subject to the right to provide proof to the contrary.

Article 12 Costs

The costs in connection with the formation of this contract as well as all costs this contract might give cause to, including the charges related to judicial and extrajudicial collection of the amount due, shall be chargeable to Borrower.

Article 13 Disputes/ Applicable Law

1. This agreement and any dispute arising therefrom shall be governed and enforced in accordance with the laws of the Netherlands.
2. All disputes between Parties arising under or in respect of this agreement, shall be dealt with in accordance with the Minitrial Rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut). The Minitrial Board shall consist of one member.
3. In the event these disputes are not settled in accordance with those Rules, they shall at the request of either Party be referred to and finally settled by arbitration under The Arbitration Rules of The Netherlands Arbitration Institute. The arbitral tribunal shall be composed of one/three arbitrators. The Minitrial and or arbitration proceedings shall be conducted in English language. The place of the minitrial and or arbitration proceedings shall be Amsterdam. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands as provided in the Dutch Code of Civil Procedure is excluded.

Or:

Article 13 Applicable law and jurisdiction

1. This Agreement is governed by Dutch law.
2. Any disputes arising in connection with this Agreement or further agreements resulting therefrom, shall exclusively be brought before the District Court in Rotterdam.

Thus drawn up in duplicate and signed in on 201...

Lender

Borrower

Sir/mrs

Sir/mrs

