

03-26-2002



To the Honorable Commissioner of Patent

attached original documents or copy thereof.

102031398

3-11-02

1. Name of Conveying party(ies):

Crestbury Ltd.

- Individual(s)
- General Partnership
- Corporation- United Kingdom
- Other- United Kingdom
- Association
- Limited Partnership

always put country here then whatever entity it is

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):

Name: Scholle Europe, Ltd.

Street Address: Enterprise Way

City: Fakenham, Norfolk Country: England ZIP: NR21 8SN

- Individual(s) citizenship
- Association

General Partnership

Limited Partnership

Corporation United Kingdom

Other put country here

If assignee is not domiciled in the United States, a domestic representative is attached: Yes No

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: February 1, 2000

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

~~1,148,224~~

1,158,963

1,437,931

2,169,062

Additional numbers attached? Yes No

OFFICE OF PUBLIC RECORDS
2002 MAR 11 AM 11:50
FINANCE SECTION

5. Name and address of party to whom correspondence should be mailed:

Name: Shenier & O'Connor

Internal Address:

Street Address: 1077 Northern Boulevard

City: Roslyn State: NY ZIP: 11576

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41): \$ 115.00

any extra applications or regs. \$25.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

03/25/2002 GTON11 00000096 1148224

01 FC:481

40.00/OP

02 FC:482

75.00/OP

DO NOT USE THIS SPACE

9. Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Richard S. Shenier
Name of Person Signing

Signature

February 28, 2002
Date

Total number of pages comprising cover sheet: 16

DATED

1st February

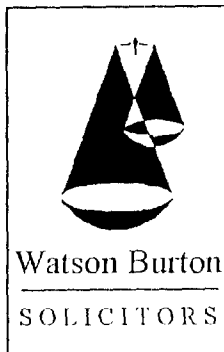
2000

We certify that this is a true copy of the original document

CRESTBURY LIMITED
and
SCHOLLE EUROPE LIMITED

AGREEMENT

**In relation to the Sale and Purchase of
the assets and undertaking of
Crestbury Ltd**



20 Collingwood Street, Newcastle upon Tyne NE99 1YQ
Tel: 0191 244 4444 Fax: 0191 244 4500 email: WB@dial.pipex.com DX 61009 Newcastle

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THIS AGREEMENT is made on the 1st day of February 2000

BETWEEN: (1) **CRESTBURY LIMITED** (registered number 1083456) whose registered office is at Enterprise Way, Fakenham, Norfolk, NR21 8SN (the "Seller") and (2) **SCHOLLE EUROPE LIMITED** (registered number 3467709) whose registered office is at 20 Collingwood Street Newcastle upon Tyne NE99 1YQ ("the Purchaser")

WHEREAS:

- (A) The Seller and the Purchaser are both private companies limited by shares incorporated under the Companies Acts 1985-1989.
- (B) The Seller has agreed with the Purchaser for the transfer of the Business of the Seller and its goodwill and undertaking and of the assets used in connection with it to the Purchaser with a view to carrying on the business as a going concern in succession to the Seller on the terms and subject to the conditions of this agreement.
- (C) The whole of the issued capital of the Seller is in the beneficial ownership of the Purchaser and the Ultimate parent company of both the Purchaser and the Seller is Scholle Corporation a company incorporated under the laws of the United States of America.

IT IS AGREED as follows:-

1. INTERPRETATION

- (1) In this agreement:

"**Agreed Form**" means, in relation to any document, the form of that document which has been initialled for the purpose of identification by or on behalf of the Seller and the Purchaser;

"**Assets**" means the assets of the Business to be sold by the Seller to the Purchaser under this agreement and described in clause 2(1);

"**Assumed Liabilities** means, any and all liabilities of the Seller incurred in the conduct of the Business to the extent that such liabilities appear or have been provided for in the Completion Accounts of the Seller (as defined in the Share Sale Agreement) but for the avoidance of doubt excluding the Retained Liabilities;

“Business” means the manufacture and distribution of products from PVC materials and the production of flexible bags and storage tanks as carried on by the Seller prior to the date hereof;

“Business Day” means a day (other than a Saturday or Sunday) on which clearing banks are open for business

“Completion” means completion of the sale and purchase of the Business in accordance with clause 11;

“Consideration” means the consideration for the sale and purchase of the Business as provided in clause 4;

“Contracts” means all contracts, agencies, licences, distributorships, and engagements entered into or orders made before the Effective Time by or on behalf of the Seller with third parties in connection with the Business which remain (in whole or in part) to be performed at the Effective Time including (but without limitation) all orders and contracts which were made received or entered into in the course of the Business for the manufacture, sale or purchase of goods or provision or supply of services or for the hire purchase, credit sale, leasing or license of goods or services but excluding contracts with employees;

“Debts” means the debts or other sums invoiced by or otherwise payable to the Seller and including:-

(i) Trade Indebtedness debts accrued or accruing due to the Purchaser at the Effective date;
and

(ii) any debts or other sums which become due or payable to the Seller in connection with the Business after the Effective Time including all debtor items together with the benefit of all retention of title rights, letter of credit, guarantees and all other securities (if any) arising from or otherwise connected with the Business which belong to the Seller; and

(iii) the benefit of any insurance effected by or on behalf of the Seller in relation to any of the Assets, the Employees, the Property, or otherwise relating to the Business;

“Effective Time” means immediately before the opening for business on 1st February 2000;

“Employees” means those individuals employed by the Seller referred to in the Share Sale Agreement;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981;

“Equipment” means those items of the plant, machinery, spare parts, tools, equipment, chattels, motor vehicles, furniture, fixtures and fittings (to the extent they are not included in the Property) owned by the Seller;

“General Assets” means all intangible assets and choses in action of the Seller not otherwise specifically identified in this Agreement relating to the Business including (without limitation) all of the Seller's rights against manufacturers and suppliers (including all rights in connection with such manufacturers' and suppliers' warranties) in connection with the Business;

“Goodwill” means the goodwill of the Seller in relation to and in connection with the Business together with the exclusive right for the Purchaser to represent itself as carrying on the Business in succession to the Seller and to the extent that the Seller has the right, the right to use the Names;

“Industrial Property Rights” means all industrial and intellectual property rights licensed to or owned by the Seller or used in or for the purposes of the Business and including, without limitation:-

- (a) all patents trade marks and registered design rights in any part of the world;
- (b) all unregistered design rights and all copyright including in particular the copyright in all drawings plans specifications designs and computer software;
- (c) all know-how and confidential information.

“Information” means all information in whatever form owned or used by the Seller relating to the Business including (but without limitation) industrial and commercial information and techniques, computer programmes, marketing information, customer names and lists accounting and other records, data, correspondence, taxation records, price lists, catalogues, sales literature and publicity material provided that to the extent the Seller does not own such information it will include such rights as it may have to such information;

“Landlord” means, in relation to the Property, the person entitled to the reversion immediately expectant on the determination of the term granted by the Leases;

“Leases” means, in relation to the Property, the leases under which it is held and includes every deed varying the leases and every licence granted under the leases;

“Lease Obligations” means, in relation to the Property, the covenants by the tenant and the conditions contained in the Leases;

“Property” means the freehold and leasehold properties described in the Share Sale Agreement;

“Retained Liabilities” means any and all liabilities of the Seller not expressly assumed by the Purchaser pursuant to this Agreement;

“Share Sale Agreement” means an agreement of even date relating to the shares of the Seller and made between JRN Wise, J Wise and J E Mann of the one part and the Purchaser of the other part;

“Stocks” means the stocks of raw materials, work-in-progress and finished goods at the Effective Time held by the Seller for the purposes of the Business;

“Trade Indebtedness” means indebtedness arising from the supply of goods and services in the ordinary course of business;

“VAT” means value added tax;

- (2) Words denoting a person shall include a body corporate, and vice versa.
- (3) Any reference, express or implied, to an enactment includes references to:
 - (a) that enactment as amended, extended or applied by or under any other enactment at the date of this agreement; and
 - (b) any subordinate legislation made at the date of this agreement under that enactment, as amended, extended or applied as described in paragraph (a) above.
- (4) Subclauses (1) to (3) above apply unless the contrary intention appears.
- (5) The headings in this agreement do not affect its interpretation.
- (6) The Schedules and Appendices form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.

2. SALE OF ASSETS

- (1) The Seller shall sell and the Purchaser shall purchase the following assets with a view to the Purchaser carrying on as a going concern in succession to the Seller:
 - (a) the Property;
 - (b) the Equipment;
 - (c) the Stocks;
 - (d) the benefit (subject to the burden) of the Contracts;
 - (e) the Debts;
 - (f) the Information;
 - (g) the Goodwill;
 - (h) the Industrial Property Rights; and
 - (i) the General Assets
- (2) The Seller shall below sell or procure the sale of the Assets with full title guarantee free of all liens, charges and encumbrances and other rights exercisable by third parties and property and risk in those Assets shall vest in the Purchaser on Completion.
- (3) As part of the consideration of the sale of the Assets the Purchaser shall pay, satisfy and discharge the Assumed Liabilities in accordance with normal commercial practice and assume liability for the Assumed Liabilities.
- (4) The Property shall be sold on and subject to the provisions of clause 10.

3. EXCLUDED ASSETS

- (1) There shall be expressly excluded and excepted from this sale and purchase and nothing in this agreement shall operate to transfer the statutory books and records of the Seller.

4. CONSIDERATION

- (1) The consideration payable for the sale and purchase shall be the value appearing for the "Net Assets" in the "Completion Accounts" as defined in the Share Sale Agreement.
- (2) The aggregate consideration payable by the Purchaser for the Assets shall be in accordance with the Completion Accounts.
- (3) The Consideration shall be left outstanding on an interest free loan account and due to the Seller on demand provided and on condition that such demand is made within two years of the

date of this Agreement. In the event that no written demand is made by the Seller within the said two year period, the Purchaser's liability to pay the consideration shall lapse.

5. DEBTS

(1) In relation to the Debts:-

- (a) The Seller undertakes to provide all necessary assistance to the Purchaser to enable the Purchaser to collect the Debts. The Seller will at the request of the Purchaser enter into a formal assignment to the Purchaser of all or any of the Debts (in such forms as the Purchaser shall reasonably require) and the Purchaser is hereby authorised to bring proceedings for recovery of all or any of the Debts in the name of the Seller.
- (b) If at any time the Seller shall receive any payment in respect of any of the Debts which have been assigned to the Purchaser the Seller shall forthwith account to the Purchaser for the same and pending such shall hold the same as bare trustee for the Purchaser.

6. CREDITORS AND LIABILITIES

- (1) The Seller shall retain liability for the Retained Liabilities and undertakes to indemnify the Purchaser from and against all Retained Liabilities.
- (2) The Purchaser shall adopt responsibility for the Assumed Liabilities and undertakes to indemnify the Seller from and against all Assumed Liabilities.

(3) 7. CONTRACTS

(1) Subject to subclause (2) the Purchaser shall, with effect from the Effective Time:-

- (a) assume the obligations of and become entitled to the benefits and burdens of the Seller under the Contracts; and
- (b) accept assignments from the Seller of or join with the Seller in procuring a novation of the Contracts.

(2) From the Effective Time the Seller shall so far as may be possible (provided that nothing contained in this Agreement shall or shall be deemed to operate as such an assignment as would or might give rise to any termination or forfeiture of any benefit right or interest of any person in any of the contracts or arrangements in question) assign to the Purchaser and the Purchaser shall accept an assignment of the benefit and burden of the Contracts.

- (3) Insofar as the benefit or burden of the Contracts cannot effectively be transferred to the Purchaser without the agreement of a third party or a novation:
- (a) the Seller with the co-operation of the Purchaser shall use its reasonable endeavours to procure such agreement or the assignment or novation of the same at the request of the Purchaser ;
 - (b) unless and until any such Contracts shall be assigned or novated the Purchaser shall perform all the obligations of the Seller and discharge all liabilities thereunder (whether as the Seller's sub-contractor or in any way or capacity reasonably open to it) and the benefits of such Contracts shall be passed to the Purchaser by the Seller.
- (4) The Seller hereby declares itself a bare trustee of the Purchaser with effect from Completion in respect of such of the Contracts as are subject to subclause (3) until such time as they shall (with any necessary consents from third parties) have been finally assigned to the Purchaser or a novation in favour of the Purchaser in respect thereof has been effected.

8. COMPLETION

- (1) Completion shall take place immediately following execution of this agreement or at such time and place as shall be specified in advance by the Seller.
- (2) On Completion or as soon as reasonably practicable thereafter:
- a) The Seller shall deliver and/or let the Purchaser into possession of those Assets capable of delivery;
 - b) The Seller shall cause to be delivered or (if so requested by the Purchaser) made available to the Purchaser:-
 - (i) assignments of Industrial Property Rights and Leases;
 - (ii) the Information and all books of account payroll records income records stock and other records information relating to customers and suppliers and Employees relevant computer programmes and other books and documents which relate to the Business (other than minute books relating to directors' and shareholders' meetings and statutory books);
 - (iii) all designs and drawings plans instructional and promotional material sales publications advertising materials terms and conditions of sale and other

technical material and sales matter which relate to the Business together with any plates blocks negatives and similar material relating to them;

- (iv) all records of National Insurance and PAYE relating to all the Employees
- (v) the value added tax records referred to in clause 14;
- (vi) originals of the Contracts which are in written form to the extent within the Seller's possession;
- (vii) transfer and/or assignments in respect of the Property as shall be required (subject to the provisions of clause 10);
- (viii) Releases or certificates of non – crystallisation in a form acceptable to the Purchaser in respect of all charges on or affecting the Assets

(3) The Seller will ensure that all fastenings attaching any of the Equipment to the Property will be unfastened so that they are in a state of severance at the time title to them passes to the Purchaser.

(4) The Seller and the Purchaser shall each provide the other on written request from either with reasonable access (including the right to take copies) at the cost of the requesting party during usual business hours to the books, accounts and records of the Business to be held by each of them after Completion and in the case of the Seller which relate to the period up to Completion.

9. EMPLOYEES

(1) The Seller and the Purchaser acknowledge and agree that under the Employment Regulations the contracts of employment between the Seller and the Employees and the Collective Agreement will have effect after Completion as if originally made between the Purchaser and the Employees or between the Purchaser and the relevant trade union (as the case may be) save as provided in Regulation 7 of the Employment Regulations namely in so far as such contracts relate to any occupational pension scheme.

(2) The Seller shall discharge all its obligations in respect of the Employees up to Completion including without limitation payment of all salaries, wages, bonuses, overtime, holiday pay, PAYE and national insurance contributions and any accrued holiday entitlement other than in

respect of breaches of Regulations 10 & 11 of the Employment Regulations save as provided for by subclause (11).

- (3) The Purchaser shall on and from Completion discharge all the obligations of the employer in relation to the Employees (including without limitation payment of all salaries, wages, bonuses, overtime, holiday pay, PAYE and national insurance contributions) or are imposed on employees generally by statute or common law.

10. PROPERTY

10.1 The sale of the Leases is for the unexpired residue for each of the terms of the Leases subject to the Lease Obligations.

10.2 The Seller shall use all reasonable endeavours to obtain any landlord's licences required for the transfer of the Leases and the Purchaser shall co-operate in obtaining the licences.

10.3 The following provisions of this paragraph shall apply with respect to the period from the Effective Date to the date of the assignment in relation to each Lease where the reversioners licence is required:-

10.3.3 the Purchaser may enter the relevant property and occupy them as licensee of the Seller and the Seller will hold them upon trust for the Purchaser according to the terms of the Agreement;

10.3.2 notwithstanding the capacity of the Purchaser as licensee of the Seller with respect to the occupation of the relevant Property the Purchaser shall carry on the Business in them for its own account;

10.3.3 the purchaser shall be responsible for and if necessary reimburse the Seller against all rates, water rates, insurance premiums and other outgoings of an annual or recurring nature and for all other services consumed on the relevant Property;

10.3.4 the Purchaser shall pay to the Seller an amount equal to the rent reserved by the Leases as and when the rents fall due from the Seller and shall act or conduct itself in such a manner that the covenants (other than for the payment of rent) and against alienation without prior consent) on the part of the tenant contained in the relevant lease are fully observed and perform and shall indemnify the Seller against the breach, non-observance or non-performance of these covenants;

10.3.5 the assignment of each Lease shall be completed within 7 days after the reversioner's licence has been obtained.

11. VALUE ADDED TAX

- (1) The Seller and the Purchaser intend that article 5 of the Value Added Tax (Special Provisions) Order 1995 ("article 5") shall apply to the sale of the Assets under this agreement, so that the sale is treated as neither a supply of goods nor a supply of services
- (2) If nevertheless any VAT is payable on any supply by the Seller under this agreement, the Purchaser shall pay to it the amount of that VAT in addition to the price (and the interest and penalties imposed by H.M. Customs & Excise ("Customs") arising out of the treatment by the Seller and the Purchaser of the sale as described in (1) above shall be borne equally by the Seller and the Purchaser) subject to the issue to the Purchaser by the Seller of a proper VAT invoice in respect of that VAT.
- (3) Without limiting subclause (2), VAT shall be treated as payable if Customs rule that it is payable. If they have done so before Completion, the VAT shall be payable by the Purchaser on Completion. If they do so on or after Completion, the VAT shall be payable by the Purchaser within five days after the Seller gives the Purchaser written notice of the ruling.
- (4) With a view to procuring that article 5 applies, the Purchaser:
 - (a) shall ensure that the Purchaser is registered for VAT not later than Completion;
 - (b) agrees that the Assets are to be used by the Purchaser in carrying on the same kind of business as that carried on by the Seller.
- (5) The Seller and the Purchaser intend that s. 49 of the Value Added Tax Act 1994 shall apply to the sale of the Assets under this agreement and accordingly:
 - (a) the Seller shall on Completion deliver to the Purchaser all records referred to in s. 49;
 - (b) the Seller shall not make any request to Customs for those records to be preserved by the Seller rather than the Purchaser;
 - (c) the Purchaser shall during such period as it retains the records, permit the Seller reasonable access to them to inspect or make copies of them at its own cost;

12. NOTICES

- (1) Any notice or other document to be served under this agreement may be delivered or sent by post to the party to be served at his address appearing in this agreement or at such other address as he may have notified to the other party in accordance with this clause. Any notice or other document sent by post shall be sent by prepaid first class recorded delivery post (if within the United Kingdom) or by prepaid airmail (if elsewhere).
- (2) Any notice or document shall be deemed to have been served:
 - (a) if delivered, at the time of delivery; or
 - (b) if posted, at 10.00 a.m. on the second business day after it was put into the post if sent within the United Kingdom, or at 10.00 a.m. (local time at the place of destination) on the fifth business day after it was put in the post if sent by airmail.
- (3) In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted (either by prepaid first class recorded delivery post or by prepaid airmail, as the case may be

13. GENERAL

- (1) Each of the obligations and undertakings set out in this agreement which is not fully performed at Completion will continue in force after Completion.
- (2) None of the rights or obligations under this agreement may be assigned or transferred without the prior written consent of all the parties.
- (3) This agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement and any party may enter into this agreement by executing a counterpart.
- (4) This agreement will be binding on each party's successors and assigns.

14. WHOLE AGREEMENT

- (1) This agreement and the documents referred to in it contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersede all previous agreements between the parties relating to these transactions.
- (2) In entering into this agreement no party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this agreement and the documents referred

to in it) made by or on behalf of any other party before the signature of this agreement and each of the parties waives all rights and remedies which, but for this subclause, might otherwise be available to him in respect of any such representation, warranty, collateral contract or other assurance; provided that nothing in this subclause shall limit or exclude any liability for fraud or negligence.

- (3) All expenses incurred by or on behalf of the parties including all fees of the agents, representatives, solicitors, accountants and actuaries employed by any of them in connection with the negotiation, preparation or execution of this Agreement and any documents arising as a result of this Agreement shall be borne by the Purchaser and the Seller shall not have any liability in respect of them.
- (4) Unless expressly indicated to the contrary, any conditions in the Agreement are imposed for the benefit of the Purchaser and may be waived wholly or in part by the Purchaser.

15. GOVERNING LAW

This agreement is governed by and shall be construed in accordance with English law.

IN WITNESS the parties have executed this Agreement on the day and date set out above.

SIGNED BY... *J.M. Moorhead*) *J.R. Mollins*

duly authorised on behalf of)

CRESTBURY LIMITED)

in the presence of:-)

[Signature]
Solicitor
Newcastle upon Tyne

SIGNED BY... *Martin D. Bell*) *Martin D. Bell*

duly authorised on behalf of)

SCHOLLE EUROPE LIMITED)

in the presence of:-)

[Signature]
Solicitor