

DRAFT

**SHARE PURCHASE AGREEMENT  
OF THE COMPANY  
“ŠIPAD EXPORT-IMPORT” D.D.  
SARAJEVO**

between

**Agency for Privatization in  
Federation of Bosnia and Herzegovina**

and

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**(The Buyer)**

Sarajevo, .....

## Agreement Parties

Agency for Privatization in the Federation of Bosnia and Herzegovina, with its seat in Sarajevo, Alipašina, 41 represented by a director Enes Ganić (hereafter referred to as the **Seller**)

and

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registered in the Register \_\_\_\_\_, represented by a legally empowered \_\_\_\_\_ (hereinafter referred to as the **Buyer**).

## Part1

### 1. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings ascribed to them ::

**1.1. "Party" or "Parties"** - shall mean the Buyer and the Seller, as "the contract party or the contract parties" as the context may require.

**1.2. "Company"** – the company as a subject of privatization.

**1.3. "Shares"** – the capital of the Company, owned by the Government of FBiH being transferred to the Buyer pursuant to the terms of this Agreement.

**1.4 "Closing"** – a cumulative fulfillment of the following conditions: a signing of the Agreement, payment of the purchase price, a submission of the guarantee as the obligation of the Buyer according to this Agreement, and a validity of Decision on subscribing of the executed privatization into the Court Register.

**1.5. "Purchase Price"** – a total amount which Buyer pays for the capital under Item 13 of this Part.

**1.6. "Investments"** – investments into the company by the Buyer not sourced out of the accounts of the Company which is the subject of privatization, which will be realized through equipment and technology, working capital, adaptation of the existing and new built objects and other obligations determined by the Share Purchase Agreement according with the Business Plan.

**1.7. "Investment Guarantee"** - a bank guarantee to be obtained by the Buyer by which the bank is obliged towards the Seller that in case the Buyer fails to fulfill obligations from this Agreement upon its request will pay the amount of the guarantee.

**1.8. "Employment Plan"** - shall mean the obligation of the Buyer to maintain the existing number of full time employees in the Company, to employ new workers according to regulations of this Agreement upon the Business Plan.

**1.9. "Financial Sources Statement"** – shall mean the Statement made and submitted according to tender Rules

**1.10. "Force Majeure"** shall mean each events that the parties hereunder could not foresee and prevent and which makes the fulfillment of the obligations hereunder impossible. Such events might be wars, international embargo, civil riots, acts of nature, fire, terrorist acts and similar events as provided by law.

**1.11. "Penalties"** - shall mean the penalty charges in case of failure or delay in fulfillment of the obligations to other Party.

## **2 THE SUBJECT, THE OBJECTIVE OF THE AGREEMENT PARTIES, DUE DILIGENCE AND CONTROL**

**2.1. The Objective.** The objective of this Agreement is the sale of the Company's shares in accordance with the Laws on Privatization according to obligations by the Buyer according to this Agreement to provide efficient business activities and the growth of the company.

**2.2. Intention of the Seller.** The Seller intends to privatize the Company transferring it to the Buyer according to regulations of this Agreement.

**2.3. Intention of the Buyer.** The Buyer intends to buy shares of the Company, to achieve ownership and making conditions for the Company success and employment.

**2.4. Due Diligence.** The Buyer has performed, i.e. has been provided the opportunity for its own due diligence of the Company, its legal status, property and business operations of the Company, other relevant documents, in order to get knowledge of the company.  
The Seller, hereby, states it has no knowledge of any impediments or latent risks that have not been mentioned in the stipulated documents

**2.5. Control of the performed liabilities** will be realized according to the Rules on control of fulfillment of obligations from the Share Purchase Agreement in the privatization process in FBiH ("Official Gazette of FBiH", No. 52/09 and 5/11).

## **3 THE SUBJECT OF SALE AND TRANSFER OF THE OWNERSHIP RIGHTS**

**3.1. Subject of Sale** The subject of sale is the state capital amounting 8.350.287,00 KM what is 66,5673% of the stock capital of the Company "Šipad Export-Import" d.d. Sarajevo.  
The state capital from the previous item is determined on the basis of the corrected Opening Balance Sheet of the Company, dated 31.12.2010. (Annex 1).

**3.2. Transfer of the Ownership Rights** Upon the report on the executed privatization process The Seller will issue the Decision on approved registration of the conducted privatization in the Court Registry upon which the Buyer gains its right to register the ownership over the subject of sale.

**3.3. Right to withdraw from the Agreement**-if the Buyer fails to pay the purchase price according to regulations of this Agreement it means that the Buyer gave up to buy the subject of sale, and its deposit will not be refunded.

If the Seller applies the right from the previous Item it does not exclude its right to demand the compensation

## 4. PURCHASE PRICE, DEADLINE AND PAYMENT

**4.1. Purchase price.** A total capital price offered according to the Chapter 3. Item 3.1. ("Purchase price") amounting .....KM (in letters: .....).  
The Buyer shall bear the bank fees.

**4.2. Deadline of Payment.** The Buyer is obliged to pay the Seller a purchase price within .....days since signing of the Agreement.

**4.3. Payment.** Agreed amount from the Item 4.1. is to be paid by the Buyer through the remittance-form on the account of the Seller, at:

Bank: "INTESA SANPAOLO BANKA" d.d. Bosna i Hercegovina

Account title: Agencija za privatizaciju u Federaciji BiH

Payment in KM

Account number: 1540012000050827.

Payment in EUR

IBAN: BA 39 1540012000050827.

ACC 53011204-037800

The document on the money transfer shall bear the Company name (the Company which is a subject of privatization), the name of the Buyer and the identification number/reference No. of the Seller (if exists). The Buyer shall provide - along with the remittance form a notification (avizo) to the Seller stating the amount, purpose, date of this Agreement and the identification/reference number aforementioned.

The payment shall be considered effected and received on the day of the confirmation of the receipt of the paid resources by the "INTESA SANPAOLO BANKA" d.d. Bosna i Hercegovina.

## PART II

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### 5. BUSINESS OBLIGATIONS

**5.1. Business Plan.** The Buyer agrees to manage the Company according to the Business Plan, attached as Annex 2 to this Agreement (further: "Business Plan"), (Attachment 2).

The Buyer shall maintain the operation of the Company as a good businessman in accordance with reasonable economical judgment according with the Business Plan for a period of three (3) years, from the date of closing the Agreement ("Business Plan Period").

The Buyer reserves the right to increase, or modify production of the Company, and manage the operation in the best possible way, so as to achieve the objective of the Company.

**5.2. Alienation of Assets.** During a duration period of this Agreement, the Buyer shall not cause, nor enable without a previous agreement by the Seller that:

a) the assets of the Company are ceded, sold, transferred or renounced except in cases reasonable to obtain a business operations and the interest of the Company.

b) take over any other measures leading to the same economic results mentioned under Item a) apart from those consistent with reasonable economic judgment used to implement the Business Plan.

**5.3. Plan Review and Modification.** The Buyer shall meet with the Seller at least once a year. Or more if necessary, during the Business Plan Period in order to assess the Business Plan progress.

If the Buyer proposes to change the Business Plan, it will be changed only with a written notification to the Seller and its consent.

The Buyer shall further for each meeting with the Seller ensure the documentation for the Seller in order to prove the fulfillment of the Business Plan. Meetings will be organized upon the invitation by the Seller if required, and upon the request of the Buyer.

**5.4. Sale and Transfer of the Company.** The Buyer shall not reserve the right to sell, transfer the shares of the Company from Art. 3., Section 3.1. assumed in this Agreement to third Parties until the Seller's confirmation that all the liabilities from this Agreement are performed.

**6. INVESTMENT COMMITMENT - INVESTMENTS**

**6.1. Investment Commitments - investments.** The Buyer is obliged to commit investments into the company, totally amounting-----KM (in letters.....) within 3 (three) years after the Closing date of this Agreement:

- First year: .....KM
- Second year: .....KM
- Third year: .....KM

**6.2. Assets for Investment - investments.** Assets for investments-investments are ensured by the Buyer.  
Assets on behalf of investments - investments will be focused and used according with the Business Plan.

**6.3. Proof of Investment-investments.** The Buyer shall for each meeting, i.e. after received investment liabilities-investments ensure the Seller with a valid proof on the performed investments, determined by regulations of the Rules on control of the performed liabilities from SPA-s in the privatization process of the Federation.

**6.4. Delayed Fulfillment.** In case the Buyer has failed to fulfill its investment obligation-investments with a delay, and referring to this is allowed to close the Attachment to the Agreement, the Seller will request the fulfillment of liabilities and the Agreement penalty.  
The Agreement penalty is determined from 10% (ten percents) of the amount the Buyer failed to invest - invest timely.  
The Agreement penalty determined by these regulations, the Buyer may charge from the Guarantee of the Seller's obligations  
Payment of the Agreement penalties shall not release the Buyer from its obligation to make investments-to invest.

**7. EMPLOYMENT OBLIGATION**

**7.1. Employment of workers.** The Buyer is obliged to retain the Company existing workers and to employ the new workers in accordance with this Agreement based upon the Employment Plan, which is the ingredient part of the Business Plan at least for the 3 (three) years period since a day of closing the Agreement, and to regulate the legal working status in compliance with regulations of the right on work.

**7.2. Proof of Employment.** The Buyer shall ensure upon any request by the Seller a valid proof of employed workers in accordance with regulations of the Rules on control of the performed liabilities from SPA-s in the privatization process of the Federation BiH.

**7.3. Failure to Employ.** If the Buyer fails to fulfill the employment obligations and in accordance with this is allowed to close the Attachment to the Agreement, the Seller will claim the fulfillment of liabilities and the Agreement penalty.

The Buyer is obliged for any delay of employment obligation according to the Employment Plan to pay the Seller the agreed penalty, amounting 20 % of the amount gained according to the following formula:

- Number of workers x (multiply) a number of months x (multiply) the average paid monthly gross salary of the employees in the Federation BiH according to the last published data.

\*Number of workers: With not realized obligation according to the Employment Plan.

\*Number of months: The total number of months from the first next day when the Employment Plan has to be realized for a certain period until a day determined by the Attachment to the Agreement for fulfillment of this obligation.

The Agreement penalty determined in compliance with these regulations, the Seller may charge from the Guarantee of Buyer's performed liabilities.

Payment of penalties shall not release the Buyer from its obligation to perform employment obligations.

## **8. GUARANTEE FOR PERFORMANCE OF BUYER'S OBLIGATIONS**

To perform obligations from this Agreement the Buyer will submit to the Seller a bank guarantee, which must be unconditional, irrevocable and payable upon the first request of the Seller for the amount of.....KM (35%)of the offered investments) issued by the eligible Bank for the Seller.

The bank guarantee shall have a deadline of at least 30 days longer than the deadline of the performed liabilities for the period it refers to.

The authenticity of the bank guarantee shall be certified by the bank of the Seller.

Obligations of the Buyer towards the Seller as of this Agreement are in no way limited by Guarantees on performed liabilities of the Buyer, or by the amount guaranteed in them.

## **9. OBLIGATION TO INFORM**

**9.1. Obligation of the Buyer to Inform.** The Buyer shall inform the Seller on time, and not later than 15 days before a deadline for fulfillment of its liabilities, to inform the Seller in writing on the failure to fulfill any of its obligations as per this Agreement

The Buyer shall also inform the Seller in writing of any facts and circumstances referring to the following events within 7 days from the event occurrence:

- (a) Change of the address of the Buyer, i.e. the Company
- (b) Change of the telephone number, fax number, e-mail address of the Buyer, i.e. the Company
- (c) Purchase, taking over or purchase of the all or substantially all previously privatized shares/stakes of the Company.
- (d) Any bankruptcy or liquidation initiated against the Buyer, i.e. the Company
- (e) Any other changes crucial for the realization of this Agreement.

**9.2. Obligation of the Seller to Inform the Buyer.** The Seller shall inform the Buyer in writing on the following changes within 7 days:

- (a) Change of the address of the Seller,
- (b) Change of the telephone number, fax number, e-mail address of the Seller,
- (c) Any other changes relevant to the realization of this Agreement.

## PART III

### 10. REPRESENTATION AND GUARANTEES

**10.1. Representation and Guarantees of the Seller.** The Seller hereby confirms and guarantees to the Buyer as stated hereunder:

**10.1.1. Organization.** The Seller is duly organized and validly exists in accordance with the laws of the Federation of Bosnia and Herzegovina with all legal authority to sell the subject of sale as of this Agreement.

**10.1.2. Validity of the Agreement.** This Agreement shall make the Seller obligation valid and binding. The execution and implementation of this Agreement does not require a consent, approval or authorization from any other entity, public authority, therefore it is not in violation of, or in conflict with, or makes any omission by any law, rule or regulations of any authority body upon which the subject of sale cannot be privatized.

**10.1.3. Ownership Rights over the Shares.** The Seller has the right and authority to transfer the ownership right over the shares of the Company onto the Buyer on the date as envisaged in the Part.3. Item 3.2.

**10.1.4. Ownership Rights over the Real-estate Property.** Annex, No. .... as an attachment to the Agreement, provides a list of all the real property used for the operation of the Company as well as all other property owned, possessed, by the Company.

**10.1.5. Organization and Good Reputation of the Company.** The Company is duly organized and validly exists in accordance with the laws of the Federation and Bosnia and Herzegovina, and, to the best of the Seller's knowledge, has the legal power, unlimited official licenses to dispose of the respective property and to manage the respective operation. The evidence of the Company registration is in the Attachment No. ....

**10.1.6. Information Provided by the Seller.** All information provided by the Buyer to the Seller during negotiations are based upon documentation and information given by the Company.

**10.1.7. Litigation.** Litigations are based upon the evidence made by the Company and are given in the Attachment No.....

**10.1.8. Financial Statements.** The financial statements of the Company for the period from.....to..... are given in the Attachment to this Agreement as Attachment 3.

**10.2. Representation and Guarantees of the Buyer.** The Buyer hereby confirms and guarantees to the Seller as stated hereunder:

**10.2.1. Organizational-legal status.** The Buyer is duly organized and validly existing according to laws....., with all required legal authority to purchase the subject of sale of this Agreement. The evidence of the Buyer's registration is in the Attachment of this Agreement as the Attachment No. ....

**10.2.2. Legal Validity of the Agreement.** This Agreement represents a valid, binding and lawful obligation to the Buyer. The Buyer guarantees that the execution and implementation of this Agreement and the execution of transactions contained here in this Agreement have been properly approved by an authorized body of the Buyer and no other agreement, approval, or authorization from any other person, any other Company body, public authority or legal entity is required..

**10.2.3. Failures.** The execution and implementation of this Agreement by the Buyer and the execution of its obligations as per this Agreement do not represent a violation or disruption, nor are they in conflict with, or make omission by any law, rule or regulations of any government authority or court, i.e. the provisions or regulations on partnership, or the Statute of the Buyer, i.e. any agreement, license, or any other act, written or oral, with the Buyer being one of the parties involved.

**10.2.4. Court disputes.** Upon the date of this Agreement, there are no cases, disputes, litigations or governmental investigation ongoing, or which according to the knowledge of the Buyer are obstacles to the Buyer or obstacles to any of its subsidiaries, or their belonging property, assets, operations, and business activities, which may prevent their liabilities execution and/or implementation of the transactions as envisaged by this Agreement.

**10.2.5. Financing.** The Buyer hereby gives assurances it has enough funds, i.e. ensured credit lines to effect payment of the purchase price, investments, and other transactions envisaged in this Agreement, including but not limiting the execution of the intended activities. The statement of the Buyer's funds is given in Annex of this Agreement, as the Annex, No.....

**PART IV**

**11. ECOLOGY**

11.1. Indemnity of ecology. The Seller shall not under any conditions be responsible for the ecological damage. Each such responsibility is the responsibility of the Buyer of the Company.

11.2. Responsibility of the Buyer. The Buyer is fully responsible to manage over the Company assets according with laws and other regulations applied for the ecological damage. The Buyer is responsible for all the ecological damages comings from the responsibility to manage over assets which are in the ownership of the Company and its subsidiaries.

**12. RESPONSIBILITY, *FORCE MAJEURE***

**12.1. Responsibility.** The Buyer and the Seller are responsible for the execution of the obligations as per this Agreement and the proper regulations.

**12.2. *Force Majeure.*** Implies any event that could not have been foreseen and prevented by the contractual parties, and which prevents the execution of obligations as per this Agreement. Such events can include war, international embargo, civil uprising, natural disasters, large-scale fire, act of terrorism, etc. as envisaged by law. Strikes shall not be included in such events. In case of not performed liabilities caused by these events, there is no responsibility of the contractual parties.

**13. CESSATION OF AGREEMENT**

**13.1. Finishing of the Agreement.** This Agreement shall be finished with the fulfillment of the agreed obligations i.e. after expiration of the period envisaged for the fulfillment of the contractual obligations of both parties

**13.2. Termination of the Agreement.**

(a) Termination of the Agreement by the Seller  
Because of the not realized liabilities of the Buyer, the Seller has right to terminate this Agreement, And in that case will keep all payments made by the Buyer including the guarantee and claim the compensation for potentially caused damage to the Seller.



(b) Termination of the Agreement by the Buyer:

Due to the Seller's failure to fulfill its obligations, the Buyer has right terminate this Agreement.

## PART V

### 14. JURISDICTION

**14.1. Litigations.** The parties agree to put maximum effort into solving any disagreement, i.e. dispute in connection with this Agreement through discussion and mutual compromise.

**14.2. Court of Jurisdiction.** Any dispute or disagreement, including but not limiting to anything that refers to or is connected to the interpretation of the Agreement, its validity or invalidity, its termination or whether the contractual Party has fulfilled its obligations as per the Agreement, that cannot be solved through good will negotiations of the parties shall be solved by the court of jurisdiction in the place of the conclusion of this Agreement.

### 15. CLOSING PROVISIONS

**15.1. Confidentiality.** Prior to the transfer of shares, the Buyer shall keep in confidence all the information and documents received from the Seller and the Company, and the Buyer is obliged not to disclose such information to any other person (apart from its employees, agents, and representatives in order to perform "due diligence" examination, in connection with this Agreement). In case the purchase foreseen by this Agreement does not materialize, the Buyer shall return to the Seller and the Company all received documented information including copies.

**15.2. Whole Agreement.** This Agreement and all enclosures, indicators, maps, addendums, and annexes, if are the constituent part of this Agreement, are the whole Agreement.

**15.3. Alterations and Amendments.** Alterations and amendments to this Agreement shall not be valid unless made as the Attachment to the Agreement in writing and signed by the contractual parties. The Attachment to the Agreement are determined the elements referring to guarantees and the contractual penalties.

Changes and Amendments to the Agreement can not be made in any case so that the contractual parties give up any crucial element of the Agreement referring to the amount of liabilities for making investments – investments, as well as to the number of workers obliged by the Buyer in compliance with the Business Plan.

**15.4. Severability.** Should any of the provisions of this Agreement be or will become invalid, the validity of the other provision of this Agreement will be on force. In such case the invalid provision should be replaced with a legally valid provision which will be closer as much as possible to the economic effect of the invalid provision.

**15.5. Applicable Law.** This Agreement shall be interpreted in accordance with the laws applicable on the territory of Bosnia and Herzegovina.

**15. 6. Costs and Fees.** All costs and fees arising from the conclusion and execution of this Agreement, especially without limitation, public notary costs, registration fees, shall be at the expense of the Buyer. Each Party shall bear their own costs related to their consultancy services.

**15.7. Communication.** All notifications, requests and information that one party needs to send to the other as per this Agreement shall be in writing and shall be delivered through courier or by mail with certified receipt on the following addresses:

**Seller. Agencija za privatizaciju u Federaciji Bosne i Hercegovine (Seller)**

Alipašina 41, Sarajevo, Bosna i Hercegovina

e-mail: [apfbih@bih.net.ba](mailto:apfbih@bih.net.ba)

Telephones: ++387 33 212 884, 212 885

Fax: ++387 33 212 883

**Buyer:** “.....”

Address: ... No.....

e-mail:.....

Phone. ....

Fax: .....

Contact person:

**15.8. Copies.** This Agreement is made in four identical copies (in Bosnian and English language). Each party shall receive two full copies of the Agreement with each page initialed.

**AGREED AND ACCEPTED**

No. ....

Sarajevo, .....

**SELLER**

**BUYER**

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**LIST OF ANNEXES:**