



Letter of Intent (Asset Purchase)

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LETTER OF INTENT
FOR PURCHASE OF THE ASSETS OF
[TARGET COMPANY NAME]

PRIVATE AND CONFIDENTIAL

[DATE]

[OFFICER NAME AND TITLE]
[COMPANY NAME]
[ADDRESS]

Dear [NAME OF OFFICER]:

[PURCHASER COMPANY NAME] (the "**Purchaser**"), a _____ [corporation], is pleased to submit this letter of intent (the "**Letter of Intent**") regarding the acquisition of [___%] of the assets of [TARGET COMPANY NAME] (the "**Company**"), [a _____ [corporation] by a corporation ("**AcquisitionCo**") to be formed by Purchaser together with the current management of the Company.

The acquisition of the assets by AcquisitionCo from the current Stockholders shall hereafter be known as the "**Transaction**" and the date of the consummation of the Transaction shall be the "**Closing**". AcquisitionCo will pay a total consideration (the "**Total Consideration**") composed of a cash purchase price (the "**Cash Purchase Price**") for the assets of the Company of \$[PURCHASE PRICE AMOUNT] plus the assumption of [ASSUMPTION AMOUNT] (US\$_____) composed of certain liabilities, subject to the terms and conditions of this Letter of Intent.

At the Closing, AcquisitionCo will be owned by the Purchaser (and/or its appointees and affiliates) and certain members of the management team of the Company (the "**Future Management Owners**") that the Purchaser intends to form at the Closing. The Transaction, including terms and conditions, is described in greater detail below.

1. Purchase Agreement. The parties to this Letter of Intent will endeavor to finalize and execute an asset purchase agreement (the "**Purchase Agreement**") defining the Transaction which shall include the terms below and such other provisions as may be mutually agreed upon, prior to the Expiration Date.

1.1 Assets Purchased. The Transaction shall include the purchase of all of the assets of the Company, including but not limited to: (i) all right, title and exclusive interest to all patents, trademarks, trade names, technical processes, know-how or other intellectual property associated with the business of the Company, whether registered or not; (ii) all tangible and intangible property related to the business of the Company including customer lists, records, goodwill and other intangible assets; (iii) all contracts for purchases from suppliers or deliveries, to customers of

the Company; and (iv) any other assets of any nature whatsoever that are related to or used in connection with the business of the Company and its goodwill.

2. Total Consideration. The total consideration of [TOTAL CONSIDERATION AMOUNT] (US\$ _____) shall be payable to the Stockholders as follows:

2.1 Cash Purchase Price. A cash amount of \$[_____] to be paid at Closing, subject to adjustments as described under Section 3.1 (Closing Adjustment) (the "**Cash Purchase Price**").

2.2 Assumed Liabilities. The assumption of [AMOUNT OF ASSUMED LIABILITIES] [\$_____] composed of certain liabilities as listed on the Closing balance sheet (the "**Assumed Liabilities**").

2.3 Ownership of AcquisitionCo. Common Stock in AcquisitionCo representing [____]% of the fully diluted stock at Closing.

3. Purchase Price Adjustment.

3.1 Closing Adjustment. The Cash Purchase Price shall be adjusted as of Closing dollar for dollar by an amount equal to any variances in the estimated net working capital of the Company (the "**Estimated Net Working Capital**"), with respect to \$[_____] based on an estimate of the Company's [DATE] balance sheet.

The Estimated Net Working Capital shall be determined by the Company as prepared by its auditing firm, with the concurrence of the Purchaser as reviewed by its auditing firm [NAME OF AUDITING FIRM], according to generally accepted accounting principals ("**GAAP**") and shall be made available to the Purchaser no later than two weeks before the Closing, or as otherwise agreed.

3.2 Post-Closing Adjustment. The Purchase Price shall be adjusted dollar for dollar by an amount equal to any variances in the combined net working capital of the Company calculated within sixty (60) days of the Closing (the "**Actual Net Working Capital**") with respect to the Estimated Net Working Capital (the "**Post-Closing Adjustment**"). The Actual Net Working Capital shall be determined according to GAAP by [NAME OF AUDITOR].

3.3 Receivable Adjustment. As part of the Post-Closing Adjustment, the Purchase Price shall be reduced dollar for dollar by an amount equal to any account receivable of the Company, which having been included in the determination of the Actual Net Working Capital, that is not collected by AcquisitionCo within one hundred eighty (180) days after Closing. In such cases the receivable shall be returned to the Current Stockholders for their collection. If any of those receivables were collected by AcquisitionCo beyond the one hundred eighty (180) days, the amounts of any such recoveries shall be paid to Seller.

3.4 Inventory Adjustment. The Purchase Price shall be reduced by a dollar for every dollar of inventory acquired by AcquisitionCo at the Closing written off within one year of the Closing. The value of the inventory acquired by AcquisitionCo shall be the value used to determine the Actual Net Working Capital. Any such write down shall be determined by an

accounting firm, acceptable to the Current Stockholders, to the Purchaser and to its lenders, according to GAAP.

4. Environmental Agreement. The Company shall provide the Purchaser with full disclosure of all environmental issues, studies, remediation activities and monitoring occurring during the period of the Company's ownership of the Company's real estate, facilities, and operations or of periods which the Company has knowledge. The Company shall also cooperate with any environmental audits required by investors in the Transaction, and that the parties shall concur on the scope and extent of such audits, the entity that shall perform any such audits and the splitting of samples taken in the course of such audits. The parties shall keep strictly confidential all information regarding the results of any environmental audits. For a period of five years after Closing, any environmental liability cost incurred by AcquisitionCo in respect of the assets or their use for the period prior to Closing shall be the obligation of the Current Stockholders who shall reimburse AcquisitionCo for any such costs AcquisitionCo incurs.

5. Representations and Warranties. The Purchase Agreement shall contain representations and warranties typical in a transaction of this size and nature. Any cost incurred by AcquisitionCo within five years of the Closing as a result of a breach in the representations and warranties shall cause a dollar for dollar reduction in the Purchase Price.

6. Conditions Precedent to the Closing. The Purchase Agreement shall provide for the following conditions precedent to closing:

6.1 Governmental Approvals. All required governmental approvals necessary for the Closing and for the operations of AcquisitionCo in the manner that the Company operated prior to the Transaction shall have been attained.

6.2 Material Adverse Change. There shall have been no material adverse change in the business, assets, operations, or prospects of the Company prior to the Closing, relative to the state of the Company as of the date of this Letter of Intent, and the Company shall notify the Purchaser of any material changes.

6.3 Due Diligence. The Purchaser shall have concluded its due diligence and found the results acceptable.

6.4 Documentation. The Purchaser shall consider acceptable the documentation necessary for Closing the Transaction.

6.5 Approval Process. Successful completion of the Purchaser's internal approval process.

6.6 Audit. Receipt of the audit for the period ending [_____] prepared by the Company's auditors, satisfactory to the Purchaser.

7. Other Provisions. The Company shall be precluded from making changes to current levels of compensation and from declaring or paying dividends prior to the Closing, and the Company shall conduct its business only in the ordinary course and shall not acquire or agree to acquire as part of the business of the Company all or any substantial portion of the assets or business of any

other business organization by merger or consolidation, stock purchase or asset purchase without the Purchaser's approval in writing.

8. Closing. The Closing of the Transaction shall occur within [NUMBER] (___) days of the signing of the Purchase Agreement. The Closing is anticipated to be by [DATE].

9. Management Investment. The management team of AcquisitionCo will make a direct equity investment in AcquisitionCo prior to Closing, in an amount to be determined and satisfactory to the Purchaser.

10. Terms of this Letter of Intent

10.1 Access to Information. To the extent reasonably required for the purpose of the Letter of Intent, and subject to the provisions of, and the Purchaser's compliance with that certain Confidentiality Agreement dated effective _____, 20__, the Company will cause the Purchaser, its counsel, accountants, certain insurance brokers, lenders, and all other reasonable representatives of the Purchaser ("**Representatives**") to have access, during normal business hours, prior to the Expiration Date, to all of the properties, books, contracts, and records of the Company, and will cause to be furnished to the Purchaser and its Representatives all such information concerning the affairs of the Company as the Purchaser or such Representatives may reasonably request, the Purchaser and its Representatives shall have access to customers and suppliers of the Company for the purpose of gaining information subject to the condition that at least one officer of the Company shall participate in such discussions.

At all reasonable times during normal business hours, the Purchaser, and its Representatives shall have access, prior to the Expiration Date, to discuss the Company's business and affairs with [EMPLOYEE NAME(S)], any other employees of the Company, and the Company's designated advisors.

10.2 Exclusivity. During the Term of this Letter of Intent, the Company shall not directly or indirectly through any director, officer, employee, agent, representative (including, without limitation, investment bankers, attorneys and accountants) or otherwise, (i) solicit, initiate or encourage submission of proposals or offers from any third party, relating to any acquisition or purchase of all or a material portion of the Company's assets, or any equity interest in it, or any transaction, consolidation or business combination with it, or (ii) participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any person to do or seek any of the foregoing.

10.3 Expiration. Unless extended by agreement of the parties, this Letter of Intent shall expire the earlier to occur of [NUMBER] (___) days after the execution of this Letter of Intent or the execution and delivery of the Purchase Agreement (the "**Expiration Date**"). Expiration of this Letter of Intent shall not otherwise limit any of the Purchaser' rights set forth herein.

10.4 Breakup Payment. The Company shall pay the Purchaser the following breakup payment (the "**Breakup Payment**") if the Purchaser is willing to enter into the Purchase Agreement on terms substantially in accordance with the terms described in this Letter of Intent and prior to the expiration of this Letter of Intent and if the Company refuses to enter into the

Purchase Agreement for any reason: (i) the reimbursement to the Purchaser of all costs incurred by the Purchaser associated with the proposed Transaction; and (ii) the amount of \$[_____]. If due, the Breakup Payment shall be paid in cash upon the expiration of this Letter of Intent.

11. Topping Payment. The Company shall pay the Purchaser the following topping payment (the "**Topping Payment**") if the Purchaser is willing to enter into the Purchase Agreement on terms substantially in accordance with the terms described in Section A of this Letter of Intent and prior to the expiration of the Letter of Intent and if the Company refuses to enter into the Purchase Agreement and if the Company or an appreciable asset of the Company is sold within twelve months after the termination of this Letter of Intent. The Topping Payment is computed as the sum of [___]% of the first \$[_____] over the Purchase Price, [number]% over the second \$[amount] over the Purchase Price, [___]% of the third \$[AMOUNT] over the Purchase Price, [___]% of the fourth \$[_____] over the Purchase Price and [NUMBER]% for each additional \$[_____] over the Purchase Price.

If due, the Topping Payment shall be paid in cash at the time the Company or an appreciable asset of the Company is sold.

12. Counterparts. This letter may be executed in one or more counterparts which when taken together shall constitute but a single instrument.

13. Arbitration. All claims, demands, disputes, controversies, differences, or misunderstandings between the parties relating to this Letter of Intent shall be settled by arbitration, in accordance with the rules of the [NAME OF ARBITRATOR], and judgment on the award rendered by the arbitrator or arbitrators may be entered and enforced in any court having jurisdiction.

14. Contacts. [NAME OF OFFICER], [TITLE] will serve as exclusive contact for any response to this Letter of Intent. [OFFICER NAME] can be reached at _____.

15. Public Disclosure. Neither the Company nor the Purchaser will make any disclosure of the existence of this Letter of Intent or any terms of this Letter of Intent without the consent of the other party, unless required by law.

16. Legal Effect. This Letter of Intent is intended to be a statement of the mutual interest of the parties with respect to a possible Transaction and is subject to execution and delivery of a mutually satisfactory Purchase Agreement. Nothing herein shall constitute a binding commitment of either party. The parties will become legally obligated with respect to the Transaction only in accordance with the terms contained in the Purchase Agreement relating thereto if, as and when such document has been executed and delivered by the parties.

As indicated above, we would expect to go forward immediately to prepare and negotiate a mutually satisfactory Agreement while at the same time the Purchaser concludes the necessary due diligence investigations. If the foregoing is acceptable to the Company and the Stockholders, please so indicate in the space provided below and return one signed original to us.

Sincerely,

[PURCHASER NAME]

By: _____
Its:

ACCEPTED AND AGREED
this _____ day of _____, 20__

[COMPANY NAME]

By: _____
Its:

Stockholder

Stockholder