

ASSET PURCHASE AGREEMENT

A takeover of a business is usually defined as the acquisition of ownership or control of a corporation. Such a takeover is typically accomplished by the purchase of shares or by the purchase of assets.

An Asset Purchase Agreement is the acquisition of a company by purchasing its assets directly from the corporation itself rather than purchasing shares from its shareholders (see model: Share Purchase Agreement). The main advantage of an asset deal is that a purchaser may choose the assets and liabilities it wants to acquire. There is usually less risk of hidden liabilities than is the case with a share deal.

The transfer of individual assets can be done with a simple sale and purchase agreement customised to the type of asset concerned. Such transfer is subject to value added tax and invoice requirements. But a collection of assets forming a business can be transferred with an exemption of value added tax on a going concern basis, either as a branch of activities ("*bedrijfstak/branche d'activités*") or as a universality of goods ("*algemeenheid van goederen/universalité de biens*"). This model intends to cover such a situation. The model also assumes that together with the business, all employees automatically transfer under the Collective Labour Agreement No. 32bis.

The major disadvantage of an asset as opposed to a share deal is that each item must be transferred in accordance with its proper rules and made enforceable against third parties. This is in particular the case for customer contracts and for *intuitu personae* contracts. The parties must therefore make a complete list of assets and liabilities and incorporate that list in the agreement. Since real estate property requires a notarial deed, this model does not cover the transfer of real estate.

The enforceability of the transfer *erga omnes* can be obtained by following the procedures of the Belgian Company Code (articles 759 *et seq.*) and using a notarial deed. This model does not cover such a case.

THIS AGREEMENT IS MADE AND ENTERED INTO

between

_____, a limited liability company organized and existing under the laws of Belgium, having its registered office at _____ [address], Belgium and registered at RPR/RPM in _____ [judicial district] under number _____ (the "Seller"),

and

_____, a limited liability company organized and existing under the laws of _____, having its registered office at _____ [address] and registered _____ under number _____ (the "Purchaser"),

and for the purpose of Article 19:

_____, a limited liability company organized and existing under the laws of _____, having its registered office at _____ [address] and registered _____ under number _____ (the “Shareholder”).

The Seller, the Purchaser and the Shareholder are individually referred to as a “Party” and also collectively as the “Parties”.

WHEREAS the Seller operates the Business (as defined in article 1), and no other activities than the Business are carried on by it;

[optional] WHEREAS _____, a limited liability company organized and existing under the laws of Belgium, having its registered office at _____ [address], Belgium and registered at RPR/RPM in _____ [judicial district] under number _____ (the “Subsidiary”) is a wholly-owned subsidiary of the Seller and forms a fully integrated part of the Business;

WHEREAS the Seller and the Shareholder wish to sell and transfer and the Purchaser wishes to purchase and accept the Business of the Seller with a view to carrying on the Business as a going concern in succession to the Seller on the terms set out in this Agreement. On _____ [date], the Seller and the Purchaser have concluded a Letter of Intent;

WHEREAS the Purchaser (including, without limitation, its officers and its external advisers) has conducted a due diligence investigation from _____ [date] to _____ [date], in to financial, operational, sales and marketing, human resources, legal, regulatory and tax matters, which due diligence has taken place on the premises of the Business, including, without limitation, the opportunity to review and occasionally copy any and all relevant documents made available by the Seller and, as requested by the Purchaser, numerous interviews with (i) all members of the management team of the Business, both individually and in team meetings, (ii) certain business units and employees of the Business;

[optional] WHEREAS the Seller and the Purchaser have complied with the provisions of the Law on the Works Council (*“wet van 20 september 1948 houdende organisatie van het bedrijfsleven/loi du 20 septembre 1948 portant organisation de l’économie”*) and the works council of the Seller has been properly informed regarding the sale and transfer of the Business (as defined hereinafter) to the Purchaser;

[optional] WHEREAS the Seller and the Purchaser have complied with the Belgian Competition Law (“*wet tot bescherming van de economische mededinging/loi sur la protection de la concurrence économique*”), by filing the contemplated concentration with the Belgian Competition Authorities on _____ [date];

NOW, THEREFORE, the Parties have agreed as follows:

Article 1 – Definitions

1.1. For the purposes of this Agreement:

“Affiliate” means in relation to any person, any subsidiary or direct or indirect holding company of that person and any other subsidiary of that holding company;

“Agreed Form” means, in relation to any document, the form of that document which has been initialled by the Seller and the Purchaser for the purpose of identification;

“Assets” means the assets which are all of the assets held by the Seller and which are listed in sub-article 2.1. and described in the Annexes headed “The Properties”, “The Equipment”, “The Receivables and Creditors”, “The Insurance Policies” and “The Business Intellectual Property Rights”, the Shares, including any assets which will be acquired by the Seller after the date of this Agreement in the ordinary course of the Business, but excluding the Excluded Receivables;

“Bank Accounts” means the bank accounts of the Seller at:

	name of bank	account number
a)
b)
c)

“Business” means all businesses carried out by the Seller and the Subsidiary which comprises of all of its Assets and Liabilities, all Contracts, the Employees and all of its activities which, inter alia, consists of _____ [description] at the date of this Agreement, such as:

- (i) _____;
- (ii) _____;
- (iii) _____ [detailed description];

but excluding the Excluded Receivables, the Excluded Liabilities and Excluded Contracts;

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are generally open in Belgium for normal business;

“Business Intellectual Property Rights” means the Intellectual Property Rights used in connection with and as of the Effective Date required for the operation of the Business and as summarily described in the Annex headed “Business Intellectual Property Rights”;

“Claims” means all actions, proceedings, rights and claims by third parties or by the Seller in connection with the ongoing operation of the Business or (parts of) the Assets, whether in respect of any defective workmanship or fault, defect or error of any kind arising from goods supplied or services provided and in particular (but without prejudice to the generality of the foregoing) any claim by a third party under any Contract, undertaking, warranty, condition, guarantee or indemnity, whether express or implied;

“Completion” means completion of the sale and transfer of the Business;

“Completion Date” shall have the meaning ascribed to such term in sub-article 12.1.;

“Conditions” means the conditions precedent as identified and specified in the article headed “Conditions precedent”;

“Contracts” means:

- a) all agreements entered into by the Seller with third parties or a member of the Seller’s Group, in particular including (without limitation) those listed in the Annex headed “The Contracts”, but excluding the Excluded Contracts and agreements which relate to the Excluded Receivables or Excluded Liabilities;
- b) subject to article 3 headed “Contracts”, the parts of the agreements entered into by Shareholder (or one or more of its Affiliates) and third parties relative to the Business;
- c) all orders made by the Seller; and
- d) offers made by or to the Seller in connection with the Business before the Effective Date, which remain (in whole or in part) to be performed at the Effective Date, including (but without limitation) all orders, offers and contracts for the manufacture, sale or purchase of goods or supply of services or for the hire-purchase, credit sale, lease or licence of goods or

services, or the licence of Business Intellectual Property Rights, in particular including (without limitation) the contracts listed in the Annex headed “Contracts”;

“Creditors” means the amounts owed by the Seller in connection with the Business to trade creditors, at the Effective Date (whether or not then due), and excluding the creditors in connection with the Excluded Receivables or Excluded Liabilities;

“Effective Date” means _____^(*);

“Effective Date Accounts” means the financial statements (generally in the form of a company’s balance sheet and company’s profit and loss account) relating to the Business as at the Effective Date and drafts of which, as presented by the Purchaser to the Seller, shall be in accordance with both the principles applied by the Seller’s Group in the most recently published annual accounts and Belgian GAAP;

“Employees” means all employees working in the Business on the Completion Date (as per the Effective Date estimated at approximately _____ [number]) and who shall transfer to the Purchaser by operation of law and who (or most of whom) are named in the Annex headed “Employees and Collective Agreements”, and “Employee” means any of them;

“Encumbrance” means any encumbrance, mortgage (*“hypotheek/hypothèque”*), pledge (*“pandrecht/gage”*), assignment by way of security, option or right of preemption, any executorial attachment (*“uitvoerend beslag/saisie exécutoire”*) and any other interest or right held that could be raised by a third party having an interest in acquiring or executing the goods so encumbered;

“Equipment” means all machinery, spare parts, tools, equipment, tangible chattels, motor vehicles, furniture, fixtures and fittings (to the extent they are not included in the Properties) used in connection with and as of the Effective Date, title to which is held by the Seller and as summarily described in the Annex headed “Equipment”, but excluding the Excluded Receivables;

“Excluded Liabilities” means, collectively:

- a) the Inter-Company Loans; and

^(*) In this model, a cut-off is made for accounting purposes and for calculating the working capital. This cut-off is made at the Effective Date, which is also the date on which the employees of the business are transferred and the purchaser takes over the risks and benefits of the Business. The Completion Date is subsequent to the Effective Date but should be as close in time as possible.

- b) the payables to _____, notwithstanding their listing in the Annex headed “The Receivables and Creditors” in an aggregate amount of _____ euro [amount in words] (€ _____) [amount in numbers], and an “Excluded Liability” means any of them;

“Excluded Receivables” means, collectively:

- a) the receivable on the Seller’s Group unit “_____” in the amount of _____ euro [amount in words] (€ _____) [amount in numbers];
- b) the receivable on _____ in the amount of _____ euro [amount in words] (€ _____) [amount in numbers] and an “Excluded Receivable” means any of them;

“Goodwill” means the goodwill of the Business with the right to carry on the Business in succession to the Seller;

“Group” means, in relation to any person, such person and its Affiliates;

“Independent Accountants” means a firm of certified auditors (“*bedrijfsrevisoren/reviseurs d’entreprises*”) appointed pursuant to the article headed “Effective Date Accounts”;

“Information” means all printed or electronically available information relating to the Business, including (without limitation) industrial and commercial information and test reports, operating and testing procedures, shop practices, instruction manuals and tables of operating conditions and all physical information relating to the supply of any materials to the Business and to the marketing of any products or services supplied by the Business, physically available customer and supplier details and, to the extent available, lists, sales and purchase targets and statistics, market share statistics, marketing surveys and reports, marketing research and any advertising and other promotional materials;

“Insurance Policies” means the insurance policies listed in the Annex headed “Insurance”;

“Intellectual Property Rights” means copyrights, design rights, trade marks and trade names, service marks, domain names, data base rights, trade secrets, computer software, including any updates or new releases and any other intellectual property rights;

“Inter-Company Loans” means all loans granted to the Seller by any member of the Seller’s Group (excluding the Subsidiary), including any accrued interests on such loans, and in particular:

	Member of the Seller's Group	Principal and accrued interests (as at the Effective Date)
a)
b)

“Subsidiary” means _____ [name], as described in the Annex headed “Subsidiary”;

“Letter of Intent” means the binding letter of intent, attached as the Annex headed “Letter of Intent”;

“Liabilities” has the meaning ascribed to it in sub-article 2.2.;

“Properties” means all properties used in connection with and as of the Effective Date required for the operation of the Business as summarily described in the Annex headed “Properties” including every part of each of them and “Property” means any of them^(*);

“Purchase Price” means _____ euro [amount in words] (€ _____) [amount in numbers] in cash;

“Receivables” means (a) any debts or other sums due or payable to the Seller at the Effective Date, (b) any debts or other sums which become due or payable to the Seller after the Effective Date in connection with goods supplied or services performed by it, and (c) any interest payable on such debts or other sums and (d) the benefit of all securities, guarantees, indemnities and rights relating to those debts or other sums;

“Shares” means all issued and outstanding shares in the capital of the Subsidiary, including all securities, whether or not representing share capital, whether or not carrying any voting right, issued by the Subsidiary, and all options, or warrants in respect of these securities;

“Stocks” means the stock-in-trade as described in the Annex headed “The Stocks”, including components, of the Business as at the Effective Date;

“Taxation” or “Tax” means all forms of taxation and social security charges, including corporate income tax, social security contributions, VAT, capital tax, dividend withholding tax, environmental taxes, transfer taxes and local taxes in any relevant jurisdiction;

^(*) This model assumes no real estate property is transferred by the Seller.

“Transferred Current Assets” means the part of the Assets which consists of the aggregate of the financial fixed assets, plus Stocks, plus short term receivables (including intercompany and tax receivables), plus asset accruals, plus liquidities, as reflected in the Effective Date Accounts;

“Transferred Current Liabilities” means the part of the Liabilities which consists of the aggregate of the short term payables (including intercompany and tax payables), plus liability accruals, as reflected in the Effective Date Accounts;

“VAT” means value added taxation (“*belasting over de toegevoegde waarde/ taxe sur la valeur ajoutée*”);

“Warranty Claim” means a claim by the Purchaser for any breach of the Warranties;

“Warranties” means the representations and warranties on the part of the Seller as referred to in the article headed “Warranties”; and

“Working Capital” means the difference between the Transferred Current Assets less the Transferred Current Liabilities as at the Effective Date.

- 1.2. Where any Warranty or statement in the Disclosure Letter is qualified by the expression “so far as the Seller is aware” or “to the best of the Seller’s knowledge, information and belief” or any similar expression, that expression or statement shall be construed as the actual knowledge the Shareholder has or should have, and the actual knowledge the Seller has.
- 1.3. Any express or implied reference to an enactment (which includes any legislation in any jurisdiction) includes references to:
 - a) that enactment as amended, extended or applied by or under any other enactment before or after the date of this Agreement;
 - b) any enactment which that enactment re-enacts (with or without modification); and
 - c) any subordinate legislation (including regulations) made under that enactment, as re-enacted, amended, extended or applied as described in paragraph (a) above, or under any enactment referred to in paragraph (b) above.
- 1.4. References to a “company” shall be construed so as to include any company, corporation or other body corporate or other legal entity, wherever and however incorporated or established, including, without limitation, general or limited partnerships.

- 1.5. References to a “person” shall be construed so as to include any individual, firm, company, government, governmental authority, Tax authority, state or agency of a state or any joint venture, association or partnership (whether or not having separate legal personality).
- 1.6. An action taken by a person shall be deemed to have been taken in the “ordinary course of business” if:
 - (a) such action is consistent with the past practices of such person and is taken in the ordinary course of the normal day-to-day operations of such person and against normal conditions;
 - (b) such action is not required to be authorised by the board of directors of such person (or by any person or group of persons exercising similar authority) and is not required to be specifically authorised by the holding company (if any) of such person; and
 - (c) such action is fairly similar in nature and magnitude to actions taken earlier, without any authorisation by the management board (or by any person or group of persons exercising similar authority), in the ordinary course of the normal day-to-day operations of other persons that are in the same line of business as such a person.
- 1.7. Where any statement is qualified or phrased by the expression “fairly disclosed”, that expression shall mean that the information is disclosed in or pursuant to the Disclosure Letter or otherwise to the Purchaser or its advisers.
- 1.8. Where any obligation is qualified or phrased by reference to “use reasonable endeavours”, “best efforts” or wording of a similar nature, it means the efforts that a person would use in similar circumstances to ensure that such a result is achieved fairly expeditiously and, regard shall be had, among other factors, to (i) the price, financial interest and other terms of the obligation; (ii) the degree of risk normally involved in achieving the expected result; and (iii) the ability of an unrelated person to influence the performance of the obligation.
- 1.9. Where in this Agreement a Dutch/French term is given in italics after an English term and there is any inconsistency between the Dutch/French and the English, the meaning of the Dutch/French term shall prevail.
- 1.10. In this Agreement, unless the contrary intention appears, a reference to an article, sub-article, exhibit or Annex is a reference to an article or sub-article of or an Exhibit or Annex to this Agreement. The Annexes and Exhibits form part of this Agreement.

Article 2 – Sale and Purchase

2.1. Subject to the provisions of the article headed “Conditions”, the Seller hereby agrees to sell and shall transfer or assign to the Purchaser at Completion, and the Purchaser hereby agrees to purchase and shall accept or assume (as the case may be) at Completion, the Business, excluding for the avoidance of doubt the Excluded Receivables, Excluded Liabilities and Excluded Contracts, generally comprising of the following assets:

- a) the Goodwill;
- b) the Shares;
- c) the Business Intellectual Property Rights;
- d) the Properties;
- e) the licences, permits and authorisations, if transferable in accordance with the law, in connection with the Properties^(*);
- f) the Equipment;
- g) the Stocks;
- h) the Insurance Policies;
- i) the Claims;
- j) subject to the consent from the relevant banks, Seller’s rights to maintain the Bank Accounts;
- k) the Receivables;
- l) the Information;
- m) all books, records, administration and other data and documents relating to the Business (copies of which shall be retained as non-proprietary information for the purpose of the financial accounts of the Seller’s Group and the Seller);
- n) cash in hand; and

^(*) Whether licences, permits and authorisations given by any governmental body are transferable will need to be established in the due diligence process. It is possible to list such licences, permits and authorisations in a schedule. If a licence, permit and/or authorisation needs to be obtained by the Purchaser, the issuance thereof can be made a Condition precedent in the agreement, or as in this model be the responsibility of the Purchaser only (see article 6.2.).

- o) for the avoidance of doubt, any other assets to which title is held by the Seller as at the Completion Date, including those assets acquired in accordance with this Agreement in the period up to the Completion Date.
- 2.2. Subject to the provisions of the article headed “Conditions”, the Purchaser agrees and accepts to assume at Completion the liabilities relating to the Business excluding, however, the Excluded Liabilities and in any case comprising the liabilities identified in the Annex headed “Liabilities”, with a view to the Purchaser carrying on the Business from the Completion Date as a going concern in succession to the Seller (collectively, the “Liabilities” and also individually, a “Liability”).
- 2.3. At Completion, the Business shall be transferred free from all Encumbrances other than the Encumbrances listed in the Annex headed “Encumbrances” and together with the rights attaching to them in accordance with the article headed “Completion”.
- 2.4. Subject to the provisions of the article headed “Conditions”, the Business and each separate Asset and each separate Liability shall be for the risk and account of the Purchaser as from the Effective Date. Accordingly, the Purchaser shall enjoy the benefits of the Business (and each individual part of the Business) as from the Effective Date.
- 2.5. [optional] The Purchaser shall be entitled to nominate by notice in writing to the Seller at any time up to 5 Business Days prior to Completion Date one of its wholly-owned subsidiaries (or a wholly-owned subsidiary of its shareholder, of which it is itself a wholly-owned subsidiary) to purchase the Business, provided that any such person shall become a Party to this Agreement by entering into the Deed of Adherence^(*).

Article 3 – Contracts

- 3.1. Subject to the provisions of the article headed “Conditions”, the Seller shall assign to the Purchaser at Completion, and the Purchaser shall accept on the Completion Date all of the present and future rights and benefits of the Seller under the Contracts and assume all corresponding present and future obligations specifically referred to therein (each such transfer being an “Assignment”).

^(*) This provision can apply for instance if a foreign corporation is purchasing through a wholly-owned subsidiary which will only be incorporated once the agreement is signed.

- 3.2. Pending Completion, the Seller and the Purchaser shall form a transition committee, which shall be composed of 2 representatives of the Seller and 2 representatives of the Purchaser. This transition committee shall work diligently towards enabling Assignments of the Contracts as much as reasonably possible as per Completion. In addition, the Seller shall make reasonable efforts and the Shareholder shall actively participate and exercise its influence in order to obtain the written consent to the Assignment of the other parties to the Contracts (as listed in the Annex headed “Contracts”). The Purchaser shall indemnify and hold harmless the Seller against any claim or action by any party to any Contract, save to the extent that a Contract to which such claim relates has remained with the Seller by reason of a lack of third party co-operation on the Assignment of such Contract. At Completion and upon receipt of the consent, the Parties shall notify the other parties to the Contracts, if any, of the Assignment and provide the other Parties with copies of the consent and the notification of each of the parties to the Contracts.
- 3.3. [optional] The Purchaser shall inform the Seller as soon as possible but ultimately on the Completion Date, whether or not it shall acquire the lease contract in respect of the premises at _____, on renegotiated terms and conditions as the Purchaser, after consultation with the Seller, deems acceptable. If the Purchaser shall enter into a lease contract in respect of such premises, the lease Contract shall be deemed to have been assigned for the purpose of this article 3. If the Purchaser shall not enter into a lease contract in respect of such premises, the Seller shall terminate such lease contract on the shortest term possible. The Parties acknowledge that this sub-article shall in no case constitute a sub-lease agreement. Any negotiations by the Purchaser may not result in the landlord of such premises making any claim against the Seller and any costs to be made in relation to or as a result of the termination shall be for the account of the Purchaser. The Parties shall, as reasonably appropriate, consult with each other to discuss the manner of their respective conduct.
- 3.4. The Purchaser shall compensate the Seller for any rent paid for the premises in _____ [location] during the later of (a) such period after the Completion Date as the Purchaser shall have delivered (“*vrij opgeleverd/livraison libre*”) the premises to the landlord or the Seller, and (b) 6 months following the first day of the month after which the Purchaser has informed the Seller that it wishes to terminate the lease contract.
- 3.5. Without prejudice to sub-articles 3.2. and 18.1., on or as soon as practicable after the date of this Agreement, the Purchaser shall, jointly with the Seller, arrange for the dispatch to all or any past and present customers of the Business of a circular letter in a form to be approved by both Parties announcing

the sale by the Seller of the Business and introducing the Purchaser as their successor from the Completion Date and the Seller shall take all such other steps as the Purchaser may reasonably require^(*).

- 3.6. To the extent that no consent to an Assignment has been obtained on the Completion Date, the Seller shall, subject to sub-article 3.6., until such consent has been obtained exercise such rights or fulfil such obligations in consultation with the Purchaser and transfer all existing benefits (“*vruchten/fruits*”) of the relevant Contract, forthwith to the Purchaser.

Furthermore, the Purchaser shall:

- a) compensate the Seller for any and all costs made with the consent of the Purchaser; and
 - b) indemnify the Seller against all actions, proceedings, costs, damages, claims and demands in respect of any failure on the part of the Purchaser to perform those obligations, and
 - c) the Seller shall (so far as it lawfully may and subject to sub-article 3.6.) give all reasonable assistance to the Purchaser to enable the Purchaser to enforce its rights under the Contract, as if the Purchaser would be in a position whereby the Contract was effectively assigned to it.
- 3.7. To the extent that a consent to an Assignment has been rejected, the Seller shall:
- a) notify the Purchaser of such rejection and, in consultation with the Purchaser, discuss any possible action to nevertheless obtain such consent, so as to establish the Assignment and failing the Assignment in order to minimise the adverse consequences of the termination for the continuation of the Business; and
 - b) on the assumption that the obligations set forth under (a) of this sub-article have been observed, be entitled to terminate the Contract in accordance with the law applicable to the dissolution and winding-up (“*ontbinding en vereffening/résolution et liquidation*”) of a limited liability company (or its business) or the terms of the relevant Contract.

^(*) The letter referred to herein does not replace the need for a written consent of Assignment of existing contracts with customers as the need may be depending on such contract. The type of contracts or the number of customers may also entail the parties to opt for following the procedures of the Belgian Company Code to make the transfer enforceable *erga omnes* without having to ask for the consent of third parties.

- 3.8. Subject to the article headed “Pre-Completion”, the Seller shall not become liable vis-à-vis the Purchaser or any third party for actions, proceedings, claims and demands and for costs and damages in respect of any defective workmanship, fault, defect or error of any kind arising from goods supplied or services provided by the Business after the Effective Date and in particular (but without prejudice to the generality of the foregoing) any claim by a third party under any warranty or for non-conformity of any part of the Business, mistake (“*dwaling/erreur*”) or any legal equivalent under the applicable laws.
- 3.9. Subject to article 14.1., 14.2. and 14.3., the Seller shall procure that any member of its Group effectively controlled by it, that is a party to any of the Contracts or that has concluded any Contract relating to the Business, shall give their consent to Assignments in respect of these Contracts (to the extent that this is within their discretion). Such Assignment shall be under the terms and conditions in force as at the date of this Agreement. If such Contract is not put into writing, the Parties shall agree on terms and conditions, substantially in accordance with the established course of operations under such Contract, and furthermore on commercial terms and conditions.
- 3.10. For the avoidance of doubt, nothing in this article shall result in an adjustment of the Purchase Price or the Working Capital and nothing in this Agreement:
- a) except for gross negligence or wilful misconduct and subject to the article headed “Pre-Completion”, makes the Seller liable for any act, neglect, default or omission in respect of any of the Contracts after the Effective Date or for any claim, expense, loss or damage arising from any failure to obtain the consent or agreement of any party to a Contract to the acceptance of an Assignment; or
 - b) except for any liability in connection with the Excluded Assets, Excluded Contract or Excluded Receivables, imposes any obligation on the Seller vis-à-vis third parties for or in respect of any product delivered by the Purchaser or any service rendered by the Purchaser after the Completion Date.
- 3.11. If and to the extent that the Seller would become jointly and severally liable (“*hoofdelijk aansprakelijk/solidairement responsable*”) for the due and timely performance of any obligations (or fulfilling of any duty) by or on behalf of the Purchaser under any actually transferred Contract, the Purchaser shall indemnify the Seller and hold the Seller harmless in all respects against any claim and furthermore reimburse the Seller for any of their costs made in relation to any claim made.

Article 4 – Excluded Receivables, Liabilities and Contracts

- 4.1. The Excluded Receivables are not included in the sale and purchase of the Business and nothing in this Agreement shall result in a sale or transfer to the Purchaser of any Excluded Receivable.
- 4.2. The Excluded Liabilities are not included in the sale and purchase of the Business and nothing in this Agreement shall result in a sale or transfer to the Purchaser of any Excluded Liability.
- 4.3. The Excluded Contracts are not included in the sale and purchase of the Business. “Excluded Contracts” means, collectively:
 - a) the management contracts with (or in relation to) _____; and
 - b) the agreement(s) incorporated in the document “Exhibit A” _____ [title] dated _____,and an “Excluded Contract” means any of them.
- 4.4. The Seller shall indemnify and hold harmless the Purchaser for any and all claims, damages, expenses and costs, in relation to the Excluded Contracts.
- 4.5. The Seller hereby confirms that all contracts which are material to the Business as in force on the date of the Letter of Intent, except as otherwise agreed in this Agreement or as fairly disclosed to the Purchaser, have not been terminated by the Seller or transferred out of the Business for the benefit of a member of the Seller’s Group (excluding the Subsidiary).
- 4.6. [optional] In respect of the Excluded Contracts referred to in sub-article 4.3., the Parties agree that the Purchaser shall in no event inform (in whatever form) the counterparty under that agreement (or its assignee) about its existence or it being an “Excluded Contract”.

Article 5 – Damage to Assets before Completion

- 5.1. If any of the Assets are lost, destroyed, damaged or break down before Completion other than as result of the Seller’s gross negligence or wilful misconduct after the date of the Letter of Intent, then regardless of the cause for such loss, destruction, damage or break-down:
 - a) such Asset shall be transferred to the Purchaser at Completion;
 - b) no adjustment to the Purchase Price shall be made; and
 - c) the Purchaser shall have no recourse to the Seller, except as provided otherwise in this Agreement.

- 5.2. Notwithstanding sub-article 13.1., the Seller shall refrain from taking action which is on a prima facie basis likely to result in a loss, destruction, damage or break-down of the Assets, thereby considering the action as a whole. Similarly, where there is an apparent threat of such material loss, destruction, damage or break-down, the Seller shall make reasonable efforts to prevent such loss, destruction, damage or break-down or, as the Seller may determine, let the Purchaser undertake measures, as appropriate.

Article 6 – Transfer of Properties

- 6.1. The Parties shall co-operate with each other in order to transfer all Properties to the Purchaser in accordance with article 2.
- 6.2. Without prejudice to sub-article 6.1., the transition committee referred to in sub-article 3.2. shall perform its duties diligently so as to facilitate the Purchaser to obtain, and the Shareholder shall actively participate and exercise its influence in order for the Purchaser to obtain, any required permit, approval or consent of any public authorities, the licences and permits required in connection with the Properties. For this purpose, the Purchaser (or the Purchaser's lawyer on its behalf) shall prepare all documents necessary for obtaining such approvals or consents, which it shall submit to the Seller (and the Seller's lawyer) prior to dispatching it. For the avoidance of doubt, the Seller shall not be liable for the Purchaser failing to obtain any permit, approval or consent it may require for either the full operation of the Property or the Business or the transfer of the Property or the Business to the Purchaser.
- 6.3. If (part of) the Property appears to be incapable of being transferred, for any reason, including but not limited to the obtaining of any permit, approval or consent, or if a transfer of (part of) the Property appears to be impracticable, the Parties shall make reasonable efforts to accomplish a result similar to that contemplated in this Agreement.
- 6.4. The Parties agree that if the transfer of (a part of) the Properties or a lease contract is subject to an environmental investigation and possible decontamination, they shall act in accordance with the applicable law and the Seller shall bear the costs of it.
- 6.5. If the results of such investigation are negative (*i.e.* no contamination), the transfer of such (part of the) Property or lease contract shall be completed as soon as possible after the relevant soil certificate ("*bodemattest/certificat de sol*") is received.

- 6.6. If the results of such investigation are positive (*i.e.* existing contamination), the Seller shall forthwith agree with the Purchaser as to
- a) how such (part of the) premises shall be decontaminated; and
 - b) following decontamination, the (part of the) Property or lease contract shall be transferred as soon as possible in accordance with the applicable law and the terms of this Agreement;
- 6.7. The Parties agree that in all cases referred to in this article, the overriding principle shall be to minimise, as much as possible, the aggregate costs of all Parties for any solution, bearing in mind that the Business will be sold and transferred pursuant to this Agreement as a “going concern”.

Article 7 – Receivables and Creditors

- 7.1. The Annex headed “The Receivables and Creditors” contains a list of the names and addresses of the debtors of the Business and the amount and age of each debt owing by each to the Seller as at the Effective Date.
- 7.2. The Annex headed “The Receivables and Creditors” contains a list of the names and addresses of the Creditors and the amounts owed by the Seller to each of them, the date of invoice and the date on which payment is due as at the Effective Date.
- 7.3. Between the Effective Date and Completion, the Seller shall in the ordinary course of the Business collect the Receivables. However, the Seller shall not, without the Purchaser’s consent, take legal action in respect of any of the Receivables.
- 7.4. Subject to the provisions of the article headed “Conditions” and in accordance with article 2.4., following Completion, the Purchaser shall in the ordinary course of the Business pay the Creditors as the obligations in respect of them fall due (and become payable).
- 7.5. No Party shall become liable to pay any commission in respect of any Receivable collected or received by or on behalf of the Purchaser or the Seller (*i.e.* pending Completion).
- 7.6. Save as otherwise explicitly agreed by the Parties, any payment in connection with the Business received by the Seller, following Completion, shall be transferred to the Purchaser, without any right to set-off against any other liability or debt.

Article 8 – Transfer of Employees

- 8.1. The Seller and the Purchaser acknowledge and agree that the Employees transfer to the Purchaser on the Completion Date as per the Effective Date by operation of law upon the transfer of the Business^(*).
- 8.2. The Seller shall perform and discharge all its obligations in respect of each of the Employees for its own account up to the Effective Date (including any salary and remuneration which have accrued prior to the Effective Date but which have not become payable on the Completion Date, and including any other payment or liability such as holiday payment, 13th month, premiums and contributions or payments to pension schemes). The Seller shall indemnify and hold harmless the Purchaser against all claims and liabilities arising from the Seller's failure to perform and discharge such obligations, to the extent that they originate prior to the Effective Date.
- 8.3. Pending Completion, the Seller shall perform and discharge all obligations in respect of the Employees for the account of the Purchaser. The Seller shall indemnify and hold harmless the Purchaser against any and all claims, liabilities, penalties, costs and expenses (other than the salary payment) caused by the Seller's failure to perform and discharge such obligations. The Seller shall indemnify and hold harmless the Purchaser against all claims, liabilities, penalties, costs and expenses arising from the Seller's obligations as an employer, and arising from the Seller's acts, defaults, negligence or omission in respect of its duties as the employer of an Employee or former employer of former employees of the Business.
- 8.4. As from the Completion Date, the Purchaser shall perform and discharge its obligations in respect of each of the Employees (including any salary and remuneration and any other payment or liability such as holiday payment, 13th month, premiums and contributions or payments to pension schemes, which accrue after the Effective Date). The Purchaser shall indemnify and hold harmless the Seller against all claims, liabilities, penalties, costs and expenses relative to the Employees, which arise other than by reason of the Seller's failure to comply with its obligations vis-à-vis the Employees, as from the Effective Date. For the avoidance of doubt, the Parties acknowledge, that the Business, including all Employees, is transferred on the Completion Date as per the Effective Date.

^(*) An automatic transfer is realised if the conditions of the Collective Labour Agreement No. 32bis of June 7, 1985 are fulfilled. It is assumed that this is the case.

- 8.5. Pending Completion, the Seller and the Purchaser shall observe and perform those provisions of the Annex headed “Pensions” as are expressed to be observed and performed by each of them respectively. On the Completion Date, as per the Effective Date, the Purchaser shall assume the Seller’s obligations vis-à-vis the Employees under the pension schemes in such a manner that all Employees’ rights and claims are safeguarded during the period between the Effective Date and the Completion Date.

Article 9 – Purchase Price and Settlement of the Working Capital

- 9.1. The consideration payable by the Purchaser for the Business shall be the Purchase Price.
- 9.2. The Purchase Price is based on the assumption that the Working Capital shall be zero.
- 9.3. Pending Completion, the Seller and the Purchaser shall agree on the amount of the Working Capital. The Working Capital shall be derived from the Effective Date Accounts, which shall be prepared in accordance with the provisions of article 10.
- 9.4. For the purpose of determining the Working Capital, the amount in the books of the Seller attributed to the Stocks (and as reflected in the draft accounts relating to the Business as at the Effective Date and delivered by the Seller to the Purchaser pursuant to article 10) shall serve as binding evidence between the Parties and be deemed to be the amount representing the actual value of the items contained in the inventory as described in the Annex headed “Stocks”, provided only that the Seller has consistently applied valuation policies established in preceding years and the current accounting principles, and not increased the value of individual (spare) parts of the Stocks. The burden of counter-proof that the value attributed to the Stocks in the draft accounts delivered by the Seller is higher than the actual value of the Stocks is on the Purchaser. The Parties agree that any deviations between the value attributed to the Stocks in the draft accounts delivered by the Seller and the actual value of the Stock shall not be taken into account in respect of items with a value less than _____ euro [amount in words] (€ _____) [amount in numbers] and any adjustment to the value of the Stocks as reflected in the draft accounts delivered by the Seller shall only be made to the extent that the adjustment would exceed an amount of _____ euro [amount in words] (€ _____) [amount in numbers].
- 9.5. Any amount by which the Working Capital as derived from the Effective Date Accounts exceeds or is less than zero shall be settled on the Completion Date

or within ____ Business Days after the Independent Accountants have settled any disputed item or items of the Effective Date Accounts, as follows:

9.5.1. Any surplus with a minimum of _____ euro [amount in words] (€ _____) [amount in numbers] shall be payable by the Purchaser to the Seller; or

9.5.2. Any shortfall with a minimum of _____ euro [amount in words] (€ _____) [amount in numbers] shall be payable by the Seller to the Purchaser.

9.6. Save as otherwise explicitly agreed between the Parties, any payment falling due pursuant to sub-article 9.5. may not be settled by way of set-off.

Article 10 – Effective Date Accounts

- 10.1. The Seller shall deliver to the Purchaser draft accounts relating to the Business as at the Effective Date as soon as possible and in any event within 10 Business Days after the Effective Date. The Purchaser shall within 15 Business Days after sending such draft accounts give notice in writing to the Seller whether it accepts the draft accounts as the Effective Date Accounts. If notice of non-acceptance is given by the Purchaser to the Seller within the above 15 Business Day period (a “Non-Acceptance Notice”), such Non-Acceptance Notice shall be accompanied by a letter from the Purchaser or the Purchaser’s Accountants giving details of any item or items they wish to dispute together with the reasons for such dispute and a list of proposed adjustments. Failing such Non-Acceptance Notice by the Purchaser within 15 Business Days after sending the draft accounts by the Seller, the draft accounts shall be deemed to be the Effective Date Accounts and be final and binding upon the Parties.
- 10.2. Upon the timely receipt of a Non-Acceptance Notice, the Parties shall use their best endeavours to agree in writing the item or items disputed by the Purchaser and any other item or items which, following receipt of notice of the items disputed by the Purchaser, the Seller notifies the Purchaser that they wish to adjust.
- 10.3. The draft accounts as at the Effective Date, adjusted to reflect the item or items as agreed between the Seller and the Purchaser in writing in accordance with this article 10 or as determined by the Independent Accountants under this article 10, shall constitute the Effective Date Accounts for the purposes of this Agreement.
- 10.4. If, within 15 Business Days after the Seller having received a Non-Acceptance Notice, the Parties have not reached agreement on the Effective Date Accounts,

each of them may refer any matter in dispute to the Independent Accountants. Failing agreement on the identity of the firm of certified auditors within 30 Business Days of receipt of the Non-Acceptance Notice, such firm of certified accountants shall be appointed for this purpose within 5 Business Days from the application of either Party (with copy of such application to the other Party) by the chairman of the Belgian Institute of Certified Auditors (“*Instituut voor Bedrijfsrevisoren/Institut des Reviseurs d’Entreprises*”) (the “Independent Accountants”).

10.5. The Independent Accountants shall act on the following basis:

10.5.1. the Independent Accountants shall determine the dispute and this shall be a final and binding determination of the Working Capital in accordance with article 1592 of the Belgian Civil Code;

10.5.2. the item or items in dispute shall be notified to the Independent Accountants in writing by the Seller and the Purchaser within 5 Business Days of the Independent Accountants’ appointment;

10.5.3. their terms of reference shall be to determine the item or items in dispute, as established in accordance with sub-article 10.2. and accordingly the calculation of the Working Capital and the amounts of any adjustment to be made (as set forth in article 9) within 20 Business Days of notice given under sub-article 10.5.2. above;

10.5.4. the Independent Accountants shall decide the procedure to be followed in the determination, but shall allow the Parties to make written representations. The Independent Accountants shall render their decision within 2 calendar months of the appointment of the Independent Accountants in accordance with this sub-article;

10.5.5. the Seller and the Purchaser shall each provide (and to the extent that they are reasonably able, shall procure that, respectively, the Seller’s Accountants and the Purchaser’s Accountants shall provide) the Independent Accountants promptly with all information, assistance and access to books of account, documents, files and papers which they reasonably require and the Independent Accountants shall:

10.5.5.1. be entitled (to the extent they consider it appropriate) to base their opinion on such information; and

10.5.5.2. on the accounting and other records of the Business; and

10.5.5.3. take into account (in this order) the accounting principles applied by the Seller’s Group in its most recent published annual accounts, the

accounting principles generally acceptable in the business sector, and Belgian GAAP; and

10.5.6. the costs of the determination, including fees and expenses of the Independent Accountants, shall be borne equally as between the Seller on the one hand and the Purchaser on the other hand.

10.6. The Seller's Accountants and the Purchaser's Accountants are entitled (to the extent that they jointly consider it appropriate) to rely on information provided or made available by the Parties, provided that each of the Parties shall have had a fair opportunity to reflect on such information.

Article 11 – Conditions Precedent

11.1. Completion is conditional on:

- a) the Belgian competition authorities having approved or not having objected to the transaction in accordance with the Belgian Competition Law; and
- b) settlement of the Working Capital in accordance with article 9; and
- c) the Tax authorities having delivered the certificates referred to in article 442bis § 3 of the Income Tax Code (*“Wetboek van de Inkomstenbelastingen 1992/Code des impôts sur les revenus 1992”*) and in article 93undecies B § 3 of the VAT Code (*“Wetboek van de Belasting over de Toegevoegde Waarde/Code de la taxe sur la valeur ajoutée”*)(^{*)}).

Condition (b) is for the benefit of the Party whom it may concern and may be waived with the written consent of the Purchaser and the Seller, which shall not unreasonably be withheld or delayed.

11.2. Each of the Parties shall use reasonable endeavours to procure that the Conditions are satisfied on or before _____ [date]. If the Conditions are not fulfilled or waived on or before that date, all the other articles of this Agreement shall lapse and cease to have effect, except for this sub-article, the articles headed “Confidentiality”, “Miscellaneous Provisions”, “Applicable law and Jurisdiction”.

11.3. If Condition (a) in sub-article 11.1. is not satisfied and this Agreement terminates and ceases to have effect, then each Party will bear its own costs, charges and expenses with respect to the negotiation, preparation and termination of

(^{*)} In order for the purchaser to avoid liability for the outstanding tax debts of the Business, the tax collector can issue a tax certificate to the seller conforming that no outstanding tax debts exist.

the Agreement. Neither Party will have the right to claim from each other losses or profits incurred as from the Effective Date up to the termination of the Agreement.

Article 12 – Completion

- 12.1. Completion shall commence at the offices of _____ in _____ at _____ on the earlier of: (i) the third Business Day after the date on which all the Conditions are satisfied or, as permitted, waived; (ii) _____ [date]; and (iii) such other time and on such other date as the Seller and the Purchaser may agree (the “Completion Date”).
- 12.2. On Completion, the Purchaser shall acquire the Business and the Assets, Liabilities and Contracts shall be transferred (“*geleverd/délivré*”) to the Purchaser pursuant to the applicable law.

To effect such transfer:

- a) the Seller shall transfer the Assets by physically handing them over, or, with regard to the Equipment and the Stocks, by providing the Purchaser access to the location (including all keys) where these Assets are held, such that the Assets become fully available to and in the possession of, the Purchaser;
- b) the Seller shall deliver to the Purchaser an invoice in respect of the Business to the Purchaser in the amount of the Purchase Price;
- c) the Seller shall deliver to the Purchaser written details of the Assets and the Contracts, which have been sold to third parties in the ordinary course of business or are no longer subsisting, as at Completion and written details of new Assets and Contracts, acquired or entered into, respectively, since the date of this Agreement;
- d) the Seller shall deliver to the Purchaser a duly executed deed of assignment (“*overdrachtsakte/contrat de cession*”) in a customary form, containing no material terms or conditions, relating to the Contracts, Business Intellectual Property Rights, Insurance Policies, Receivables and Claims;
- e) the Purchaser shall deliver to the Seller and the Seller shall execute copies of the notifications of the assignment of the Insurance Policies, the Receivables, and the Claims to each insurer under the Insurance Policies and each counterparty of the agreement from which such Receivable or Claim originates, to complete the assignment of the Insurance Policies, the Receivables, and the Claims;

- f) the Seller shall transfer to the Purchaser all Assets and effect all such legal acts as shall be needed to effect the transfer of the licences, permits and authorisations as are part of such Assets;
- g) the Seller and the Purchaser shall execute a deed of transfer of the Shares in a customary form, containing no material terms or conditions, make appropriate amendments to the shareholders' register of the Subsidiary and do all other necessary acts so as to effectuate the transfer of the Shares;
- h) the Purchaser shall pay the Purchase Price to the Seller and the Seller shall give a receipt to the Purchaser.

Article 13 – Covenants pending Completion

13.1. Prior to Completion the Seller shall:

- a) give the Purchaser's representatives access to the Business and its management at reasonable times such that the ordinary course of business (as determined by the Seller) shall not by any means be disturbed or disrupted;
- b) inform the Purchaser as to material or unusual developments in the operation of the Business;
- c) maintain the level of the Stocks at a consistent level reasonably sufficient to operate the Business in an efficient manner and ensure that there is no unusual increase or unusual decrease in the level of the Stocks; and
- d) maintain the policies for the payment of the Creditors which have been applied during the financial period ended on the Effective Date and ensure, in particular, that there is no unusual postponement of the payment of Creditors, settlement of a Claim or unusual acceleration of the collection of any Receivable, in each case having regard to the policies applied for such payment or collection during the financial period ended on the Effective Date.

13.1. Pending Completion, the Seller shall on a regular basis consult with the Purchaser on any management issue of the Business.

13.2. Prior to Completion, the Seller shall not, except in the ordinary course of business (which shall include, for the purpose of this sub-article, the extension of a term of any existing Contract which extension is furthermore materially on the same or more favourable terms and conditions) or with the prior consent of the Purchaser:

- a) introduce into the Business any new range or type of goods or services;

- b) enter or offer to enter into any contract which relates to the Business (other than as a result of the acceptance of any existing tender) on terms which do not permit the Assignment of it;
- c) make any change in the terms and conditions of employment or pension benefits of any of the Employees, except for any regular salary increases (as periodically granted to employees by contract, collective labour agreement or statutory provisions) or as may be agreed prior to the date of this Agreement;
- d) enter into an agreement with the works council or union representatives of the Employees;
- e) hire or fire any key employees;
- f) permit any of the Insurance Policies to lapse or do or omit anything which would make any of the Insurance Policies void or voidable.

Article 14 – Covenants

- 14.1. The Parties agree that the current arrangement between the Seller and the Seller's Group for the _____^(*) shall be continued for a period of no less than _____ months following Completion albeit that services shall, as from Completion be provided at fair market prices. Pending Completion, the Parties shall negotiate in good faith, with a view to entering into an agreement in writing of the arrangement, on commercial terms and conditions.
- 14.2. The Purchaser shall make reasonable endeavours to procure that as from the Completion Date the Seller's Group is released from all guarantees and indemnities given by a member of it in respect of obligations of the Seller in respect of the Business, including, without limitation, those listed in the Annex headed "Parent Indemnities" and the Seller shall make reasonable endeavours to complete the list as much as possible, prior to the Completion Date. Pending its release the Purchaser shall indemnify such members of the Seller's Group against all liabilities under those guarantees and indemnities, if such liabilities result from the Business' non-performance or are caused by circumstances which are agreed to be for the risk and account of the Business.
- 14.3. [optional] The Parties agree that as of the Completion Date, the Seller shall have the right to terminate all insurance policies maintained by members of the

^(*) If the continued operation of the Business is dependent upon services rendered by the Seller that will not be transferred, such as accounting services, it is advisable to foresee, in regard to their continuation, a transition period of for instance 6 months.

Seller's Group other than the Seller, to the extent that such insurance policy relates to the Business. These policies include, for the avoidance of doubt, without limitation, the policies listed in the Annex headed "Insurance" under the headers "Group Insurances". The Seller shall give reasonable previous notice to the Purchaser of any such termination, for which purpose the Parties shall timely consult with each other pending Completion in order to determine the nature, scope and coverage of such (parts of) insurance policies. The Purchaser shall provide, at its discretion, for appropriate insurance effective as of the Completion Date, so as to provide for adequate coverage of the Business against any risks to which the Business is exposed as per the date of each such termination.

- 14.4. [optional] The Purchaser shall discontinue the use of the name "_____" and "_____" and other related names (whether as a trade name, word mark or other Intellectual Property Right), as soon as possible but ultimately _____ months after the Completion Date. The Seller and the Seller's Group undertake not to utilise the name "_____" in the Belgian market for a period of _____ years following the Completion Date.
- 14.5. [optional] For a period of _____ months following the Completion Date, the Purchaser shall be entitled to redirect any internet traffic over the domain names "_____" and "_____" to the websites of the Purchaser (or the Purchaser's Group, as the case may be).
- 14.6. The Seller shall indemnify and hold harmless, the Purchaser (or the members of the Purchaser's Group whom it concerns) for any and all Tax claims being the immediate result of the transfer of the Business (as such) from the Seller to the Purchaser^(*).
- 14.7. Each Party shall, after a reasonable request by the other Party, provide such Party with such information, documents and records relating to the Business and such assistance as the requesting Party may require in connection with the preparation by it of and for any annual or quarterly financial accounts, Tax return, audit, prosecution, defence or other of any claim, suit, proceeding, proposed adjustment or other relating to a taxable year or other taxable or accounting period which, in relation to the Seller requesting such information, ends on or prior to the Completion Date, and, in relation to the Purchaser requesting such information, ends after the Completion Date.

^(*) It is in the interest of the Seller to obtain the certificates from the Tax authorities referred to in sub-article 11.1. in order to avoid any liability under this clause.

- 14.8. The Purchaser shall, and shall procure that the Business shall, retain all Tax returns, schedules, working papers and all other records or documents relating to tax matters of the Business for at least _____ years after _____^(*).

Article 15 – Warranties

- 15.1. The Seller represents and warrants to the Purchaser that, to the best of its knowledge, information and belief, except as fairly disclosed to the Purchaser (a) during the due diligence procedure described in Recital D^(†), (b) in the Disclosure Letter or (c) this Agreement, each of the statements set out in the Annex headed “Warranties” is true and accurate in all material respects and the Seller has not withheld any information from the Purchaser which in their opinion is relevant to form a proper view of the Business.
- 15.2. Notwithstanding sub-article 15.1., the Purchaser may not rely on any other oral representations, oral warranties or other oral information obtained from the Seller or the Business or their representatives or advisers.
- 15.3. The Purchaser agrees with the Seller that it shall not and shall procure that no member of the Purchaser’s Group shall, in connection with giving the Warranties and preparation of the Disclosure Letter, bring any claim against any member of the Seller’s Group, or against any employee, managing director or director of the Seller or any member of the Seller’s Group in the event of a Warranty Claim.
- 15.4. The liability of the Seller in connection with the Warranties and any Warranty Claim is subject to the limitations contained in, and to the other provisions of, the article headed “Warranty Limits”.

Article 16 – Warranty Limits

- 16.1. The liability of the Seller is limited as follows:
- 16.1.1. no breach of the Warranties shall be taken into account by the Seller and the Purchaser for any purposes in respect of which the amount of the damages to which the Purchaser would otherwise be entitled is less than _____ euro [amount in words] (€ _____) [amount in numbers];

^(*) Customary period is 7 years from 31 December prior to the Completion Date.

^(†) Given the fact that an asset deal requires thorough investigation by the purchaser of the assets and liabilities that he will receive, it is not unreasonable to ask the purchaser to accept such assets and liabilities in an “as is” state. It is of course prudent to identify clearly all of the information that was gathered during the due diligence process, for instance as an annex to the agreement.

16.1.2. the Purchaser is not entitled to recover any damages in respect of any breach or breaches of the Warranties, unless the aggregate amount of damages in respect of such breach or breaches is equal to or exceeds _____ euro [amount in words] (€ _____) [amount in numbers] in which case only the excess over that amount may be recovered by the Purchaser;

16.1.3. the maximum aggregate liability of the Seller in respect of all and any Warranty Claims, except as otherwise agreed in sub-article 6.4., shall not exceed _____ euro [amount in words] (€ _____) [amount in numbers]; and

16.1.4. the Seller shall cease to have any liability under or in respect of the Warranties:

- a) on the date which is _____ months after the expiry of the periods allowed for by law for the assessment of the liability of the Seller in respect of the Warranty under the heading “Taxation” of the Annex headed “Warranties”; and
- b) in respect of any other Warranties on the date which is _____ months after the Completion Date,

except in respect of a claim of which the Purchaser gives specific written notice to the Seller before that relevant date.

- 16.2. If the Purchaser becomes aware of any matter which in the opinion of the Purchaser is likely to result in a Warranty Breach, the Purchaser shall within 10 Business Days after the Purchaser becomes aware of any such Warranty Claim or facts upon which such Warranty Claim could be based, give written notice containing summary details thereof to the Seller (the “Indemnification Notice”).
- 16.3. If a third party makes any claim in or out of court against the Purchaser or otherwise in respect of the Business and such claim relates to a fact or event which, whether wholly or partly, also constitutes a Warranty Breach, the Purchaser shall notify the Seller of this within 10 Business Days after the Purchaser becomes aware of any such claim.
- 16.4. After a notification referred to in sub-article 16.3., the Seller shall have the right to take over the defence in the case that the plaintiff is also a supplier or customer of the Seller’s Group (at the Seller’s discretion), in which case the Seller shall inform the Purchaser without delay as to whether it wishes to take over the defence against the claim. In all other cases, the Parties shall agree in

good faith as to the most appropriate manner in which to conduct the defence. The take-over of the defence shall take immediate effect.

- 16.5. If the Seller decides to, or the Parties agree that the Seller shall (as the case may be), defend a third party claim in accordance with this article 16, neither the Purchaser nor any Employee shall be entitled to deal with the claim vis-à-vis the relevant plaintiff(s), and shall refrain from making any acknowledgement of the claim or conclusion of a settlement. However, the Seller shall, prior to taking action in the scope of legal proceedings or otherwise in handling such third party claim, reasonably and timely consult with the Purchaser and, in deciding which actions they shall take, the Seller shall at all times take into account the legitimate interests of the Purchaser and the Business.
- 16.6. Notwithstanding the Seller' liability under article 15, if the Seller takes over the defence, it will bear the costs for the defence of such claim excluding the costs incurred by the Purchaser which are made without the consent of the Seller during the period in which the Seller had not yet taken over the defence against the claim. Upon any third party claim arising which may in part or in whole constitute a breach of the Warranties, the Parties shall enter into discussions on the possibility of an early settlement of such Warranty Claim.
- 16.7. If the Seller does not take over the defence in accordance with this article 16, the Purchaser shall be entitled to deal with the claim at its own discretion, including acknowledgement of the claim or conclusion of a settlement.
- 16.8. In addition to sub-articles 16.6. and 16.7., the Party conducting the defence against a claim shall keep the other Party informed of any development in the dispute and of its intentions as to how to proceed.
- 16.9. If:
- (a) the Seller makes a payment in respect of a Warranty Claim (the "Damages Payment"); and
 - (b) within 12 months of the making of the relevant payment any member of the Purchaser's Group or the Purchaser receives any sum, which would not have been received but for the circumstance which gave rise to that Warranty Claim;
 - (c) the receipt of that sum was not taken into account in calculating the Damages Payment; and
 - (d) before receipt of that sum, but after taking into account the Damages Payment, the Purchaser has been compensated by a third person in full for the loss or liability which gave rise to the Warranty Claim in question,

the Purchaser shall, promptly on receipt of that sum by it or the relevant member of the Purchaser's Group, repay to the Seller an amount equal to the lower of (i) that sum and (ii) the Damages Payment, after deducting (in either case) all costs incurred by the Purchaser or the relevant member of the Purchaser's Group in recovering that sum and any Tax payable by the Purchaser or any member of the Purchaser's Group by virtue of its receipt.

Article 17 – Protective Covenants

Save for any business conducted with customers from outside Belgium, which may lead to services to be provided to such customers into or through the Belgian territory, the Seller covenants with the Purchaser that Seller shall and shall procure that no member of the Seller's Group shall not for a period of _____ years from the Completion Date, conduct business in Belgium which is competitive with the Business as at Completion, provided, however, that the Seller's Group shall be allowed to _____ [description of permitted activities].

Article 18 – Announcement and Confidentiality

- 18.1. Notwithstanding article 3.5., no Party shall make or permit any person connected with him to make any announcement concerning this sale and purchase or any ancillary matter before, during or after Completion.
- 18.2. Nothing in this article prevents any announcement being made or any confidential information being disclosed (i) with the written approval of the other Parties, which in the case of any announcement shall not be unreasonably withheld or delayed; or (ii) to the extent required by law or any competent regulatory body, but a Party required to disclose any confidential information shall promptly notify the other Parties, where practicable and lawful to do so, before disclosure occurs and co-operate with the other Parties regarding the timing and content of such disclosure or any action which the other Parties may reasonably elect to take to challenge the validity of such requirement.
- 18.3. The Parties shall and shall procure that:
 - (a) each member of its Group as it may be from time to time shall keep confidential all information provided to it by any other Party or otherwise provided in connection with this Agreement which relates to any member of the other Party's Group; and
 - (b) if after Completion any member of the Group holds confidential information relating to the other Party's Group, it shall keep that information con-

fidential and, to the extent reasonably practicable, shall return that information to the relevant (other) Party or destroy it, without retaining copies.

18.4. Nothing in this article prevents disclosure of confidential information by any Party:

18.4.1. as agreed in this Agreement, and in particular, but without limitation, the articles headed “Purchase Price and Settlement of the Working Capital” and “Effective Date Accounts”; or

18.4.2. to the extent that the information is in or comes into the public domain other than as a result of a breach of any undertaking or duty of confidentiality by that Party; or

18.4.3. to that Party’s professional advisers, auditors or bankers, but before any disclosure to any such person the relevant Party shall procure that he is made aware of the terms of this article and shall use its best endeavours to procure that each such person adheres to those terms as if he were bound by the provisions of this article.

Article 19 – Obligations of the Shareholder

19.1. The Shareholder guarantees as its own obligation to the Purchaser that it will maintain the corporate existence of the Seller for a period of _____ years as from the Effective Date.

19.2. The Shareholder guarantees as its own obligation to the Purchaser, the payment and performance when due of all amounts and obligations by the Seller in respect of the terms and conditions of this Agreement including, but not limited to, any Warranty Claim.

Article 20 – Assignments

20.1. Subject to sub-article 2.5., no Party may assign any of its rights or transfer any of the obligations under this Agreement without the prior written consent of the other Parties. The Purchaser agrees to notify the Seller as soon as practicable after any assignment.

20.2. Following any assignment of rights or appointment of a limited liability company for the acquisition of the Business, the assignee or such company shall be jointly and severally liable vis-à-vis the Seller (or the Seller’s Group, as the case may be) for the due and timely performance of any obligation or fulfilment of any duty pursuant to this Agreement.

- 20.3. Where any obligation, representation or undertaking in this Agreement is expressed to be made or undertaken by 2 or more of the Purchasers or a member of the Purchaser's Group they are jointly and severally liable in respect of it.

Article 21 – Payments

- 21.1. All payments under this Agreement shall be made in euro, as follows:

21.1.1. if to the Seller in the bank account at _____ [name of the bank] with IBAN account number _____ or such other account as the Seller may specify; and

21.1.2. if to the Purchaser in the bank account at _____ [name of the bank] with IBAN account number _____ or such other account as the Purchaser may specify.

- 21.2. If any Seller is required by law to make a deduction or withholding in respect of any sum payable under this Agreement, the Purchaser shall, at the same time as the sum which is the subject of the deduction or withholding is payable, pay to the Purchaser such additional amount as is required to the effect that the net amount received by the Purchaser shall equal the full amount which would have been received by the Purchaser if no such deduction or withholding had been required to be made.

Article 22 – Value Added Tax

- 22.1. The Parties agree that the Business shall be transferred to the Purchaser as a going concern as of the Completion Date and that articles 11 and 18 § 3 of the Belgian VAT code (“*Wetboek van de Belasting over de Toegevoegde Waarde / Code de la taxe sur la valeur ajoutée*”) (the “VAT Act”) shall apply to the transfer of the Business under this Agreement and that the Parties shall use all reasonable endeavours to secure that the sale and transfer of the Business is not treated as a supply of goods and services for the purposes of the VAT Act.
- 22.2. If the transfer of the Business or any part of it (including, for the avoidance of doubt, any Property) is subject to VAT, the Purchaser shall satisfy the amount of any such VAT together with any interest and penalties due by reason of late payment of VAT within 5 Business Days of receipt of such invoice in accordance with the article headed “Payments”.
- 22.3. All books, records, administration and other data and documents relating to VAT due or paid by the Business shall be properly stored by the Purchaser or the Business for the minimum statutory term as applicable under the applicable VAT laws. Copies of such books, records, administration and other data and

documents may be retained by the Seller for such purpose and shall be made available to the Seller upon its first request.

Article 23 – Miscellaneous Provisions

- 23.1. This Agreement and its Annexes contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supercedes and replaces all prior agreements or understandings, written or oral, with respect to the same subject matter still in force between the Parties.
- 23.2. Any amendment to this Agreement, as well as any additions or omissions, can only be agreed in writing with the mutual consent of the Parties.
- 23.3. Whenever possible, the provisions of this Agreement shall be interpreted in such a manner as to be valid and enforceable under the applicable law. However, if one or more provisions of this Agreement is found to be invalid, illegal or unenforceable, in whole or in part, the remainder of any such provision and of this Agreement shall not be affected and shall continue in full force and effect as if such an invalid, illegal or unenforceable provision had never been contained herein. Moreover, if the Parties decide to amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision, they should take care that the new or amended provision embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).
- 23.4. Neither Party shall be held liable for failure to perform under this Agreement (save for the payment of any sums due hereunder) if such failure is due to causes beyond its reasonable control (“*overmacht/force majeure*”), such as, but not limited to, fire, flood, strikes, labour disputes or other industrial disturbances, (declared or undeclared) war, embargos, blockades, legal restrictions, riots, insurrections, governmental regulations or the unavailability of means of transport.
- 23.5. Any failure or delay by either Party in exercising any right under this Agreement, the exercise, in whole or in part, of any right under this Agreement, or any reaction or absence of reaction by either Party in the event of violation by the other Party of one or more provisions of this Agreement shall not operate or be interpreted as a waiver (whether express or implied, in whole or in part) of any of its rights under this Agreement or under said provision(s), nor shall it preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If one Party has expressly waived a right in writing following a specific failure by the other Party, this waiver cannot be invoked

by the latter Party in favour of a new failure, similar to the previous one, or any other failure.

- 23.6. All notices and other forms of communication required under this Agreement must be in writing and delivered or transmitted to the recipient in person through a reputable courier service, by fax with a confirmation sheet or by registered mail (with acknowledgement of receipt) to the address indicated below:

To the Seller: _____

To the Purchaser: _____

A notice shall be considered delivered to the recipient's address on the date of delivery if delivered in person, the next working day if sent by fax and 3 working days following the date of mailing if sent by registered mail.

Either Party may change the address to which notices are to be delivered or transmitted by giving the other Party written notice to this effect in the manner set forth herein.

- 23.7. If any conflict or inconsistency arises in the interpretation (or construction) of any provision of an agreement or deed attached as a Annex, exhibit or annex to this Agreement on the one hand and any provision of this Agreement on the other hand, the provision of this Agreement shall at all times prevail, unless the former document both clearly provides otherwise and expressly specifies which provision of this Agreement shall be prejudiced.
- 23.8. Save as otherwise provided in this Agreement, each Party shall pay the costs and expenses incurred by it (and, in the case of the Purchaser, each member of the Purchaser's Group and, in the case of the Seller, each member of the Seller's Group) in connection with the entering into this Agreement and the Completion, including without limitation in respect of their obligations in satisfying the Conditions and the other requirements for transferring the Assets, the Liabilities and the Contracts, provided that all Taxes, including but not limited to transfer taxes, which become due as a result of this Agreement or the actions contemplated in this Agreement, shall be for the account of the Purchaser.
- 23.9. This Agreement is executed in _____ [number] separate copies, each of which is deemed to be an original and both/all of which taken together constitute the same agreement. Translations into any language other than English are for convenience purposes only, even when executed by one or both Parties.
- 23.10. Articles 18, 23 and 24 shall continue in full force and effect in accordance with their terms, notwithstanding the expiration or termination of this Agreement.

Article 24 – Applicable Law and Jurisdiction

24.1. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this Agreement shall be governed by and construed in accordance with the Belgian law. No effect shall be given to any other choice of law or to any conflict-of-laws rules or provisions (Belgian, foreign or international), including the UN Convention on the sale of goods (if applicable), that would result in the application of the laws of any country other than Belgium.

24.2. Any dispute concerning the validity, interpretation, enforcement, performance or termination of this Agreement shall be submitted to the exclusive jurisdiction of the _____ [judicial district] courts.

[optional] Any disputes arising out of or in relation with this Agreement shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators in accordance with those Rules. The arbitral tribunal shall be composed of _____ [number] arbitrators. The seat of the arbitration shall be _____ [city]. The arbitration shall be conducted in _____ [language.]

Executed in _____ [place], on _____ [date] in three counterparts, each Party acknowledging having received an original.

FOR AND ON BEHALF OF THE SELLER

_____ [name]
_____ [title]
_____ [date]
_____ [signature]

FOR AND ON BEHALF OF THE PURCHASER

_____ [name]
_____ [title]
_____ [date]
_____ [signature]

FOR AND ON BEHALF OF THE SHAREHOLDER

_____ [name]
_____ [title]
_____ [date]
_____ [signature]

LIST OF ANNEXES

Annex I.	The Properties
Annex II.	The Equipment
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