

Draft Dated: ■, 20■

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ASSET PURCHASE AGREEMENT

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT made the ■ day of ■, 199■, by and among ■ (the “Vendor”) and ■ (the “Purchaser”).

[Note: The principal shareholder of the Vendor should be added as a third party for purposes of the representations and warranties.]

RECITALS

A. The Vendor carries on business as ■ at its plant at ■, Ontario, under the name “■” (the “Business”).

B. The Vendor has agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Vendor, the Purchased Assets, all in accordance with the terms of this Agreement.

WITNESSETH:

NOW THEREFORE in reliance upon the representations, warranties and covenants of the respective parties contained herein, and in consideration of the mutual terms and conditions contained herein, the parties hereto intending to be legally bound hereby, agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 **Definitions** - In this Agreement and in the schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions shall have the following meanings:

“**Accounts Receivable**” means all accounts receivable, trade accounts receivable, notes receivable, book debts and other debts due or accruing due to the Vendor in connection with the Business;

“**Act**” means the Business Corporations Act 1990, c.B.16 (Ontario) as in effect at the date hereof;

“**Affiliate**” shall have the meaning ascribed to that term in the Act and shall also include a Person Related To the Vendor and a shareholder of the Vendor;

“**Arm’s Length**” shall have the meaning ascribed to that term in the Income Tax Act, S.C. 1970-71-72, c.63 (Canada);

“Assumed Liabilities” means the liabilities of the Vendor which are to be assumed by the Purchaser pursuant to Section 4.1;

“Bank” means ■, the banker of the Vendor;

“Business” means the business of ■ at its plant at ■, Ontario, presently and heretofore carried on by the Vendor;

“Business Day” means a day which is not a Saturday or a Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws of the Canada applicable in the Province of Ontario;

“Cash Portion of the Purchase Price” has the meaning ascribed to that term in Subsection 3.3(b);

“Claims” means any legal, administrative, governmental or any other claims, proceedings, actions, grievances, arbitrations, investigations, judgments, orders, injunctions or restrictions including, without being limited to, those relating to environmental, pay equity, employment equity and human rights, health, safety, workers’ compensation, hazardous material handling or waste transportation or disposal concerns;

“Closing” means the closing of the transactions contemplated hereby on the Closing Date;

“Closing Balance Sheet” has the meaning ascribed to that term in Subsection 3.3(a);

“Closing Date” means ■, 199■, or such other date as may be agreed upon by the Purchaser and the Vendor;

“Closing Date Payment” shall have the meaning ascribed to that term in Section 3.2;

“Closing Financial Statements” has the meaning ascribed to that term in Subsection 3.3(c);

“Contracts” has the meaning ascribed thereto in Section 6.24;

“Dollars” or **“\$”** means lawful money of Canada and **“US Dollars”** or **“US\$”** means lawful money of the United States of America;

“Encumbrances” means mortgages, charges, pledges, security interests, liens, encumbrances, actions, claims, demands and equities of any nature whatsoever or howsoever arising and any rights or privileges capable of becoming any of the foregoing and with respect to real properties, “Encumbrances” shall also include leases, licenses, rights of use, rights of occupancy, rights of possession, reservations, restrictions, easements, rights-of-way,

encroachments, construction lien claims and profits-a-prendre;

“Environmental Laws” means all applicable federal, provincial, state, municipal and local laws, statutes, regulations, orders, policies, directives or ordinances relating to the environment, health, occupational safety, product liability and transportation including, without being limited to, the following: the Canadian Environmental Protection Act and the Transportation of Dangerous Goods Act, the Environmental Protection Act (Ontario), the Gasoline Handling Act (Ontario), the Ontario Water Resources Act, the Occupational Health and Safety Act (Ontario) and any and all similar or corresponding laws of or applicable in any jurisdiction in which the Vendor carries on the Business or in which its products are sold, together with all applicable rules, regulations or the like, promulgated thereunder and including applicable orders, decisions or the like, rendered by any governmental body;

“Equipment Contracts” has the meaning ascribed to that term in Section 6.22;

“ETA” means Part IX of the Excise Tax Act (Canada), as amended from time to time;

“Excluded Assets” means (a) all cash, bank balances, moneys in possession of banks and other depositaries, term or time deposits and similar cash items of, owned or held by or for the account of the Vendor; (b) all shares, notes, bonds, debentures or other securities of or issued by corporations or other Persons and all certificates or other evidences of ownership thereof owned or held by or for the account of the Vendor; (c) the corporate, financial, taxation and other records of the Vendor not pertaining exclusively or primarily to the Business; (d) all extra-provincial, sales, excise or other licences or registrations issued to or held by the Vendor, whether in respect of the Business or otherwise; and, (e) all other assets of the Vendor that are not Purchased Assets and are not used by the Vendor in connection with the Business;

“Facilities” means the lands and buildings constituting the facilities of the Business, including the lands and buildings described in Schedule 6.18 and Schedule 6.21 and the Properties as that term is defined in Subsection 6.18(a);

“Financial Projections” means the financial projections for the Business consisting of ■, a copy of which is annexed hereto as Schedule ■;

“Financial Statements” means the audited financial statements of the Vendor as at and for the fiscal year ended ■, 199■, consisting of ■, and the opinion of the Vendor’s auditors thereon, a copy of which is annexed hereto as Schedule 6.4;

“Generally Accepted Accounting Principles” and **“GAAP”** means the accounting principles so described and promulgated by the Canadian Institute of Chartered Accountants which are applicable as at the date on which any calculation made hereunder is to be effective or as at the date of any financial statements referred to herein, as the case may be;

“GST” means all taxes payable under the ETA or under any provincial legislation similar to the ETA, and any reference to a specific provision of the ETA or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

“Hazardous Substance” includes, but is not limited to, any contaminants, pollutants, dangerous substances, including asbestos, liquid wastes, industrial wastes, toxic substances, hazardous or toxic chemicals, hazardous wastes, hazardous materials or hazardous substances either in fact or as defined in or pursuant to any Environmental Law;

“Intellectual Property” has the meaning ascribed to that term in Section 6.23;

“Interim Financial Statements” means the unaudited [**consolidated**] financial statements of the Vendor as at and for the ■ month period ended ■, 199■, consisting of ■ prepared by ■, a copy of which is annexed hereto as Schedule 6.5;

“Interim Period” means the period from and including the date hereof until Closing;

“Inventories” means all inventories acquired or used with or otherwise relating to the Business, including, without being limited to, raw materials, work-in-process, finished goods and replacements parts;

“Permitted Encumbrances” means Encumbrances entered into in the ordinary course of business that are listed in Schedule 2, annexed hereto, and (a) liens for taxes, assessments and governmental charges due and being contested in good faith and diligently by appropriate proceedings (and for the payment of which adequate provision has been made in the Financial Statements); (b) liens for taxes either not due and payable or due but for which notice of assessment has not been given provided they are accrued in the Financial Statements; (c) undetermined or inchoate liens, charges and privileges incidental to current construction or current operations and statutory liens, charges, adverse claims, security interests or encumbrances of any nature whatsoever claimed or held by any governmental authority that have not at the time been filed or registered against the title to the asset or served upon the Vendor pursuant to law or that relate to obligations not due or delinquent; (d) assignments of insurance provided to landlords (or their mortgagees) pursuant to the terms of any lease, and liens or rights reserved in any lease for rent or for compliance with the terms of such lease; (e) security given in the ordinary course of the Business to any public utility, municipality or government or to any statutory or public authority in connection with the operations of the Business, other than security for borrowed money; (f) the reservations in any original grants from the Crown of any real property or interest therein and statutory exceptions to title, which do not materially detract from the value of the real property concerned or materially impair its use in the operation of the Business;

“Person” means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, government, governmental agency or board or commission or authority and any other entity or organization;

“Prepaid Expenses” means all prepaid expenses determined in accordance with Generally Accepted Accounting Principles including, without being limited to, land taxes, business taxes, rents, insurance, utilities, telephone but excluding income or other Taxes which are personal to the Vendor or not incurred in connection with the Business;

“Prime Rate” means the rate of interest expressed as a rate per annum established from time to time by the Canadian Imperial Bank of Commerce as its reference rate of interest for

the determination of interest rates for loans in Canadian dollars to Canadian customers at Windsor, Ontario;

“Properties” shall have the meaning ascribed to that term in Subsection 6.18(a);

“Purchase Price” means the lesser of the aggregate book value of the Purchased Assets as at the Closing Date determined in accordance with the provisions of Section 3.3 and after allowing for depreciation accrued to that date as reflected on the Closing Balance Sheet and (\$■);

“Purchase Price Calculation” has the meaning ascribed to that term in Subsection 3.2(b);

“Purchased Assets” means all property and assets used in connection with or otherwise relating to the Business (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate, as a going concern including, without being limited to, the following: (a) machinery, equipment, trucks, automobiles, vehicles, parts, tooling, moulds, dies, jigs or patterns, supplies and accessories, office furniture and furnishings, and any other fixed assets, together with the benefit of all manufacturers’ warranties which relate thereto including, without being limited to, the machinery, equipment, trucks, automobiles and vehicles described in Schedule 1.1(■); (b) all legal and equitable interests in the Facilities and to the extent not otherwise contemplated in paragraph (a) above, all fixtures, erections and improvements owned by the Vendor relating thereto; (c) all leasehold interests and licences of whatever kind; (d) all computer hardware and software and rights under licences and other agreements or licences relating thereto; (e) all Intellectual Property; (f) all right, title and interest of the Vendor in and to the Inventories; (g) all Accounts Receivable and the benefit of all security for such accounts, notes and debts; (h) all right, title and interest of the Vendor in, to and under the Contracts and Equipment Contracts and the full benefit of all service contracts relating to any Equipment Contracts or any equipment or other assets covered thereby, and all options, including, without being limited to, options to purchase thereunder and the full benefit of all orders or contracts for the provision of goods or services (whether as buyer or seller), distribution and agency agreements and employee benefit plans including, without being limited to, those set out in Schedule 6.30; (i) all prepaid expenses; (j) all licences, permits and authorizations, including, without being limited to, those described in Schedule 6.1; (k) all books and records (other than those required by law to be retained by the Vendor, copies of which will be made available to the Purchaser), including, without being limited to, customer lists, sales records, price lists and catalogues, sales literature, advertising material, manufacturing data, production records, employee manuals, personnel records, supply records, inventory records and correspondence files (together with, in the case of any such information that is stored electronically, the media on which the same is stored); and (l) all goodwill, together with the exclusive right for the Purchaser to represent itself as carrying on the Business in succession to the Vendor and the right to use any words indicating that the Business is so carried on, including, without being limited to, the exclusive right to use the name “■“, or any variation thereof, as part of the name or style under which the Business or any part thereof is carried on by the Purchaser and the existing telephone numbers of the Business;

“Related To” and similar references in relation to any Person includes, with respect to any individual, any current or former spouse and any parent, grandparent, lineal descendant, sibling, cousin, nephew, aunt or uncle (either by blood or adoption) of such individual or spouse, and any corporation, partnership, trust, division or other entity controlled, directly or indirectly by

any one or more of such Persons, alone or in combination and, with respect to any corporation, partnership, trust or other entity, any Person or related group of Persons who or which controls, is controlled by or is under common control with such corporation, partnership, trust or other entity;

“**Taxes**” has the meaning ascribed to that term in Section 6.32;

“**Trade Payables**” means the trade accounts and accrued liabilities to trade creditors of the Business incurred in the ordinary course of the routine daily affairs of the Business;

“**Vendor**” means ■, a corporation incorporated under the laws of the Province of Ontario.

1.2 **Best of Knowledge** - Any reference herein to “the best of the knowledge” of a party or parties will be deemed to mean the actual knowledge of such party or parties and the knowledge which they would have had if they had conducted a diligent enquiry into the relevant subject matter.

1.3 **Schedules** - The schedules listed in the Table of Contents to this Agreement and which are attached to this Agreement shall be deemed to be a part of this Agreement and are incorporated herein by this reference.

1.4 **Currency** - Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.

1.5 **Choice of Law and Attornment** - This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties to this Agreement agree that the courts of the Province of Ontario will have non-exclusive jurisdiction to determine all disputes and claims arising between and among them.

1.6 **Number and Gender** - In this Agreement, unless there is something in the subject matter or context inconsistent therewith, words in the singular number include the plural and such words shall be construed as if the plural had been used; words in the plural include the singular and such words shall be construed as if the singular had been used, and words importing the use of any gender shall include all genders where the context or party referred to so requires, and the rest of the sentence shall be construed as if the necessary grammatical and terminological changes had been made.

1.7 **Headings, Divisions, etc.** - The division of this Agreement into articles, sections, paragraphs, subsections, clauses and schedules, the insertion of headings and the provision of a Table of Contents are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. The terms “this Agreement”, “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and the schedules hereto; and not to any particular article, Section, paragraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto. The parties hereto acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement, and the parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.

1.8 **Defined Terms** - All terms used herein which are denoted with initial capital letters shall have the meanings assigned to them in Section 1.1 of this Agreement.

ARTICLE 2

PURCHASE AND SALE

2.1 **Purchase and Sale of Purchased Assets** - The Vendor hereby agrees to sell to the Purchaser, and the Purchaser hereby agrees to buy from the Vendor, Closing on and effective as at the close of business on the Closing Date, the Purchased Assets, for the Purchase Price and, at the Closing the Vendor shall deliver to the Purchaser good and valid title to the Purchased Assets free and clear of any and all Encumbrances other than Permitted Encumbrances.

ARTICLE 3

PURCHASE PRICE

3.1 **Payment of Purchase Price** - The Purchase Price, determined in accordance with the provisions of Section 3.3, shall be paid and satisfied by the payment of the Closing Date Payment referred to in Section 3.2 (subject to adjustment pursuant to Sections 3.4 and 3.5) and the assumption of the Assumed Liabilities as provided in Section 4.1.

3.2 **Closing Date Payment** - At the Closing, the Purchaser shall pay the Vendor the amount of \$■ (the "Closing Date Payment") by certified cheque or bank draft payable to or to the order of the Vendor.

3.3 **Determination of Purchase Price** - The Purchase Price shall be determined as follows:

(a) Within 60 days after the Closing Date, the Vendor shall deliver to the Purchaser an audited balance sheet (the "Closing Balance Sheet") of the Business as at the close of business on the Closing Date, prepared in accordance with Generally Accepted Accounting Principles applied on a basis consistent with those used in the preparation of the Financial Statements. The Closing Balance Sheet shall be accompanied by a report thereon by the Vendor's auditors, without qualification. For the purpose of preparing the Closing Balance Sheet, the Purchaser agrees to grant the Vendor's authorized representatives reasonable access to relevant records, facilities and personnel of the Purchaser; and, the Vendor and Purchaser agree to cooperate in the joint taking and valuation of all inventories.

(b) At the time of delivery of the Closing Balance Sheet, the Vendor shall also deliver to the Purchaser a statement verified by the Vendor's auditors setting forth a detailed calculation of the Purchase Price (the "Purchase Price Calculation") and of the amount by which the Purchase Price exceeds the aggregate amount of the Assumed Liabilities reflected in the Closing Balance Sheet (the "Cash Portion of the Purchase Price"). The Purchase Price Calculation shall be

accompanied by:

- (i) an itemized list of all of the Assumed Liabilities reflected in the Closing Balance Sheet; and
- (ii) an itemized list of all of the Accounts Receivable reflected in the Closing Balance Sheet (and setting out the face amounts thereof and the period of time for which they have been owing).

(c) The Purchaser shall have a period of 30 days after the date it receives the Closing Balance Sheet, the report of the Vendor's auditors thereon and the Purchase Price Calculation (collectively, the "Closing Financial Statements") in which to review the same. For the purpose of such review, the Vendor agrees to cause its auditors to permit the Purchaser and its authorized representatives to examine all working papers, schedules and other documentation used or prepared by the Vendor's auditors. If no objection to the Closing Financial Statements is given to the Vendor by the Purchaser within such 30 day period, the Closing Financial Statements shall be deemed to have been approved as of the last day of such 30 day period.

(d) If the Purchaser objects to any of the Closing Financial Statements within such 30 day period by giving notice to the Vendor setting out in reasonable detail the nature of such objection, the parties agree to attempt to resolve the matters in dispute within 15 days from the date the Purchaser gives such notice to the Vendor. If all matters in dispute are resolved by the parties, the Closing Financial Statements shall be modified to the extent required to give effect to such resolution and shall be deemed to have been approved as of the date of such resolution.

(e) If the parties cannot resolve all matters in dispute within such 15 day period, all unresolved matters shall be submitted to ■ (the "Arbitrator") for resolution, and the Arbitrator shall be given access to all materials and information reasonably requested by it for such purpose. The rules and procedures to be followed in the arbitration proceedings shall be determined by the Arbitrator in its discretion. The Arbitrator's determination of all such matters shall be final and binding on both parties and shall not be subject to appeal by either party. The fees and expenses of the Arbitrator shall be borne equally by the parties. The Closing Financial Statements shall be modified to the extent required to give effect to the Arbitrator's determination and shall be deemed to have been approved as of the date of such determination.

3.4 Adjustment of Closing Date Payment - Within two Business Days after the Closing Financial Statements are deemed to have been approved in accordance with Subsection 3.3(c) or Subsection 3.3(e):

(a) if the Cash Portion of the Purchase Price exceeds the Closing Date Payment, the Purchaser shall pay the Vendor an amount equal to such excess, together with interest thereon at the Prime Rate from and including the Closing Date to but excluding the date of payment; and

(b) if the Closing Date Payment exceeds the Cash Portion of the Purchase Price, the Vendor shall pay the Purchaser an amount equal to such excess, together with interest thereon at the Prime Rate from and including the Closing Date to but excluding the date of payment.

3.5 General Adjustments - The adjustments specified hereunder shall be made as of the Closing Date and allowed to the Vendor or the Purchaser as the case may be:

- Business;
- (a) vacation pay and statutory holiday pay accruing to the employees of the Business;
 - (b) receipts or payments under leases in respect of Equipment Contracts;
 - (c) Prepaid Expenses;
 - (d) usual real estate adjustments; and
 - (e) any other adjustments specifically provided for under this Agreement including, without being limited to, under Section 4.2.

The Vendor and Purchaser agree to adjust all items referred to herein at the same time the Closing Date Payment is adjusted pursuant to Section 3.4 and each shall pay to the other, as appropriate, the amount of any such adjustment. The provisions of Section 10.3 shall not be affected by any such adjustment.

3.6 Allocation of Purchase Price - The Vendor and the Purchaser agree to allocate the Purchase Price among the Purchased Assets in accordance with Schedule ■ and to report the sale and purchase of the Purchased Assets for all federal, provincial and local tax purposes in a manner consistent with such allocation.

3.7 ETA Election - The Purchaser and the Vendor shall elect jointly under ss.167(1) of the ETA that no tax be payable pursuant to the ETA with respect to the sale of the Purchased Assets pursuant to this Agreement. The election shall be in the form prescribed for the purposes of that Subsection; and, the Vendor shall file such election in its GST return for its reporting period that includes the Closing Date.

3.8 Income Tax Election - The Purchaser and the Vendor shall, as soon as possible after the Closing, jointly execute an election under s.22 of the Income Tax Act (Canada) on Department of National Revenue form T2022 in respect of the sale of the Accounts Receivable, shall designate therein the face value of the Accounts Receivable sold and the applicable portion of the Purchase Price referred to in Schedule ■ as the consideration paid by the Purchaser therefor, and shall each file such election with Revenue Canada forthwith after execution thereof (and, in any event, with their respective income tax returns for the year of sale) to make such election.

3.9 Guarantee of Accounts Receivable - The Vendor represents and warrants to the Purchaser that the Accounts Receivable will realize an amount at least equal to the aggregate face value thereof that will be set out in the Closing Balance Sheet and the Purchaser agrees that after the Closing it will exercise reasonable diligence in attempting to collect all amounts owing in respect of the Accounts Receivable. If, at the expiration of 120 days after the Closing, the amounts collected by the Purchaser in respect of the Accounts Receivable shall have aggregated less than the face amount thereof, the Vendor shall within 5 days after receipt by it of a written demand by the Purchaser pay the Purchaser the amount of the deficiency and the Purchaser shall thereupon assign the entire uncollected portion of the Accounts Receivable to the Vendor.

3.10 Transfer Taxes - The Purchaser shall be liable for and shall pay all federal and

provincial sales taxes (including any retail sales taxes and land transfer taxes) and all other taxes, duties, fees or other like charges of any jurisdiction properly payable in connection with the transfer of the Purchased Assets by the Vendor to the Purchaser.

ARTICLE 4

LIABILITIES

4.1 **Assumption of Certain Liabilities** - The Purchaser hereby agrees, subject to the provisions of this Agreement, to assume, pay, satisfy, discharge, perform and fulfill, from and after the Closing, all obligations and liabilities of the Vendor existing as at the Closing under (a) the Contracts; (b) the Equipment Contracts; (c) the licences, permits and authorizations described in Schedule 5.1; and, for (d) all Trade Payables existing as at the Closing Date in the amounts provided for in the Purchase Price Calculation and accompanying statements referred to in Subsection 3.3(b); and, (e) all liabilities and obligations of the Vendor accruing after the Closing Date under the Contracts and Equipment Contracts (collectively, the “Assumed Liabilities”).

4.2 **Retained Liabilities and Indemnity** - The Purchaser will not assume and will not be liable for, and the Vendor shall be solely responsible for and shall indemnify and hold harmless the Purchaser from and against, all obligations, commitments and liabilities of and claims against the Vendor (whether absolute, accrued or contingent) relating to the Business, except for the Assumed Liabilities. Without limiting the generality of the foregoing or of the provisions of Section 10.3, it is agreed that the Purchaser will have no liability for any of the following obligations or liabilities:

(a) liabilities in respect of indebtedness of the Vendor to Persons other than for the Trade Payables;

(b) product liability, product warranty and other claims and obligations respecting products manufactured or sold or services provided by the Vendor in connection with the Business up to and including the Closing, including, without being limited to, any obligation or liability in respect of any general product recall campaign;

(c) liabilities for Taxes payable by the Vendor to any federal, provincial, municipal or other government or governmental agency, authority, board, bureau or commission, domestic or foreign, including, without being limited to, any taxes in respect of or measured by the sale, consumption or performance by the Vendor of any product or service prior to the Closing Date and any tax pursuant to the Employer Health Tax Act, R.S.O. 1990, c.E.11 (Ontario) or any similar legislation in respect of all remuneration payable to all Persons employed in the Business up to and including the Closing Date;

(d) liabilities for salary, bonus, vacation pay, statutory holiday pay, and other compensation and liabilities under the Vendor’s employee benefit plans relating to employment of Persons in the Business up to and including the Closing Date;

(e) severance payments, damages for wrongful dismissal and all related costs in

respect of the termination by the Vendor of the employment of any employee of the Business who does not accept the Purchaser's offer of employment referred to in Subsection ■ hereof and in respect of any employee of the Business who is not offered employment by the Purchaser; and

(f) liabilities for claims for injury, disability, death or workers' compensation including, without being limited to, NEER penalty assessments under the Workers' Compensation Act (Ontario) arising from or related to employment in the Business prior to the Closing Date.

ARTICLE 5

CLOSING

5.1 **Closing** - The closing hereunder shall take place on the Closing Date at the offices of ■, or at such other location as may be agreed in writing.

5.2 **Closing Deliveries** - At or before the Closing, the Vendor shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Purchaser all documents, instruments and things which are to be delivered by the Vendor pursuant to the provisions of this Agreement, and the Purchaser shall execute, or cause to be executed, and shall deliver, or cause to be delivered, to the Vendor all cheques or bank drafts and all documents, instruments and things which the Purchaser is to deliver or to cause to be delivered pursuant to the provisions of this Agreement.

ARTICLE 6

GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE VENDOR

Except as disclosed in the disclosure schedules hereto, the Vendor hereby represents and warrants to the Purchaser that as of the date hereof and as of the Closing Date:

6.1 **Good Standing** - The Vendor is duly incorporated and organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction, and has the corporate authority and holds all licences, permits and authorizations from all governmental and regulatory authorities having jurisdiction necessary to enable it to carry on the Business as now carried on by it, and all such licences, permits and authorizations are valid, subsisting and in good standing; the Vendor is not in violation of any term of any such licence, permit or authorization nor of its incorporating instruments nor of its by-laws which individually or in the aggregate would materially adversely affect the Vendor, the Purchased Assets or its Business or give rise to a Claim. A list of all such licences, permits and authorizations is set out in Schedule 6.1 hereto and complete and correct copies thereof have been delivered to the Purchaser.

6.2 **Authority** - Neither this Agreement nor any of the transactions contemplated hereby will result in a violation of any of the terms and provisions of the incorporating documents or by-laws of the Vendor, or any indenture or other agreement to which the Vendor may be a party or by

which the Vendor may otherwise be bound or of any law, regulation, judgment, order or decree governing or affecting the operation of its Business, nor will the same constitute an event permitting termination or amendment of any Contract or Equipment Contract, the cancellation, suspension or revocation of any licence, permit or authorization, or the acceleration of any indebtedness or payment of any of them.

6.3 **No Other Agreements** - There are no outstanding options, agreements of purchase and sale or other agreements or commitments, written or oral, obligating the Vendor, directly or indirectly, to sell all or any part of the Business or any of the Purchased Assets except inventory in the ordinary course of business on normal commercial terms; and, the Vendor is not a party to or bound by any agreement which limits or restricts its right to carry on any business or activity or to solicit business from any Person or in any geographic area or otherwise to conduct the Business as the Vendor may determine.

6.4 **Financial Statements** - The Financial Statements are true, complete and correct and present fairly the financial position and results of operations of the Business at the dates and for the periods indicated and all assets and liabilities (whether actual, accrued or contingent or whether direct or indirect) as at such dates, and were prepared in accordance with Generally Accepted Accounting Principles, consistently applied; and, except as and to the extent identified and reflected in the Financial Statements, the Vendor was not then and is not now, directly or indirectly, liable upon or with respect to and is not obligated in any other way to provide funds in respect of or to guarantee or assume any debt, dividend or obligation of any Person.

6.5 **Interim Financial Statements** - The Interim Financial Statements are true, complete and correct, were prepared in accordance with Generally Accepted Accounting Principles applied on a basis consistent with the Financial Statements, and present fairly the financial position and results of operations of the Business at the dates and for the periods indicated and all assets and liabilities (whether actual, accrued or contingent or whether direct or indirect) as at such dates.

6.6 **Closing Financial Statements** - The Closing Financial Statements (including the Closing Balance Sheet) will present fairly the financial position and results of operations of the Business as at such date and for the period indicated and will reflect all assets and liabilities (whether actual, accrued or contingent, whether direct or indirect) as at such date and will be prepared in accordance with Generally Accepted Accounting Principles consistently applied (as such applied at the date of the Closing Financial Statements) and the provisions of this Agreement.

6.7 **Carrying Value of Purchased Assets** - For purposes of the Financial Statements, Interim Financial Statements and the Closing Financial Statements: (a) all inventories are and will be valued at the lower of cost and net realizable value using the first in, first out method and all of such inventories are merchantable and in quantities that are usable and saleable to customers in the ordinary course of business at normal profit margins; (b) all fixed assets are and will be valued at historical cost less depreciation computed using a rate and method appropriate to each type or category of asset; and (c) all intangible assets are and will be valued at net amortized cost in a manner consistent with industry norms.

6.8 **Accounts Receivable** - The Accounts Receivable of the Business reflected in the Financial Statements, the Interim Financial Statements and the Closing Financial Statements or acquired or accrued thereafter through to Closing are, and shall be, bona fide Accounts Receivable created in the ordinary course of business and will have been collected or are collectible in the ordinary course of business and are not subject to any set-off or counterclaim, and, to the extent not collectible, will have been adequately reserved against in the Closing Financial Statements; any Accounts Receivable (whether or not shown on the Closing Financial Statements) from the Vendor or from any Person Related To the Vendor shall be repaid in full by the relevant obligor on or before Closing.

[Note: If there are financial projections a representation and warranty should be included.]

6.9 **No Liabilities** - There are no liabilities of the Business of any kind whatsoever, contingent or otherwise, existing on the date hereof for which the Purchaser may be liable after the Closing other than:

(a) liabilities (including liabilities for unpaid Taxes) that are disclosed on, reflected in or provided for in the Interim Financial Statements or in Schedule 6.■;

(b) the Assumed Liabilities;

(c) liabilities incurred in the ordinary course of business that are listed in the schedules accompanying the Purchase Price Calculation, none of which is or will be materially averse to the Business, operations, affairs or financial condition of the Vendor.

6.10 **No Adverse Change** - Since ■, 199■, there has been no material adverse change in the Business, the Purchased Assets or the financial condition, results of operations or prospects of the Vendor; in particular, and without limiting the foregoing, there has been no loss of customer contracts or orders since ■, 199■, which represent individually or in the aggregate more than three (3%) per cent of the Vendor's annual combined sales for fiscal 199■.

6.11 **Claims** - Except as disclosed in Schedule 6.11, there are no Claims either threatened, pending or outstanding by, on behalf of or against or which may adversely affect the Vendor, the Business or any of the Purchased Assets; the Vendor does not have any knowledge of any basis on which any material Claim might at any time in the future be founded; none of the Claims set out in Schedule 6.11 may adversely affect the Vendor, the Business or any of the Purchased Assets.

6.12 **Product Liability and Warranties** - Schedule 6.12 sets forth an accurate and complete list of all Claims commenced or threatened against the Vendor related to the Business in respect of personal injury and property damage or other economic loss arising from or related to any products sold or services rendered by the Business; except as set forth in such schedule, neither the Vendor nor any Person utilizing products of the Business has ever or is currently conducting any general product recall campaign relating to or affecting any product of the Business nor to the best of their knowledge and belief is any such campaign planned or based on past practices anticipated by the Vendor to be required.

6.13 **Insurance** - The Vendor has all of the Purchased Assets insured against loss or damage by all insurable hazards or risks including, without being limited to, fire, boiler, public liability and property damage, on a replacement cost basis and such insurance coverage will be continued in full force and effect to and including the Closing; Schedule 6.13 sets forth a true and accurate summary of all insurance policies in force with respect to the Business, including a brief description of each such policy and setting forth for each the term, premium and coverage; all such policies are in full force and effect and are in good standing and the Vendor is not in default in payment of any premium or in default in compliance with any of the provisions contained in any such policy; and, there are no outstanding unpaid claims under any such policy and no notice of cancellation or non-renewal has been received.

6.14 **Records and Data** - The Vendor has made available all information, records and data relating to the Vendor and its Business; and, all information, records and data relating to the Vendor and its Business furnished to the Purchaser and its representatives by the Vendor is true, accurate and complete in all material respects and all material financial transactions of the Business (including actual, accrued and contingent liabilities) through to the Closing Date will properly be recorded in the books and accounts of the Business.

6.15 **Operations of the Business** - Schedule 6.15 sets forth complete and accurate summaries of all transactions affecting the Business involving the Vendor or any Person Related To the Vendor during the fiscal year ending ■, 199■; except as specifically contemplated hereby, since ■, 199■, the Vendor has carried on the Business in the ordinary and normal course and will carry on the Business in the ordinary and normal course up to the Closing Date and since ■, 199■, except as otherwise specifically provided herein, the Vendor will not have, prior to Closing:

(a) waived or cancelled any material right under any contract or other agreement or written off any rights, claims, Accounts Receivable or any amounts payable to the Business, except in the ordinary course of business;

(b) made any change in its accounting practices or made any change in depreciation or amortization policies or rates adopted by it;

(c) materially changed any of its business policies including, without being limited to, advertising, distributing, marketing, pricing, purchasing, personnel, sales, returns or budget;

(d) except in the ordinary course of business, incurred or assumed any obligation or liability (whether absolute or contingent and whether or not currently due and payable);

(e) terminated, discontinued, closed or disposed of any plant, facility or Business operation or, disposed of any other Purchased Assets except for redundant equipment that is not material and inventory disposed of in the ordinary course of business or, except in the ordinary course, made any acquisition of all or part of the assets, properties, capital stock or business of any other Person;

(f) paid, directly or indirectly, any of its material liabilities before the same became due in accordance with its terms otherwise than in the ordinary course of business;

(g) except as set forth in Schedule 6.15, paid any bonus or advanced any loan to any employee or to a Person Related To any employee or guaranteed or assumed the indebtedness of any such Person;

(h) except as set forth in Schedule 6.15, created any Encumbrance upon any of the Purchased Assets;

(i) suffered any damage, destruction or loss (whether or not covered by insurance) which has materially adversely affected or could materially adversely affect the Business or the financial condition of the Vendor;

(j) suffered any extraordinary loss relating to the Business;

(k) became aware of any event or condition which is likely to result in a material change in the Business or the financial condition of the Business or its relationships with any of the customers, suppliers or employees of the Business; or

(l) authorized, agreed or otherwise become committed to do any of the foregoing.

6.16 **Purchased Assets** - Except ■, and raw materials and goods received on consignment as set forth in Schedule 6.16 and those leased Purchased Assets identified in Schedules 6.21 and 6.22, the Purchased Assets are owned legally and beneficially by the Vendor, which has good and marketable title thereto, free and clear of all Encumbrances except for Permitted Encumbrances and the Purchased Assets constitute all of the assets which are used in connection with or are necessary to carry on the Business and include all machinery, equipment, Inventories and other personal property of whatever kind located in or on or affixed to any of the Facilities.

6.17 **Purchased Assets in Good Working Condition** - All of the Purchased Assets being used by the Vendor in connection with the Business are sufficient to carry on the Business and have been properly maintained and are in good operating condition.

6.18 **Real Property** - (a) All real properties owned by the Vendor (collectively

“Properties” and individually “Property”) are disclosed and described in Schedule 6.18, there are no agreements, undertakings or other documents which are material and which affect or relate to the title to, or ownership of the Properties except as disclosed in Schedule 2 or Schedule 6.18.

(b) Except as disclosed in Schedule 6.18, title to each of the Properties is legally and beneficially held by the Vendor, free and clear of any Encumbrances other than Permitted Encumbrances, and the existing and proposed use of each of the Properties and the location (construction and condition) of all structures and other improvements thereon are not in violation of any requirement of any authority having jurisdiction over the Properties, Facilities or the Business.

(c) Except as disclosed in Schedule 2, no Person has any right to purchase any Property; no Person is using or has any right to use, as tenant, or is in possession or occupancy of, any part of the Properties.

(d) Except as disclosed in Schedule 2, the Vendor has not entered into any agreement to sell, transfer, encumber or otherwise dispose of or impair the air and density rights relating to any Property.

(e) The Vendor has delivered to the Purchaser the surveys prepared by registered land surveyors which are the most up-to-date surveys relating to the real property owned or leased by the Vendor which are in the Vendor’s possession.

(f) To the best of the knowledge and belief of the Vendor, no expropriation or condemnation proceedings are pending or threatened against the real property owned or leased by the Vendor or any part of any Property.

6.19 **Work Orders** - There are no material defects in the construction, state of repair or state of completion of the Facilities nor, to the best of the Vendor’s knowledge, do there exist any orders or directives that any material alteration, repair, improvement or other work be done with respect thereto or relating to non-compliance in any respect with any building permit, building or land use by-law, ordinance, order or regulation, or relating to any threatened or impending condemnation from any governmental authority, agency, department or board of fire underwriters having jurisdiction which has not been complied with to the satisfaction of such governmental authority, agency, department or board of fire underwriters.

6.20 **Environmental** - (a) The Vendor, its Facilities (including, without limitation, leased and licenced interests), its Business and all parts thereof are in compliance with all Environmental Laws and hold all approvals and permits required thereby and neither the Vendor, its Facilities (including, without limitation, leased and licenced interests), its Business nor any part thereof are subject to any remedial or control action, direction, order or investigation by any authority having jurisdiction over matters involving the application of Environmental Laws, nor are they aware of any factual basis for such actions, direction, orders or investigations to be commenced.

(b) During the period that the Vendor has operated its Business and owned or leased the Facilities, the Vendor has complied with all reporting, notification and inspection requirements imposed by Environmental Laws and all operating, monitoring and reporting records have been maintained in accordance with all Environmental Laws and environmental approvals and have been disclosed to the Purchaser.

(c) The Vendor has never been convicted of any offence, or been found liable in any proceeding to pay any fine or judgment to any Person (including, without limitation, any government), or has been required to conduct any clean-up or remediation of its Facilities or any other property, as a result of the release or threatened release of any Hazardous Substance into the environment or the creation of a nuisance on the Facilities, nor is the Vendor aware of any basis for any civil or criminal action to be commenced against it for such reason.

(d) The Vendor has not notified any Person (including, without limitation, any government) of the release or threatened release of any Hazardous Substance into the environment nor of the breach by it of any Environmental Law or environmental approval.

(e) All pollution control equipment used in connection with the Business or used at or forming part of the Facilities is effective in meeting current applicable emission limits and effluent pretreatment standards, and the Vendor has complied with all applicable monitoring and sampling requirements.

(f) The Vendor has never used the Facilities or any part thereof, and the Vendor has no knowledge that the Facilities or any part thereof have ever been used as a landfill or waste disposal site.

(g) Except as disclosed in Schedule 6.20 there are no above-ground or underground storage tanks in or upon the Facilities and all such aboveground and underground storage tanks in or upon the Facilities (if any) comply with current leak prevention requirements of Environmental Laws and the Vendor has no knowledge that any such aboveground or underground storage tanks have ever leaked or are now leaking.

(h) All Hazardous Substances created or used in connection with the Business or on the Facilities have been properly registered with government authorities, and have been and are currently being transported away from the Facilities by licenced waste haulers pursuant to appropriate manifests, and have been and are currently being disposed of in licenced waste disposal facilities in Canada.

(i) All material engineering and environmental data and studies (including, without limitation, the results of any environmental reviews, studies or audits) with respect to the Business or the Facilities in the possession or control of the Vendor have been provided to the Purchaser and are set out in Schedule 6.20.

(j) Since commencement of use by the Vendor of the Facilities, there has not been:

(i) except as disclosed in Schedule 6.20 and in the data and studies referred to therein any release of any Hazardous Substance into the environment from, or the deposit or disposal of any Hazardous Substance onto, the Facilities or any part thereof at any time;

(ii) except as disclosed in Schedule 6.20 or in the data and studies referred to therein any urea formaldehyde foam insulation, friable asbestos or

radioactive substances on the Facilities;

- (iii) any Hazardous Substance originating from the Facilities which has migrated to any neighbouring or adjoining properties or which has been transported, or deposited at, any unlicensed waste disposal site or facility;
- (iv) except as disclosed in Schedule 6.20 or in the data or studies referred to therein any Hazardous Substance originating from any neighbouring or adjoining properties which has migrated onto or contaminated the Facilities.

(k) The Vendor is not aware that any prior owner of the Facilities or any part thereof conducted any activities thereon which would permit or constitute or lead to: (i) a nuisance or a violation of any Environmental Laws or environmental approvals; or (ii) any matters referred to in Subsections (a) to (j) of this Section 6.20.

(l) The Vendor has substantially complied with all contracts or agreements entered into by it with government authorities relating to environmental matters and, without limiting the generality of the foregoing, the Vendor has substantially complied with the provisions of any sewer surcharge agreement by and between it and any relevant municipality (if any).

(m) Except as disclosed in Schedule 6.20, to the best of the knowledge of the Vendor, there are no pending or proposed changes to Environmental Laws which would render illegal or materially restrict the operation of the Business.

6.21 **Leases of Real Property** - (a) The Vendor is not a party to or bound by any leases or subleases of real property connected with the Business except the leases disclosed in Schedule 6.21 (the "Leases") and all interests (including, without limitation, all purchase rights, rights of first refusal and similar rights) held by the Vendor as lessee under the Leases are free and clear of any and all Encumbrances other than Permitted Encumbrances; all rental and other payments required to be paid by the Vendor pursuant to the Leases have been duly paid to date and the Vendor is not otherwise in default in meeting its obligations under any of the Leases; each of the landlords in respect of the Leases is not in default in meeting any of its material obligations under any such Lease; no event exists which, but for the passing of time or the giving of notice, or both, would constitute such a default by either party to any of the Leases and no party to any of the Leases is claiming any such default or taking any action purportedly based on any such default.

(b) The Vendor has not waived or omitted to take any action in respect of any substantial rights under any of the Leases where the loss of such right would have a material adverse effect on the Vendor or the Business.

(c) To the best of the knowledge of the Vendor, none of the Landlords have advised the Vendor or given the Vendor any indication that a Lease will not be renewed or extended at the end of the term thereof or that the Landlord may require the leased premises for its own purposes or otherwise cease leasing the leased premises to the Vendor at any time in the future.

6.22 **Equipment Contracts** - Schedule 6.22 sets forth a complete list of all equipment leases, conditional sales contracts, title retention agreements and other agreements relating to equipment used by the Vendor in connection with the Business or situated on or within the

Facilities (the “Equipment Contracts”); all such Equipment Contracts are in full force and effect and no default exists on the part of the Vendor, or, to the best of the knowledge of the Vendor on the part of any of the other parties thereto; the entire interest of the Vendor under any such Equipment Contracts is held by it free and clear of any and all Encumbrances other than Permitted Encumbrances, and all payments due under such Equipment Contracts have been duly paid.

6.23 **Intellectual Property** - (a) Schedule 6.23 sets forth a complete and correct list and brief description of all patents, trade marks, copyright and industrial designs and other intellectual property rights and all the product names, formulae, processes, procedures, know-how and technology that have been or are used in connection with the Business or that are owned by or licenced to the Vendor that are material to its Business (the “Intellectual Property”).

(b) The Vendor has all right, title and interest in and to the Intellectual Property to the extent necessary to fulfill all of its obligations under all agreements to which it is a party and to carry on the Business in the ordinary course; with respect to Intellectual Property not owned by the Vendor, no such Intellectual Property rights or technology is used by the Vendor other than with the consent of or licence from the rightful owner or licensor thereof on terms disclosed in Schedule 6.23.

(c) All Intellectual Property owned by the Vendor in the Business or included in the Purchased Assets are in full force and effect and have not been used or enforced or failed to be used or enforced in a manner that would result in the abandonment, cancellation or unenforceability of any of the Intellectual Property.

(d) Except as set forth in Schedule 6.23, the Vendor is not aware of any claim of adverse ownership, invalidity or other opposition to or conflict with any Intellectual Property owned or used by nor of any pending or threatened suit, proceeding, claim, demand, action or investigation of any nature or kind against the Vendor relating to such Intellectual Property.

(e) Neither the Vendor nor the Business manufactures, processes, packages, advertises, uses or sells any product that breaches, violates, infringes or interferes with any rights or Intellectual Property of any Person or that requires payment to any other Person for the use of any patent, trade name, trade secret, trademark, copyright or other Intellectual Property right or technology.

6.24 **Contracts** - Schedule 6.24 and the other Schedules to this Agreement set forth a complete and accurate list of each contract, licence, lease or agreement which relates to the Business and the Purchased Assets other than Excluded Assets and Equipment Contracts to which the Vendor is a party or by which the Vendor is bound, whether with suppliers, customers or otherwise, including without being limited to, quotations, orders or tenders for contracts which remain open for acceptance, and intercorporate contracts and arrangements made between the Vendor’s ■ division and any other division of the Vendor’s Business (collectively referred to as the “Contracts”), which involves annual expenditures or sales of \$■ or more and has a remaining term of more than ■ months or which is otherwise material to the ongoing Business of the Vendor; except as disclosed in Schedule 6.24 and in any other Schedule, all of such Contracts are valid and binding obligations of the parties thereto, and the Vendor is not in material default or material breach of any Contract and to the best of the Vendor’s knowledge there exists no condition, event or act which, given notice or lapse of time or both, would constitute such a material breach or

default; Schedule 6.24 also sets forth a list of all contracts currently in negotiation or proposed by the Vendor of a type which if entered into would be a "Contract" within the definition set out above; except as set forth in Schedule 6.24 the consent or other approval to the transactions contemplated hereby (or any applicable portion thereof) by a third party is not required by or under any Contract to which the Vendor is a party.

6.25 **Commitments** - Except as set forth in Schedule 6.25, no commitments for capital expenditures aggregating in excess of \$■ are outstanding or have been made or authorized by the Vendor since ■, 199■, and no such commitments will be made or authorized during the Interim Period without the prior written consent of the Purchaser; all forward commitments by the Vendor for supplies or materials to be used in operating the Business has been entered into in the ordinary course of operating such Business.

6.26 **Guarantees, Warranties and Discounts** - Except as described in Schedule 6.26:

(a) the Vendor is not a party to or bound by any agreement of guarantee, indemnification, assumption or endorsement or any other like commitment of the obligations, liabilities (contingent or otherwise) or indebtedness of any Person connected with the Business;

(b) the Vendor has not given any guarantee or warranty in respect of any of the products sold or the services provided by it, except warranties implied by law;

(c) during each of the two fiscal years of the Vendor ended immediately preceding the date hereof, no Claims have been made against the Vendor for breach of warranty or contract requirement or negligence or for a price adjustment or other concession in respect of any defect in or failure to perform or deliver any products, services or work which had, in any such year, an aggregate cost exceeding \$■;

(d) there are no repair contracts or maintenance obligations of the Vendor in favour of the customers or users of products of the Business;

(e) the Vendor is not now subject to any agreement or commitment, and the Vendor has not, within two years prior to the date hereof, entered into any agreement with or made any commitment to any customer of the Business which would require the Vendor to repurchase any products sold to such customers or to adjust any price or grant any refund, discount or other concession to such customer; and

(f) the Vendor is not required to provide any letters of credit, bonds or other financial security arrangements in connection with any transactions with its suppliers or customers.

6.27 **Major Suppliers and Customers** - Schedule 6.27 sets forth a comprehensive listing of each supplier of goods and services to, and each customer of, the Business to whom the Vendor paid or billed in excess of \$■ in the aggregate during the fiscal year ended ■, and the period from ■, to and including the date hereof, together with, in each case, the amount so billed or paid; except as set out in Schedule 6.27, none of such suppliers are another division of the Vendor's Business or otherwise Related To the Vendor and the relationship of the Vendor with such major suppliers and customers is a good commercial working relationship and except as set out herein no such supplier or customer of the Business has cancelled or otherwise terminated, or threatened in writing to cancel or otherwise terminate, its relationship with the Business or has during the last twelve months decreased materially, or threatened in writing to decrease or limit its services, supplies or materials to the Vendor or purchases from the Vendor; the Vendor is not aware of any such major supplier's or customer's intention to cease dealing with or renegotiate its relationship with the Vendor as a result of the transactions contemplated hereby; with respect to customers, the Vendor remains on all relevant bidding lists.

6.28 **Employees** - (a) Schedule 6.28 hereto sets out the name, job title, duration of employment, vacation entitlement, employee benefit entitlement and rate of remuneration (including bonus and commission entitlement) of each employee of the Business. Schedule 6.28 also sets out the names of all employees of the Business who are on disability, maternity or other authorized leave or who are receiving Workers' Compensation or short term or long term disability benefits or who are assigned to special light duties due to any disability.

(b) Except as set out in Schedule 6.28, all employees of the Business will have agreed to accept continuing employment with the Purchaser as of the Closing Date; the Vendor is not a party to any written employment, service or consulting contracts; the Business is not bound by any agreement with any employee providing for a specific period of notice of termination or a fixed term of employment, and all such employees may be dismissed upon such notice as is required by laws of general application.

(c) The Vendor has complied with all laws, rules, regulations and orders applicable to it relating to employment, including those relating to wages, hours, collective bargaining, occupational health and safety, workers' hazardous materials, employment standards, pay equity and Workers' Compensation. There are no outstanding charges or complaints against the Vendor relating to unfair labour practices or discrimination or under any legislation relating to employees. The Vendor has paid all amounts owing under the Workers' Compensation Act, R.S.O. 1990, c.W.11 (Ontario) or comparable federal legislation and the Workers' Compensation claims experience of the Vendor will not permit a penalty assessment under such legislation.

6.29 **Labour Relations** - Except as disclosed in Schedule 6.29, the Vendor is not a party to a collective agreement with a trade union or council of trade unions affecting the Business, nor are the employees of the Business, or any of them, members of a trade union or council of trade unions which has been certified as a bargaining agent in respect of the Business and the Vendor is not aware of any recent drive or proposal by any trade union to seek certification as a bargaining agent in respect of any employees of the Business; there are no controversies or grievances pending between the Vendor and any of its employees, which controversies have affected or may affect materially and adversely the Business, the Purchased Assets, or operations, prospects or conditions (financial or otherwise) of the Vendor, and a list of all such controversies and grievances is set out in Schedule 6.29.

6.30 **Employee Benefit Plans** - Schedule 6.30 sets out the Vendor's policies with respect to vacation pay, holiday and/or sick pay and a complete list of all pension, profit sharing, retirement, deferred compensation, insurance, medical, health, share purchase, share option and other employee group or individual benefit plans, programs or arrangements maintained by the Vendor or under which the Vendor has any obligations in respect of, or which otherwise cover, any of the current or former officers or employees of the Business or their beneficiaries; Schedule 6.30 also sets out the general policies, procedures and work related rules in effect with respect to employees of the Business, whether written or oral, including but not limited to, policies regarding holidays, sick leave, vacation, disability and death benefits, termination and severance pay, automobile allowances and rights to Vendor provided automobiles and expense requirements; the policies, plans, programs, policies, practices and procedures set out in Schedule 6.30 are hereinafter individually referred to as a "Plan" and collectively referred to as the "Plans"; true and complete copies of all documents, as they may have been amended to the date hereof, embodying or relating to all Plans, including true and complete copies of the most recent annual actuarial valuation report, if any, Plan descriptions, and the most recent periodic accountings related to Plan assets and liabilities, have been delivered to the Purchaser and, to the best of the Vendor's knowledge, the information contained in such documents is true and correct in all material respects as of the date of such reports; the Vendor has made all payments due and payable by the Vendor to date under or with respect to each Plan, and all amounts properly accrued to date as liabilities of the Vendor under or with respect to each Plan which have not been paid have been recorded on the books of the Vendor; the Vendor has performed all material obligations required to be performed by it under, and is not in default under or in violation of, any Plan; the Vendor is in compliance in all material respects with the requirements prescribed by all statutes, orders or governmental rules or regulations applicable to the Plans; and there are no material actions, suits or claims pending (other than routine claims for benefits) or, to the knowledge of the Vendor, threatened, against any Plan or against the assets of any Plan; Plans are duly registered where required by, and are in good standing under, all applicable legislation; all employee and employer contributions and premiums under Plans to the date of Closing have been made and any and all funds established under Plans are funded in accordance with applicable regulatory requirements and the rules of such Plans and there exist no going concern unfunded actuarial liabilities or solvency deficiencies under any Plan. Except as disclosed in Schedule 6.30, the Vendor does not and has not maintained, sponsored or contributed to any pension, retirement or other deferred compensation plan and has not made or granted or committed to make or grant any benefit improvements to any Plan and no funds have been withdrawn by the Vendor from any Plan.

6.31 **Deductions At Source** - The Vendor has fulfilled all requirements under the Income Tax Act (Canada) and the Regulations thereto, the Canada Pension Plan and the Unemployment Insurance Act and comparable legislation of each relevant jurisdiction of the withholding of amounts from employees and has remitted all amounts so withheld (together with all amounts payable as employer shares or contributions under or in respect of such legislation or as employer health tax or other salary or wage based tax or governmental charge) to the appropriate authorities within the prescribed times and has filed, in complete and accurate form, all information and other returns required pursuant to any such legislation within the time or times prescribed in respect thereof.

6.32 **Taxes** - All returns, declarations, remittances, information returns and reports of every nature required to be filed by or on behalf of the Vendor of or in respect of any foreign,

federal, state, municipal and local taxes including all capital, income, sales, goods and services, value added, excise, business and property taxes and all other taxes and customs duties and any penalties or interest in respect thereof (collectively “Taxes”) have been filed or extensions of the filing dates have been obtained and all such returns and reports are substantially complete and accurate; all Taxes shown on such returns and reports and all assessments or re-assessments of tax, penalties and interest payable by the Vendor have been paid; and no further Taxes, interest or penalties are due with respect to any taxation year or years or other taxation period or periods; there are no outstanding issues which have been raised by relevant taxing authorities in any actual, proposed or threatened assessment or re-assessment; no assessments or re-assessments of Taxes payable by the Vendor are under discussion, objection or appeal with any governmental authority; to the extent that Taxes have accrued but have not become payable, they are adequately reflected as liabilities on the Financial Statements and Interim Financial Statements, and will be so reflected on the Closing Financial Statements and internal financial records of the Vendor; there are no outstanding agreements or waivers extending the statute of limitation with respect to the assessment or re-assessment of any income tax or other tax. All payments to and other transactions, directly or indirectly, or wholly or partially affecting or benefitting the Vendor or any Person related thereto have been properly recorded for income tax purposes and each amount deducted by the Vendor in respect thereof is fully and properly deductible by it.

6.33 **Goods and Services Tax** - The Vendor is registered for purposes of the ETA; this Agreement provides for the sale to the Purchaser of all or substantially all of the property used in the Business; and, the Business is a “commercial activity” for purposes of the ETA.

6.34 **Residency** - The Vendor is a resident of Canada for the purposes of the Income Tax Act (Canada).

6.35 **Reputation** - To the best of the Vendor’s knowledge, it has not knowingly done and it will not do anything up to the Closing Date which would adversely affect it, the Business, its reputation or its goodwill.

ARTICLE 7

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PURCHASER

The Purchaser hereby represents and warrants to and covenants with the Vendor as follows:

7.1 **Organization and Standing** - The Purchaser is a corporation duly incorporated, organized and validly subsisting under the laws of its jurisdiction of incorporation and has the corporate power to enter into this Agreement and to perform its obligations hereunder.

7.2 **Corporate Authority** - The board of directors of the Purchaser has duly approved the execution, delivery and performance of this Agreement; upon execution, this Agreement will constitute a valid and binding obligation of the Purchaser enforceable in accordance with its terms subject to bankruptcy, insolvency, moratorium, re-organization and other laws relating to or

affecting the enforcement of creditors' rights generally, and the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court; neither this Agreement nor any transactions contemplated hereby will result in a violation of any of the terms and provisions of the incorporating documents or by-laws of the Purchaser or of any indenture or other agreement to which the Purchaser may be a party or by which it may otherwise be bound or of any law, regulation, judgment, order or decree governing or affecting the operation of the Business.

7.3 **Consents and Approvals** - There is no requirement for the Purchaser to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement.

7.4 **Investment Canada** - The Purchaser is a Canadian within the meaning of the Investment Canada Act.

7.5 **GST Registration** - The Purchaser is a registrant for purposes of the ETA and its registration number is ■.

ARTICLE 8

COVENANTS

8.1 **Conduct of Business** - During the Interim Period, the Vendor shall conduct its Business and its operations and affairs only in the ordinary course and in such manner so that the representations and warranties contained in this Agreement shall continue to be true and correct on and as of the Closing Date as if made thereon. During the Interim Period the Vendor and the Purchaser shall consult on all material acts and decisions with respect to the Business. Without limiting the generality of the aforesaid, the Vendor will: (a) promptly advise the Purchaser of any facts that come to his attention which would cause any of the Vendor's representations and warranties herein contained to be untrue in any respect; (b) take all action to preserve its Business and its goodwill and its relationships with customers, suppliers and others having business dealings with it, to keep available the services of its present officers and employees and to maintain in full force and effect all agreements to which it is a party, and take all other action reasonably requested by the Purchaser in order that its Business and condition will not be impaired during the Interim Period; (c) pay and discharge the liabilities of the Business in the ordinary course in accordance and consistent with the previous practice of the Vendor, except those contested in good faith by the Vendor; (d) promptly advise the Purchaser in writing of any material adverse change in its Business or condition during the Interim Period; (e) maintain its tangible properties and Purchased Assets in the same condition as they now exist, ordinary wear and tear excepted; (f) ensure that it does not create, incur or assume any long-term debt (including obligations in respect of leases) or create any Encumbrance upon any of its properties or assets or guarantee or otherwise become liable for the obligations of any other Person or make any loans or advances to any Person; (g) ensure that it does not sell or otherwise dispose of any of the Purchased Assets except Inventories in the ordinary course of its Business; (h) ensure that it does not terminate or waive any right of substantial value of its Business; (i) ensure that it does not make any capital expenditure in excess of \$10,000 in respect

of any particular item or in excess of \$30,000 in the aggregate; (j) keep in full force all of its current insurance policies; (k) take all actions within its control to ensure that it performs all of its obligations falling due during the Interim Period under all agreements to which it is a party or by which it is bound; (l) ensure that it does not enter into any agreement other than agreements made in the ordinary course of its Business consistent with past practice; and (m) except pursuant to existing commitments, ensure that it does not increase, in any manner, the compensation or employee benefits of any of its employees, or pay or agree to pay to any of its employees any pension, severance or termination amount or other employee benefit not required by any of the employee benefit plans and programs referred to in the schedules attached hereto.

8.2 **Access to Purchased Assets** - The Vendor shall forthwith make available to the Purchaser and its authorized representatives and, if requested by the Purchaser, provide a copy to the Purchaser of, all title documents, Contracts, financial statements, policies, plans, reports, licences, orders, permits, books of account, accounting records and all other documents, information and data relating to the Business. The Vendor shall afford the Purchaser and its authorized representatives every reasonable opportunity to have free and unrestricted access to the Purchased Assets and all other property and assets utilized in the Business. At the request of the Purchaser, the Vendor shall execute such consents, authorizations and directions as may be necessary to permit any inspection of the Business or any of the Purchased Assets or to enable the Purchaser or its authorized representatives to obtain full access to all files and records relating to any of the Purchased Assets maintained by governmental or other public authorities.

8.3 **Co-Operation** - The Vendor shall co-operate with any reasonable request by the Purchaser relating to satisfaction of the conditions hereto and the preparation and execution of various documents reasonably necessary to complete the transactions contemplated by this Agreement including, without being limited to, arranging meetings with: (a) employees employed in the Business; (b) customers, suppliers, distributors or others who have or have had a business relationship with the Vendor in respect of the Business; and (c) the auditors, solicitors or any other persons engaged or previously engaged to provide services to the Vendor who have knowledge of matters relating to the Business or Purchased Assets. The Vendor shall also permit the Purchaser's representatives or consultants to conduct all such testing and inspection in respect of environmental matters at such locations of the Business as the Purchaser may determine, in its sole discretion, as may be required to satisfy the Purchaser in respect of such matters and the Vendor shall conduct, in co-operation with the representatives or consultants of the Purchaser, such physical review of the equipment of the Business as is necessary so as to enable the confirmation of the values carried on the balance sheets of the Vendor in respect of such assets, to the reasonable satisfaction of the Purchaser. The exercise of any rights of inspection by or on behalf of the Purchaser under this Section 8.3 shall not mitigate or otherwise affect any of the representations and warranties of the Vendor hereunder, which shall continue in full force and effect as provided in Sections 10.1 and 10.2.

8.4 **Consents** - The Vendor shall use all reasonable efforts to obtain the consent of third parties as are needed for the sale, transfer and assignment of the Purchased Assets. If any such consent is not or cannot be obtained, subject to the provisions of Section 9.1, such Purchased Assets shall be held by the Vendor in trust for the Purchaser and shall be performed by the Purchaser in the name of the Vendor and all benefits and obligations derived thereunder shall be for the account of the Purchaser. The Purchaser shall indemnify the Vendor in respect of the Purchaser's performance or failure to perform any obligation, duty or liability in connection with any such Purchased Asset.

8.5 **Approvals** - The Vendor and the Purchaser shall use all reasonable efforts in order to secure as expeditiously as practically possible any approvals, consents, determinations and orders of governmental, regulatory or administrative bodies required to complete the transaction herein.

8.6 **Employees** - The following provisions apply with respect to the employees of the Business:

(a) The Purchaser will not employ **[names]** and the Vendor will transfer or terminate them prior to the Closing.

(b) The Purchaser agrees to offer employment to all of the other employees of the Business, effective immediately after the Closing, on substantially the same terms and conditions of employment as are then applicable to employees employed in similar positions in the Business.

(c) The Vendor shall indemnify and hold harmless the Purchaser from and against any and all claims, liabilities, damages, losses, costs and expenses, including reasonable solicitors' fees, resulting from or arising directly or indirectly out of any and all claims by the two employees in the quality control department and by any of the other employees of the Business who do not accept the Purchaser's offer of employment.

(d) If any of **[name employees]** do not accept the Purchaser's offer of employment and enter into an employment contract with the Purchaser and the Purchaser completes the purchase of the Purchased Assets pursuant to this Agreement notwithstanding, the Vendor shall use its best efforts to provide the Purchaser with their services for a mutually satisfactory transition period upon reasonable terms.

(e) The Vendor shall not attempt in any way to discourage any of the employees of the Business from accepting any offer of employment to be made by the Purchaser and shall not solicit the services of any of the employees during the three year period following the Closing Date without the consent in writing of the Purchaser, which consent may be unreasonably withheld.

(f) No employee of the Business shall be entitled to any rights under this Subsection or under any of the other provisions of this Agreement.

8.7 **Vendor to Deliver Documents** - At the Closing Date, the Vendor shall cause to be delivered to the Purchaser all documents which relate to the operation of the Business including all records, books of account, lists of suppliers and other data, financial or otherwise relating to the operation of its Business. The Purchaser agrees that it will preserve the documentation so delivered to it for a period of six years following the end of the year in which the Closing Date occurs or for such other period as is required by an applicable law, and during such period will permit the Vendor and his authorized representatives reasonable access thereto and at the request of the Vendor will provide copies of such documentation in connection with the affairs of the Vendor relating to tax matters or Claims arising under this Agreement in respect of which indemnification is sought hereunder.

8.8 **Sale and Transfer of Purchased Assets** - At or before the Closing, the Vendor shall (a) take or cause to be taken all necessary corporate action, steps and proceedings to approve or authorize validly and effectively the transfer of the Purchased Assets to the Purchaser and the execution and delivery of the other agreements and documents contemplated hereby and to cause all necessary meetings of directors and shareholders of the Vendor to be held for such purpose; (b) deliver to the Purchaser a certificate of status and two copies, certified by a senior officer of the Vendor as of the Closing Date, of its constating documents and by-laws and of the resolution authorizing the execution, delivery and performance by the Vendor of this Agreement and any documents to be provided by it pursuant to the provisions hereof; (c) shall use its best efforts to satisfy the conditions contained in Section 9.2; and (d) deliver to the Purchaser all necessary deeds, conveyances, bills of sale, assurances, transfers, assignments and any other documentation necessary or reasonably required to transfer the Purchased Assets to the Purchaser with a good and marketable title, free and clear of all Encumbrances whatsoever except for Permitted Encumbrances.

8.9 **Retail Sales Tax Certificate** - The Vendor shall deliver to the Purchaser a certificate issued by the Minister of Revenue of Ontario under ss.6(1) of the Retail Sales Tax Act (Ontario).

8.10 **Business Name** - The Vendor agrees that within 30 days after the Closing Date it shall change its name and the names of any of its Affiliates that include the word “■” to a name that does not include the word “■” or any part thereof or any similar word. The Vendor agrees that from and after the Closing Date neither the Vendor nor any of its Affiliates will use the word “■” or any part thereof or any similar word.

8.11 **Non-Solicitation** - The Vendor covenants and agrees not to solicit, accept or enter into any discussion with any third party relating directly or indirectly to the acquisition of the shares or Purchased Assets of the Vendor, or any similar type of transaction. The Vendor and the Purchaser agree to use all reasonable efforts to cause the transactions contemplated hereby to be consummated. The Vendor shall be free from the obligations contained in this Section 8.11 if this Agreement is not executed and delivered by ■, 199■. If the Vendor breaches or threatens any breach of the obligations contained in this Section 8.11, the Purchaser shall be entitled to obtain injunctive relief (as the parties agree that any legal remedy would be inadequate) as well as any damages or other relief as the Purchaser may be entitled to at law.

ARTICLE 9

CONDITIONS

9.1 **Conditions Precedent of the Purchaser** - The obligation of the Purchaser to complete the purchase of the Purchased Assets contemplated hereby on the Closing Date is subject to the following conditions in favour of the Purchaser (which may, in the unfettered discretion of the Purchaser be waived by it in whole or in part:

(a) **Vendor's Compliance with Agreement.** The Vendor shall have performed and complied with all covenants and agreements on his part to be performed or complied with on or before Closing.

(b) **Representations and Warranties of Vendor True at Closing.** All representations and warranties of the Vendor shall be true and correct as of the Closing Date; the Vendor shall provide a certificate that his representations and warranties are true and correct as of the Closing Date; provided that the acceptance of such certificates and the Closing of the transactions contemplated hereby by the Purchaser shall not be or be deemed to be a waiver of any of such representations and warranties.

(c) **No Material Adverse Change.** There has not been any material adverse change in the affairs, prospects, sales, revenues, operations or condition (financial or otherwise) of the Business since ■, 199■, and that the Business has been carried on in the ordinary and normal course up to the Closing Date.

(d) **No Material Damage.** No material damage by fire or other hazard to the whole or any material part of the Purchased Assets shall have occurred during the Interim Period.

(e) **Clear Title.** The Vendor shall have taken all proper actions to enable the Vendor to vest the Purchased Assets in the Purchaser and the Purchaser shall have a good and marketable title to the Purchased Assets free of all Encumbrances, except for Permitted Encumbrances, and the Vendor shall have delivered to the Purchaser such deeds, transfers, assignments and consents to assignments and/or transfers giving effect to same in form and substance reasonably satisfactory to the Purchaser.

(f) **Consents Required by Contract.** The Vendor shall have obtained the consents required by contract or by law of all requisite Persons to permit the change of ownership of the Purchased Assets and to permit the Purchaser to operate the Business on the Closing on a basis reasonably satisfactory to the Purchaser; the Vendor shall pay and be solely responsible for the cost of soliciting and obtaining all such consents; provided, however, that the Purchaser shall cooperate with the Vendor in endeavouring to obtain same; all such consents shall be in form and substance reasonably satisfactory to the Purchaser.

(g) **Bulk Sales Act.** The Vendor shall have delivered to the Purchaser evidence to satisfy the Purchaser that the sale and purchase of the Purchased Assets pursuant to this Agreement is in compliance with the provisions of the Bulk Sales Act (Ontario) and such compliance may consist of an order of the court made pursuant to s.3 of the Act.

(h) **Non-Competition Agreement.** The Vendor and ■ shall have executed and delivered a non-competition agreement in the form of Schedule ■.

(i) **No Action or Proceeding.** No legal or regulatory action or proceeding shall be pending or threatened by any Person to enjoin, restrict or prohibit the sale and purchase of the Purchased Assets pursuant to this Agreement.

(j) **Major Customers and Suppliers.** The Purchaser shall have obtained confirmation reasonably satisfactory to the Purchaser from each customer of and supplier to the Business that they will continue to honour existing commitments to the Vendor, contractual and otherwise, and will continue to carry on business with the Business after Closing in the same manner and to at least the same degree as they have in the past, notwithstanding the sale of the Purchased Assets.

(k) **No Termination.** The Purchaser shall not have terminated its obligations under this Agreement.

(l) **Opinion of Vendor's Counsel.** There shall have been delivered to the Purchaser an opinion from counsel to the Vendor, dated as of the Closing Date, in form and substance reasonably satisfactory to the Purchaser with respect to matters related to the representations, warranties and covenants of the Vendor.

(m) **Employees.** All of the employees shall have agreed to accept continuing employment by the Purchaser on terms acceptable to the Purchaser and each of [names] shall have executed and delivered on Closing, an employment agreement upon terms and conditions acceptable to the Purchaser in its sole discretion.

(n) **Estoppel Certificate.** The Purchaser shall have received, prior to the Closing, from the landlord under each of the Leases described in Schedule 6.21 an executed estoppel certificate in the form of Schedule ■.

(o) **Environmental Audit.** The Purchaser, in its sole discretion, shall be satisfied with the results of the Environmental Audit referred to in Section ■.

(p) **Financing.** The Purchaser shall have arranged financing to enable it to purchase the Purchased Assets pursuant to this Agreement in amounts and upon terms and conditions acceptable to the Purchaser in its sole discretion and, on Closing, the lender shall advance the funds to permit the Closing.

(q) ■. The Purchased Assets shall include ■ that were owned by ■ at the time of the sale by the Purchaser of the shares of ■ to Vendor or one of its predecessors in 199■.

(r) **Finalization of Due Diligence.** The Purchaser shall be satisfied, acting reasonably, that no issue or combination of issues arising out of completion of its due diligence review materially and adversely affects the combined value of the Business.

(s) **Legal Matters.** All actions, proceedings, instruments and documents required to implement this Agreement, or instrumental thereto, shall have been approved as to form and legality by Sutts, Strosberg LLP, counsel for the Purchaser, acting reasonably.

If any obligation or covenant of the Vendor or any condition for the benefit of the Purchaser to be satisfied or performed prior to the Closing Date shall not have been satisfied or performed prior to the Closing Date or waived, the Purchaser shall be entitled to terminate this Agreement by notice in writing to the Vendor and in that event the Purchaser shall be released from all obligations

hereunder. Such termination will not in any way limit any other rights or recourse available to the Purchaser in respect thereof.

9.2 **Conditions Precedent of the Vendor** - The obligations of the Vendor to complete the sale of the Purchased Assets contemplated hereby on the Closing Date are subject to the following conditions in favour of the Vendor which may, in the Vendor's unfettered discretion, be waived in writing by it:

(a) **Compliance with Agreement.** The Purchaser shall have performed and complied with all covenants and agreements on its part to be performed or complied with on or before Closing.

(b) **Representations and Warranties of the Purchaser True at Closing.** All representations and warranties of the Purchaser shall be true and correct on and as of the Closing Date. The Purchaser shall provide a certificate executed by an authorized senior officer dated as of the Closing Date that such representations and warranties are true and correct as of the Closing Date; provided that acceptance of such certificate and the Closing of the transactions contemplated hereby shall not be or be deemed to be a waiver of any of such representations or warranties.

(c) **Opinion of the Purchaser's Counsel.** There shall have been delivered to the Vendor an opinion from counsel to the Purchaser, dated as of the Closing Date, in form and substance satisfactory to the Vendor, acting reasonably, with respect to ■.

(d) **Consents Required by Contract.** The Vendor shall have obtained the consents required by contract or by law of all requisite Persons to permit the change of ownership of the Purchased Assets and to permit the Purchaser to operate the Business on the Closing on a basis reasonably satisfactory to the Vendor.

(e) **No Action or Proceeding.** No legal or regulatory action or proceeding shall be pending or threatened by any Person to enjoin, restrict or prohibit the sale and purchase of the Purchased Assets pursuant to this Agreement.

(f) **No Termination.** The Vendor shall not have terminated its obligations to sell the Purchased Assets pursuant hereto.

(g) **Legal Matters.** All actions, proceedings, instruments and documents required to implement this Agreement, or instrumental thereto, shall have been approved as to form and legality by ■, counsel for the ■, acting reasonably.

If any obligation or covenant of the Purchaser or any condition for the benefit of the Vendor to be satisfied or performed prior to the Closing Date shall not be satisfied or performed prior to the Closing Date or so waived, the Vendor shall be entitled to terminate this Agreement by notice in writing to the Purchaser and in that event the Vendor shall be released from all obligations hereunder. Such termination will not in any way limit any other rights or recourse available to the Vendor in respect thereof.

ARTICLE 10

SURVIVAL OF REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITY AGREEMENT

10.1 **Survival of Representations and Warranties** - The representations and warranties of the Vendor and the Purchaser contained in this Agreement and contained in certificates or documents submitted pursuant to or in connection with the transaction herein provided for shall survive the Closing regardless of any investigation by or on behalf of the Purchaser or the Vendor with respect thereto, and, unless otherwise specifically provided for, shall continue in full force and effect for the benefit of the Purchaser:

(a) with respect to any claim based upon, arising out of or in respect of any inaccuracy in or any breach of any representation, warranty, covenant or agreement of the Vendor related to Taxes, to the date upon which the liability to which such claim is based is barred by all applicable statutes of limitation;

(b) with respect to any claim based upon or arising out of or in respect of any inaccuracy in or any breach of any representation, warranty, covenant or agreement, related to any environmental matter including those set out in Section 6.20, for a period of three (3) years after the Closing Date;

(c) with respect to any claim based upon or related to the title to the Purchased Assets, or which is based upon intentional misrepresentation or fraud by the Vendor, at any time; and

(d) with respect to any other claim, for a period of three years after the Closing Date.

10.2 **Survival of Covenants** - Except as otherwise specifically provided for in this Agreement, the covenants and agreements of each of the Purchaser and the Vendor contained in this Agreement or contained in any agreements, certificates or other documents submitted or delivered pursuant to or in connection with the transactions herein provided for, shall survive the closing of the purchase and sale of the Purchased Assets regardless of any investigation by or on behalf of the Purchaser or the Vendor with respect thereto and shall not merge on Closing but shall continue in full force and effect for the benefit of the Purchaser or the Vendor, as the case may be.

10.3 **Vendor to Indemnify Purchaser and Vendor** - The Vendor hereby agrees to indemnify and hold harmless the Purchaser from and against:

(a) any and all claims, liabilities, damages, losses, costs and expenses, including reasonable solicitors' fees, resulting from or relating to any inaccuracy in or any breach of any of the representations or warranties made by the Vendor in this Agreement or in any document or certificate delivered pursuant to this Agreement or any breach or default in the performance by the Vendor of any of the covenants or other obligations which he is to perform or observe hereunder; and

(b) any and all claims, liabilities, damages, losses, costs and expenses, including reasonable solicitors' fees, resulting from or arising out of any Claim identified in Schedule 6.15;

provided that the Vendor's obligation to indemnify the Purchaser pursuant to this Section shall be subject to the limitations referred to in Section 10.1 with respect to the survival of representations and warranties and, to the further limitation that the Purchaser shall have no right to any indemnity hereunder unless and until the aggregate of such Claims, losses, damages and costs exceed \$■. Thereafter, Claim(s) eligible for indemnity hereunder shall be submitted by the Purchaser to the Vendor only when all such outstanding Claims are equal to or greater than \$■ in the aggregate. The aforesaid limitations shall not apply to any Claim based on the failure or deficiency of the Vendor to deliver to the Purchaser good and valid title to the Purchased Assets free of all Encumbrances or to any Claim based upon intentional misrepresentation or fraud by the Vendor.

10.4 Process for Claiming Indemnity - The foregoing obligations of indemnification are subject to the following provisions which will apply to any Claim by the Purchaser for indemnification by the Vendor pursuant to Section 10.3 (herein, in this Section, called an "Indemnity Claim"):

(a) Promptly after becoming aware of any matter that may give rise to an Indemnity Claim, the Purchaser will provide to the Vendor written notice of the Indemnity Claim specifying (to the extent that information is available) the factual basis for the Indemnity Claim, the amount of the Indemnity Claim or, if an amount is not then determinable, an estimate of the amount of the Indemnity Claim, if an estimate is feasible in the circumstances and whether it believes the Claim could have a material adverse effect on the Business or the Purchaser.

(b) If an Indemnity Claim relates to an alleged liability of the Vendor to any other Person (hereinafter, in this Section, called a "Third Party Liability"), including without limitation any governmental or regulatory body or any taxing authority, which is of a nature such that the Purchaser or the Business is required by applicable law to make a payment to a third party before the relevant procedure for challenging the existence or quantum of the alleged liability can be implemented or completed, then the Purchaser may, notwithstanding the provisions of paragraphs (c) and (d) of this Section, make such payment and forthwith demand re-imburement for such payment from the Vendor in accordance with this Agreement; provided that, if the alleged Third Party as Liability finally determined upon completion of settlement negotiations or related legal proceedings is less than the amount which is paid by the Vendor in respect of the related Indemnity Claim, then the Purchaser shall forthwith following the final determination pay to the Vendor the amount by which the amount of the liability as finally determined is less than the amount which is so paid by the Vendor.

(c) The Purchaser shall not negotiate, settle, compromise or pay (except in the case of payment of a judgment) any Third Party Liability as to which it proposes to assert an Indemnity Claim, except with the prior consent of the Vendor (which consent shall not be unreasonably withheld or delayed), unless there is a reasonable possibility that such Third Party Liability may materially and adversely affect the Business, or the Purchaser, in which case the Purchaser shall have the right, after notifying the Vendor, to negotiate, settle, compromise or pay such Third Party Liability without prejudice to its rights of indemnification hereunder.

(d) With respect to any Third Party Liability, provided the Vendor first admits the Purchaser's right to indemnification for the amount of such Third Party Liability which may at any time be determined or settled, then in any legal, administrative or other proceedings in connection with the matters forming the basis of the Third Party Liability, the following procedures will apply:

- (i) Except as contemplated by subparagraph (iii) of this Subsection, the Vendor will have the right to assume carriage of the compromise or settlement of the Third Party Liability and the conduct of any related legal, administrative or other proceedings, but the Purchaser shall have the right and shall be given the opportunity to participate in the defence of the Third Party Liability, to consult with the Vendor in the settlement of the Third Party Liability and the conduct of related legal, administrative and other proceedings (including consultation with counsel) and to disagree on reasonable grounds with the selection and retention of counsel, in which case counsel satisfactory to the Vendor and the Purchaser shall be retained by the Vendor;
- (ii) the Vendor will co-operate with the Purchaser in relation to the Third Party Liability, will keep it fully advised with respect thereto, will provide it with copies of all relevant documentation as it becomes available, will provide it with access to all records and files relating to the defence of the Third Party Liability and will meet with representatives of the Purchaser at all reasonable times to discuss the Third Party Liability; and
- (iii) notwithstanding Subsections (i) and (ii) of this Section, the Vendor will not settle the Third Party Liability or conduct any legal, administrative or other proceedings in any manner which could, in the reasonable opinion of the Purchaser, have a material adverse effect on the Business or the Purchaser, except with the prior written consent of the Purchaser.

(e) If, with respect to any Third Party Liability, the Vendor does not admit the right of the Purchaser to indemnification or declines to assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability, then the following provisions will apply:

- (i) the Purchaser, at its discretion, may assume carriage of the settlement or of any legal, administrative or other proceedings relating to the Third Party Liability and may defend or settle the Third Party Liability on such terms as the Purchaser, acting in good faith, considers advisable; and
- (ii) any cost, loss, damage or expense incurred or suffered by the Purchaser or the Business in the settlement of such Third Party Liability or the conduct of any legal, administrative or other proceedings shall be added to the amount of the Indemnity Claim.

10.5 **Right of Set-Off** - The Purchaser shall have the right to satisfy any amount from time to time owing to it by the Vendor by way of set-off against any amount from time to time

owing by it to the Vendor, including, without being limited to, any amount owing to the Purchaser pursuant to the Vendor's indemnification contained in Section 10.3.

ARTICLE 11

POST CLOSING MATTERS

11.1 **Computers and Accounting** - After the Closing, the Purchaser, in its discretion, shall have the right of access to and the use of the Vendor's hardware, software and accounting systems to the extent necessary in connection with the Business, without charge, in order to continue and maintain all the Vendor's existing systems until they can be replaced, with the Purchaser's own hardware, software and/or accounting systems.

ARTICLE 12

GENERAL PROVISIONS

12.1 **Confidentiality of Information** - In the event that the transactions contemplated herein are not consummated for any reason, the Purchaser covenants and agrees that, except as otherwise authorized by the Vendor, neither the Purchaser nor its representatives, agents or employees will use for their own purposes or disclose to third parties, directly or indirectly, any confidential information or confidential data relating to the Business discovered by the Purchaser or its representatives as a result of the Vendor making available to the Purchaser and its representatives the information requested by them in connection with the transactions contemplated herein.

12.2 **Brokerage and Finder's Fees** - Each Party represents and warrants to the other that all negotiations relating to this Agreement and the transactions contemplated hereby have been carried on between them directly and without the intervention of any other Person in such manner as to give rise to any valid claim against any of the parties for a brokerage commission, finders fee or other like payment. The Vendor agrees to indemnify the Purchaser and hold it harmless in respect of any claim for brokerage or other commissions relative to this Agreement or the transactions contemplated hereby which is caused by actions of the Vendor. The Purchaser agrees to indemnify the Vendor and hold it harmless in respect of any claim for brokerage or other commissions relative to this Agreement or to the transactions contemplated hereby which is caused by actions of the Purchaser or any of its Affiliates.

12.3 **Disclosure** - Neither the Purchaser nor the Vendor will make any announcement concerning, or disclose to any Person details of, the purchase contemplated by this Agreement without the prior written consent of the Purchaser and the Vendor; provided, however, that (a) the Vendor may disclose the foregoing to its professional advisors (who will agree to keep same in confidence); (b) the Purchaser may disclose the foregoing to its professional advisors and potential investors (who will agree to keep same in confidence) and may make such announcements that are necessary to comply with securities laws and the requirements of regulatory authorities; (c) the

Purchaser and the Vendor will jointly prepare appropriate notices and/or other forms of disclosure to employees, customers, suppliers and parties to Contracts with the Vendor; and (d) the Purchaser shall prepare a press release to be issued immediately after Closing, the contents of which shall be subject to the consent, not to be unreasonably withheld or delayed, of the Vendor.

12.4 **Further Assurances** - The Vendor and the Purchaser each hereby covenant and agree that at any time and from time to time after the Closing Date it will, upon the request of the other, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.

12.5 **Remedies Cumulative** - The rights and remedies of the parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such party may be lawfully entitled for the same default or breach.

12.6 **Severability** - If at any time subsequent to the date hereof, any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect but the illegality or unenforceability of such provision shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement and any provision held invalid will be deemed to be revised and in such minimal manner as will under the revised terms be valid and legally effective consistent with the context of this Agreement.

12.7 **Notices** - All notices and other communications required or permitted to be given hereunder shall be in writing and shall be given by prepaid first-class mail, by facsimile or other means of electronic communication or by delivery as hereafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the third Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this Section. Notices and other communications shall be addressed as follows:

- (a) If to the Vendor:
 -
 - Attention: ■
 - Telecopier No.: ■

With a copy to:

■

Attention: ■

Telecopier No.: ■

(b) If to the Purchaser:

■

Attention: ■

Telecopier No.: ■

With a copy to:

Sutts, Strosberg LLP

Barristers and Solicitors

600 Westcourt Place

251 Goyeau Street

Windsor, Ontario

N9A 6V4

Attention: ■

Telecopier No.: (519) 258-9527

12.8 **Counterparts** - This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

12.9 **Expenses of Parties** - Each of the parties hereto shall bear all expenses incurred by it in connection with this Agreement including, without limitation, the charges of their respective counsel, accountants, financial advisors and finders.

12.10 **Waiver** - Any party hereto which is entitled to the benefits of this Agreement may, and has the right to, waive any term or condition hereof at any time on or prior to the Closing Time provided, however, that such waiver shall be evidenced by written instrument duly executed on behalf of such party.

12.11 **Amendments** - No modification or amendments to this Agreement may be made unless agreed to by the parties hereto in writing.

12.12 **Entire Agreement** - This Agreement and the schedules referred to herein constitute the entire agreement between the parties hereto and supersede all prior agreements, arrangements and understandings, whether oral or written, express or implied with respect to the subject matter hereof. This Agreement constitutes the entire agreement between or among the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between or among the parties other than as expressly set forth in this Agreement.

12.13 **Assignment** - The rights of the Vendor hereunder shall not be assignable without the prior written consent of the Purchaser. The rights of the Purchaser hereunder shall not be assignable

without the prior written consent of the Vendor.

12.14 **Time of Essence** - Time shall be of the essence hereof.

12.15 **Successors and Assigns** - This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. Nothing herein, express or implied, is intended to confer upon any Person, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their corporate seals by the hands of their

(The remainder of this page is intentionally blank.)

proper signing officers in that behalf, as the case may be, this ■ day of ■, 199■.

SIGNED, SEALED AND DELIVERED
in the presence of:

)■

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)

)

)By: _____

)Authorized Signing Officer

)

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)By: _____

)Authorized Signing Officer

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