

Draft
For discussion purposes only
Strictly private and
confidential

DRAFT

Version for financial bidders

**AGREEMENT For the SALE AND PURCHASE of the Share capital of
[NEWCO]**

DATED

2016-08-22 blah blah

[●]

BLABLA HOLDINGS NV

AND

**[●Any and all documents produced or delivered by Company to Avnet shall remain the property
of Company, and all such documents and all copies thereof—except for one reference copy which
may be retained—shall be promptly returned to Company upon demand.]**

AND

[●]

TO DO: ADJUST PLACEMENTS OF THINGS O TITLE PAGE

Contents

THIS AGREEMENT is made on [●] 2009
BETWEEN:

- (1) **BLABLA HOLDINGS NV**, a limited liability company incorporated and existing under the laws of Belgium whose registered office is at [address line], [postal code], [City], Belgium and which is registered with the Crossroad Bank of Enterprises under number [company number], hereby represented by [●] (the **Seller**);
- (2) [●], a limited liability company incorporated and existing under the laws of Belgium whose registered office is at [●] and which is registered with the Crossroad Bank of Enterprises under number [●], hereby represented by [●] (the **Purchaser**); and
- (3) [●], a [private/public limited liability company] incorporated and existing under the laws of [●] whose [registered/principal] office is at [●] and which is represented by [●] (the **Purchaser's Guarantor**)¹.

Each referred to separately as a **Party** and together as the **Parties**.

BACKGROUND:

- (A) The Seller is the direct or indirect owner of **BLABLA INDUSTRIES NV**, a limited liability company incorporated and existing under the laws of Belgium whose registered office is at (**Blabla industries**) and **BLABLARELATED UK LTD.** (**Blablarelated UK**).
- (B) The Blablarelated business division of Blabla industries and Blablarelated UK jointly constitute the Blablarelated Business, full details of which are given in ?? (the **Blablarelated Business**).

IT IS AGREED as follows:

1 Interpretation

- 1.1 In addition to terms defined elsewhere in this Agreement, the definitions and other provisions in ?? (Interpretation) apply throughout this Agreement, unless the contrary intention appears.
- 1.2 The headings in this Agreement do not affect its interpretation.

2 Adjustment to Purchase Price

- 2.1 The following payments shall be made within five Business Days following the day on which the Net Cash Balances, Net Indebtedness and Net Working Capital are determined.
 - (a) The Purchaser shall pay to the Seller as an increase to the Purchase Price an amount, if any, equal to the Net Cash Balances;
 - (b) The Seller shall pay to the Purchaser as a reduction to the Purchase Price an amount, if any, equal to the Net Indebtedness;

¹ To the extent that Bidco is a newly incorporated company, the ultimate holding company of Bidco shall be requested to act as guarantor to the obligations of Bidco under this Agreement and the Transaction Documents. This draft Agreement assumes that Bidco shall be a company newly incorporated for the purpose of this transaction.

- 2.2 The Net Cash Balances, Net Indebtedness and the Net Working Capital will be determined in accordance with clause **Error: – missing in original .doc Reference source not found** and clause **Error: – missing in original .doc Reference source not found**.

3 Conditions Precedent

3.1 The sale and purchase of the Shares is conditional on:

- (a) where the sale and purchase must be notified to the European Commission under the Merger Regulation, the European Commission notifying the Purchaser, in terms reasonably satisfactory to the Purchaser, that it will neither initiate proceedings under Article 6(1)(c) of the Merger Regulation in relation to the proposed acquisition of the Shares by the Purchaser or any matter arising from or relating to that proposed acquisition nor refer the proposed acquisition of the Shares by the Purchaser or any matter arising from or relating to that proposed acquisition to the competent authorities of one or more Member States under Article 9 of the Merger Regulation.
- (b) where the sale and purchase must be notified to [the national competition authorities of [Belgium] [and/or] [the United Kingdom] [or other applicable countries] under the relevant competition laws, [the national competition authorities of [Belgium] [and] [the United Kingdom][or other applicable countries]:
 - (i) taking a decision that the sale of the Shares to the Purchaser does not give rise to a concentration falling within the scope of the relevant competition laws; or
 - (ii) not taking a decision within the time limits set by the relevant competition laws and as a result the sale of the Shares to the Purchaser is deemed to have been allowed.]
- (c) completion of the Pre-Completion De-merger as set out in **Error: – missing in original .doc Reference source not found**.

4 Limitations

4.1 Due diligence investigation

The Purchaser acknowledges and agrees that:

- (a) it has performed, with the assistance of professional advisers, a due diligence investigation with respect to the Blablarelated Business and the operations, assets, liabilities and financial condition of the Blablarelated Business on the basis of the information provided by the Seller and (where applicable) their advisers (the Due Diligence Investigation); it has performed, with the assistance of professional advisers, a due diligence investigation with respect to the Blablarelated Business and the operations, assets, liabilities and financial condition of the Blablarelated Business on the basis of the information provided by the Seller and (where applicable) their advisers (the **Due Diligence Investigation**);
- (b) in the Due Diligence Investigation, the Purchaser and its advisers have obtained all information and raised all questions that they deemed proper and necessary for the purposes of entering

into this Agreement, through interviews, presentations and questions submitted to the Seller and its advisers or, where appropriate, through searches or by means of other enquiries.

4.2 Exclusions

The Seller shall not be liable in respect of any Claim to the extent that the matter or circumstance giving rise to the Claim:

- (a) was known, or should reasonably have been known, to the Purchaser or its advisers on the basis of the Due Diligence Investigation; or
 - (i) the Due Diligence Investigation; or
 - (ii) the Disclosed Information.
- (b) was, or should have been, otherwise known to the Purchaser or its advisers on the basis of their knowledge of the Blablarelated Business and the market(s) in which the Blablarelated Business operates; or

5 Notices

5.1 Any notice or other communication to be given under this Agreement must be in writing (which does not include fax or email) and must be delivered or sent by post to the party to whom it is to be given at its address appearing in this Agreement as follows:

- (a) to the Seller at:
Belgium
marked for the attention of: []
with a copy to:
- (b) to the Purchaser at:
[●]
marked for the attention of: [●]
with a copy to:
[●]
- (c) to the Purchaser's Guarantor at:
[●]
marked for the attention of: [●]
with a copy to:
[●]

or at any such other address of which it shall have given notice for this purpose to the other parties under this clause. Any notice or other communication sent by post shall be sent by registered mail requesting a return receipt (if the country of destination is the same as the country of origin) or by overnight courier (if the country of destination is not the same as the country of origin).

5.2 Any notice or other communication shall be deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by post, on the second Business Day after it was put into the post or sent by courier.

5.3 This clause shall not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

6 Payments

6.1 Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made to the Seller or the Purchaser under this Agreement shall be made in Euro by transfer of the relevant amount into the relevant account on or before the date the payment is due for value on that date. The relevant account for a given payment is:

- (a) if that payment is to the Seller, the account of the Seller at:

bank: [name and address]
sort code: [●]
account number: [●],

or such other account as the Seller shall, not less than three Business Days before the date that payment is due, have specified by giving notice to the Purchaser for the purpose of that payment;

- (b) if that payment is to the Purchaser, the account of the Purchaser at:

bank: [name and address]
sort code: [●]
account number: [●],

or such other account as the Purchaser shall, not less than three Business Days before the date that payment is due, have specified by giving notice to the Seller for the purpose of that payment.

6.2 If a party defaults in making any payment when due of any sum payable under this Agreement, it shall pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of [6]% above EURIBOR (three months) on that sum, which interest shall accrue from day to day and be compounded monthly.

THIS AGREEMENT has been signed by the Parties (or their duly authorised representatives) on the date stated at the beginning of this Agreement in [NUMBER] counterparts, and each party acknowledges receipt of one such counterpart.

sign-here-1 _____

Blabla industries NV

sign-here-3 _____

[Purchaser]

sign-here-3 _____

[Purchaser's Guarantor]

SCHEDULE 1
The BLABLARELATED Business

SCHEDULE 2
THE COMPANY

Company name: dummy company

Type of corporate entity: dummy type

Registered (or principal) office: dummy office

Management Structure (including names of managing directors, supervisory directors and chairman): dummy structure

Financial year end: dummy FYE

Auditors: dummy auditors

SCHEDULE 3

INTERPRETATION

1. In this Agreement:

Accounts means the statutory accounts of the Company and of the Subsidiary, established under local GAAP, as of 1 January 2007;

Trade Creditors has the meaning as set out in Part 2 of **Error: – missing in original .doc Reference source not found**;

Trade Debtors has the meaning as set out in Part 2 of **Error: – missing in original .doc Reference source not found**;

Transaction Documents means this Agreement, and the documents referred to in it and any other agreements executed or to be executed by the parties on the date of this Agreement or Completion.

2. In this Agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes:

- (a) that enactment as amended, extended or applied by or under any other enactment (before or after signature of this Agreement);
- (b) any enactment which that enactment re-enacts (with or without modification); and
- (c) any subordinate legislation made (before or after signature of this Agreement) under that enactment, including (where applicable) that enactment as amended, extended or applied as described in subparagraph ??, or under any enactment which it re-enacts as described in subparagraph ??,

except to the extent that any legislation or subordinate legislation made or enacted after the date of this Agreement would create or increase the liability of the Seller under this Agreement.

3. In this Agreement:

- (a) words denoting persons shall be construed so as to include any individual, firm, company, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);
- (b) references to an individual or a natural person include his estate and personal representatives; and subject to clause **Error: – missing in original .doc Reference source not found** (Assignments), references to a party to this Agreement include the successors or assigns (immediate or otherwise) of that party.