

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made this ____ day of _____, 20____, by and between _____ not individually, but as assignee for the benefit of the creditors of _____, Inc., an _____ corporation, ("**Seller**"), and _____, an _____ ("**Buyer**").

RECITALS:

WHEREAS, _____, Inc. ("**Seller**") operated its business (the "**Business**") at certain leased real properties identified in Exhibit A (collectively the "**Premises**"); and

WHEREAS, due to operational and financial difficulties, Seller made an assignment for the benefit of its creditors to _____, not individually, but as assignee for the benefit of Seller's creditors, effective as of _____ (the "**Assignment**"); and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, all Seller's rights, title and interest, if any, in and to certain assets on the terms described below.

NOW, THEREFORE, the parties agree as follows:

1. Preamble; Preliminary Recitals.

The preamble and preliminary recitals set forth above are by this reference incorporated in and made a part of this Agreement.

2. Purchase of Assets.

Subject to the provisions of this Agreement, Buyer agrees to purchase, and Seller agrees to sell, all Seller's rights, title and interest, if any, in and to the Purchased Assets, as defined in this paragraph. The purchase price for the Purchased Assets shall be \$_____ ("**Purchase Price**").

"**Purchased Assets**" means, collectively all tangible property, including but not limited to, furniture, fixtures, machinery, equipment, tools, and inventory ("**Inventory**"), and the following intangible property: all right, title and interest of Seller, if any, under leases of personal property and equipment and under the leases for the Premises, intellectual property (including, without limitation, trademarks, tradenames, and service marks), telephone numbers and telephone listings, insurance policies, trade accounts receivable ("**Accounts**"), promissory notes arising from Accounts, all causes of action related to the Purchased Assets, contingent and unliquidated claims, counterclaims and rights to setoff claims related to the Purchased Assets, customer lists, goodwill and other intangible property related to the Business, which is located at the Premises on the Closing Date; but excluding all other assets of Seller and specifically excluding: (i) cash; (ii) any accounting related books and records, whether written or electronically recorded; (iii) causes of action not related to the Purchased Assets; (iv) contingent and unliquidated claims of every nature except those related to the Purchased Assets, including tax refunds, counterclaims, and rights to set off claims; (v) deposits and (vi) any personal property subject to any security interest in favor of a third party other than _____.

3. Payment of Purchase Price.

Buyer shall deliver to Seller by certified or bank check, \$_____.

4. Assumption of Liabilities.

At Closing Buyer shall assume and agree to pay, discharge or perform as appropriate only the following liabilities and obligations (the "**Assumed Liabilities**"):

- a. All obligations with respect to the Premises arising on or after Closing;
- b. All obligations under customer purchase orders;
- c. All leases of personal property and equipment, and contracts or agreements with vendors providing services to the Business after the Closing Date;
- d. All obligations under the certain Consulting Agreement between _____, Inc. and _____, dated _____; and
- e. All obligations with respect to the factored accounts receivable of [Seller], Inc.

Except for the Assumed Liabilities, Buyer is not assuming, nor shall it in any way be liable or responsible for, any liabilities, obligations, or debts of Seller, whether accrued, absolute, contingent or otherwise, arising before or after the Closing.

5. Seller's Auction.

Buyer acknowledges that after execution of this Agreement, Seller shall advertise to the public in such manner as Seller in his sole discretion deems appropriate, that the Purchased Assets are for sale and: (i) will be sold to the highest and best bidder at a publicly advertised auction to be conducted by Seller by publication in the _____ no later than _____. In connection therewith, the Purchased Assets and copies of this Agreement shall be available for examination by other prospective Buyers or interested parties prior to the Auction at such time or times as Seller in his sole discretion deems appropriate. Buyer shall be entitled to submit bids at the Auction in the event that an offer that is higher and better than the Purchase Price is received by Seller.

6. Covenants of Seller.

Seller hereby covenants and agrees with Buyer that:

- a. Until the Closing Seller shall use its best efforts to maintain its current relationships with suppliers, customers and others having business relations with Seller in connection with the Purchased Assets.
- b. Until the Closing, except as may be first approved in writing by Buyer or as is otherwise permitted or contemplated by this Agreement, Seller shall conduct its business and all transactions with respect to the Purchased Assets, only in the usual and ordinary course of business consistent with Seller's past practice.
- c. Until the Closing, Seller shall make no sale of assets other than in the ordinary course of Seller's past practice.

7. Closing.

a. In the event that Buyer is the successful Buyer following the Auction, the consummation of the purchase and sale of the Purchased Assets (the "**Closing**") shall be held at _____ on _____ or sooner by agreement of the parties, at such place as Buyer and Seller may agree.

b. At the Closing, Seller shall deliver the Purchased Assets to Buyer and shall deliver the following documents to Buyer:

- i. an Assignee's Bill of Sale in substantially the form of Exhibit B
- ii. an Assignment, Acceptance and Assumption Agreement pursuant to which Seller shall assign and Buyer shall assume and agree to pay all Assumed Liabilities ("**Assignment**");
- iii. list of Accounts;
- iv. list of Inventory;
- v. Closing Statement; and
- vi. such other documents as may be reasonably requested by Purchaser in connection with the consummation of the transactions contemplated by this Agreement.

c. At Closing Buyer shall pay to Seller the Purchase Price and shall deliver to Seller the following documents:

- i. executed counterparts of the Assignment;
- ii. copies, certified by the appropriate governmental official of the State of _____ as of a date not more than _____ (____) days prior to the Closing Date, of its articles of incorporation and all amendments thereto;
- iii. a secretary's certificate in the form satisfactory to Seller's counsel relating to incumbency and corporate proceedings authorizing the transactions contemplated by this Agreement;
- iv. executed counterparts of the Closing Statement; and
- v. such other documents as may be reasonably requested by Seller in connection with the consummation of the transactions contemplated by this Agreement.

8. Delivery and Condition of the Purchased Assets.

a. Immediately upon completion of the Closing, Seller shall be deemed to have fully and completely transferred to Buyer all his rights, title, and interest, if any, in, as well as possession, custody and control of, the Purchased Assets. Seller shall not be liable or responsible for any liabilities or obligations of any kind or nature whatsoever arising out of, under, or related to the Purchased Assets from and after the Closing.

b. Buyer agrees that it is purchasing and shall take possession of the Purchased Assets in their AS IS, WHERE IS condition and acknowledges that it has previously been given the opportunity to and has conducted such investigations and inspections of the Purchased Assets as it has deemed necessary or appropriate for the purposes of this Agreement.

c. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SELLER DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS, STATEMENTS, WARRANTIES, OR CONDITIONS OF ANY KIND OR NATURE WHATSOEVER CONCERNING THE PURCHASED ASSETS, INCLUDING (WITHOUT LIMITING THE GENERALITY OF THE FOREGOING) ANY WARRANTIES REGARDING THE OWNERSHIP, CONDITION, QUANTITY AND/OR QUALITY OF ANY OR ALL OF THE PURCHASED ASSETS AND ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.

9. Conditions Precedent to Closing.

The performance by Seller and Buyer of their respective obligations under this Agreement is subject to the condition that on the Closing Date no suit, action or other proceeding shall be pending before any court or governmental or regulatory authority which seeks to restrain or prohibit or to obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated by this Agreement.

10. Default.

a. If Seller fails to make the required deliveries at the Closing or otherwise defaults under this Agreement, then Buyer shall have the right to terminate this Agreement and thereupon this Agreement shall be null and void and of no legal effect whatsoever. If so terminated, each party hereto shall suffer their own losses, costs, expenses, or damages arising out of, under or related to this Agreement.

11. Indemnity.

Buyer shall indemnify, defend, and hold Seller harmless from and against any and all losses, liabilities, damages, costs and obligations (or actions or claims in respect thereof) (including reasonable counsel fees), which Seller may suffer or incur arising out of or based upon:

a. the breach of any representation, warranty, covenant or agreement of Buyer contained in this Agreement;

b. the Assumed Liabilities; and

c. the operation of the Business and the use of any of the Purchased Assets after the Closing.

12. Notices.

Any notice required or permitted by this Agreement shall be in writing and effectively delivered for all purposes if delivered personally, by overnight delivery service or by United States mail, certified mail, postage prepaid, return receipt requested and:

If directed to Seller:

_____ [Assignee], not individually, but
as Assignee for the benefit of the creditors of
[Seller], Inc.

If directed to Buyer:

[Buyer], Ltd.

All notices shall be deemed delivered upon receipt.

13. Survival.

The representations, warranties and covenants contained herein shall not survive the execution and delivery of this Agreement and Closing.

14. Brokers.

Buyer and Seller each warrants to the other that it has not engaged, consented to, or authorized any broker, investment banker, or other third party to act on its behalf, directly or indirectly, as a broker or finder in connection with the transactions contemplated by this Agreement and no such third party is entitled to any fee or compensation in connection with this Agreement or the transactions contemplated hereby by reason of any action of it.

15. Amendment and Modification.

This Agreement may be amended, modified or supplemented only by written agreement of Buyer and Seller.

16. Severability.

Any provision of this Agreement that shall be prohibited or unenforceable shall be deemed ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

17. Entire Agreement.

This Agreement sets forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and undertakings, inducements or conditions, express or implied, oral or written.

18. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of _____.

19. Counterparts.

This Agreement may be executed in one or more counterparts all of which when taken together constitute one and the same instruments. A signed counterpart is as binding as an original.

20. Headings, Exhibits.

The headings used in this Agreement are for convenience only and shall not be used to limit or construe the contents of any of the sections of this Agreement. All lettered Exhibits are attached to and by this reference made a part of this Agreement.

21. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SELLER:

_____ [ASSIGNEE], NOT
INDIVIDUALLY, BUT AS ASSIGNEE
FOR THE BENEFIT OF THE
CREDITORS OF [SELLER], INC.

_____, ASSIGNEE

BUYER:

[BUYER], LTD.

By:_____

Its:

EXHIBIT A
THE PREMISES

EXHIBIT B

ASSIGNEE'S BILL OF SALE

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, _____ [Assignee], not individually, but as Assignee for the benefit of the creditors of [Seller], Inc. ("**SELLER**"), hereby assigns, conveys and transfers over unto [Buyer], Ltd. ("**BUYER**"), all of his right, title and interest, if any, in and to the Purchased Assets as defined in that certain Asset Purchase Agreement between Seller and Buyer dated - _____ (the "Purchase Agreement").

The purchase price for the Purchased Assets is \$_____. THE PURCHASED ASSETS ARE BEING SOLD "AS-IS, WHERE-IS" WITH NO WARRANTIES OR REPRESENTATIONS WHATSOEVER, EXCEPT AS EXPRESSLY PROVIDED IN THE PURCHASE AGREEMENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale to be executed as of the ___ day of _____, 201__.

[ASSIGNEE], NOT
INDIVIDUALLY, BUT AS ASSIGNEE FOR THE
BENEFIT OF [SELLER], INC.

_____, Assignee