

ASSET PURCHASE AGREEMENT

THIS AGREEMENT, signed by the parties hereto effective the date shown by their respective signatures, is made by [SELLER'S NAME] (hereinafter the "Seller"), and [PURCHASER'S NAME] (hereinafter the "Purchaser");

RECITAL: Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller certain assets and properties currently used in the business known as [BUSINESS NAME] with a principal operating address of [BUSINESS ADDRESS] (the "Business"). The Business location is sometimes referred to as the "Premises".

IN CONSIDERATION of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. SALE OF ASSETS

1. Sale of Assets.¹

Seller shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase and accept at closing, certain assets and properties of the Business owned by Seller, or in which Seller has any right, title, or interest of every kind and description, wherever located (hereinafter "Assets"), including (but excluding the Excluded Assets set forth in Section 1.13 below):

1.1 Furniture, Fixtures and Equipment.

All furniture, fixtures, equipment, machinery, computers, computer peripherals, tools, devices and other tangible personal property (hereinafter "Furniture, Fixtures and Equipment") owned by Seller and used in the operation of the Business, whether or not listed in the books or records of the Business, including, but not limited to, the items described on Schedule 1.1²

¹ The parties have a mutual interest in defining the assets included and excluded in the sale. The Asset Purchase Agreement should outline the general categories of assets included and excluded in the sale. Seller may wish to specifically identify any assets which are excluded from the sale.

² Seller may be reluctant to share a significant amount of detailed information with a potential Purchaser until after an Asset Purchase Agreement is signed and an Earnest Money Deposit received. Thus, the Asset Purchase Agreement may provide a date certain by which Seller shall provide further information regarding the Assets offered for sale. The following is sample language:

“All furniture, fixtures, equipment, machinery, computers, computer peripherals, tools, devices and other tangible personal property (hereinafter "Furniture, Fixtures and Equipment") owned by Seller and used in the operation of the Business, whether or not listed in the books or records of the Business, including, but not limited to, the items described on Schedule 1.1, which Schedule shall be provided to Purchaser on or before [DATE].”

This approach may be taken for some or all of the necessary Schedules. Purchaser's obligation to close on the Asset purchase is contingent upon its inspection and due diligence rights as further defined in Article 9 below. This would include Purchaser's review and approval of the various Schedules that Seller would provide by the specified date. It is extremely important that the due date by which Seller must deliver the Schedules to Purchaser is coordinated with the end of Purchaser's inspection period to allow enough time for Purchaser review the Schedules and terminate the contract if desired.

1.2 Inventory.³

All inventory, goods, parts, stock and supplies, and other materials necessary in the operation of the business (hereinafter "Inventory") in the estimated amount of [INVENTORY VALUE], which Inventory shall be counted and priced at cost by Seller and Purchaser, and agreed upon by the parties two (2) calendar days prior to Closing. The purchase price will increase, and any Seller carry Promissory Note or cash due at closing, at Purchaser's election, will also increase, if the value of such items is greater than the estimated amount. The purchase price will decrease, and the cash due at closing will also decrease, if the value of such items is less than the estimate.

1.3 Leasehold Improvements.⁴

Leasehold improvements (hereinafter "Leasehold Improvements") incorporated into the Premises (as defined below) and included in the conveyance of Assets, which property shall be more fully described on the Leasehold Improvements list attached hereto as Schedule 1.3. The Leasehold Improvements are sold subject to the terms and conditions of the lease for the business premises.

1.4 Work-in-Progress.

The Purchase Price includes all work-in-progress and customer deposits as of the Closing Date. Seller shall continue to operate the Business in a customary manner through the Closing Date. Work-in-progress, as of the day prior to Closing, shall be prorated between Purchaser and Seller to the date of Closing in a manner, and on such basis, as shall be mutually and reasonably agreeable and acceptable to Seller and Purchaser.

1.5 Vehicles.

The vehicles listed on the attached hereto as Schedule 1.5.

1.6 Trade Name and General Intangibles.

The trade name of the Business is [BUSINESS NAME], wherein Seller shall release and waive any and all rights thereto and will not make use thereof after Closing. The Assets also include all advertisement and promotion materials, artwork, films, graphics, written material, logos, trademarks and copyrights including but not limited to the items listed and attached hereto as Schedule 1.6.

1.7 Licenses and Permits.

All transferable licenses and/or permits (hereinafter "Licenses and Permits") necessary to own the Assets and to conduct the Business as listed and attached hereto as Schedule 1.7.

1.8 Telephone Numbers and E-Mail Addresses.

The telephone numbers (land lines and cell phone), e-mail addresses, domain names and websites for the Business as listed and attached hereto as Schedule 1.8.

³ Inventory, work-in-progress, customer deposits and the like will vary through the closing date. The parties should discuss on a practical and an economic level how continued operations may change the assets and the value at closing. This Asset Purchase Agreement requires Seller to continue normal business operations until closing.

⁴ The parties may wish to review any lease for the Business Premises to determine ownership of leasehold improvements and tenant finish items. Many commercial leases provide that landlord retains ownership of all leasehold improvements and tenant finish items upon lease termination. The Asset Purchase Agreement includes Seller's interest in such items, subject to the terms of the commercial business lease.

1.9 Executory Contracts and Agreements.

Seller's executory contracts and agreements, including deposits, of the Business⁵; provided, however, the purchase price specifically excludes any lease deposit with the Landlord for the Business Premises, the return of which Seller shall negotiate with Landlord; provided further, that Purchaser does not assume any of Seller's liability under said contracts for obligations prior to the Closing Date. Seller and Purchaser shall cooperate and use commercially reasonable efforts to obtain any required third-party consents for the transfer and assignment of such contracts from Seller to Purchaser.

1.10 Plans.

All plans, specifications, designs, notes, schematics, models, samples and related materials pertaining to the design, development and manufacture of the products in development, in production or currently sold by the Business.

1.11 Customer Lists.

The customer lists of the Business for all current and former customers, which lists shall be provided to Purchaser at closing. The Purchase Price includes the customer base and a complete, unedited customer list which shall be provided at Closing.

1.12 Books and Records.

The books and records of the Business however kept including but not limited to paper and electronic records.

1.13 Excluded Assets.

This sale excludes the Seller's: (i) cash on hand; (ii) accounts receivable as of the day before the Closing Date; and, (iii) those items specifically listed on the attached Schedule 1.13.

II. PURCHASE PRICE AND TERMS

2. Purchase Price and Terms.⁶

The Purchase Price is [PURCHASE PRICE], as adjusted pursuant to Section 3, and shall be payable as set forth below. Except as specifically set forth below, Purchaser does not assume any of Seller's liabilities.

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⁵ Black's Law Dictionary, Fifth Edition, 1979, defines an "Executory Contract" as a contract that has not yet been fully completed or performed. Examples may include the lease for the Business premises, an equipment lease for heavy machinery or office equipment, and an independent contractor agreement for marketing research. Seller and Purchaser have a mutual interest in identifying all current contracts to ensure that all required third-party approvals are obtained effective on the Closing Date. This particular Asset Purchase Agreement is contingent upon obtaining certain defined Required Consents as note in Section 9.5 below.

⁶ The purchase price may be paid in cash, a loan from the Seller or a third-party loan. Sophisticated transactions may also include alternative payment methods such as post-closing consulting or earn-out agreements with the current owners, or the assumption of debt or liabilities. The Transaction Management Center includes a file entitled Additional Provisions for Asset Purchase Agreement which sets forth examples of additional concepts for more sophisticated transactions. For example, an earn-out agreement provision is included as an additional method to establish and pay a business asset sale purchase price. Many of these alternative provisions are limited to sophisticated transactions only. As is the case in all aspects of a business sale or acquisition, the manner in which the purchase price is paid may vary as circumstances warrant.