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RECORDATION FORM COVER SHEET

## PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

ACMI Corporation

2. Name and address of receiving party(ies)

Name: ConMed Corporation

Internal Address: \_\_\_\_\_

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other \_\_\_\_\_

Street Address: 525 French RoadCity: Utica State: NY Zip: 13502Execution Date: June 27, 2003Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No.(s) \_\_\_\_\_

B. Patent No.(s) 4,823,7914,936,842Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Penelope AgodoaInternal Address: Federal Research CorporationStreet Address: 1030 15th Street, NW

Suite 920

City: Washington State: DC Zip: 200056. Total number of applications and patents involved: 27. Total fee (37 CFR 3.41).....\$ 80.00

Enclosed



Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

DO NOT USE THIS SPACE

9. Signature.

Susan A. Pilius

Name of Person Signing

Susan A. Pilius

Signature

June 30, 2003

Date

Total number of pages including cover sheet, attachments, and documents: 45

07/08/2003 ECDOPER 00000129 4823791

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80.00 DP

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231PATENT  
REEL: 014235 FRAME: 0566

**Schedule 1.06 – Assigned Patents**

**U.S. Patent Number 4,823,791 Electrosurgical Probe Apparatus - expires 4/25/06**

**U.S. Patent Number 4,936,842 Electrosurgical Probe Apparatus - expires 6/26/07**

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**") is made and entered into as of this 26th day of June 2003 by and between CONMED Corporation, a New York corporation, with its principal offices at 525 French Road, Utica, New York 13502 (the "**Buyer**" or "**CONMED**"), and ACMI Corporation, a Delaware corporation, with its principal offices at Turnpike Road, Southborough, MA 01772 (the "**Seller**" or "**ACMI**"). CONMED or the Buyer, on the one hand, and ACMI or the Seller, on the other hand, are each sometimes referred to in this Agreement as a "**party**" and, as applicable, as the "**parties**".

WHEREAS, ACMI engages, in addition to the other lines, types and areas of business in which it is engaged, in the business of the development, manufacture, marketing and sale of the BiCap Products (as defined herein) (the "**BiCap Business**");

WHEREAS, Buyer desires to purchase and acquire the assets, and assume certain liabilities, of the BiCap Business, acquire certain other of ACMI's assets (including the Other Assets (as defined below) and receive a grant from ACMI of certain other licenses, all on the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, agreements and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

### **Article 1. Definitions**

Section 1.01 Assumed Liabilities. The term "**Assumed Liabilities**", or any variation thereof as used in this Agreement, shall mean the liabilities and obligations to be assumed by the Buyer pursuant to Article 4 hereof.

Section 1.02 Contracts. The term "**Contracts**" shall mean (a) in the case of vendors and suppliers to the BiCap Business, the written contracts (excluding purchase orders) and other written agreements to which ACMI is a party and (b) in the case of customers and other users of the BiCap Products, the written contracts (including purchase orders) and other written agreements to which ACMI is a party, in the case of both clause (a) and clause (b), to the extent related to the sales and manufacture of the BiCap Products or to the conduct of the BiCap Business, including those contracts and agreements identified on **Schedule 1.02** to this Agreement, to the extent that the same continue to be in effect as of the Closing Date (as hereinafter defined). The parties acknowledge that **Schedule 1.02** to this Agreement identifies, and that the Contracts otherwise include, certain such written contracts and other written agreements which are only contemplated to be assigned hereunder to Buyer in part (i.e., to the extent the same relate to the BiCap Products or otherwise to the BiCap Business), and not in their respective entirety; accordingly any such contract or other agreement only constitutes a "**Contract**" for the purposes of this Agreement to the extent that such contract or other agreement relates to the BiCap Business (i.e., with respect to the part thereof as to which such assignment to Buyer hereunder is contemplated). Such **Schedule 1.02** indicates, with respect to

contracts and other agreements identified thereon which such contracts and other agreements are the subject of such a partial (rather than entire) assignment, and, as applicable, the extent of each such partial assignment.

Section 1.03 Excluded Assets. The term “**Excluded Assets**”, or any variation of such term, as used in this Agreement, shall mean the assets specified in Schedule 2.01(a)(ii) hereto or Section 2.02 hereof, as not to be sold, assigned, transferred and conveyed by ACMI to the Buyer pursuant to Article 2 hereof.

Section 1.04 Field Inventory. The term “**Field Inventory**” shall mean the sets of demonstration models of BiCap Products identified on Schedule 1.04, each collection of which shall be a “**Set**”, all of which are owned by ACMI, however which are not currently located at ACMI’s facilities in Racine, Wisconsin or Norwalk, Ohio, or at any other ACMI facility, but rather which ACMI believes are currently in the possession of sales representatives of ACMI.

Section 1.05 GAAP. The term “**GAAP**” shall mean generally accepted accounting principles, as consistently applied from period to period.

Section 1.06 Intellectual Property. The term “**Intellectual Property**” shall mean the two registered patents identified on Schedule 1.06 hereto (the “**Assigned Patents**”) and (a) any registered or expired patents, registered, unregistered or common law trademarks, registered copyrights or other registered intellectual property (or any applications for registration of any of the foregoing), and (b) any trade secrets, manufacturing or design processes, software or other know-how or unregistered intellectual property rights, in respect of both clauses (a) and (b), to the extent directly and exclusively currently or formerly used in the BiCap Business, and in respect of both clauses (a) and (b), together with any and all patents or patent applications which derive from any of the foregoing, including any improvements or modifications thereto that are discovered before or after the Closing Date, provided that for these purposes (and for the purposes of the definition of Shared Intellectual Property set forth below), the “ACMI” name and trademark shall be deemed not to relate to or be used in connection with the BiCap Business or the BiCap Products, or to be within the Intellectual Property.

Section 1.07 Inventory. The term “**Inventory**” shall mean (a) the Raw Material (as hereinafter defined), (b) current, nonobsolete work-in-process and spare parts for BiCap Products and (c) the finished goods of BiCap Products, in each case, held by ACMI as of the Closing Date. For avoidance of doubt, the term “**Inventory**” does not include the Field Inventory.

Section 1.08 Material Adverse Effect. The term “**Material Adverse Effect**” shall mean a material adverse effect on the business, assets, financial condition or results of operation of the BiCap Business, taken as a whole (including as a result of an action by a customer or regulatory authority), other than as a result of (a) any general change in economic conditions in the United States, (b) any change in the industry in which the BiCap Business operates or (c) the announcement or pendency of the transactions contemplated hereby.

Section 1.09 Purchased Assets. The term “**Purchased Assets**”, or any variation of such term, as used in this Agreement, shall mean the assets to be sold, assigned, transferred and conveyed by ACMI to the Buyer pursuant to Section 2.01 hereof.

Section 1.10 Raw Material. The term “**Raw Material**” shall mean all current, non-obsolete supplies and raw materials used in manufacturing the BiCap Products.

Section 1.11 BiCap Financial Statements. The term “**BiCap Financial Statement**” shall refer to the sales and cost of sales information attached as Schedule 5.01(i) hereto.

Section 1.12 BiCap Products. The term “**BiCap Products**” shall mean those products manufactured by or sold by or through ACMI (or its subsidiaries or affiliates) which are identified on Schedule 1.12 hereto, and including any modifications or improvements thereto or prototypes in development as of the Closing Date.

Section 1.13 Shared Intellectual Property. The term “**Shared Intellectual Property**” shall mean (a) registered or expired patents, registered, unregistered or common law trademarks, registered copyrights or other registered intellectual property (or any applications for registration of any of the foregoing), and (b) any trade secrets, manufacturing or design processes, software or other know-how or unregistered intellectual property rights, including in respect of both clauses (a) and (b) any improvements or modifications thereto that are discovered before or up to the Supply Arrangement Termination Date, in each case, if the same (x) are related to, used in or have been used in connection with the BiCap Business or the BiCap Products as of or prior to the Supply Arrangement Termination Date and (y) are also used by ACMI or its subsidiaries in connection with other ACMI products or in connection with the business of ACMI other than the BiCap Business.

Section 1.14 Other Products. The term “**Other Products**” shall mean those products manufactured by or sold by or through ACMI (or its subsidiaries or affiliates) which are identified on Schedule 1.14 hereto, and including any modifications or improvements thereto or prototypes in development on or prior to the Closing Date.

Section 1.15 Shared Products. The term “**Shared Products**” shall mean those products manufactured or sold by or through ACMI (or its subsidiaries or affiliates) which are identified on Schedule 1.15 hereto, and including any modifications or improvements thereto or prototypes in development on or prior to the Closing Date.

Section 1.16 Other Terms Defined in the Agreement. Other capitalized terms defined in other Sections of this Agreement shall have the meanings ascribed to them in such Sections. The following, for ease of reference only, is an index identifying the Section or other provision of this Agreement in which certain such capitalized terms are defined; provided, that the failure of any such defined term to be identified in the following index shall in no way limit or impair the definition given thereto under the relevant Section or other provision of this Agreement:

“510(k)s”	Section 2.01(g)
“Agreement”	page 1
“Authorization”	Section 5.01(f)
“Closing”	Section 9.01
“Closing Date”	Section 9.01
“Dispute”	Section 11.03(a)
“Fixed Assets”	Section 2.01(a)
“Indemnified Party”	Section 10.04
“Indemnifying Party”	Section 10.04

"Losses"	Section 10.02(a)
"Principals"	Section 11.03(a)
"Purchase Price"	Section 3.01(a)
"Third Party Claim"	Section 10.04
"Transaction Documents"	Section 9.02(c)
"BiCap Financial Statements"	Section 1.11
"BiCap Business"	page 1
"Seller"	page 1
"ACMI"	page 1
"Buyer"	page 1
"CONMED"	page 1
"party" or "parties"	page 1
"Principals"	Section 11.03(a)
"Arbitration Demand"	Section 11.03(c)(i)
"AAA"	Section 11.03(c)(i)
"Confidentiality Agreement"	Section 11.06
"Target Finished Goods Value"	Section 3.04(a)
"Target WIP Value"	Section 3.04(b)
"Target Inventory Value"	Section 3.04(c)
"Target Raw Materials Value"	Section 3.04(c)
"Actual Finished Goods Value"	Section 3.04(i)
"Actual Inventory Value"	Section 3.04(iii)
"Actual WIP Value"	Section 3.04(ii)
"Actual Raw Materials Value"	Section 3.04(iii)
"Field Inventory Delivery Number"	Section 3.05
"Disclosure Schedules"	Section 5.01
"Assigned Patents"	Section 1.06
"ACMI Records"	Section 9.05
"New ACMI Records"	Section 8.17
"Initial Production Request"	Section 8.03(b)
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"Other Product Inventory"	Section 2.07
"Other Product Intellectual Property"	Section 2.07
"Supply Arrangement Termination Date"	Section 8.11
"Other Product Records"	Section 2.07
"Unused Inventory Value"	Section 8.13
"Other Product Patent"	Section 2.07
"Other Product Assets"	Section 2.07

## **Article 2.**

### **Sale of Purchased Assets; Matters Relating to Other Products or Shared Products**

Section 2.01 Purchased Assets. Subject to the terms and conditions hereof, at the Closing, ACMI shall sell, assign, transfer and convey to the Buyer, and the Buyer shall purchase and acquire from ACMI, all of ACMI's right, title and interest in and to the following assets, wherever located:

(a) all fixed assets, machinery, manufacturing equipment (including manufacturing and inspection equipment), laboratory and test equipment, tooling, work stations,

molds, BiCap Product specifications, drawings and manufacturing processes documents and equipment, in each case, owned, leased and/or used in the BiCap Business for use in manufacturing BiCap Products as of the Closing Date (collectively, the “**Fixed Assets**”), including, without limitation, those listed on **Schedule 2.01(a)(i)**, but expressly excluding those specified in **Schedule 2.01(a)(ii)**;

(b) (i) all Inventory owned by ACMI as of the Closing Date, together with (ii) BiCap Product prototypes and BiCap Product developments, BiCap Product samples (including retained production run BiCap Product samples), demonstration units of BiCap Products, BiCap Product labels and BiCap Product packaging materials, in each case to the extent held by ACMI as of the Closing Date, as well as (iii) obsolete work-in-process and spare parts for BiCap Products, obsolete finished goods of BiCap Products and obsolete supplies and raw materials used in manufacturing the BiCap Products, in each case, held by ACMI as of the Closing Date;

(c) the Intellectual Property (excluding, for avoidance of doubt, the Shared Intellectual Property which is the subject of the license granted to Buyer under Section 2.06), and all operating manuals, drawings, technology manuals, data, records, procedures and research and development records, BiCap Product specifications, BiCap Product drawings and BiCap Product manufacturing processes documents, and any right to use or exploit any of the foregoing, in each case to the extent that they relate to the BiCap Business or to BiCap Products in existence on or prior to the Closing Date;

(d) the records related to the BiCap Products and the Purchased Assets; provided, that Buyer shall only be entitled to copies of any records which do not relate exclusively thereto;

(e) all rights of ACMI relating to the Contracts and any customer lists and sales tracings relating to BiCap Products, in each case, to the extent transferable (all Contracts, the assignment of which is prohibited by their terms (including if a consent or approval for such assignment is required thereby) are identified in **Schedule 2.01(e)** hereto);

(f) all marketing, labeling, printed materials to the extent relating to the BiCap Products or the BiCap Business, including materials for displays at tradeshow;

(g) To the extent transferable, the concurrences of the Food and Drug Administration listed on **Schedule 2.01(g)** to this Agreement (the “**510(k)s**”). ACMI further agrees to provide Buyer with copies, to the extent the same relate to the BiCap Products, of (i) any documents which Buyer may reasonably request as necessary or useful to demonstrate that the BiCap Products were marketed prior to 1976, if applicable, (ii) all documents in ACMI’s possession which were required to be maintained with respect to the BiCap Products or the BiCap Business pursuant to Federal Food and Drug Act laws and regulations, or which are maintained by Seller with respect to the BiCap Products or the BiCap Business for regulatory purposes, including, without limitation, the Quality System Regulation, including, without limitation, design history files, technical files, process and other validations, complaint and corrective action files, installation qualification and audit records, labeling, literature and directions for use, and training and other records relating to regulatory compliance; and

(h) The website page images relating to the BiCap Products.

Section 2.02 Excluded Assets. The following assets of the BiCap Business or assets of ACMI which otherwise might be deemed to relate to or be used in connection with the BiCap Business or the BiCap Products, are notwithstanding anything to the contrary herein, hereby excluded from the Purchased Assets and are not being sold or conveyed to Buyer hereunder: (i) corporate minute books of ACMI or any subsidiary thereof or the capital stock of any subsidiary of ACMI owned by ACMI; (ii) cash and cash equivalents of ACMI or any subsidiary thereof; (iii) accounts receivable of ACMI or any subsidiary thereof; (iv) any of ACMI's or its subsidiaries' real property, employees or assets or rights used by ACMI or any of its subsidiaries in the performance of its general and administrative functions (other than regulatory, sales, marketing, service or manufacturing), including, without limitation, its human resources, accounting, legal, executive management, benefits and finance functions; and (v) any items listed in Schedule 2.01(a)(ii) hereto. Further included in the definition of Excluded Assets are any other assets, properties, rights, privileges, entitlements or benefits (whether tangible or intangible, fixed or movable, real or personal or otherwise), leased, used or held for use by ACMI or any of its subsidiaries or affiliates, in each case, which are not related to, or used presently or formerly in connection with, the BiCap Business or the BiCap Products.

Section 2.03 No Assumption of Liabilities. Except as expressly set forth in Article 4 hereof, it is understood and agreed that, other than the obligations for warranty claims relating to the BiCap Products, CONMED assumes no liabilities as a result of this Agreement that existed prior to the Closing Date or arise out of the sales of the BiCap Products prior to the Closing Date.

Section 2.04 Retention of Certain Records. It is understood and agreed that ACMI reserves the right to retain copies or written records relating to the BiCap Products, the BiCap Business and the Purchased Assets, for the purpose of defending any claims, losses, causes of action or lawsuits or other investigations or proceedings of any kind, including any of the same related to or arising from the sale to Buyer of the BiCap Products, the BiCap Business and the Purchased Assets contemplated hereby, and for the purpose of preparing any tax returns or financial statements or reports; provided, that ACMI shall maintain the confidentiality of such documents, subject to disclosure as required by applicable law or legal process, and shall promptly notify CONMED of any lawsuit or claim served upon ACMI relating to the BiCap Business and/or the BiCap Products.

Section 2.05 ACMI Trade Name and Trade Mark; BiCap Name; Other Intellectual Property Matters. (a) Notwithstanding anything to the contrary in Section 1.06 hereof, ACMI hereby grants to Buyer, effective as of the Closing Date, a non-exclusive, fully paid-up, royalty-free, non-assignable license to use the ACMI name and logo and any related trademarks (i) from the Closing Date until the six-month anniversary of the Supply Arrangement Termination Date on BiCap Products sold by Buyer, if and to the extent the same are affixed to or appear on any Inventory or other inventory (including any finished BiCap Products) acquired by Buyer at Closing hereunder or under the supply and manufacturing arrangements to become effective at Closing under Article 8 hereof, and (ii) for such period following the Closing Date as such use may be reasonably required for CONMED to maintain product registrations for the BiCap Products; provided, that (A) CONMED shall make reasonable efforts following Closing to obtain registrations for all BiCap Products without using such name, logo and marks, it being



understood that reasonable efforts in any particular country shall require CONMED or its distributors to have filed for such registration within nine (9) months following Closing and (B) CONMED shall remove the ACMI name and logo and any related trademarks from the website images referred to in Section 2.01(h) and Section 2.07(c)(i) before using the same. Notwithstanding any other provision of this Agreement, CONMED agrees to indemnify ACMI for any losses, expenses, damages or claims as a result of Buyer's sale of products with, or other use of, the ACMI mark.

(b) For a period of six months following the Closing Date, Buyer hereby grants to ACMI, effective as of the Closing Date, a non-exclusive, fully paid-up, royalty-free, non-assignable license to use the "BiCap" name on, and in connection with the manufacture, marketing and sale of, products of ACMI (other than BiCap Products) which incorporate, use or have affixed thereto the "BiCap" name as of the Closing Date. Further, following the Closing Date, ACMI shall be permitted to retain (and shall have no obligation to remove) any and all references to the "BiCap" name and/or the Products which appear or are included in versions of ACMI catalogs or brochures or similar printed material, which have been printed and are in existence as of the Closing Date; provided, that ACMI agrees that future versions of catalogs, brochures or other printed material prepared by ACMI shall not include references to the "BiCap" name or to the BiCap Products.

Section 2.06 License to Shared Intellectual Property; Certain Matters Relating to Registered Intellectual Property; License to Patents.

(a) It being acknowledged that, under Section 2.01 of this Agreement, ACMI makes no assignment to Buyer of ACMI's right, title and interest in, to or under any Shared Intellectual Property (which is not included in the Purchased Assets), ACMI nonetheless hereby irrevocably grants and conveys to Buyer, effective from and after the Closing Date, a fully paid-up, royalty-free, perpetual, non-exclusive, fully-transferable license to use the Shared Intellectual Property in connection with the BiCap Business and the BiCap Products, with ACMI agreeing not to provide any third party a license to use any Shared Intellectual Property within the field of the BiCap Products.

(b) Buyer acknowledges that ACMI has informed Buyer that it is ACMI's current understanding that none of the Shared Intellectual Property, the Other Product Intellectual Property (other than the Other Product Patent) or the Intellectual Property (other than the Assigned Patents) includes any registered intellectual property rights, including, without limitation, any registered patents, registered trademarks, registered copyrights, or any applications for registration of any such intellectual property rights. Accordingly, Buyer agrees that (i) prior to Buyer's knowing use of any registered intellectual property rights of ACMI other than the Assigned Patents or the Other Product Patent, Buyer shall give written notice to ACMI informing ACMI that Buyer may seek to use such registered intellectual property rights of ACMI and requesting ACMI to respond in writing to Buyer indicating whether or not ACMI believes such registered intellectual property rights to constitute any of Shared Intellectual Property which is the subject of the license granted under Section 2.06(a), Other Product Intellectual Property which is the subject of the license granted under Section 2.07(b) or Intellectual Property assigned to Buyer at Closing as a Purchased Asset under Section 2.01 (and notifying ACMI if Buyer believes any of the same to be the case), or (ii) if applicable, as promptly as practicable (but in no

event more than 10 days) following Buyer's discovery that it has been unknowingly using any registered intellectual property rights of ACMI other than the Assigned Patents or the Other Product Patent, Buyer shall give written notice to ACMI informing ACMI that Buyer is so using (or may be so using) such registered intellectual property rights of ACMI and requesting ACMI to respond in writing to Buyer indicating whether or not ACMI believes such registered intellectual property rights to constitute any of Shared Intellectual Property which is the subject of the license granted under Section 2.06(a), other Product Intellectual Property which is the subject of the license granted under Section 2.07(b) or Intellectual Property assigned to Buyer at Closing as a Purchased Asset under Section 2.01 (and notifying ACMI if Buyer believes either to be the case). Notwithstanding the foregoing, Buyer shall not be liable for its failure to deliver the written notice contemplated by clause (ii) of the immediately preceding sentence to ACMI within the 10-day period contemplated thereby unless ACMI (including with respect to any rights or remedies otherwise available to ACMI) is actually prejudiced by such failure of Buyer to give such notice within such 10-day period. If it shall be determined under this Section or otherwise agreed by the parties that any registered patent held by ACMI as of the date hereof (other than one of the Assigned Patents listed on **Schedule 1.06(a)**) is or was used by ACMI as of or prior to the Closing directly and exclusively in connection with the BiCap Business, then, from and after the date of such determination or agreement such registered patent shall for all purposes of this Agreement (including Section 2.06(c)) be deemed to constitute, and to have constituted as of the Closing Date an "Assigned Patent" (and, therefore, Intellectual Property included in the Purchased Assets) in addition to those listed on such **Schedule 1.06(a)**; provided, that ACMI shall not be liable to CONMED for any infringement or alleged infringement of, or similar claim with respect to, any such patent prior to the date on which it is determined or agreed hereunder that the same is an Assigned Patent.

(c) Buyer hereby irrevocably grants and conveys to ACMI, effective from and after the Closing Date, a fully-paid up, royalty-free, perpetual, non-exclusive, fully transferable license to use the Assigned Patents, subject in all respects to ACMI's obligations under the non-competition covenant set forth in Section 7.06 of this Agreement.

#### Section 2.07 Matters Relating to the Other Products and Shared Products.

(a) *Purchase and Sale of Other Product Inventory.* Subject to the terms and conditions hereof, at the Closing, ACMI shall sell, assign, transfer and convey to the Buyer, and the Buyer shall purchase and acquire from ACMI, all of ACMI's right, title and interest in and to the Other Product Inventory, together with all Other Product prototypes and documentation related to Other Product developments, Other Product samples (including retained product run Other Product samples), demonstration units of Other Products, Other Product labels and Other Product packaging materials, in each case, to the extent held by ACMI as of the Closing Date. As used herein, the term "**Other Product Inventory**" means, in each case, to the extent the same are held by ACMI as of the Closing Date, any (i) current supplies and raw materials used in manufacturing the Other Products (and the Shared Products to the extent agreed by the parties), (ii) current work-in-process and spare parts for Other Products (and the Shared Products to the extent agreed by the parties) and (iii) the finished goods of Other Products and Shared Products.

(b) *License of Intellectual Property Relating to Other Products and Shared Products.* Effective as of the Closing Date, ACMI hereby grants to CONMED a fully paid-up, royalty-free, non-transferable, perpetual, non-exclusive license to use the Other Product Intellectual Property in connection with the manufacture and sale of the Other Products. As used herein, the term **“Other Product Intellectual Property”** shall mean (i) registered or expired patents (including U.S. Patent No. 4,765,331, the **“Other Product Patent”**), registered, unregistered or common law trademarks, registered copyrights or other registered intellectual property (or any applications for registration of any of the foregoing), and (ii) any trade secrets, manufacturing or design processes, software or other know-how or unregistered intellectual property rights, including in respect of both clauses (i) and (ii) any improvements or modifications thereto that are discovered before or up to the Closing Date, in each case, if the same are related to, used in or have been used in connection with the manufacture or sale of the Other Products and/or Shared Products as of or prior to the Closing Date.

(c) *Access to Information and Records Relating to Other Products and Shared Products.* From and after the Closing Date, promptly upon CONMED’s request therefor, ACMI shall provide CONMED with copies of any Other Product Records. As used herein, the term **“Other Product Records”** shall mean, to the extent not included in the Other Product Assets, in each case, if and to the extent the same relate to the Other Products and/or the Shared Products and are in existence and held by ACMI as of the Closing Date: (i) specifications, (ii) drawings (iii) manufacturing processes documents, (iv) operating manuals, (v) technology manuals, (vi) data, (vii) records, (viii) procedures and research and development records, (ix) any documents which Buyer may reasonably request as necessary or useful to demonstrate that the Other Products and/or the Shared Products were marketed prior to 1976, if applicable, or (x) documents which were required to be maintained with respect to the Other Products and/or the Shared Products pursuant to Federal Food and Drug Act laws and regulations, or which are maintained by Seller with respect to the Other Products and/or the Shared Products for regulatory purposes, including, without limitation, the Quality System Regulation, including, without limitation, design history files, technical files, process and other validations, complaint and corrective action files, installation qualification and audit records, labeling, literature and directions for use, and training and other records relating to regulatory compliance.

(d) *Other Product Assets.* Subject to the terms and conditions hereof, at the Closing, ACMI shall sell, assign, transfer and convey to the Buyer, and the Buyer shall purchase and acquire from ACMI, all of ACMI’s right, title and interest in, to and under the following assets of ACMI (together with the Other Product Inventory and the other assets of ACMI described in Section 2.7(a) above, the **“Other Product Assets”**), to the extent held by ACMI at the Closing and directly and exclusively related to the manufacturing and sale of the Other Products:

- (i) to the extent transferable, the concurrences of the Food and Drug Administration with respect to the Other Products, if any;
- (ii) the website images relating to the Other Products;
- (iii) all fixed assets, machinery, manufacturing equipment (including manufacturing and inspection equipment), laboratory and test equipment, tooling, work stations,

molds, Other Product specifications, drawing specifications, operating manuals, technology manuals, data, records, procedures and research and development records and manufacturing processes documents and equipment;

(iv) the records related to the Other Products and the assets identified under this Section 2.07(d); and

(v) marketing, labeling, printed materials, including materials for displays at tradeshow.

### **Article 3.**

#### **Purchase Price and Other Payments**

##### **Section 3.01 Purchase Price.**

(a) In consideration for the Purchased Assets and the Other Product Inventory, and the various licenses granted hereunder, the Buyer agrees to pay to ACMI at the Closing Two Million Nine Hundred Thirty-Five Thousand Dollars (\$2,935,000), payable by wire transfer of immediately available funds (the "**Purchase Price**"), subject to adjustment after Closing as provided in Section 3.04, in accordance with the following wire transfer instructions:

	<b><u>JPMorgan</u></b>	<b><u>Bank of America</u></b>
Amt:	\$2,500,000	\$435,000
Bank:	JP Morgan Chase	Bank of America
ABA#:	021-000-021	111-000-012
Location:	New York, NY	Dallas, TX
Acct#:	323141072	3751366605
Acct Name:	ACMI CIRCON Corp. Clearing Account	ACMI Corporation

**Section 3.02 Allocation of Total Purchase Price.** It is understood and agreed by the parties that the Purchase Price, as adjusted, if applicable, under Section 3.04 of this Agreement, shall be allocated in accordance with an allocation schedule to be delivered by Buyer to ACMI within 90 days following the Closing Date, subject to ACMI's reasonable prior review of such schedule, and that said allocation will be used by the parties for state and federal tax purposes. Each party acknowledges that such allocation is consistent with the requirements of Section 1060 of the Internal Revenue Code 1986, as amended, and the regulations thereunder. Each party agrees (i) to jointly complete and separately file a Form 8594 with its federal income tax return for the tax year in which the Closing Date occurs, and (ii) that such party will not take a position on any income, transfer or gains tax return before any governmental agency charged with the collection of any such tax, that is in any manner inconsistent with the terms of such allocation without the written consent of the other party. Notwithstanding anything to the contrary provided herein, neither party shall be bound by such allocation in the event the Internal Revenue Service or another tax authority successfully challenges the allocation. In the event of any challenge to

such allocation by the Internal Revenue Service or another tax authority, the parties will give each other notice of the challenge and advise each other periodically of the status of such challenge and reasonably cooperate with each other with respect to such challenge.

Section 3.03 Sales, Use and Transfer Taxes. Buyer shall be responsible for and shall pay when due all sales, use, stamp, duty or other transfer taxes, deed taxes, recording, registration or similar fees, if any, which are or may become payable in connection with the sale and purchase of the Purchased Assets and the Other Product Inventory hereunder and the grant to Buyer of the various licenses granted hereunder. To the extent permitted by applicable law, Buyer and Seller (at no expense to Seller) shall reasonably cooperate with each other to obtain available exemptions (if any) from any such taxes; provided, that neither party shall be obligated to seek any such exemption that if doing so could reasonably be expected to result in any increased liability for taxes or result in any governmental (including any tax) audit of its books and records or, if in its reasonable judgment, doing so is inconsistent with or not supported by applicable legal requirements or tax or other laws or regulations.

Section 3.04 Purchase Price Adjustment. Attached to this Agreement as Schedule 3.04 is a statement (the "**Inventory Statement**") setting forth in reasonable detail the amounts and values of each of the following categories of inventory which Buyer and ACMI have agreed shall be included in the Purchased Assets as of the Closing Date:

(a) Finished BiCap Products. The Inventory Statement sets forth a number of items of finished goods of BiCap Products (representing what Buyer has identified in the aggregate as a 60-day supply of such finished goods of BiCap Products), having an aggregate value of \$108,000 (the "**Target Finished Goods Value**").

(b) Work-in-Process. The Inventory Statement sets forth a number of items of works-in-process of BiCap Products (representing what Buyer has identified in the aggregate as a 90-day supply of works-in-process of BiCap Products), having an aggregate value of zero dollars (the "**Target WIP Value**").

(c) Raw Materials. The Inventory Statement sets forth a number of items of supplies and raw materials used in the manufacture of BiCap Products (representing what Buyer has identified in the aggregate as a 90-day supply of raw materials for BiCap Products), having an aggregate value of \$110,000 (the "**Target Raw Material Value**" and, when added to the Target Finished Goods Value and the Target WIP Value, the sum thereof being referred to as the "**Target Inventory Value**").

On July 1, 2003, or, if the Closing shall not have occurred by such date, as promptly as practicable following the Closing, personnel of Buyer and ACMI shall conduct a physical inventory of the Purchased Assets in order to determine, and shall mutually agree upon and reflect in a written statement jointly executed by them and delivered by them on such date (the "**Actual Inventory Statement**"), the actual number and value, determined as of the close of business on the Closing Date, of (i) finished goods of BiCap Products actually included in the Purchased Assets (the value ascribed thereto being the "**Actual Finished Goods Value**"), (ii) works-in-process of BiCap Products actually included in the Purchased Assets (the value ascribed thereto being the "**Actual WIP Value**") and (iii) supplies and raw materials used in the

manufacture of BiCap Products actually included in the Purchased Assets (the value ascribed thereto being the “**Actual Raw Material Value**” and, when added to the Actual Finished Goods Value and the Actual WIP Value, the sum thereof being referred to as the “**Actual Inventory Value**”).

Promptly following delivery of the Actual Inventory Statement (i) ACMI shall pay to Buyer an amount equal to the amount, if any, by which the Target Inventory Value exceeds the Actual Inventory Value, by more than \$130,000 or Buyer will pay to ACMI the amount, if any, by which the Actual Inventory Value exceeds the Target Inventory Value minus \$130,000.

Section 3.05 Delivery of Field Inventory. As promptly as practicable following the execution and delivery of this Agreement, Seller shall give notice to such persons or entities having possession of the Field Inventory, requiring such persons and entities to return such Field Inventory to ACMI's possession, prior to the then-anticipated Closing Date, at one of ACMI's facilities. After giving such notice, ACMI shall use commercially reasonable best efforts between the date hereof and the Closing Date to procure that fifty-five (55) Sets of Field Inventory shall be so-returned to ACMI and thereafter be available to be physically delivered to Buyer on the Closing Date. At the Closing, ACMI shall deliver to Buyer such number of Sets of Field Inventory as shall have been received by Buyer as of the Closing Date from the persons and entities having possession thereof as of the date hereof. If, at the Closing, ACMI delivers to Buyer fewer than fifty-five (55) Sets of Field Inventory, then during the thirty (30) day period following the Closing, ACMI shall use commercially reasonable best efforts to secure the return to ACMI, and delivery by ACMI to Buyer of a number of Sets of Field Inventory equal to the difference between (a) fifty-five (55) and (b) the number of Sets of Field Inventory actually delivered by ACMI to Buyer at the Closing. If, as of the 30th day following the Closing, ACMI shall have delivered to Buyer (at the Closing and during the ensuing thirty (30) day period) an aggregate number of Sets of Field Inventory (the “**Field Inventory Delivery Number**”) which is fewer than fifty-five (55), then following such 30th day, ACMI shall manufacture and deliver to Buyer as promptly as is practicable, at no cost to Buyer, pursuant to the manufacture and supply arrangements contemplated by Article 8 hereof (and in addition to any other BiCap Products or components contemplated to be manufactured and supplied by ACMI to Buyer thereunder), a number and type of BiCap Product sufficient to substitute for the Sets of Field Inventory not delivered to Buyer under this Section (i.e., a number of such new BiCap Products equal to the difference between (i) fifty-five (55) and the Field Inventory Delivery Number). ACMI shall, following such 30th day, deliver to Buyer such additional Sets of Field Inventory as may from time to time be returned to ACMI by the persons or entities having possession of the same.

#### **Article 4.**

##### **Assumption of Liabilities**

Section 4.01 Assumption of Liabilities. Subject to the terms and conditions hereof, at the Closing, the Buyer shall assume and agree to carry out and perform on a timely basis and in accordance with their respective terms and conditions only the following liabilities and obligations of ACMI, to the extent that such liabilities and/or obligations have not been paid, performed or discharged prior to the Closing by ACMI:

(a) Those liabilities and obligations, and only those liabilities and obligations, of ACMI payable or performable after the Closing Date under any of the Contracts included in the Purchased Assets, to the extent that such liabilities and obligations do not relate to benefits delivered to ACMI under such Contracts prior to the Closing Date;

(b) All warranty obligations of ACMI with respect to BiCap Products sold on or prior to the Closing Date pursuant to ACMI's standard warranty as set forth in **Schedule 4.01(b)** hereto;

(c) Such other liabilities and obligations related to or arising out of the Purchased Assets or the BiCap Business, or the marketing, manufacture and sale of Other Products by Purchaser, in each case, as may arise after the Closing, including, without limitation, the payment of all taxes relating to the Purchased Assets attributable to taxable periods, or any portions thereof, which begin on or after the Closing Date.

(d) The language of Section 4.01 (a)-(c) notwithstanding, Buyer shall not be responsible for any taxes, liens or similar claims upon the Purchased Assets that arise from pre-Closing facts or circumstances. If any third party asserts any lien on any of the Purchased Assets arising under lien laws and based upon pre-Closing facts and circumstances and/or arising under federal, state, local or other tax laws relating to ACMI's failure to pay when due any taxes relating to the BiCap Business or the BiCap Products for any taxable period or portion thereof ending on or prior to the Closing Date, then ACMI shall be responsible to pay to Buyer, an amount equal to the portion of any such asserted lien or tax obligation which is actually paid by Buyer to such third party. Buyer acknowledges and agrees that the indemnification obligations of ACMI set forth in the immediately preceding sentence shall be subject to the notice procedures set forth in Sections 10.04 of this Agreement. ACMI also agrees to execute such other documents as may reasonably be requested by Buyer as necessary to show that the intent of the parties is that Buyer will not assume Purchased Assets hereunder at Closing subject to liens or outstanding tax obligations.

## **Article 5.**

### **Representations and Warranties**

Section 5.01 ACMI Representations. ACMI hereby represents and warrants that, except as discussed in the attached disclosure schedules (the "**Disclosure Schedules**"), as follows:

(a) Organization of ACMI. ACMI is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware.

(b) Authority of Seller.

(i) ACMI has all requisite corporate power and authority to execute and deliver and to perform its obligations under this Agreement, and each of the Transaction Documents, and such execution, delivery and performance have been duly authorized by all necessary corporate action of ACMI. This Agreement and each Transaction Document has been duly executed and delivered by ACMI, and (assuming due authorization, execution and delivery hereof by the Buyer, if applicable) are the valid and binding obligations of ACMI enforceable

against ACMI in accordance with their respective terms (except as such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights generally or by general principles of equity, whether applied by a court sitting at law or in equity).

(ii) The execution, delivery and performance by ACMI of this Agreement and the Transaction Documents and the consummation by ACMI of the transactions contemplated hereby and thereby:

(1) will not violate the provisions of the Certificate of Incorporation or Bylaws of ACMI;

(2) will not violate any material legal requirement or order to which ACMI is subject or by which any of its properties or assets are bound; and

(3) will not result in a material violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default under, or result in the creation of any lien or encumbrance upon any of the properties or assets of ACMI under, any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, license, franchise, permit, agreement, lease, franchise agreement or any other instrument or obligation to which ACMI is a party, or by which its properties or assets may be bound;

excluding from the foregoing clauses (2) and (3), violations, breaches, defaults and encumbrances and liens the existence of which, could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or to prevent ACMI from performing its obligations under this Agreement, or prevent or establish any materially burdensome condition on the consummation of the transactions contemplated by this Agreement.

(iii) Except as expressly contemplated by this Agreement, ACMI is not required to submit any notice, report or other filing with any governmental authority in connection with the execution or delivery by it of this Agreement or the consummation of the transactions contemplated hereby. No consent, approval or authorization of any governmental or regulatory authority is required to be obtained by ACMI in connection with its execution, delivery or performance of this Agreement or the transactions contemplated hereby.

(c) Title to Purchased Assets. Except as set forth in **Schedule 5.01(c)** to this Agreement, ACMI has title to the Purchased Assets, free and clear of all mortgages, liens, security interests, claims, tax liabilities, charges and encumbrances.

(d) Brokers. With respect to the transactions contemplated by this Agreement, ACMI has not dealt with or been contacted by any finder or broker and is not in any way obligated to compensate any such persons. To the extent that any broker or similar entity asserts any claim for fees based upon any contract or commitment of ACMI, ACMI agrees that it alone is liable for any commissions or other amounts that may be due as a result of this Agreement being consummated.



(e) Intellectual Property. ACMI has title to the Intellectual Property and such Shared Intellectual Property subject to the license granted under Section 2.06, and all of its rights to such Intellectual Property and such Shared Intellectual Property subject to the license granted under Section 2.06 are valid. To the best of ACMI's knowledge after commercially reasonable inquiry of ACMI employees with responsibility for such matters, as of the date hereof neither the BiCap Products nor ACMI's operation of the BiCap Business infringe, misuse or misappropriate any intellectual property rights not owned by or licensed to ACMI. ACMI has not received written notice from any third party alleging that the BiCap Products or ACMI's operation of the BiCap Business infringe, misuse or misappropriate any intellectual property rights not owned by or licensed to ACMI. To ACMI's knowledge no third party is infringing any of the Intellectual Property and such Shared Intellectual Property subject to the license granted under Section 2.06.

(f) Compliance with Law. The BiCap Business is not in violation of any law, ordinance or regulation of any governmental entity, including, without limitation, any such law, ordinance or regulation relating to the environment, occupational health and safety, medical devices, or property, except for such violations which could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. ACMI has obtained all governmental approvals, permits, licenses and other authorizations required in connection with the manufacture or sale of the BiCap Products where now being manufactured or sold, or with the conduct of any material aspect of the BiCap Business (collectively, "**Authorizations**") and such Authorization are in full force and effect and are being complied with in all material respects, except where the failure to have obtained such Authorizations, or for such Authorizations to be in full force and effect or for ACMI to comply therewith, could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Seller has not received any written notification of any asserted past or present violation in connection with the conduct of the BiCap Business of any law, ordinance or regulation, which violation could reasonably be expected to have a Material Adverse Effect. None of the BiCap Products are subject to a recall as of the date hereof, except as set forth on Schedule 5.01(f), no BiCap Product has been voluntarily recalled or removed by ACMI since January 1, 2002 and ACMI has no knowledge of any facts as of the date hereof that could reasonably be expected to require a recall or support a finding that the BiCap Products do not comply in all material respects with the requirements applicable to medical devices such as the BiCap Products.

(g) FDA and Foreign Regulatory Approval Status. All BiCap Products are currently being, and all obsolete BiCap Products were at the last date marketed by ACMI being, manufactured and are or were (as applicable) marketable, and are or were (as applicable) being marketed, in material compliance with all applicable material Food and Drug Act, Medical Device Directive or other governmental requirements. Without limiting the generality of the preceding sentence, ACMI is, or with respect to obsolete BiCap Products was at the last date such BiCap Products were marketed by ACMI, legally authorized to manufacture and to sell all BiCap Products under the current or then current (as applicable) 510(k)s currently or then currently (as applicable) issued in ACMI's name, and all BiCap Products properly bear or bore (as applicable) the CE Mark or otherwise comply or complied (as applicable) in all material respects with any similar labeling or other requirements imposed under the laws of any foreign country in which the BiCap Products are or were (as applicable) sold.

(h) Completeness of Purchased Assets. The Purchased Assets constitute all assets (other than those listed on Schedule 2.01(a)(ii) or identified in Section 2.02) material to the conduct of the BiCap Business, and particularly to the manufacture and sale of the BiCap Products, in substantially the manner conducted by ACMI as of the date hereof. All Purchased Assets are in good, working order, subject to ordinary wear and tear, and none of the Purchased Assets are at or near (within 30% of) the end of their expected useful lives, assuming the continued maintenance from and after the Closing and the Supply Agreement Termination Date of such Purchased Assets in a manner consistent with ACMI's past practice.

(i) Financials. The BiCap Financial Statements attached hereto as Schedule 5.01(i) are true and accurate in all material aspects, have been derived from the books and records of ACMI and have been prepared and maintained in accordance with GAAP (except as indicted in the notes thereto). To ACMI's knowledge, it has not received any pre-paid sales of BiCap Products or deposits related to sales of BiCap Products.

(j) Inventory. All Inventory (specifically excluding any Field Inventory) consists of items of a quality and quantity usable and, with respect to finished goods only, salable, in each case, in the ordinary course of the business.

(k) Contracts.

(i) None of the Contracts constitute, and there are not any other contracts, commitments or binding understandings, whether oral or written, to which ACMI is a party, which are currently in effect and which relate to the operation of the BiCap Business or the Purchased Assets which constitute, (A) a confidentiality agreement, (B) a non-compete agreement or (C) another contract that would prohibit ACMI or Buyer from freely engaging in BiCap Business or in the manufacture, sale or distribution of the BiCap Products anywhere in the world. Each of the Contracts was entered into by ACMI in the ordinary course of the conduct of the BiCap Business.

(ii) ACMI (A) has performed all material obligations required as of the date hereof to have been performed by it under the Contracts, (B) is not in receipt of any written notice which claims that ACMI is in default under any Contract and (C) has no knowledge of any breach by any other party to any such Contract.

(l) Litigation. There are no actions, suits, proceedings, orders or investigations pending or, to the knowledge of ACMI, threatened against ACMI, with respect to the BiCap Products, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, court, agency or instrumentality, domestic or foreign, which actions, suits, proceedings, orders or investigations:

(i) could reasonably be expected to have a Material Adverse Effect (including but not limited to bankruptcy filings by or against ACMI); or

(ii) seeks to enjoin or otherwise prevent the consummation of the transactions contemplated by this Agreement.

(m) Customers and Suppliers. **Schedule 5.01(m)** lists (i) the twenty-five (25) largest customers (including for such purposes, distributors) of ACMI for the BiCap Products and (ii) the twenty-five (25) largest suppliers of ACMI (relating exclusively to the supply of materials for the BiCap Products), in each case, for the most-recent fiscal year and for the twelve-month period ending March 31, 2003 (measured by total such revenues received from, or amounts paid to, such customer or supplier, as applicable, during the relevant period), and sets forth opposite the name of each such customer or supplier the approximate percentage of ACMI's revenues for BiCap Products from, or payments to (as applicable), such customer or supplier for each such period. Since January 1, 2003, to the date of this Agreement, no customer or supplier of the BiCap Business listed on **Schedule 5.01(m)** has notified ACMI in writing that it will stop or materially decrease the rate of business done with ACMI with respect to BiCap Products.

(n) Accounts Current. ACMI's accounts with its vendors under Contracts relating to the BiCap Business or the BiCap Products are current (consistent with ACMI's past practice with respect to payments to the relevant vendors) as of the date of this Agreement and will remain current as of the Closing Date.

(o) ISO 9001 Certification. ACMI's facilities used in connection with the production and manufacture of BiCap Products are ISO 9001 certified and comply in all material respects with all requirements for such ISO 9001 certification.

(p) Operation in Ordinary Course of Business. From December 31, 2002 through the date of this Agreement, ACMI has conducted the BiCap Business only in the usual and ordinary course of business, consistent with past practice, and during such period (i) has continued to order raw materials and component parts for the BiCap Products in a manner that is consistent with past practice and (ii) has not taken any of actions which, if taken following the date hereof would require the consent of the Buyer pursuant to Section 7.01 hereof.

Section 5.02 Buyer Representations. The Buyer hereby represents and warrants as follows:

(a) Organization of Buyer. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New York.

(b) Authority of Buyer. The Buyer has full corporate power and authority to execute, deliver and perform this Agreement and each of the Transaction Documents to be entered into by it at the Closing, and such execution, delivery and performance have been duly authorized by all necessary and proper corporate action of the Buyer. This Agreement and each of the Transaction Documents to be executed by Buyer has been duly executed and delivered by the Buyer, and (assuming due authorization, execution and delivery hereof by ACMI) are the valid and binding obligations of Buyer enforceable against the Buyer in accordance with their respective terms (except as such enforceability may be limited by bankruptcy, reorganization, insolvency moratorium, fraudulent conveyance and other similar laws affecting creditors' rights generally or by general principles of equity, whether applied by a court sitting at law or in equity). No consent, approval or authorization of any governmental or regulatory authority or

other person or entity is required to be obtained by Buyer in connection with its execution, delivery or performance of this Agreement or the transactions contemplated hereby.

(c) Brokers. With respect to the transactions contemplated by this Agreement, the Buyer has not dealt with or been contacted by any finder or broker and is not in any way obligated to compensate such persons. To the extent that any broker or similar entity asserts any claim for fees based upon any contract or commitment of Buyer, Buyer agrees that it alone is liable for any commissions or other amounts that may be due as a result of this Agreement being consummated.

(d) Litigation. There are no legal actions, suits, arbitrations or other legal, administrative or other governmental investigations or proceedings (whether federal, state, local or foreign) pending, or, to the knowledge of Buyer threatened, (i) against or affecting Buyer or its properties, assets or business and which could reasonably be expected to prevent Buyer from performing its obligations under this Agreement or otherwise interfere with such performance or establish any materially burdensome condition on the consummation of the transactions contemplated by this Agreement or (ii) which seeks to enjoin or otherwise prevent, alter or delay the consummation of the transactions contemplated by this Agreement.

(e) No Conflict. The execution and delivery by Buyer of this Agreement and the Transaction Documents to which it is a party, and the consummation by Buyer of the transactions contemplated hereby and thereby:

(i) will not violate any provisions of the Articles of Incorporation or Bylaws of Buyer;

(ii) will not violate any legal requirement or order of any court of governmental authority to which Buyer is subject of by which any of its properties or assets or bound; or

(iii) will not result in a material violation or breach of, conflict with, constitute (with or without due notice or lapse of time of both) a default (or give rise to any right of termination, cancellation, payment or acceleration) under, or result in the creation of any lien or encumbrance upon any of the material properties or assets of Buyer under any of the material terms, conditions or provisions of any note, bond, mortgage, indenture, license, franchise, permit, agreement, lease, franchise agreement or any other instrument or obligation to which Buyer is a party or by which it's properties or assets may be bound,

excluding from the foregoing clauses (ii) and (iii), violations, breaches, defaults, conflicts and liens and encumbrances, the existence of which, would not prevent Buyer from performing its obligations under this Agreement, or prevent or establish any materially burdensome condition the consummation of the transactions contemplated by this Agreement.

**Article 6.**  
**Conditions to Closing**

Section 6.01 Conditions to the Buyer's Obligations. The Buyer's obligation to consummate the Closing shall be subject to the satisfaction or the waiver in writing by the Buyer at or prior to the Closing of the following conditions:

(a) (i) Each of the representations and warranties of ACMI contained in this Agreement shall be true in all material respects as of the Closing with the same effect as though such representations and warranties have been made as of the Closing, except for any variations therein resulting from actions contemplated or permitted by this Agreement and without taking into account any update or supplement to the Disclosure Schedules delivered by ACMI under Section 11.17 hereof or any other disclosure by ACMI made between the date hereof and the Closing, and (ii) each of the covenants to be performed by ACMI at or before the Closing pursuant to the terms hereof shall have been duly performed in all material respects. The Buyer shall have been furnished with a certificate of ACMI, executed on its behalf by an appropriate officer of ACMI and dated the Closing Date, certifying to the foregoing effects.

(b) No action, suit or proceeding by any governmental authority shall be pending against the Buyer or ACMI which seeks to prevent the consummation of the transactions contemplated by this Agreement, and no injunction or order for any court or administrative agency of competent jurisdiction shall be in effect which restricts or prohibits the consummation by the Buyer or ACMI of the transactions contemplated by this Agreement.

(c) Buyer shall have received from ACMI each of the deliveries contemplated by Section 9.02 hereof.

(d) There shall not as of the Closing Date have occurred a Material Adverse Effect which has not as of the Closing Date been cured or otherwise ceased to constitute a Material Adverse Effect.

(e) CONMED shall have been provided with evidence that the parties identified on Schedule 6.01(e) hereto (each of which is a "GPO"), have consented to the assignment to CONMED hereunder at Closing of the respective Contracts to which they are a party.

Section 6.02 ACMI's obligation to consummate the Closing shall be subject to the satisfaction or the waiver in writing by ACMI at or prior to the Closing of the following conditions:

(a) Each of the representations and warranties of the Buyer contained in this Agreement shall be true in all material respects as of the Closing with the same effect as though such representations and warranties had been made as of the Closing, except for any variations therein resulting from actions contemplated or permitted by this Agreement, and each of the covenants to be performed by the Buyer at or before the Closing pursuant to the terms hereof shall have been duly performed in all material respects. ACMI shall have been furnished with a certificate of the Buyer, executed on its behalf by an appropriate officer of the Buyer and dated the Closing Date, certifying to the foregoing effects.

(b) No action, suit or proceeding by any governmental authority shall be pending against the Buyer or ACMI which seeks to prevent the consummation of the transactions contemplated by this Agreement, and no injunction or order of any court or administrative agency of competent jurisdiction shall be in effect which restricts or prohibits the consummation by the Buyer or ACMI of the transactions contemplated by this Agreement.

(c) ACMI shall have received any necessary consents from lenders.

(d) ACMI shall have received from Buyer each of the deliveries contemplated by Section 9.03 hereof.

(e) Buyer shall have paid the Purchase Price to ACMI in the amount, time and manner specified in Section 3.01(a) hereof.

## **Article 7. Certain Agreements**

Section 7.01 Conduct of Business Prior to Closing. Except as expressly contemplated by this Agreement, ACMI shall conduct the BiCap Business in the usual and ordinary course from the date hereof through the Closing Date. ACMI specifically agrees during such period that it shall not without Buyer's prior written consent, except as set forth in **Schedule 7.01** or as required or contemplated by this Agreement:

(a) enter into any agreements with respect to the BiCap Business other than in the ordinary course of business and consistent with past practice and custom;

(b) give away or commit to give away any Other Products or any BiCap Products or related services associated with the BiCap Business (other than samples given in the ordinary course of business and consistent with past practice and custom);

(c) offer or provide its Other Products or BiCap Products to customers, distributors or others in any special incentive pricing packages, including any bundled sales of the Other Products or BiCap Products with other medical or other products, other than in the ordinary course of business and consistent with past practice and custom;

(d) offer discounted pricing or free Other Products or BiCap Products in connection with any effort to sell other ACMI products other than in the ordinary course of business and consistent with past practice and custom;

(e) cancel, terminate, rescind or allow to lapse any insurance policy relating to the BiCap Business, unless it is simultaneously replaced with a policy with equal or more coverage;  
or

(f) ship or deliver any Other Products or any BiCap Products to customers or distributors any sooner or in amounts that are greater than would be the case in the ordinary course of business and consistent with past practice and custom.

Section 7.02 Unassignable Contracts. Notwithstanding anything to the contrary stated in this Agreement, with respect to the Contracts which are identified on Schedule 2.01(e), which, pursuant to their terms, cannot be assigned to, or assumed by, the Buyer without the approval, consent or waiver of another party thereto, if such approval, consent or waiver has not been obtained as of the Closing Date:

(a) such Contract shall, notwithstanding anything to the contrary herein, not be assigned to or assumed by the Buyer at the Closing and not constitute a Purchased Asset hereunder,

(b) ACMI and the Buyer shall, if such approval, consent or waiver is obtained following the Closing, promptly thereafter execute all documents reasonably requested by Buyer as necessary to complete the assignment to, and the assumption by, Buyer of such Contract (at Buyer's expense), and

(c) unless and until such approval, consent or waiver is obtained and such assignment and assumption occurs, ACMI shall be deemed to hold the benefits and privileges of such Contract arising after the Closing Date in trust for the Buyer and the Buyer will indemnify and hold harmless ACMI against and with respect to all obligations or liabilities of ACMI which may be or become payable or performable or which may otherwise be imposed upon ACMI or for which it may otherwise become liable after the Closing Date under or in connection with such Contract.

Each of ACMI and the Buyer agrees to use commercially reasonable efforts to obtain prior to the Closing all approvals, consents and waivers from third parties to any Contracts identified on Schedule 2.01(e) which are necessary to permit the Contracts to be assigned to, and assumed by, the Buyer (and with respect to any such approval, consent or waiver which is not obtained prior to the Closing, to obtain the same as promptly as practicable thereafter); provided that neither ACMI nor the Buyer shall be obligated to make any payment or offer or grant any accommodation (financial or otherwise) in exchange for any such approval, consent or waiver.

Section 7.03 Record Retention. The Buyer shall retain all business files and documents included in the Purchased Assets for a period of five (5) years after the Closing Date, and the Buyer shall make available to ACMI any such records for inspection and copying, upon reasonable notice from ACMI.

Section 7.04 Further Assurances. For a period of five (5) years following the Closing Date, ACMI shall promptly execute, acknowledge and deliver any further assignments, conveyances and other instruments of transfer reasonably requested by Buyer and necessary to effectuate the transfer of title to the Purchased Assets to Buyer and, at Buyer's expense, will take any other action consistent with the terms of this Agreement that may be reasonably be requested by Buyer for the purpose of assigning, transferring, granting, and confirming ownership in or to Buyer, or reducing to Buyer's possession, any or all of the Purchased Assets.

Section 7.05 Product Liability Claims. To the extent that it is reasonably able to do so (including, without prejudice or risk of liability to ACMI or its subsidiaries or Affiliates and where no conflict of interest exists), ACMI will, at Buyer's expense, render reasonable assistance

to Buyer in connection with Buyer's defense of any future product liability actions relating to the BiCap Products or Other Products.

**Section 7.06 ACMI's Non-Competition Agreement.**

(a) For a period of four years following the Closing Date, ACMI shall not sell, manufacture or market, directly or indirectly, anywhere within the United States or any U.S. territory and any foreign country, any products which compete with the BiCap Products.

(b) For a period of one year following the Closing Date, ACMI shall not sell, manufacture or market, directly or indirectly, anywhere within the United States or any U.S. territory and any foreign country, any products which compete with the Other Products.

(c) For avoidance of doubt, the parties acknowledge and agree that the BiCap Products and the Other Products do not "compete with" one another for purposes of this Section 7.06. Notwithstanding anything to the contrary provided in Section 7.06(a) or Section 7.06(b) above, Buyer acknowledges and agrees for avoidance of doubt, that the foregoing restrictive covenants shall not limit or restrict ACMI's right to sell, manufacture or market, directly or indirectly, to any person or entity any endoscopes and/or other visualization technologies, products or devices, including any of the same which may (i) be used in the gastrointestinal tract and/or (ii) include a working channel (which working channel Buyer acknowledges may be designed to serve and be used as a conduit for BiCap Products, Other Products or products similar to the BiCap Products or the Other Products, with ACMI acknowledging that any such BiCap Products, Other Products or similar products may not be manufactured, marketed and sold by ACMI directly or indirectly during the period during which ACMI is restricted from doing so under Section 7.06(a) or 7.06(b), as applicable).

(d) If, at the time of enforcement of this Section 7.06, any court or arbitrator shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area, but in no event in excess of the stated duration, scope or area. In an action at law or in equity or arbitration proceeding, for breach or enforcement of this Section 7.06, the prevailing party shall be entitled to recover from the other party or parties its reasonable attorneys fees, costs and expenses associated with prosecuting or defending such an action or proceeding to its final disposition (including final dispositions by summary adjudication, judge or jury verdict or final appeal).

**Section 7.07 Misdirected Payments.** The parties anticipate that certain third parties, including customers and vendors, may, after Closing, misdirect payments or goods relating to the Purchased Assets, the Other Products, the BiCap Products and the BiCap Business either (i) which should properly be paid or delivered to Buyer, to ACMI rather than to Buyer, or (ii) which should properly be paid or delivered to ACMI, to Buyer, rather than to ACMI, as the case may be. ACMI and Buyer each agree to notify the other if this shall occur, and to forward to the other any such misdirected payments or goods, promptly after the same are identified as such by Buyer or ACMI, as the case may be. In particular, and for avoidance of doubt, the parties acknowledge and agree that any and all accounts receivable of ACMI which exist as of



the date of this Agreement and relate to the sale of Other Products or BiCap Products or otherwise to the BiCap Business or the Purchased Assets are being retained by ACMI and constitute Excluded Assets hereunder. Accordingly, the parties acknowledge and agree that any payments made following the Closing on or with respect to such accounts receivable are properly payable (including if any such payment is misdirected by the payor to Buyer) to ACMI.

Section 7.08 Customer Notification Letter. Promptly following the Closing, Buyer may send a letter, executed by both ACMI and CONMED, to customers of the BiCap Products informing such customers that Buyer has purchased the BiCap Business from Seller. Said letter shall be in the form of the letters attached hereto at **Schedule 7.08**.

Section 7.09 Post-Closing Customer Referrals. The parties anticipate that after the Closing, customers may communicate with ACMI seeking to purchase BiCap Products. For a period of twelve (12) months following the Closing Date, ACMI shall use commercially reasonable efforts to notify those customers that said BiCap Products are available from Buyer.

Section 7.10 Agreement Not To Solicit Offers. ACMI agrees that it will not solicit any offers from other companies for the BiCap Business or Other Products (other than sales of inventory in the ordinary course of business) so long as this Agreement remains in effect.

## **Article 8.**

### **Supply and Transition Arrangements**

Section 8.01 ACMI to Retain Physical Possession of Certain Purchased Assets. Notwithstanding anything to the contrary set forth in this Article 8, at the Closing Buyer will acquire from ACMI all of ACMI's right, title and interest in, to and under all Purchased Assets; provided, that, from the Closing through the Supply Arrangement Termination Date, ACMI shall retain physical possession of the Purchased Assets (other than the Field Inventory and finished goods of BiCap Products to be delivered to Buyer at Closing under Section 3.05 and Section 9.02 of this Agreement, respectively), including, without limitation the Fixed Assets, the Inventory and other inventory included in the Purchased Assets, and the Contracts, in each case, as Buyer's bailee with respect thereto, for the sole purpose of fulfilling ACMI's obligations under this Article 8 to act as Buyer's interim supplier and manufacturer of BiCap Products. Buyer's only obligations with respect to the maintenance, care and treatment of such retained Purchased Assets from and after the Closing shall be as expressly specified in this Article 8.

Section 8.02 License of Intellectual Property. Effective upon the occurrence of the Closing, for the period beginning on the Closing Date and ending on the Supply Arrangement Termination Date, Buyer hereby grants to ACMI a non-exclusive, fully paid-up, royalty-free, non-assignable license to use, solely for the purposes of performing ACMI's obligations under this Article 8, the Intellectual Property acquired by Buyer at Closing and any trademarks, servicemarks, logos or other marks or intellectual property rights of Buyer as may be necessary in order to carry out ACMI's obligations under this Article 8.

Section 8.03 ACMI to Supply BiCap Products.

(a) Scheduled BiCap Product Supply. From the date hereof through the Supply Arrangement Termination Date, ACMI shall manufacture, supply and deliver to Buyer BiCap

Products (including critical component parts) of the types, in the amounts, on the dates listed on **Schedule 8.03** to this Agreement. From time to time as reasonably requested by Buyer, ACMI shall consult with Buyer concerning ACMI's production capabilities for BiCap Products and shall review with Buyer the projected purchase and delivery schedule contemplated by **Schedule 8.03** as in effect from time to time, and any modifications to such projected purchase and delivery schedule reflected on **Schedule 8.03** to which the parties mutually agree shall be reflected in an amendment to such **Schedule 8.03** duly executed by the parties; provided, that ACMI agrees to use commercially reasonable efforts to accommodate modifications to the projected purchase and delivery schedule contemplated by **Schedule 8.03** as in effect from time to time.

(b) **Post-Closing Orders by CONMED.** At the Closing, CONMED shall deliver to ACMI a written request (the "**Initial Production Request**") identifying by SKU or otherwise identifying with specificity the BiCap Products or component parts of BiCap Products which CONMED is requesting be manufactured, supplied and delivered by ACMI under this Article 8, which shall be included and incorporated into **Schedule 8.03** hereto. The Initial Production Request shall specify the quantity of each BiCap Product or component part being requested by CONMED, and the date on which delivery of the same is being requested by CONMED; which delivery date, unless otherwise consented to by ACMI in writing, shall be the 90th day following the date of delivery by CONMED of the Initial Production Request, it being understood that CONMED has requested ACMI, and ACMI has consented, to deliver, on a staged basis, certain BiCap Products within such 90-day time frame as would be reasonably required to meet anticipated customer demand within such period, and that ACMI shall deliver BiCap Products specified by ConMed in the Initial Production Request which are in excess of trailing customer demand within 120 days of the Closing Date.. On the 30th day following the date on which CONMED delivers the Initial Production Request and on the 30th day following the date on which CONMED delivers each Additional Production Request (as defined below) CONMED shall deliver to ACMI a written request (each, an "**Additional Production Request**"), identifying by SKU or otherwise identifying with specificity the BiCap Products or component parts of BiCap Products which CONMED is requesting be manufactured, supplied and delivered by ACMI under this Article 8 in addition to those identified on **Schedule 8.03** hereto and in addition to any requested in the Initial Production Request or any prior Additional Production Request(s). Each such Additional Production Request shall specify the quantity of each BiCap Product or component part being requested by CONMED, and the date on which delivery of the same is being requested by CONMED, which delivery date, unless otherwise consented to by ACMI in writing, shall be the 90th day following the date of delivery by CONMED of such Additional Production Request. ACMI shall accept from CONMED and fulfill requests for, the manufacture, supply and delivery by ACMI of BiCap Products and component parts for BiCap Products other than the above-contemplated Initial Production Request and Additional Production Requests if and as mutually agreed by the parties; provided, that ACMI shall in good faith work to accommodate any such additional requests by CONMED. No Initial Production Request or Additional Production Request (or any other request submitted by CONMED under this Section 8.03(b)) will be accepted by ACMI if and to the extent such request calls for the delivery of BiCap Product (or component parts) by ACMI on a date which occurs after the then-effective Supply Arrangement Termination Date.

(c) Communication by ACMI. ACMI shall communicate regularly with CONMED and shall promptly advise Buyer of any production delays or other problems which may from time to time arise in connection with the BiCap Product manufacturing and supply process contemplated hereby, and shall review and discuss in good faith the Buyer alternatives to avoid any such delays or other problems.

Section 8.04 Specifications; Ordering of Inventory. ACMI shall manufacture the BiCap Products in accordance with the specifications therefor as in effect on the Closing Date. ACMI agrees to purchase raw material and other supplies for the manufacture of BiCap Products under this Article 8 in a commercially reasonable manner and in a manner that is otherwise consistent with the manner in which ACMI historically purchased such raw materials and other supplies prior to the Closing Date during its own operation of the BiCap Business, taking into account the terms on which such raw materials and supplies are reasonably available and the types and amounts of BiCap Products requested by Buyer (and the dates of delivery specified therefor), as set forth in Schedule 8.03 hereto as in effect from time to time and in the Initial Production Request and Additional Production Requests or other requests for BiCap Products delivered by CONMED hereunder.

Section 8.05 Pricing. Subject to Section 8.06 below, Buyer shall pay ACMI the prices set forth on Schedule 8.05 to this Agreement for the BiCap Products manufactured by ACMI and supplied to Buyer hereunder (which prices are intended reflect ACMI's standard manufacturing cost for such BiCap Products, plus a 10% markup). ACMI shall invoice Buyer for BiCap Products at the time the same are delivered to Buyer hereunder, and Buyer shall pay ACMI the invoiced amount with respect to any such invoice within thirty (30) days from the date of delivery of the relevant invoice. All payments hereunder shall be made by Buyer in U.S. Dollars. The terms of sale of BiCap Products hereunder will be F.O.B. at ACMI's facility.

Section 8.06 Penalty for ACMI Failure to Deliver BiCap Products. Subject to Section 8.14 below, if ACMI fails to deliver any BiCap Product to Buyer on the stated delivery date for such BiCap Product specified on Schedule 8.03 to this Agreement or in the Initial Production Request or Additional Production Request or other request for such BiCap Product delivered by CONMED hereunder, then, unless the parties otherwise mutually agree to substituted, adjusted or modified performance of such delivery obligation by ACMI, Buyer shall be credited, with respect to each such non-delivered BiCap Product, for an amount equal to the 10% markup included in the price for such BiCap Product (i.e., after giving effect to such credit, Buyer shall have paid only ACMI's standard manufacturing cost therefor); provided, that, if ACMI fails to deliver any such BiCap Product on a date that is materially beyond such stated delivery date, in addition to the 10% credit to which Buyer is entitled pursuant to this Section, such failure shall also constitute a breach of this Section. The parties acknowledge that one factor which is relevant to a determination as to whether a delayed delivery of BiCap Products hereunder constitutes a material delay is whether such delayed delivery could reasonably have been expected by ACMI to result in CONMED's inability to satisfy its customer demand for the relevant BiCap Product.

Section 8.07 Risk of Loss. Title and risk of loss to BiCap Products manufactured and supplied Buyer by ACMI under this Article 8 shall pass to Buyer at the time of delivery of such

BiCap Products onto Buyer's (or Buyer's shipper's) truck at ACMI's facility as contemplated hereby.

Section 8.08 Transition Assistance. For a period of six (6) months following the Closing Date, ACMI will provide Buyer with such assistance as Buyer may reasonably request, with Buyer's manufacture of BiCap Products and with Buyer's efforts to re-locate BiCap Product manufacturing capability to Buyer's facilities. Such transition assistance shall be provided at Buyer's cost and Buyer shall pay ACMI therefor as determined under the remaining sentences of this Section 8.08. It is understood and agreed that CONMED will reimburse ACMI for all of its reasonable out-of-pocket expenses, including reasonable travel, meals and lodging expenses (but excluding any labor or wage reimbursement) for up to two (2) ACMI employees to conduct a one-day BiCap Product training session at a CONMED facility. For all other transition assistance provided under this Section 8.08, CONMED shall pay ACMI all out-of-pocket costs reasonably incurred by ACMI in connection therewith, including reasonable travel, meals and lodging expenses of ACMI employees involved therein, and a per diem amount in respect of ACMI's labor cost for each such employee equal to the quotient of (i) the relevant employee's annual base salary and (ii) 365.

Section 8.09 Vendor Assignments or Assistance. ACMI shall use commercially reasonable efforts for the period beginning on the Closing Date and ending on the three (3) month anniversary of the Supply Arrangement Termination Date, to assist Buyer in entering into supply agreements with vendors relating to the BiCap Business the BiCap Products and the Purchased Assets, at Buyer's expense, and as Buyer may from time to time reasonably request.

Section 8.10 ACMI Obligations with Respect to Purchased Assets. ACMI shall continue to maintain and care for the Fixed Assets and other Purchased Assets in its possession following the Closing under this Article 8 consistent with ACMI's past practice with respect to the maintenance and care thereof.

Section 8.11 Duration of Supply Arrangements. ACMI's obligation to manufacture, supply and deliver BiCap Products to Buyer as contemplated by this Article 8 shall begin on the Closing Date and shall terminate, automatically, on earlier to occur of (a) the six (6) month anniversary of the Closing Date and (b) on the 14<sup>th</sup> day following delivery by Buyer to ACMI of written notice effecting such termination. The date of termination of such obligations of ACMI hereunder is referred to herein as the "**Supply Arrangement Termination Date**".

Section 8.12 Return of Purchased Assets at Supply Arrangement Termination Date. Upon the occurrence of the Supply Arrangement Termination Date, ACMI shall cooperate with Buyer to make such arrangements as Buyer may reasonably request (including, where required, providing reasonable weekend access to ACMI's facilities where the Purchased Assets are located) to effect the return by ACMI to Buyer, for no additional consideration but at Buyer's expense, of all of Buyer's Purchased Assets then in ACMI's possession (subject with respect to finished good of BiCap Products, works-in-process and raw materials, to Section 8.13 below), including, without limitation, all Fixed Assets and Contracts. Such return of Purchased Assets shall be without any additional representation or warranty by ACMI (other than any representations or warranties with respect thereto given by ACMI prior to or as of the Closing date hereunder). ACMI understands and agrees that, in order to fulfill its obligations under this

Section 8.12, it may be necessary for ACMI to use its own personnel at its own expense in order to move ACMI's equipment (other than the Fixed Assets) in order to permit the orderly removal of the Fixed Assets from ACMI's facility for return to Buyer or to schedule ACMI's production activities with respect to its products (other than the BiCap Products) in order to accommodate such removal of Fixed Assets.

Section 8.13 Purchase of ACMI's Inventory at Supply Arrangement Termination Date. Upon the occurrence of the Supply Arrangement Termination Date, Buyer shall promptly (but in no event more than ten (10) days) thereafter purchase and acquire from ACMI any and all (a) finished goods of BiCap Products then held by ACMI and not yet delivered to Buyer hereunder, (b) works-in-process of BiCap Products and (c) supplies and raw materials for the manufacture and supply of BiCap Products. The price paid by Buyer to ACMI for any such finished goods of BiCap Products shall be the price which would have been paid by Buyer therefor upon delivery thereof. The price paid by Buyer to ACMI for any such works-in-process or BiCap Products and supplies and raw materials for the manufacture and supply of BiCap Products shall be ACMI's cost therefor the "**Unused Inventory Value**"; provided, that Buyer shall receive a credit against its obligation to pay ACMI the Unused Inventory Value equal to the amount of the sum of (i) the Actual WIP Value and (ii) the Actual Raw Materials Value. Delivery of such finished goods of BiCap Products, works-in-process of products and raw materials and supplies shall be made at such time as the parties may agree and otherwise in the same manner as BiCap Products manufactured and supplied by ACMI are to be delivered to Buyer under this Article 8. At the time such purchase occurs, Buyer and ACMI shall also execute and deliver an Assignment and Assumption Agreement, in form mutually and reasonably acceptable to both of them, providing for Buyer's assignment and assumption of any purchase orders or contracts with suppliers of raw materials or other supplies for the manufacture of BiCap Products entered into by ACMI during the period from the Closing through the Supply Arrangement Termination Date in order to permit it to perform its obligations under this Article 8, subject to the prior receipt of any necessary consents to such assignment and assumption.

Section 8.14 Delays and Force Majeure. ACMI shall not be liable under this Article 8 for delays in delivery of BiCap Products as otherwise required to **Schedule 8.03** or under any Initial Production Request, Additional Production Request or other request for BiCap Products issued by Buyer hereunder, if and to the extent that such delays are due to (a) causes beyond the reasonable control of ACMI or (b) acts of God, acts of civil or military authority, fire, flood, epidemic, war or riot. In the event of any such delay, the date of delivery of BiCap Products hereunder shall be deferred only for a period of time equal to the period of such delay.

Section 8.15 Independent Contractors. With respect to the post-Closing manufacture and supply arrangements contemplated by this Article 8, the relationship between ACMI and Buyer is that of independent contractors. Buyer purchases and sells BiCap Products for its own account and shall in no event be deemed to be a sales agent of ACMI. Neither ACMI nor Buyer is an agent, partner, or employee of the other and neither such party has any right or any other authority to enter into any contract or undertaking in the name of, or for the account of, the other, or to either assume or create any obligation of any kind, express or implied, on behalf of the other, nor with the act or omissions of either create any liability for the other. This Agreement shall in no way constitute or give rise to a partnership between the parties.

Section 8.16 Additional Services. In the event that prior to the Supply Arrangement Termination Date Buyer shall request additional services with respect to the BiCap Products (including any BiCap Products acquired by Buyer at the Closing) or the BiCap Business not specifically covered by this Article 8 or another provision of this Agreement (e.g., repair or service of BiCap Products), such services shall be provided by ACMI to Buyer only upon such terms and conditions at such pricing as the parties may mutually agree.

Section 8.17 Certain Information to be Provided to CONMED. During the period from the Closing through the Supply Arrangement Termination Date, ACMI shall, upon CONMED's request, provide CONMED with such information regarding the manner in which ACMI manufactures and delivers the BiCap Products under this Article 8, as CONMED may reasonably require to fulfill its obligations under applicable regulatory and legal requirements. Further, following the Supply Arrangement Termination Date, with respect to any data created by ACMI in the performance of its obligations under this Article 8 which data, if it were in existence on the Closing Date would then have constituted ACMI Records (any such data being referred to as the "New ACMI Records"), ACMI shall deliver any such New ACMI Records to Buyer promptly following Buyer's request for such delivery, and the provisions of Section 9.05 with respect to the format and delivery of the ACMI Records thereunder shall apply mutatis mutandis to any Buyer requests for the delivery of New ACMI Records under this Section 8.17.

## **Article 9.**

### **Closing**

Section 9.01 Closing Date. The closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities pursuant to this Agreement, and the consummation of the other transactions contemplated hereby (the "Closing") shall take place as promptly as practicable (but no later than two (2) business days) following the date on which all conditions to the Closing set forth in Article 6 hereof have been satisfied or waived by the appropriate party, at the offices of ACMI, or at such other place and time as the parties may agree. The date on which the Closing occurs is herein referred to from time to time as the "Closing Date". The Closing shall be deemed to have become effective as of the close of business on the Closing Date. Notwithstanding anything herein to the contrary, subject to the termination right set forth in Section 11.01(d) hereof, the failure of the Closing to occur at the time and place contemplated by this Section shall not result in the termination of this Agreement and shall not relieve any party hereto of its obligations to consummate the transactions contemplated hereby or of any of their other respective obligations hereunder.

Section 9.02 Closing Deliveries. (a) ACMI shall deliver to the Buyer at the Closing such bills of sale, assignments and other instruments of transfer in form and substance prepared by Buyer and reasonably satisfactory to the Seller, as Buyer shall deem to be necessary or appropriate to effect the conveyance to the Buyer of the Purchased Assets, duly executed by ACMI, along with:

(i) A Bill of Sale in the form of Schedule 9.02(a)(i) of this Agreement;

(ii) A certificate of good standing for ACMI issued by the Secretary of State of the State of Delaware as of a date not more than ten (10) days before the Closing Date;

(iii) A Secretary's Certificate, dated the Closing Date, duly executed by ACMI's Secretary, and certifying as to attached copies of resolutions duly adopted by ACMI's board of directors authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, which resolutions remain in full force and effect, and constitute the only resolutions of such board of directors relating to such matters in effect, as of the Closing;

(iv) Such lien release or similar documents as reasonably necessary to reflect that the Purchased Assets will be, at Closing, free of liens, claims or security interests;

(v) Customer notification letters in the form referred to in Section 7.08 of this Agreement, signed by ACMI; and

(vi) The finished goods of BiCap Products and Other Product Inventory and the Other Product Assets purchased at the time of Closing; provided, that Buyer acknowledges that ACMI's only responsibility in effecting "delivery" of such BiCap Products, Other Product Inventory and Other Product Assets shall be to make them available for pick-up by Buyer at ACMI's loading dock, at Buyer's expense, and with such reasonable assistance from ACMI's personnel as Buyer may require.

(b) Buyer shall pay or deliver, as the case may be, to ACMI at the Closing:

(i) The Purchase Price paid in the manner provided in Section 3.01 of this Agreement;

(ii) A certificate of good standing for CONMED issued by the Secretary of State of the State of New York, as of a date not more than ten (10) days prior to the Closing Date;

(iii) An officer's certificate, dated the Closing Date, duly executed by a duly authorized officer of Buyer, and certifying as to attached resolutions of Buyer's board of directors, authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, which resolutions remain in full force and effect, and constitute the only resolutions of such board of directors relating to such matters in effect, as of the Closing; and

(iv) An Assignment and Assumption Agreement covering the assignment of the Contracts to Buyer hereunder and the assumption by Buyer of the Assumed Liabilities hereunder, in each case, effective as of the Closing Date, in form mutually acceptable to the Buyer and the Seller.

(c) The certificates, instruments, and documents executed and delivered by the parties at the Closing pursuant to this Agreement are herein collectively referred to as "**Transaction Documents**".

Section 9.03 Post-Closing Deliveries. Each of the Buyer and ACMI will, at the reasonable request and sole cost and expense of the other such party, do, make, execute, acknowledge and deliver after the Closing all such other and further acts and instruments of conveyance, assignment, transfer, consent and assumption as the other party may reasonably request to confirm conveyance and transfer to the Buyer of any of the Purchased Assets or to confirm assumption by the Buyer of any of the Assumed Liabilities, as applicable. Nothing contained herein shall be construed to require ACMI to acquire any intellectual property license from any third party.

Section 9.04 Delivery of Other Tangible Purchased Assets. The parties acknowledge that Buyer will acquire all of ACMI's right, title and interest in, to and under all of the Purchased Assets at Closing pursuant to the Bill of Sale and other transfer documentation contemplated to be entered into pursuant to Section 9.02 above; provided, that in order to permit ACMI to fulfill its supply and manufacture obligations under Article 8 hereof, Buyer will take physical delivery at Closing of none of the tangible Purchased Assets other than the finished goods of BiCap Products which constitute Purchased Assets. All other tangible Purchased Assets (including, without limitation, Fixed Assets, Inventory and Contracts) will, subject to Section 9.05 below, be physically delivered to Buyer in the manner and at the times contemplated by Article 8 hereof.

Section 9.05 Sales, Order and Customer Service Data; Manufacturing Systems, Quality System and Other Business Systems Requirements. For purposes of this Section, the "**ACMI Records**" shall mean, to the extent the same constitute Purchased Assets under Section 2.01, and whether maintained in electronic or non-electronic by ACMI, any data relating to sales, customer base, BiCap Products, ordering and customer service functions, manufacturing and quality system requirements (including complaint handling, investigation and response). Buyer and ACMI agree that ACMI shall deliver such ACMI Records to Buyer following the Closing as promptly as practicable following Buyer's request for such delivery, with such ACMI Records to be delivered to Buyer in the electronic or non-electronic format in which it is maintained by ACMI or in such other format as Buyer may reasonably request; provided, that such format is customarily and ordinarily used by ACMI and such ACMI Records can be produced by ACMI in such requested format without additional expense and/or without undue burden.

## **Article 10. Indemnity**

Section 10.01 Survival. The representations and warranties of the Buyer and ACMI herein shall survive the Closing, but, as to any claim for indemnity based upon a breach of any such representation or warranty, such survival period shall be only for so long as such a claim for indemnity may be made under Section 10.02 or 10.03, as applicable. Following the Closing, the exclusive remedy (other than for fraud) pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby, whether for breach of any representation, warranty, covenant or obligation contained herein or otherwise, will be the rights to indemnification, payment of Losses and other remedies provided by this Article 10.

Section 10.02 Indemnity by ACMI. (a) ACMI hereby agrees to indemnify and hold harmless the Buyer against and with respect to any and all claims, losses, injuries, damages, liabilities, obligations, assessments, judgments, costs and expenses, including (except as



otherwise expressly provided in this Agreement) costs and expenses of litigation and reasonable attorneys' fees ("Losses"), suffered or incurred by the Buyer to the extent caused by:

(i) any material breach of any representation or warranty of ACMI contained in this Agreement (after taking into account any updates or supplements to the Disclosure Schedules delivered by ACMI under Section 11.17) or any material breach by ACMI of any covenant or agreement set forth herein to be performed by ACMI prior to Closing;

(ii) any failure of the representations and warranties of ACMI set forth in Sections 5.01(f) (other than the final sentence of such Section 5.01(f)), 5.01(g) and 5.01(o) of this Agreement which are applicable to the BiCap Products to be true and correct in all material respects with respect to any BiCap Product manufactured and delivered to Buyer by ACMI under Article 8 of this Agreement on and as of the date such BiCap Product is delivered to Buyer thereunder;

(iii) subject to Section 8.06, any material breach of any covenant or agreement to be performed by ACMI on or after the Closing Date under this Agreement, including under Article 8 hereof;

(iv) any failure by ACMI to pay taxes relating to the Purchased Assets, the BiCap Products or the BiCap Business that are attributable to taxable periods (or portions thereof) ending prior to the Closing Date when due, only to the extent that any such unpaid taxes are actually paid by Buyer and, if not so paid by Buyer, could reasonably have been expected by Buyer to result in the imposition of a lien upon any of the Purchased Assets;

(v) any product liability claim for death, personal injury, other injury to persons, property damage, loss or deprivation of rights, or other product liability claim (whether based on statute, negligence, breach of warranty, strict liability or any other theory) caused by or resulting from BiCap Products sold by ACMI prior to the Closing (except for any such BiCap Products repaired or serviced by Buyer under any warranty after Closing, unless Buyer can demonstrate that the facts and circumstances giving rise to such product liability claim did not occur as a result of such repair or service by Buyer); and

(vi) Any claim by any employee, agent or other person that such employee, agent or other person is entitled to be employed by the Buyer following the Closing due to the acquisition by Buyer of the BiCap Business hereunder, as a result of foreign employment laws or regulations, including, without limitation, the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended.

(b) The obligations of ACMI under this Agreement to indemnify the Buyer with respect to any claim pursuant to Section 10.02(a)(i) or Section 10.02(a)(iii) shall be of no force and effect unless the Buyer has given ACMI written notice of such claim prior to the nine (9) month anniversary of the Closing Date; provided, that a claim under Section 10.02(a)(iii), which is (A) based upon ACMI's breach of a covenant which, pursuant to its terms, has a stated duration in excess of nine (9) months or (B) based upon ACMI's breach of its covenants contained in Sections 2.05, 2.06, 4.01(d), 7.02, 7.05 and 7.07, may be made by Buyer by delivering written notice of such claim to ACMI prior to the expiration of such stated duration of

such covenant, in the case of covenants covered by the preceding clause (A), and at any time, in the case of covenants covered by the preceding clause (B). The obligations of ACMI under this Agreement to indemnify the Buyer with respect to any claim pursuant to Section 10.02(a)(ii) with respect to any BiCap Product shall be of no force and effect unless the Buyer has given ACMI written notice of such claim prior to the nine (9) month anniversary of the date such BiCap Product is delivered to Buyer under Article 8 hereof.

(c) Notwithstanding anything to the contrary provided elsewhere in this Agreement, in no event shall ACMI be liable to the Buyer for amounts otherwise payable as indemnity under Section 10.02(a) until, and thereafter only to the extent that, such otherwise indemnifiable amounts exceed, in the aggregate, \$50,000.

(d) In no event shall ACMI's aggregate obligation to indemnify Buyer for Losses under this Section 10.02 exceed \$500,000.

Section 10.03 Indemnity by the Buyer. (a) The Buyer hereby agrees to indemnify and hold harmless ACMI against and with respect to any and all Losses suffered or incurred by ACMI to the extent caused by:

(i) any material breach of any representation or warranty of the Buyer contained in this Agreement or any material breach by Buyer of any covenant or agreement set forth herein to be performed by Buyer prior to Closing;

(ii) any material breach of any covenant or agreement to be performed by Buyer on or after the Closing Date under this Agreement or in any of the Transaction Documents, including pursuant to Article 8 hereof;

(iii) any claims which are brought against ACMI as a result of the sale, manufacture, marketing or distribution of the BiCap Products or other operation of the BiCap Business after the Closing, including, without limitation, (A) any failure by CONMED to pay any taxes attributable to taxable periods (or portions thereof) beginning after the Closing Date when due; or (B) any product liability claim for the death, personal injury, other injury to persons, property damage, loss or deprivation of rights or other product liability claim (whether based on statute, negligence, breach of warranty, strict liability or any other theory) caused by or resulting from any product, including without limitation, BiCap Products, sold by CONMED after the Closing Date;

(iv) any Assumed Liability;

(v) any Contract retained by ACMI after Closing under Section 7.01 of this Agreement; and

(vi) ACMI's retention of possession and continued operation and use of the Purchased Assets to be retained by it following the Closing in order to perform its obligations under Article 8 hereof, except to the extent caused by ACMI's gross negligence or willful misconduct or ACMI's failure to comply with obligations with respect to such Purchased Assets under such Article 8.

(b) The obligation of Buyer under this Agreement to indemnify ACMI with respect to any claim pursuant to Section 10.03(a)(i) and Section 10.03(a)(ii) shall be of no force and effect unless ACMI has given Buyer written notice of such claim prior to the nine (9) month anniversary of the Closing Date; provided, that a claim under Section 10.03(a)(ii), which is (A) based upon Buyer's breach of a covenant which pursuant to its terms has a stated duration in excess of nine (9) months or (B) based upon Buyer's breach of its covenants contained in Section 2.05(a), 2.06, 3.03, 4.01 or 7.07 may be made by ACMI by delivering written notice of such claim to Buyer prior to the expiration of such stated duration of such covenant, in the case of covenants covered by the preceding clause (A), and at any time, in the case of covenants covered by the preceding clause (B).

(c) Notwithstanding anything to the contrary provided elsewhere in this Agreement, in no event shall Buyer be liable for amounts otherwise payable as indemnity under Section 10.03(a) until, and thereafter only to the extent that, such otherwise indemnifiable amounts exceed, in the aggregate, \$500,000.

Section 10.04 Third Party Claims. In order for a party (the "**Indemnified Party**") to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim or demand made by any third party against the Indemnified Party (a "**Third Party Claim**"), such Indemnified Party shall notify the other party (the "**Indemnifying Party**") in writing of the Third Party Claim, and deliver to the Indemnifying Party copies of all notices and documents accompanying or constituting the Third Party Claim, as promptly as practicable, but in no event more than ten days after obtaining notice thereof; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder, except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure and except that the Indemnifying Party shall not be liable for any expenses incurred during the period in which the Indemnified Party failed to give such notice. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, as promptly as practicable, but in no event more than five days after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim; provided, however that failure to deliver such copies shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. If a Third Party Claim is made against an Indemnified Party, the Indemnifying Party will be entitled to participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, which election must be made within 30 days after the Indemnifying Party receives notice of the Third Party Claim from the Indemnified Party, the Indemnifying Party will not be liable to the Indemnified Party for legal expenses incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party assumes such defense, the Indemnified Party shall have the right, but not the obligation, to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense. If the Indemnifying Party has not assumed the defense of a Third Party Claim, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party. If the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the Indemnified Party shall cooperate in the defense or prosecution

thereof with reimbursement by the Indemnifying Party only of reasonable out-of-pocket expenses of the Indemnified Party incurred in connection therewith. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party shall have assumed the defense of a Third Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third Party Claim without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld.

Section 10.05 Procedure for Indemnification — Other Claims. A claim for indemnification for any matter not involving a Third Party Claim may be asserted by notice to the Indemnifying Party. Such notice shall specify the factual basis of such claim and the amount thereof in reasonable detail to the extent then known by the Indemnified Party.

Section 10.06 Setoff. If Buyer in good faith believes that it is entitled to be indemnified by ACMI for Losses under (and subject to the limitations set forth in) this Article 10, then Buyer may set-off against any amounts otherwise payable by Buyer to ACMI under this Agreement (including under Article 8 hereof) and may retain, an amount equal to the amount of such Losses; provided, that promptly following any determination under this Agreement that Buyer is not entitled to be indemnified by ACMI for all or any portion of such Losses under this Article 10, Buyer shall pay to ACMI the amount as to which the right of set-off granted hereby was exercised by Buyer and as to which it has been determined that Buyer is not entitled to indemnification, together with interest thereon at a rate of 6% per annum calculated from the date payment of such amount was initially due to ACMI hereunder through the date on which payment is made. If ACMI in good faith believes that it is entitled be indemnified by Buyer for Losses under (and subject to the limitations set forth in) this Article 10, then ACMI may set-off against any amounts otherwise payable by ACMI to Buyer under this Agreement (including under Article 8 hereof) and may retain, an amount equal to the amount of such Losses; provided, that promptly following any determination under this Agreement that ACMI is not entitled to be indemnified by Buyer for all or any portion of such Losses under this Article 10, ACMI shall pay to Buyer the amount as to which the right of set-off granted hereby was exercised by ACMI and as to which it has been determined that ACMI is not entitled to indemnification, together with interest thereon at a rate of 6% per annum calculated from the date payment of such amount was initially due to Buyer hereunder through the date on which payment is made.

Section 10.07 Bulk Sales Laws. Buyer hereby waives compliance by ACMI with any bulk sales laws or similar laws or legal requirements of any jurisdiction in connection with the sale of the Purchased Assets to Buyer contemplated by this Agreement.

## **Article 11.**

### **Miscellaneous**

Section 11.01 Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned prior to the Closing:

(a) by the Buyer giving written notice to ACMI, if ACMI shall be in breach in any material respect of its obligations contained in this Agreement (provided that no such termination shall occur unless the Buyer shall have given notice to ACMI of such breach, specifying in reasonable detail the nature of such breach, and such breach shall not have been cured in all material respects within 30 days after such notice is given), or if any of the conditions set forth in Section 6.01 becomes incapable of being satisfied on or before June 30, 2003 (other than for reasons totally within the control the Buyer and other than due to a material breach by Buyer of its agreements herein) and shall not have been waived in writing by the Buyer;

(b) by ACMI giving written notice to the Buyer, if the Buyer shall be in breach in any material respect of its obligations contained in this Agreement (provided that no such termination shall occur unless ACMI shall have given notice to the Buyer of such breach, specifying in reasonable detail the nature of such breach, and such breach shall not have been cured in all material respects within 30 days after such notice is given) or if any of the conditions set forth in Section 6.02 becomes incapable of being satisfied on or before June 30, 2003 (other than for reasons totally within the control ACMI and other than due to a material breach by ACMI of its agreements herein) and shall not have been waived in writing by ACMI;

(c) by mutual agreement of ACMI and the Buyer;

(d) by ACMI or the Buyer giving written notice to the other such party, if the Closing shall not have been consummated by June 30, 2003, unless such failure of the Closing to be consummated shall be due to the failure of the party seeking to terminate this Agreement to perform or observe in any material respect any covenants contained in this Agreement required to be performed or observed by such party at or before the Closing.

Section 11.02 Effects of Termination. If this Agreement is terminated pursuant to any of the provisions hereof, each of the parties hereto shall thereupon be released from all liabilities hereunder, except (i) liabilities for any default under this Agreement which shall have occurred prior to the effective date of such termination, (ii) all confidentiality obligations pursuant to the Confidentiality Agreement and (iii) obligations set forth in Section 11.04. Notwithstanding any confidentiality obligations, any party to this agreement (and each employee, representative or other agent of any party to this agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analysis) that are provided to such party relating to such tax treatment and tax structure.

Section 11.03 Dispute Resolution. (a) Subject to Section 11.03(d), any disagreement or dispute between the parties arising out of or related to this Agreement, including the breach or making hereof (a "**Dispute**") shall be resolved in the manner provided in Section 11.03(a) through (c). Should there develop any Dispute, either party may, by written notice to the other party, request that such Dispute be referred for resolution to the General Counsel of ACMI and the General Counsel of the Buyer (the "**Principals**"), who shall negotiate in good faith to attempt to resolve the Dispute. No settlement reached under this Section 10.03(a) shall be binding on the parties unless and until reduced to a writing signed on behalf of the parties by the Principals.

(b) Should the procedure outlined in Section 11.01(a) fail to bring about a resolution of any outstanding Dispute within 30 days following the giving of the notice referred to therein, then thereafter, either of the parties may require, by written notice to the other, that such Dispute be resolved by binding arbitration under Section 11.03(c) below.

(c) (i) Any written notice requiring resolution of a Dispute by binding arbitration given by a party under Section 11.03(b) above (an "**Arbitration Demand**") shall constitute a demand for such binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA") then in effect. In such event, the Dispute will be decided in accordance with rules set forth in this Section 11.03(c).

(ii) Within fifteen (15) days after an Arbitration Demand is given, the parties shall attempt to select a sole arbitrator satisfactory to the parties. If the parties are not able jointly to select a sole arbitrator within such fifteen (15) day period, such parties shall each appoint an arbitrator (who need not be disinterested as to the parties or the matter) within twenty (20) days after delivery of the Arbitration Demand. (If one party appoints an arbitrator within such time period and the other party fails to appoint an arbitrator within such time period, the arbitrator appointed by the one party shall be the sole arbitrator of the Dispute.) The two (2) arbitrators will, within fifteen (15) days after the appointment of the later of them to be appointed, select an additional arbitrator who shall act as the sole arbitrator of the Dispute. After selection of such sole arbitrator, the initial arbitrators shall have no further role with respect to the Dispute. If the arbitrators so appointed do not, within such fifteen (15) day period, agree on the selection of the sole arbitrator, either party may apply to AAA to select the sole arbitrator, which selection shall be made by the AAA within fifteen (15) days after such application. Any arbitrator selected by the two (2) initial arbitrators or by AAA shall be disinterested with respect to any of the parties and the matter and shall be reasonably competent in the applicable subject matter.

(iii) The sole arbitrator selected pursuant to Section 11.03(c)(ii) above will set a time for the hearing of the Dispute which will commence no later than thirty (30) days after the date of the appointment and which hearing will be no longer than fifteen (15) days (unless in the judgment of the arbitrator the matter is unusually complex and sophisticated and thereby requires a longer time, in which event such hearing shall be no longer than forty five (45) days). The place of any arbitration hereunder will be Boston, MA unless otherwise agreed by the parties.

(iv) The final award of such arbitrator will be rendered in writing to the parties not later than thirty (30) days after the last hearing date, unless otherwise agreed by the parties in writing. The decision of the arbitrator will be final and binding on the parties, and judgment thereon may be had and will be enforceable in any court having jurisdiction over the parties.

(v) In addition to any other rights to information provided for in this Agreement, any party involved in the applicable Dispute may request document production or other forms of discovery in accordance with the commercial arbitration rules of the AAA then in effect. In addition to the confidentiality and restricted use obligations with respect to information contained in this Agreement, the arbitrator will adopt procedures to protect the

proprietary rights of the parties and to maintain the confidential treatment of the arbitration proceedings (except as may be required by law). Subject to the foregoing, the arbitrator shall have the power to issue subpoenas to compel the production of documents relevant to the Dispute.

(vi) The arbitrator shall have full power and authority to determine issues subject to arbitration but shall otherwise be limited to interpreting or construing the applicable provisions of this Agreement, and will have no authority or power to limit, expand, alter, amend, modify, revoke, terminate or suspend any condition or provision of the Agreement; provided, however, that the arbitrator shall have full authority to implement the provisions of this Agreement, and to fashion appropriate remedies for breaches of such agreements (including specific performance or interim or permanent injunctive relief), provided that the arbitrator shall not have (i) any authority in excess of the authority a court having jurisdiction over the parties and the Dispute would have absent these arbitration provisions or (ii) any right or power to award punitive or treble damages. It is the intention of the parties that in rendering a decision the arbitrator give effect to the applicable provisions of this Agreement and follow applicable law (it being understood and agreed that this sentence shall not give rise to a right of judicial review of the arbitrator's award).

(vii) Arbitration costs will be borne equally by each party involved in the matter, except that each party will be responsible for its own attorneys' fees and other costs and expenses, including the costs of witnesses selected by such party.

(viii) The interpretation of the provisions of this Section 11.03, only insofar as they relate to the agreement to arbitrate and any procedures pursuant thereto, shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-14, as amended from time to time and other applicable federal law. In all other respects, the interpretation of this Agreement shall be governed as set forth in Section 11.03 of this Agreement.

(ix) To the extent that the provisions of this Agreement and the prevailing rules of the AAA conflict, the provisions of this Agreement shall govern.

(d) Notwithstanding anything to the contrary in this Section 11.03, in the case of any Third Party Claim that (i) involves a suit or other proceeding before a court and both Buyer and ACMI are a party to such suit or proceeding or (ii) involves a suit or proceeding before a court to which an Indemnified Party is a party and in connection with which there exists a dispute between the parties as to whether such Third Party Claim involves facts and circumstances with respect to which the Indemnified Party is entitled to indemnification for Losses under this Article 10, then, in such event, the parties acknowledge and agree that, upon the written notice of either party hereto to the other, in lieu of the arbitration procedure contemplated by Section 11.03(a) through 11.03(c) hereof, any disagreements or disputes between the parties relating to or arising under this Agreement which arise out of, or are reasonably related to, the facts and circumstances of such Third Party Claim (and the Indemnified Party's right to be indemnified in connection therewith hereunder) shall be adjudicated in the proceeding or suit relating to such Third Party Claim. The parties hereby consent to the non-exclusive jurisdiction of any such court before which any such Third Party Claim is brought for the purposes of this Section 11.03(d).

Section 11.04 Expenses. Except as otherwise expressly provided herein, each party hereto shall pay its own legal, accounting and other expenses incident to the preparation of, and consummation of the transactions contemplated by, this Agreement.

Section 11.05 Titles. The titles of the Articles and Sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 11.06 Entire Agreement. This Agreement (together with the Confidentiality Agreement, the Transaction Documents and the Annexes and Schedules hereto) constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding (except for the Confidentiality Agreement) all prior oral or written negotiations, discussions and agreements. The parties confirm and agree that the Confidentiality Agreement remains in full force and effect and survives the Closing. As used in this Agreement, the “**Confidentiality Agreement**” means that certain Confidential Disclosure Agreement, dated as of December 19, 2001, between Buyer and Seller.

Section 11.07 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which shall together constitute one and the same instrument.

Section 11.08 Waivers, Consents and Amendments. Any failure of either of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the other party only by a written instrument signed by such other party, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of either party hereto, such consent shall be given in writing. This Agreement may be amended, supplemented or otherwise modified only by an agreement, in writing, signed by the parties hereto.

Section 11.09 Governing Law. This Agreement shall be governed in all respects by, and construed under, the laws of the State of New York without regard to principles of conflicts of laws.

Section 11.10 Special Damages. Buyer and ACMI have each agreed to and hereby do irrevocably waive any right to receive punitive, consequential, special or indirect damages relating in any way to this Agreement or the purchase and sale of the BiCap Business and/or the Purchased Assets, irrespective of the legal theory asserted, including in connection with the calculation of any Losses under Article 10.

Section 11.11 Severability of this Agreement. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 11.12 Assignment. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, that this Agreement may not be assigned by either party without the prior written consent of the other party. Except as expressly provided herein, this Agreement is for the sole benefit of the parties hereto and nothing herein



shall give or be construed to give to any person other than the parties any legal or equitable rights under this Agreement.

Section 11.13 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given upon delivery in person, or one day after the same shall have been sent by overnight messenger service, or three days after the same shall have been mailed by registered or certified mail, postage prepaid, return receipt requested, to the respective parties at the following addresses:

If to the Buyer:                    CONMED Corporation  
525 French Road  
Utica, New York 13502  
Fax No.: 315-797-0321  
Attention: President

with copies to:                    CONMED Corporation  
525 French Road  
Utica, New York 13502  
Fax No.: 315-703-8929  
Attention: General Counsel

And                                    Conmed Electrosurgery  
14603 E. Fremont Avenue  
Centennial, CO 80112  
Attention: President

If to ACMI:                         ACMI Corporation  
Turnpike Road  
Southborough, MA 01772  
Fax No.: 508-804-2624  
Attention: President

and copy to:                        ACMI Corporation  
Turnpike Road  
Southborough, MA 01772  
Fax No.: 508-804-2624

Attention: Ron Honig, Esq., Corporate Counsel

Section 11.14 Public Announcements. No press releases or public announcements regarding the terms of this Agreement shall be made by either party without the prior written approval of the other party (which approval shall not be unreasonably withheld), except as may be necessary, in the opinion of counsel for such party, to meet the requirements of any law or governmental regulation or any applicable exchange regulation (in which event the other party will be notified before, if practical under the circumstances, and in any event after, any action is

taken thereon), or as may be necessary or appropriate in connection with a party's communications with its independent auditors and lenders. Notwithstanding the foregoing, any party to this Agreement (and any representative of any party to this Agreement) may disclose to any and all persons or entities, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement, and all materials of any kind (including opinions or other tax analyses) related to such tax treatment and tax structure.

**Section 11.15 Tax Treatment.** It is expressly understood and agreed that none of ACMI, the Buyer or any of their respective officers or agents have made any warranty or agreement, express or implied, as to the tax consequences of the transactions contemplated hereby.

**Section 11.16 Specific Performance.** Each of the parties hereto acknowledges and agrees that the other party would be damaged irreparably in the event any of the covenants contained in this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the parties hereto agrees that the other party shall be entitled, notwithstanding anything to the contrary in Section 11.03 hereof to seek from any court of competent jurisdiction an injunction or injunctions to prevent breaches of the covenants contained in this Agreement and to enforce specifically in any such court this Agreement and the covenants contained herein in any action properly instituted, in addition to any other remedy to which such other party may be entitled under this Agreement or at law or in equity.

**Section 11.17 Disclosures.** (a) Matters disclosed by ACMI to the Buyer in this Agreement or the Disclosure Schedules are not necessarily limited to matters required to be disclosed by this Agreement. Any such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature.

(b) From time to time prior to the Closing, ACMI will promptly supplement or amend the Disclosure Schedules with respect to any matter hereafter arising which would make any representation or warranty inaccurate if updated as of the Closing, or as is otherwise necessary to correct any information in such Exhibits or Disclosure Schedules or in any representation or warranty of ACMI.

**Section 11.18 Arm's Length Negotiation.** The parties are both commercial entities familiar with agreements of this type, have been advised by counsel, and have negotiated this Agreement at arms' length. The parties agree that this Agreement and its provisions shall not be construed against the drafter, whichever party that may be.

**Section 11.19 Interpretation.** In this Agreement:

(a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;

(b) the word "including" shall mean "including without limitation";

(c) the word "Affiliate" shall have the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended;

(d) the word "person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or any other person, entity or organization or any government or any department or agency thereof or subdivision;

(e) the word "business day" shall mean any day other than a Saturday, Sunday or a day which is a statutory holiday under the laws of the United States or the State of New York;

(f) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded and, if the last day of such period is not a business day, the period shall end on the next day which is a business day; and

(g) all dollar amounts are expressed in United States funds.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed of the day and year first above written.

**ACMI CORPORATION**

By: /s/ David J. Pierce  
Its: Vice President, Finance

**CONMED CORPORATION**

By: /s/ William Abraham  
Its: Senior Vice President

## **Schedules and Exhibits**

Schedule 1.02	Contracts
Schedule 1.04	Field Inventory
Schedule 1.06	List of Assigned Patents
Schedule 1.12	List of the BiCap Products
Schedule 1.14	List of Other Products
Schedule 1.15	Shared Products
Schedule 2.01(a)(i)	Fixed Assets
Schedule 2.01(a)(ii)	Excluded Assets
Schedule 2.01(e)	Consents Required Under Contracts
Schedule 2.01(g)	510(k)s
Schedule 3.04	Inventory Statement
Schedule 4.01(b)	Warranty Obligations
Schedule 5.01(c)	Liens and Encumbrances on Purchased Assets
Schedule 5.01(f)	Recalls
Schedule 5.01(i)	BiCap Financial Statements
Section 5.01(m)	List of Major Suppliers and Customers
Schedule 6.01(e)	GPO Consents Obtained by Buyer prior to Closing or Waived by Buyer as a Closing Condition
Schedule 7.01	Exceptions to Ordinary Course Between Signing and Closing
Schedule 7.08	Form of Customer Notification Letter
Schedule 8.03	Initial Production Request
Schedule 8.05	Pricing for BiCap Products
Schedule 9.02(a)(i)	Form of Bill of Sale