

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

ASSIGNMENT

CONVEYING PARTY DATA

| Name                            | Execution Date |
|---------------------------------|----------------|
| Alpine Mud Products Corporation | 10/01/2003     |

RECEIVING PARTY DATA

|                   |                       |
|-------------------|-----------------------|
| Name:             | M-I L.L.C.            |
| Street Address:   | 5950 North Course Dr. |
| Internal Address: | Legal Dept. - Patents |
| City:             | Houston               |
| State/Country:    | TEXAS                 |
| Postal Code:      | 77072                 |

PROPERTY NUMBERS Total: 9

| Property Type  | Number  |
|----------------|---------|
| Patent Number: | 6821931 |
| Patent Number: | 6734145 |
| Patent Number: | 6774089 |
| Patent Number: | 6737384 |
| Patent Number: | 6892887 |
| Patent Number: | 7001871 |
| Patent Number: | 7060660 |
| Patent Number: | 7067461 |
| Patent Number: | 7056867 |

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PATENT

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REEL: 019147 FRAME: 0422

CH \$360.00 6821931

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Address Line 4: Houston, TEXAS 77072

ATTORNEY DOCKET NUMBER:

ALPINE

NAME OF SUBMITTER:

Carter J. White, Reg. No. 41374

**Total Attachments: 41**

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**Bill of Sale**

KNOW ALL MEN BY THESE PRESENTS, that Alpine Mud Products Corporation ("Seller"), of the Parish of Plaquemines, in the State of Louisiana, (Seller), for and in consideration of the payment of [REDACTED] Dollars [REDACTED], the receipt of which is hereby acknowledged, does by these presents grant, convey, transfer and assign unto M-I L.L.C. ("Purchaser"), a Delaware limited liability company, the Purchased Assets, as defined in the October 1, 2003 Purchase and Sale Agreement By and Among M-I L.L.C. and Alpine Mud Products Corporation ("Purchased Assets").

TO HAVE AND TO HOLD Seller covenants and agrees to warrant and defend the title to all of said Purchased Assets against all and every person or persons whomever on behalf of Purchaser, its successors or assigns, against all and every person or persons whomever.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale this 1<sup>st</sup> day of October, 2003.

**ALPINE MUD PRODUCTS CORPORATION**

By: Jerry J. Rayborn  
Jerry J. Rayborn  
President

**M-I L.L.C.**

By: Bryan L. Dudman  
Bryan L. Dudman  
Senior Vice President – Western Hemisphere

STATE OF TEXAS

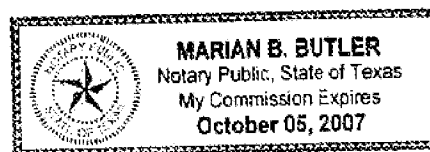
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§  
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COUNTY OF HARRIS

This instrument was acknowledged before me on this 1<sup>st</sup> day of October, 2003.

WITNESS my hand and official seal.

Marian B. Butler



**PURCHASE AND SALE AGREEMENT**

By and Between

**M-I *L.L.C.***

and

**ALPINE MUD PRODUCTS CORPORATION**

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## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "*Agreement*") is made this 1st day of October, 2003, by and among **M-I L.L.C.**, a Delaware limited liability company herein defined as ("*Buyer*"), **Alpine Mud Products Corporation** ("*Seller*"), a Louisiana corporation.

### RECITALS

WHEREAS, the Seller, through the purchase of chemicals from major and specialty chemical companies, blends the chemicals to create proprietary drilling fluid additives, and then sells such drilling fluid additives to provide lubricity, shale inhibition, help free stuck drill pipe, and perform other functions in the oil and gas industry. (the "*Business*");

WHEREAS, Seller operates the Business in the United States;

WHEREAS, Seller operates the Business through a distributorship agreement with Buyer in Canada ("*Canadian Operations*");

WHEREAS, Seller intends to sell and Buyer desires to purchase the technology, inventory, certain service/rental contracts, patents, licenses, permits, other prepaid expenses, selected leases, employees and fixed assets of the Seller related to the Business; and

WHEREAS, Buyer only agrees to assume certain liabilities associated with the Business as specifically set forth herein and no other liabilities.

NOW, THEREFORE, in consideration of the premises, the mutual benefits to be derived from this Agreement and the representations, warranties, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

1.1 Definitions. Unless otherwise defined herein or unless the context otherwise requires, capitalized terms in this Agreement have the following meanings:

"*Affiliate*" means any Person that, directly or indirectly, controls, or is controlled by or under common control with, another Person. For purposes of this definition, "control" (including the terms "controlled by" and "under common control with"), as used with respect to any Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or by contract or otherwise.

"*Allocation Statement*" has the meaning ascribed thereto in Section 2.6.

"*Assumed Contracts*" means (i) those Service, Sales and Rental Contracts listed on Schedule 1.1(a)(i), (ii) the Assumed Real Property Leases which are listed on Schedule 1.1(a)(ii), (iii) the Leased

Rental Equipment contracts which are listed on Schedule 1.1(a)(iii); (iv) other contracts, agreements, and arrangements listed on Schedule 1.1(a)(iv), and (v) those Intellectual Property agreements listed in the Intellectual Property List on Schedule 1.1(c).

"*Assumed Liabilities*" means only such liabilities and obligations of the Seller that are specifically set forth on Schedule 1.1(b).

"*Assumed Real Property Lease*" means that lease of office space in Houston, Texas to which the Seller or any of Seller's Affiliates is a party and that is specifically set forth on Schedule 1.1(a)(ii).

"*Business*" has the meaning ascribed thereto in the Recitals to this Agreement and reflected through the Financial Statements.

"*Buyer Indemnitees*" has the meaning ascribed thereto in Section 11.1(a).

"*Buyer Product Liability Claim*" shall mean any Damages insofar as such Damages arise out of or are based upon strict liability, negligence or any express or implied representation or agreement made or claimed to have been made by Buyer or any of its Affiliates or imposed or asserted to be imposed by operation of law, in each case in connection with any product manufactured or any service rendered by Buyer or any of its Affiliates in connection with the Business following the Closing Date.

"*Closing*" means the consummation of the transactions between Buyer and Seller contemplated hereby.

"*Closing Date*" has the meaning ascribed thereto in Section 3.1.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Damages*" means all judgments, good faith settlements, claims (whether or not such claims are ultimately defeated), losses, penalties, fines, liabilities (including strict liability), costs, and expenses, of whatever kind or nature, contingent or otherwise, reasonable attorney's fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder.

"*Environmental Laws*" means any and all laws, statutes, ordinances, rules, regulations or orders of any Governmental Entity (including common law duties established by courts or other Governmental Entities) pertaining to the protection of human health (provided, however, this definition is not intended to include health and safety laws, included but not limited to OSHA) and the environment in effect on the date of this Agreement in any jurisdiction, federal, state, local or foreign, in which the Business is operated, including without limitation the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act, as amended, the Safe Drinking Water Act, as amended, and the Toxic Substances Control Act, as amended.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended.

"*ERISA Affiliate*" means any corporation, trade or business under common control with the Seller as determined under Sections 414(b), (c) or (m) of the Code.

"*Excluded Assets*" means any assets or properties of the Seller or any of their Affiliates used or held for use in the Business to the extent they constitute, on the Closing Date:

- (i) all cash, bank accounts, negotiable instruments or other cash equivalents;

- (ii) accounts receivable or notes receivable;
- (iii) Real Property or any leasehold interests in Real Property including Material Real Property Leases other than the Assumed Real Property lease listed on Schedule 1.1 (a) (ii);
- (iv) the Improvements;
- (v) Inventory and Rental Equipment In-Transit not purchased by the Seller in the ordinary course of business; and
- (vi) all assets listed on the Excluded Asset Schedule prepared by Seller Schedule 2.2.

"*Excluded Asset Schedule*" means a listing of assets of the Seller that are not to be sold by the Seller nor purchased by the Buyer as part of this Agreement and attached as Schedule 2.2.

"*Excluded Liabilities*" means all liabilities other than Assumed Liabilities.

"*Financial Statements*" is the May 31, 2003 unaudited balance sheet of Buyer and has the meaning ascribed thereto in Section 4.4(a) and in which Buyer used to determine the Purchase Price.

"*Governmental Entity*" means any court or any federal, state, local, or foreign legislative body or governmental department, commission, board, bureau, agency or authority.

"*Hired Employees*" has the meaning ascribed thereto in Section 10.3(b).

"*Improvements*" means all warehouses, storage facilities, buildings, works, structures, fixtures, landings, improvements, installations and additions constructed, erected or located on or attached or affixed to the Real Property.

"*Indemnified Claim*" has the meaning ascribed thereto in Section 11.2.

"*Indemnatee*" has the meaning ascribed thereto in Section 11.2.

"*Indemnitor*" has the meaning ascribed thereto in Section 11.2.

"*Intangible Assets*" means engineering, tooling patterns, manuals, catalogs, brochures, sales literature, promotional or other selling materials, nonproprietary computer software, microfilm records, drawings, specifications, nonproprietary technology, customer lists and all other nonproprietary rights of any kind or character and wherever located which are owned by the Business and used or being developed by and in connection with the Business, and any blueprint schematics, specifications of equipment and chemical formulas used in the Business, and including the names of Alpine Mud Products Corporation or any derivation of therefrom or the Alpine Mud Products Corporation Logo and any corporate names and logos used by the Business.

"*Intellectual Property*" means domestic or foreign patents, patent applications, inventions (whether patentable or not), disclosures, trademarks and service marks (including registrations and pending registrations thereof and goodwill associated with such trademarks and service marks), copyrights (including registrations and pending registrations therefor), patent, trademark and/or copyright license rights, trade secrets, know how, processes, proprietary technology, slogans, research and development projects, all other proprietary rights of any kind or character, wherever located, that are used or are being developed in connection with the Business including all chemical blending and/or mixing formula used to

make the products sold by the Business and the confidential information owned by or licensed to and used by the Seller or Seller's Affiliates in connection with such know how or processes or the Purchased Assets or in the conduct of the Business, including without limitation all that is listed (together with the name or names of the owner or owners thereof) on Schedule 1.1(c).

"*Intellectual Property Agreement List*" has the meaning ascribed thereto in Section 4.7(a)(iii).

"IRS" means the Internal Revenue Service.

"*Inventories*" means all raw materials and work-in-process inventories of the Business which were recorded on the Financial Statement of Seller, plus all raw materials and work-in-process acquired or initiated in the ordinary course of the Business during the period between the amount recorded on the Financial Statement and the Closing Date, less all raw materials and work-in-process used or completed during said period, as listed on Schedule 1.1(d).

"*Inventory and Rental Equipment In-Transit*" means that inventory and rental equipment, which was purchased by the Seller prior to the Closing Date but was not received until after the Closing Date as listed on Schedule 1.1(e).

"*Key Employee*" means any employee of the Seller listed on Schedule 10.3(c).

"*Leased Rental Equipment*" means any rental equipment that is under lease to the Seller at the Closing Date as listed on Schedule 1.1(a)(iii).

"*Legal Proceeding*" means any judicial, administrative or arbitral action, suit, proceeding (public or private), written claim or governmental proceeding.

"*Liens*" means all mortgages, deeds of trust, liens, security interests, pledges, conditional sales contracts, claims, rights of first refusal, options, charges, liabilities, obligations, easements, rights-of-way, limitations, reservations, restrictions and other encumbrances of any kind.

"*Material Adverse Effect*" means (a) any change in the business, results of operations, financial condition, obligations (whether or not the result thereof would be covered by insurance) thereof that (individually or in the aggregate) is, or may be reasonably expected to be, material and adverse to the Business, taken as a whole, or (b) a change in the value, condition or use thereof that (individually or in the aggregate) is, or may be reasonably expected to be, material and adverse to the Purchased Assets, taken as a whole.

"*Material Contracts*" means the Seller' contracts and agreements that provide for payments or receipts by the Business of \$10,000 or more annually, excluding all leases of real property.

"*Material Real Property Leases*" means all leases of real property to which any of the Seller or any of their Affiliates is a party, whether as lessor or lessee, and that are material to the Business.

"*Non-Hired Employees*" means any of the Seller' former or present employees who are not Hired Employees listed on Schedule 10.3(b).

"*Owner*" shall mean Jerry Rayborn in his individual and personal capacity.

"*Patent List*" has the meaning ascribed thereto in Section 4.7(a)(i).

"*Permits*" means all permits, licenses, franchises and authorizations that are material to and that relate to the operation of the Business and the ownership and operation of the Purchased Assets all as the same may exist on the Closing Date.

"*Permitted Encumbrances*" means Liens for current taxes and assessments not yet due and payable, including without limitation Liens for nondelinquent *ad valorem* taxes, nondelinquent statutory Liens, inchoate liens, deposits for workman's compensation, unemployment and surety bonds arising other than by reason of any default on the part of the Seller.

"*Person*" means an individual, partnership, joint venture, corporation, bank, trust, unincorporated organization or a Governmental Entity.

"*Personalty*" means all tools, equipment (including without limitation all computer equipment and hardware), rental equipment, machinery, vehicles and other transportation equipment, furniture, spare parts, supplies and all other tangible personal property of every kind and description (other than Improvements and the Inventories), insofar as any of the foregoing is owned by the Business, including without limitation those listed or described on Schedule 1.1(f), but excluding Excluded Assets.

"*Plan*" has the meaning ascribed thereto in Section 4.12.

"*Purchase Price*" has the meaning ascribed thereto in Section 2.4.

"*Purchased Assets*" means:

(a) Deposits made by Seller on chemical mixing or blending equipment and storage tanks;

(b) The option to purchase the Improvements used to mix and blend the products sold by the Seller located at Seller's facility located at 8391 Highway 23 Belle Chasse, Louisiana. The terms and conditions of the option are described in Supply Agreement;

(c) the Personalty;

(d) the Inventories;

(e) Inventory and Rental Equipment In-Transit which were purchased by the Seller in the ordinary course of business;

(f) all Intellectual Property;

(g) all Intangible Assets;

(h) the Assumed Contracts, including any and all written or oral contracts, agreements, and communications (including any course of conduct) which constitutes a contract or gives inference to the existence of a contract, as may be evidenced and or supported by a purchase order(s), except to the extent such is in violation with or unenforceable under applicable law;

(i) all correspondence, production records, well files, laboratory equipment customer lists, employment records with respect to Hired Employees and any other information pertaining to the Business, including without limitation computer programs and files relating thereto, plus copies of any applicable portions of the books and records of Seller's Affiliates that are commingled with the books and records of the Seller but that are reasonably necessary for Buyer to conduct the

Business from and after the Closing Date in the manner in which it is presently being conducted;

(j) all Permits, to the extent transferable;

(k) all prepaid rentals, other prepaid expenses, bonds, deposits and financial assurance requirements, and those other current assets not otherwise enumerated in Excluded Assets relating to the Business, including without limitation all prepaid expenses of the nature (but not the amount) described in the Financial Statements, all as the same may exist on the Closing Date;

(l) the covenant of the Seller not to compete as better defined in Section 10.4 of this Agreement and the covenant of the Seller not to solicit Key Employees as better defined in Section 10.3 (c);

(m) the name "Alpine Mud Products Corporation" and any logos, copyrights or trademarks associated with this name.

(n) the goodwill and going concern value of the Business; and

(o) Any and all other such assets used in support of the Business or relates to the Business including but not limited to Intellectual Property,

*provided, however*, that the Purchased Assets shall not include the Excluded Assets or any Real Property or Real Property leases not listed on Schedule 1.1 (a) (ii).

"*Real Property*" means only the parcels of real property described on Schedule 1.1(g).

"*Seller Indemnities*" has the meaning ascribed thereto in Section 11.1(b).

"*Seller Product Liability Claim*" means any Damages insofar as such Damages arise out of or are based upon strict liability, negligence or any express or implied representation or agreement made or claimed to have been made by the Seller or any of their Affiliates or imposed or asserted to be imposed by operation of law in each case in connection with any product manufactured or service rendered by the Seller or any of their Affiliates in connection with the Business on or prior to the Closing Date.

"*Seller*" means Seller and those Affiliates of Seller transferring assets comprising a portion of the Business.

"*Seller's Affiliates*" means Affiliates of Seller.

"*Service, Sales and Rental Contracts*" means those contracts described on Schedule 1.1(a)(i).

"*Taxes*" means any federal, state, local or foreign income, profit, franchise (including without limitation those that are based on net worth, capitalization, income or total assets), sales, use, transfer, real property transfer, recording, value added, real or personal property or other taxes, assessments, fees, levies, duties (including without limitations customs duties and similar charges), deductions or other charges of any nature whatsoever (including without limitation interest and penalties) imposed by any law, rule or regulation.

"*Trademark/Copyright List*" has the meaning ascribed thereto in Section 4.7(a)(ii).

"Transfer Taxes" means all sales, use, transfer, real property transfer, recording, value added, customs duties and similar taxes or charges that become due and payable prior to, on or after the Closing Date as the result of (a) the conveyance to Buyer of the Purchased Assets by the Seller or any of Seller's Affiliates or (b) the expiration of any time period on or prior to the Closing Date that results in customs duties or similar charges, or an increase in customs duties or similar charges, on or with respect to any of the Purchased Assets.

## ARTICLE II

### PURCHASE AND SALE

2.1 Assets to be Conveyed. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Buyer, free and clear of all Liens other than Permitted Encumbrances, and Buyer shall purchase, acquire and accept from the Seller, the Purchased Assets.

2.2 Excluded Assets. Seller shall be obligated hereunder to sell only the Purchased Assets, and Buyer shall be obligated hereunder and thereunder to purchase only the Purchased Assets. Notwithstanding anything to the contrary contained herein, Buyer shall not be obligated to purchase, and Seller shall not be obligated hereunder to sell any other assets or properties of the Seller or any of their Affiliates, including without limitation, the Excluded Assets.

2.3 Liabilities; Completion of Certain Contracts.

(a) Except as expressly provided in Section 2.3(b), Buyer is not assuming and will not assume either hereunder or otherwise any liabilities or obligations whatsoever of the Seller or its Affiliates whether or not relating to the Business or the Purchased Assets. Specifically and without limiting the generality of the foregoing, Buyer is not assuming and will not assume any liabilities or obligations of the Seller or its Affiliates for (i) Taxes with respect to the Purchased Assets or the conduct of the Business for any period ending on or prior to the Closing Date, or any Taxes imposed in connection with the transactions contemplated by this Agreement; (ii) any portion of Seller's severance indemnity obligations contemplated in Section 10.3(d) & (e); (iii) any environmental liabilities with respect to sites upon which the Seller has operated the Business or performed activities of the Business; (iv) leases of real property or immovable property other than the Assumed Real Property Leases described on Schedule 1.1 (a) (ii); (v) any sales returns, revenue adjustments or credit notes relating to sales and services rendered prior to the Closing Date; (vi) any invoices received after the Closing Date for services rendered to the Seller or goods purchased by the Seller prior to the Closing Date; (vii) any Inventory and Rental Equipment In-Transit which Buyer determines was not purchased in the ordinary course of business and (viii) any rights or obligations arising out of certain lawsuits captioned *Alpine Mud Products Corp. v. AFE Oil & Gas L.L.C. et al.* bearing Cause No. 1718\*RMO1 in the District Court Brazoria County, Texas.

(b) Subject to the terms and conditions contained herein, Buyer agrees to assume the Assumed Liabilities and the Assumed Contracts on the Closing Date and, thereafter, to pay, perform and discharge when due the Assumed Liabilities and the liabilities and obligations under the Assumed Contracts to the extent they accrue after the Closing Date, and none other.

2.4 Purchase Price. Subject to the terms and conditions of this Agreement, Buyer shall pay to Seller at Closing a Purchase Price (the "Purchase Price") of [REDACTED] United States Dollars, subject to any adjustments as determined pursuant to Section 2.5 below. The Purchase Price, less [REDACTED] shall be payable by cashier's check or wire transfer to the account specified by Seller, which account shall

be specified not less than two business days before the Closing Date. The balance of the Purchase Price shall be paid on the Closing Date into a separate Escrow Account governed by the conditions of Section 3.6. The Purchase Price represents all of the assets that support the Business, less and except cash and accounts receivables described on the Financial Statements being valued at [REDACTED] United States Dollars and [REDACTED] United States Dollars respectively.

2.5 Adjustments to Purchase Price. For purposes of determining the Purchase Price as contemplated by Section 2.4, the Purchase Price shall be decreased by any Assumed Liabilities listed on Schedule 1.1(b). For purposes of determining the Purchase Price as contemplated by Section 2.4, the Purchase Price shall be decreased by any shortages in Inventory, any excess or obsolete products based on Seller's historical policies or GAAP and any missing or unusable fixed assets; *provided, however*, in no event shall the Purchase Price be greater than [REDACTED] United States Dollars. After Closing, Buyer and Seller will conduct a joint asset count and inspection. On one (1) business day before Closing, Seller and Buyer will initiate an audit of the Purchased Assets for the purpose of determining an adjustment, if any, to the Purchase Price. Thirty (30) days after the Closing Date, Buyer will prepare a schedule of the net assets acquired of Seller to reflect the final Adjustment to Purchase Price. Seller will have seven days from receipt of the schedule of the net assets acquired to object, in writing, with specificity or accept the schedule of the net assets acquired. The final Adjustment to Purchase Price will be paid within five working days of acceptance of the schedule of the net assets acquired. If the parties are unable to agree on an Adjustment to the Purchase Price, the parties shall choose an independent certified accounting firm to make the adjustment according to the guidelines set forth in this Agreement. The parties will share in the cost of the independent accounting firm in the portion of fifty percent (50%) each.

2.6 Allocation of Purchase Price. Within sixty (60) days after, agreement to the final Adjustment to Purchase Price pursuant to Section 2.5 of this Agreement, the Buyer will prepare pursuant to Section 1060 of the Internal Revenue Code of 1986, as amended, the allocation of the purchase price among the Purchased Assets. (the "Asset Allocation Statement"). The allocation of the purchase price will include an allocation to the covenants not to compete between Buyer and Key Employees who signed such non-compete agreements and the goodwill of the Seller. The Buyer and Seller will endeavor in good faith to resolve any differences with respect to the Asset Allocation Statement within thirty (30) days after the Seller's receipt of such statement. If the Buyer and the Seller are unable to resolve any differences with respect to the Asset Allocation Statement, then any remaining disputed matters will be finally and conclusively determined by an independent accounting firm selected by the Buyer and Seller that is not engaged by the Buyer or Seller. The independent accounting firm will render a written report as to the disputed matters and the resulting allocation of the Purchase Price, which report shall be conclusive and binding on the Parties. The parties will share in the cost of the independent accounting firm in the portion of fifty percent (50%) each. The Buyer and Seller shall report the acquisition of the Purchased Assets for all tax purposes in a manner consistent with such allocation. The allocation may not be amended or changed without the mutual consent of the Parties.

### ARTICLE III

#### THE CLOSING

3.1 Closing. The Closing shall take place at the offices of Buyer, 5750 North Course Drive, Houston, Texas, at 10:00 a.m., local time, on October 1, 2003, or at such other place and at such other time and date as may be mutually agreed upon by Buyer, and Seller. The date of the Closing is referred to in this Agreement as the "Closing Date."

3.2 Effective Date. The effective date of the transfer of title in the Purchased Assets, the assignment of the Assumed Contracts and the subcontracts entered into pursuant to Section 10.7 shall be the Closing Date.

3.3 Proceedings at Closing. All proceedings to be taken, all payments to be made and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken, paid, executed and delivered simultaneously, and no proceedings shall be deemed taken, no payments shall be deemed made nor any documents executed or delivered until all have been taken, paid, executed and delivered.

3.4 Documents to be Delivered to Buyer. At the Closing, the Seller and Owner shall execute (where necessary) and deliver, or shall cause to be executed (where necessary) and delivered, to Buyer the following:

- (a) bill of sale with respect to all the Purchased Assets, the form and substance of which shall be acceptable to Buyer;
- (b) assignments conveying all right, title and interest of the Seller in the Assumed Contracts (subject to the assumption thereof by Buyer);
- (c) assignments (excluding foreign patents requiring legalization) in recordable form where appropriate conveying good title to all Intellectual Property and Intangible Property constituting the Purchased Assets;
- (d) releases of all Liens set forth on Schedule 4.7 and of any recorded UCC-1 Financing Statements covering the Purchased Assets;
- (e) the consents described on Schedule 4.3;
- (f) lease assignments, in recordable form where appropriate, with respect to the Assumed Real Property Lease;
- (g) a certified copy of the resolution of the Board of Directors of the Seller properly authorizing and approving this Agreement and the transactions contemplated hereby;
- (h) a certified copy of the resolution of the Board of Directors of the Seller authorizing Jerry Rayborn to execute this Agreement and all other related agreements on behalf of Seller;
- (i) a change of name of the Seller to an unrelated name, with such document to be filed with the Louisiana Secretary of State and other appropriate agencies no later than thirty (30) days after the Closing Date;;
- (j) such other documents and instruments as are customary under such circumstances or as may be reasonably requested by Buyer to effectuate the transactions contemplated hereby.

The assignments referenced in this Section 3.4(d) shall include all rights to claims for damages for past infringement of any Intellectual Property, or for any misappropriation of proprietary information relating to the Business, with the right to sue for and collect said damages for the benefit of Buyer, and said assignments shall, with respect to any United States patents or patent applications and trademarks or

trademark applications, be in a form and state of completed execution, suitable for recording transfer of title to Buyer. Individual assignments in a form and state of completed execution, excluding legalization if otherwise necessary, suitable for acceptance by individual jurisdictions other than the United States for recording transfer of title to Buyer shall be provided as soon after the Closing as is reasonably possible. As soon after the Closing as is reasonably possible, Seller shall cause to be delivered to Buyer all files pertaining to such patents, trademarks, and copyrights, and applications therefor, domestic and foreign, and shall notify Seller's foreign associates and computer service currently responsible for procuring or maintenance of patents, trademarks, and copyrights, with a copy to Buyer, of Buyer's assumption of future responsibility for the patents, trademarks, copyrights and pending applications thereon related to the Purchased Assets.

3.5 Documents to be Delivered to Seller. At the Closing, Buyer shall execute (where necessary) and deliver, or shall cause to be executed (where necessary) and delivered, to Seller the following:

- (a) the Purchase Price as provided in Section 2.4;
- (b) a certified copy of the Board of Director resolution of M-I LLC properly authorizing and approving this Agreement and the transactions contemplated hereby;
- (c) a Supply Agreement and a License Agreement to govern the supply of products from Seller to Buyer after Closing; and
- (d) such other documents and instruments as are customary under such circumstances or as may be reasonably requested by Seller to effectuate the transactions contemplated hereby.

3.6 Escrow Account. On or before the Closing Date, Seller shall enter into an escrow agreement, the form of which will be approved by Buyer. On the Closing Date, [REDACTED] Dollars of the Purchase Price to be paid by Seller shall be deposited by Buyer into an interest-bearing account ("Escrow Account") representing a provision for any damages, payments, fines, or penalties made under Article XI. The Escrow Account will remain in existence for an eighteen (18) month period after the Closing Date. The monies, including interest, deposited in the Escrow Account, less any disbursements for the purposes described in this Section 3.6, will be released to the Seller eighteen (18) months after the Closing Date.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller and Owner jointly and severally represent and warrant to Buyer as follows:

4.1 Organization and Good Standing. Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and, except where failure to qualify is not material to the Business, is qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of its business or an interest in property requires it to be qualified as a foreign corporation, all of which jurisdictions are listed in Schedule 4.1. Seller has the corporate power and authority to own, lease or operate all properties and assets now owned, leased or operated by it in connection with the Business and to carry on the Business as now conducted. Except for the distribution agreement with the Buyer, the Business has only been conducted through the Seller and no part of the Business is operated through any other entity.

4.2 Authorizations and Binding Effect. Seller has full corporate power and authority to carry out and perform its undertakings and obligations as provided herein. This Agreement and the other agreements and instruments contemplated hereby have been duly executed and delivered by Seller (if a party thereto) and, where applicable, Seller's Affiliates, and constitute the legal, valid and binding obligation of Seller (if a party thereto) and, where applicable, the Owner, enforceable against Seller (if a party thereto) and, where applicable, Seller's Affiliates and Owner, in accordance with its terms. The execution, delivery and performance of this Agreement and, when executed, any other agreement, document, or instrument to be executed by Seller and, where applicable, the Owner:

(a) have been, or when executed and delivered will be, duly and validly authorized by all proper and requisite corporate actions of the Seller and, to the extent necessary, each Seller's Affiliate;

(b) will not violate or breach any provision of the charter or bylaws of the Seller, and, where applicable, each Seller's Affiliate thereto;

(c) will not violate or breach or constitute any default under any material contract, agreement, indenture or arrangement to which the Seller or any Seller's Affiliate or Owner is a party or by which the Seller or any Seller's Affiliate is bound other than any such violation, breach or default that would not prevent or delay the consummation of the transactions contemplated hereby or thereby or adversely affect title to the Purchased Assets; and

(d) will not violate any judgment, court order, statute, ordinance or other law, federal, state, foreign or local, or any rule or regulation of any Governmental Entity applicable to the Seller or Owner or any of their assets, except for violations that would not prevent or delay the consummation of the transactions contemplated hereby or thereby or adversely affect title to the Purchased Assets or where such violation would not be material to the Business.

4.2.1 The Person executing this Agreement on behalf of Seller and its Affiliates has the full corporate power and authority to bind the Seller and its Affiliates to all of its undertakings and obligations provided in this Agreement. The Person executing this Agreement on behalf of Seller and its Affiliates has the full corporate power and authority to bind the Seller and its Affiliates to its undertakings and obligations provided in any other agreement and instruments contemplated by this Agreement, including but without limitation the Supply Agreement and the License Agreement. The Person executing this Agreement on behalf of Seller and its Affiliates has the full corporate power and authority to sign any and all documents and instruments to be provided by the Seller under Section 3.4 of this Agreement

4.3 Consents. Except as set forth on Schedule 4.3, no consent, waiver, approval, or authorization of, or declaration or filing with, or notification to, any Person is required in connection with the execution and delivery by Seller of this Agreement, consummation of the transactions contemplated hereby or thereby or the compliance by Seller with any of the provisions hereof or thereof.

4.4 Financial Statements; Liabilities.

(a) The following financial information related to the Business is attached as Schedule 4.4 (collectively, the "*Financial Statements*"): May 31, 2003 (actual) unaudited balance sheet, statement of income and statement of cash flows of the Seller.

(b) Seller has provided to Buyer access to all working schedules, consolidating work papers and journal vouchers related to the preparation of the Financial Statements.

(c) The Financial Statements fairly reflect the assets, liabilities and financial position of Seller as of the respective dates thereof and the results of operations and changes in cash flow of Seller for the periods then ended, and are prepared (i) using complete and correct financial books and records of the Seller and (ii) in conformity with generally accepted accounting principles (excluding any footnote disclosure) applied on a consistent basis, subject to, in the case of the interim statements, year end adjustments consisting only of normal, recurring accruals. Since May 31, 2003, there has been no change in accounting principles applicable to, or methods of accounting utilized by, Seller, except as specifically described in the Financial Statements.

(d) Seller has no debt, obligation or liability (whether accrued, absolute, contingent, liquidated or otherwise) arising out of any transaction entered into at or before the Closing, or any act or omission at or before the Closing, or any state of facts existing at or before the Closing, or based upon the transactions or events occurring at or before the Closing, except: (i) as set forth on or reserved against in the Financial Statements, or (ii) liabilities incurred, and obligations under agreements entered into, in the usual and ordinary course of business since the date of the Financial Statements.

4.5 Books and Records. The financial books and records of the Seller and Seller's Affiliates, where applicable, with respect to the Business and the Purchased Assets are complete and correct in all material respects and accurately and fairly reflect the transactions relating to the Business as set forth therein. The books and records (other than the financial books and records) of the Seller and Seller's Affiliates with respect to the Business and the Purchased Assets are substantially complete and correct in all material respects and accurately and fairly reflect the transactions relating to the Business as set forth therein.

4.6 Title to and Condition of Purchased Assets.

(a) Quality of Title. The Seller hold good and marketable title to the Purchased Assets, free and clear of all Liens, other than Permitted Encumbrances

(b) Condition. Except as required in Section 4.6(a), Buyer and Seller agree that the Purchased Assets are being conveyed on an "As is, Where is" basis.

(c) Inventories. All Inventories in existence as of May 31, 2003 and the Closing Date, including costs thereof and reserves with respect thereto, are listed on Schedule 1.1(d). The Inventories, net of reserves for obsolete and defective Inventories reflected on Schedule 1.1(d), are good and useable in the ordinary course of the Business.

(d) Fixed Assets. All fixed assets in existence as of May 31, 2003, are listed on Schedule 1.1(f). Within ten (10) days after the Closing Date, Seller will forward to Buyer a schedule of fixed assets as of the Closing Date.

(e) Assets Complete. The Purchased Assets, taken together with the Excluded Assets, constitute all the assets, rights and properties that are necessary for the conduct of the Business as conducted by the Seller as of May 31, 2003 and the Closing Date.

4.7 Intellectual Property.

(a) Schedule 1.1(c) contains:

(i) a listing and identification of all unexpired U.S. and foreign patents, pending patent applications and currently active identified inventions that are owned by the Seller or any of its Affiliates or Owner and that are necessary for or otherwise used in connection with, the Business or the Purchased Assets (the "*Patent List*");

(ii) a listing of all registered U.S. and foreign trademarks, service marks, registrations and pending applications for registrations of marks, trade names and registered U.S. and foreign copyrights that are owned by the Seller or Owner and that are applicable to, necessary for or otherwise used in connection with the Business or the Purchased Assets (the "*Trademark/Copyright List*"); and

(iii) a listing of all agreements relating in any way to the Business, the Purchased Assets or the Intellectual Property to which the Seller or any of its Affiliates or Owner is a party (i) under which royalties presently are payable or may in the future become payable by or to the Seller or any of their Affiliates, (ii) which concern rights to patents, technology, processes or proprietary information of any Person relating to the Business or the Purchased Assets, or (iii) which in any other way affect ownership, use or disclosure of intellectual property or technology material relating in any way to the Business or the Purchased Assets (including any such agreements with current employees of the Seller or its Affiliates) (the "*Intellectual Property Agreement List*").

(b) Except as disclosed to Buyer on Schedule 4.7:

(i) the Seller or Owner are the record owners of, and have good title, free of any Liens other than Permitted Encumbrances, to all of the items on the Patent List and the Trademark/Copyright List;

(ii) to Seller's knowledge or Owner's knowledge, no Person is presently asserting that any of the Seller or any Affiliate of the Seller or any licensee of Seller or Seller's Affiliate, or Owner is infringing or has infringed upon any foreign or domestic patent, trademark, service mark, trade name, or copyright, or has misappropriated or improperly used or disclosed any trade secret, confidential information or know-how in connection with the Business or the Purchased Assets;

(iii) to Seller's knowledge or Owner's knowledge, no Person is presently infringing upon any item on the Patent List or the Trademark/Copyright List, or, in the last five years, has misappropriated or improperly disclosed any trade secret, confidential information or know-how related to the Business or the Purchased Assets;

(iv) no operations of the Owner, the Seller or Seller's Affiliates relating to the Business or the Purchased Assets is presently infringing, or has infringed within the six years prior to the date hereof, any foreign or domestic patent, trademark, service mark, trade name or copyright of any Person, or is involved in any misappropriation or improper use or disclosure of any trade secrets, confidential information or know-how of any Person;

(v) all proofs of use, renewals and all fees, annuities and other payments which are due on or before the date of this Agreement for all items in the Patent List and the Trademark/Copyright List have been met or paid;

(vi) none of the items in the Patent List or the Trademark/Copyright List is the subject of any pending interference, reexamination, opposition, cancellation or other protest proceedings;

(vii) there is no foreign or domestic patent which is reasonably expected by the Owner, the Seller, or any of its Affiliates to materially restrict Buyer or Buyer's Affiliates from practicing, licensing or otherwise exploiting the Intellectual Property in connection with the Business and the Purchased Assets; and

(viii) all material obligations required to be performed to date by the Seller, Owner or any other Person pursuant to the agreements on the Intellectual Property Agreement List have been performed and no party to any such agreement is materially in default in any respect thereunder.

4.8 Contracts and Commitments. All Material Contracts, including the Service, Sales and Rental Contracts and the Assumed Real Property Lease, are set forth on Schedule 4.8. All the Assumed Contracts, including the distribution agreement with M-I LLC., as set forth on Schedule 1.1(a)(i) through (iv), (a) are valid, binding and in full force and effect as to the Seller, (b) to Seller's knowledge, are valid, binding and in full force and effect as to, and enforceable against, the other parties thereto, and (c) except as set forth therein, have not been amended or supplemented in any material manner or respect. There are no material defaults by the Seller under any Material Contract, Material Real Property Lease, or Assumed Real Property Lease and there are no material defaults by the Seller under any other Assumed Contract, and, to Seller's knowledge, (i) there are no defaults under any Assumed Contract by any other party thereto and (ii) no events have occurred that with the lapse of time or the giving of notice or both by any party thereto would result in any material violations thereof or any material defaults thereunder. Except to the extent obligee consents may be required for the assignment of the Assumed Contracts, none of the rights under the Assumed Contracts will be impaired by the consummation of the transactions contemplated by this Agreement, and all such rights will inure to and be enforceable by Buyer after the Closing Date, without any authorization, consent, approval, permission or license of, or filing with, any other Person. The Business and the Purchased Assets are managed and operated by the management and employees of the Seller and are not subject to any contract, agreement or arrangement, written or oral, that (a) purports to transfer all right or obligation to manage or operate the Business of the Purchased Assets to any third Person or (b) restricts the management or operations of the Business geographically or territorially, other than to the extent distributors have been given exclusive rights to sell the Business's products. The Seller enjoys peaceful and undisturbed possession under the Assumed Real Property Lease included in the Assumed Contracts.

4.9 Licenses and Permits. The Permits as set forth in Schedule 4.9 constitute all the permits necessary under law or otherwise for the conduct of the Business as conducted as of the Closing Date and to own, operate, maintain and use the Purchased Assets in the manner in which they are being operated, maintained and used as of the Closing Date, except where the failure to possess such permit would not have a Material Adverse Effect. Except as set forth on Schedule 4.9(a), each Permit and the rights of the Seller or any of Seller's Affiliates with respect thereto is valid and in full force and effect and enforceable by the Seller or any of Seller's Affiliates. The Seller or one of Seller's Affiliates (depending on the holder thereof) is in compliance in all material respects with each Permit's terms. No Permit has been or is threatened to be revoked, canceled, suspended or modified.

4.10 Compliance with Law. Neither Seller nor any its Affiliates are in violation of any statute, or ordinance, or other law, federal, state, local or foreign, or any rule or regulation or any order, writ, injunction or decree of any Governmental Entity to which it may be subject and which violation could have a Material Adverse Effect, including without limitation the Foreign Corrupt Practices Act and the Export Administration Act and the rules and regulations promulgated thereunder.

Without limiting the generality of the foregoing paragraph and except as set forth on Schedule 4.10, the Seller has operated the Business and the Purchased Assets in compliance with all Environmental Laws, except where noncompliance would not have a Material Adverse Effect. Furthermore, except for matters that will not have a Material Adverse Effect, there is no physical condition existing on any property now owned or operated by the Seller in connection with the Business (nor are there any physical conditions existing on any other property that may have been impacted by the operations of the Seller in connection with the Business) which could give rise to any remedial obligation under Environmental Laws or which could result in any liability to any third party claiming damage to Persons, property or natural resources as a result of the consequences of said physical conditions.

4.11 Litigation. Except as disclosed in Schedule 4.11, there is no Legal Proceeding pending or, to the knowledge of Seller, threatened by or against the Seller or any Seller's Affiliate which relates to the Business or the Purchased Assets and, if determined adversely to the interest of any of the Seller or any of Seller's Affiliates, would have a Material Adverse Effect. Neither the Seller nor any of its Affiliates is subject to any outstanding order, writ, injunction or decree that would have a Material Adverse Effect or would prevent or delay in any material respect the consummation of the transactions contemplated hereby.

4.12 Employee Benefit Plans and Arrangements; ERISA.

(a) Buyer will not incur any liability except as otherwise provided in Section 10.3(b)(ii), and Seller is not aware of any circumstances pursuant to which Buyer could incur any liability, in connection with or following the acquisition of the Purchased Assets resulting from any employee benefit plan or arrangement, including without limitation any "employee benefit plan" within the meaning of Section 3(3) of ERISA (each such plan or arrangement being hereinafter referred to individually as a "*Plan*") maintained by Seller, or any ERISA Affiliate, or to which Seller or an ERISA Affiliate is or has been in the past, obligated to contribute on behalf of its employees or former employees.

(b) Buyer will not assume any obligations of Seller or an ERISA Affiliate under a Plan as a result of the acquisition of the Purchased Assets.

(c) No lien has been filed by any person or entity and no lien exists by operation of law or otherwise on the Purchased Assets relating to, or as a result of, the operation or maintenance of any Plan, and neither Seller, nor any ERISA Affiliate, has any knowledge of the existence of facts or circumstances that would reasonably be expected to result in the imposition of such lien.

(d) To the extent required by applicable law, Seller will offer "continuation coverage" as described in Section 602 of ERISA to each employee of Seller who ceases to be employed by Seller as a result of the acquisition of the Purchased Assets (and such employee's dependents, if applicable). Except as otherwise provided in Section 10.3(b)(ii), Buyer will have no obligation to provide continuation coverage to any employee or former employee of Seller, or to any dependent of any such employee or former employee, as a result of the acquisition of the Purchased Assets.

4.13 Customers and Suppliers.

(a) Since the May 31, 2003 there has not been any material adverse change in the relationship or course of dealing between the Seller and any of their suppliers and customers that supply goods or services to the Seller or purchase goods or services from the Seller, in each case in connection with the Business.

(b) Set forth on Schedule 4.13(b) is a complete and accurate list of the Seller' top customers representing at least seventy-five percent (75%) of sales during the fiscal year ended May 31, 2003 and the sales to each such customer during such period.

4.14 No Change in Condition. Except as set forth in Schedule 4.14, since May 31, 2003 the Seller has not, except in the ordinary course of business: (a) made any additions or deletions to the assets or properties reflected on the Financial Statement, including without limitation any deletions consisting of the establishment of reserves for obsolete or defective Inventories; (b) entered into any Material Contract, or amended or terminated any Material Contract, except as permitted by, or in connection with, this Agreement or the transactions contemplated hereby; (c) increased, or promised to increase, the compensation or benefits paid or payable to any Hired Employee, including without limitation bonuses and pension or profit sharing payments, except, however, ordinary merit increase to non-officer personnel in accordance with past practices; (d) incurred any substantial damage, destruction or loss (whether or not covered by insurance) affecting the Purchased Assets or the Business; (e) waived any material rights, claims or chooses in action of or relating to the Business or the Purchased Assets; or (f) suffered any change that has had, or could reasonably be expected to have, a Material Adverse Effect.

4.15 Accuracy of Information Furnished. No representation or warranty by Seller in this Agreement, any Schedule, Exhibit hereto or in any certificate or other document provided herein to be executed by any of the Seller and delivered to Buyer under the Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein not false or misleading.

4.16 Insurance. Seller has not been refused any insurance coverage sought or applied for with respect to the Business, and has no reason to believe that it would be unable to renew its existing insurance coverage as and when the same shall expire upon terms at least as favorable as those presently in effect, other than possible increases in premiums that do not result from any act or omission of Seller.

4.17 Labor Relations.

(a) To Seller's knowledge, no employee or agent who is material to the operations of the Business has any plans to terminate his relationship with any of the Seller, and Seller has no intention of terminating the relationship with any such employee or agent.

(b) All sums due for employee compensation and benefits and all vacation time owing to any employees of the Seller have been duly and adequately accrued on the accounting records of the Seller.

(c) There exists no collective bargaining agreement or other labor union contract applicable to any employee of the Seller. The Seller have not received any written notification of any unfair labor practice charges or complaints pending before any agency having jurisdiction thereof nor are there any current union representation claims involving any of the employees of the Seller. Further, Seller is not aware of any such threatened charges or claims.

(d) Seller is not aware of any union organizing activities or proceedings involving, or any pending petitions for recognition of, a labor union or association as the exclusive bargaining agent for, or where the purpose is to organize, any group or groups of employees of the Seller. There is not currently pending, with regard to any of its facilities, any proceeding before the National Labor Relations Board, wherein any labor organization is seeking representation of any employees of the Seller.

(e) There have been no labor disputes, strikes, slowdowns, work stoppages, lockouts or similar matters involving employees of the Seller.

4.18 Audit Letters. Seller has never been, furnished opinion letters by the Seller' legal counsel or internal auditors from Seller's accountant relating to the Seller during the last four years concerning any litigation or internal control matters related to the Business.

4.19 Subcontracts. Seller warrants and represents that none of its Affiliates currently conduct the Business and that there are no contracts between the Affiliates and the Seller nor any contracts between Seller and any third Person that relate to the Business, except the distribution agreement between Seller and Buyer.

4.20 Canadian Operations. Seller has neither assets nor employees in Canada.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

5.1 Organization and Good Standing of Buyer. M-I *L.L.C.* is limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

5.2 Authorizations and Binding Effect. Buyer has full corporate power and authority to carry out and perform its undertakings and obligations as provided herein. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. The execution, delivery and performance by Buyer of this Agreement: (a) has been duly and validly authorized by all proper and requisite corporate actions of Buyer and, to the extent necessary, any of Buyer's Affiliates, (b) will not violate or breach any provision of the charter or bylaws of Buyer or any Buyer's Affiliate, (c) will not violate or breach or constitute any default under any contract, agreement or arrangement to which it is a party or by which it is bound other than any such conflict, breach or default that would not prevent or delay in any material respect the consummation of the transactions contemplated hereby or thereby, (d) will not require any filing with, notification or consent, approval or authorization of any Governmental Entity or any third Person or constitute a violation or breach of any judgment, order or decree of any Governmental Entity except where the failure to make such filing or notification or to obtain such consent, approval or authorization would not prevent or delay in any material respect the consummation of the transactions contemplated hereby, and (e) will not violate any statute, ordinance or other law, federal, state, foreign or local, or any rule or regulation of any Governmental Entity applicable to Buyer, except for any violation which would not prevent or delay in any material respect the consummation of the transactions contemplated hereby.

5.3 Litigation; Orders. There is no Legal Proceeding pending or, to the knowledge of Buyer, threatened against or relating to Buyer by or before any Governmental Entity which, if determined adversely to the interest of Buyer would prevent or delay in any material respect the consummation of the transactions contemplated hereby. Neither Buyer nor any of its Affiliates is subject to any outstanding order, writ, injunction or decree that would prevent or delay in any material respect the consummation of the transactions contemplated hereby.

## ARTICLE VI

### COVENANTS OF SELLER

From and after August 6, 2003, and until the Closing Date, Seller hereby covenants and agrees with Buyer that:

6.1 Cooperation. Seller shall use its best efforts to cause the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

6.2 Access to Documents; Opportunity to Ask Questions. Seller shall provide Buyer with such information as Buyer from time to time reasonably may request with respect to the Business and shall permit Buyer and any of the directors, officers, employees, counsel, representatives, accountants and auditors (collectively, the "*Buyer Representatives*") reasonable access, during normal business hours and upon reasonable prior notice, to the properties, corporate records and books of accounts of the Seller as they related to the Business, as Buyer from time to time reasonably may request, *provided, however*, that Seller shall not be obligated to provide Buyer with any information the provision of which may be prohibited by law or contractual obligation. No disclosure by Seller whatsoever during any investigation by Buyer shall constitute an enlargement of or additional warranty or representation of Seller beyond those expressly set forth in this Agreement or affect Buyer's right to rely on the representations and warranties of Seller in this Agreement.

6.3 Conduct of Business. Except as otherwise may be contemplated by this Agreement, required by any of the documents listed in the Schedules hereto or as Buyer otherwise may consent to in writing (which consent shall not be unreasonably withheld), Seller shall use its best efforts to,

- (a) conduct the Business in the ordinary course of business, consistent with past practice;
- (b) maintain and preserve the Business and its goodwill and the Seller' relationships with customers, suppliers and others having business relations with the Seller;
- (c) keep available the services of the present employees of the Seller;
- (d) maintain all of the assets and properties of the Seller in their current condition, normal wear and tear excepted;
- (e) not (i) engage in any action or omit to take any action, or (ii) permit the Seller to engage in any action or omit to take any action, if such action or omission would have constituted a breach of the representations and warranties in Article IV had the action or omission occurred between May 31, 2003 and the Closing Date; and
- (f) not make any distributions or repayments of any kind or nature to shareholders or Affiliates.

6.4 Consents and Conditions; Assignment of Assets. Seller shall use its best efforts to obtain all approvals, consents or waivers from Persons (including Governmental Bodies) necessary to transfer the Purchased Assets to Buyer at the Closing; *provided, however*, that in no event shall a Seller be obligated to pay any consideration therefor to the third Person from whom such approval, consent or waiver is requested or release any right, benefit or claim in order to obtain such approval, consent or waiver.

6.5 Notice of Breach or Material Change. Seller shall promptly inform Buyer in writing of any change of which it becomes aware that would constitute a breach of Seller's representations and warranties in Article IV or that Seller reasonably expects to have a Material Adverse Effect.

6.6 Acquisition Proposals. Seller shall not solicit or encourage inquiries or proposals with respect to, furnish any information relating to, or participate in any negotiations or discussions concerning, any acquisition, business combination or purchase by any Person involving all or any substantial part of the Business.

## ARTICLE VII

### COVENANTS OF BUYER

From and after the date hereof, and until the Closing Date, Buyer hereby covenants and agrees with Seller that:

7.1 Cooperation. Buyer shall use its best efforts to cause the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

7.2 Consents and Conditions. Buyer shall use its best efforts to obtain all approvals, consents or waivers from Persons (including Governmental Bodies) necessary to transfer the Purchased Assets to Buyer or assign any claim, right or benefit arising thereunder or resulting therefrom as soon as practicable; *provided, however*, that in no event shall Buyer be obligated to pay any consideration therefor to the third Person from whom such approval, consent or waiver is requested, or institute any legal action or release any right, benefit or claim to obtain such approval, consent or waiver.

## ARTICLE VIII

### CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

The obligation of Buyer to consummate the purchase of the Purchased Assets on the Closing Date is, at the option of Buyer, subject to the satisfaction or waiver of the following conditions:

8.1 Representations, Warranties and Covenants.

(a) Each representation and warranty of Seller and Owner contained herein shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though the same had been made on and as of the Closing Date.

(b) Seller shall have performed and complied, in all material respects, with the covenants and provisions of this Agreement required to be performed or complied with by it at or prior to the Closing Date.

(c) Buyer shall have received a certificate of Seller, dated as of the Closing Date and signed by Seller's Chairman, Vice-Chairman, President or any Vice-President certifying as to the fulfillment of the conditions set forth in this Section 8.1.

8.2 No Prohibition. No law or order of any Governmental Entity shall be in affect which restrains or prohibits Buyer from consummating the transactions contemplated hereby.

8.3 Delivery of Documents. Seller shall have executed and delivered to Buyer at the Closing the items set forth in Section 3.4.

8.4 Consents. All consents and approvals set forth on Schedule 4.3 shall have been duly given including but not limited to the office lease in Houston, Texas.

8.5 Supplier Agreements. Seller to enter into supplier agreements with Dow Chemical Company and Rohm Haas in a form and content acceptable to Buyer. The supplier agreements referred to in this Section 8.6, along with the pre-existing distributorship agreement between Seller and Buyer, will be Assumed Contracts in this Agreement.

8.6 Transition Agreements. Buyer and Seller agreed to enter into both the Supply Agreement, attached hereto as Exhibit "A" and the License Agreement attached hereto as Exhibit "B" at Closing.

8.7 Key Employees. Employment, Retention and/or Non-Competition Agreements will be entered into with all Key Employees listed on Schedule 10.3 (c).

## ARTICLE IX

### CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

The obligation of Seller to consummate the sale and transfer to Buyer of the Purchased Assets on the Closing Date is, at the option of Seller, subject to the satisfaction of the following conditions.

9.1 Representations, Warranties and Covenants.

(a) Each representation and warranty of Buyer contained herein shall be true and correct in all material respects as of the Closing Date with the same force and effect as though the same had been made on and as of the Closing Date.

(b) Buyer shall have performed and complied in all material respects with the covenants and provisions in this Agreement required herein to be performed or complied with by it at or prior to the Closing Date.

(c) Seller shall have received a certificate of Buyer, dated as of the Closing Date and signed by an executive officer of Buyer, certifying as to the fulfillment of the conditions set forth in this Section 9.1.

9.2 No Prohibition. No law or order of any Governmental Entity shall be in effect which restrains or prohibits Seller from consummating the transactions contemplated hereby.

9.3 Delivery of Documents. Buyer shall have executed and delivered to Seller, at the Closing, the items set forth in Section 3.5.

## ARTICLE X

### MUTUAL AND ADDITIONAL POST-CLOSING COVENANTS

10.1 Further Assurances. From time to time after the Closing Date, and for no further consideration, Seller shall perform all acts and execute, acknowledge and deliver such assignments,

transfers, consents and other documents and instruments, including without limitation assignments of trademarks and patent applications as Buyer or its counsel may reasonably request, in each case, to vest in Buyer (or its Affiliates) title to the Purchased Assets.

10.2 Public Announcements Neither the Seller (nor any of its Affiliates), or Buyer (or any of its Affiliates) shall make any public statement, including, without limitation, any press release, with respect to this Agreement and the transactions contemplated hereby, without the prior written consent of the other party (which consent may not be unreasonably withheld), except as may be required by Law.

10.3 Certain Employee Matters.

(a) No Obligations Under Plans. Buyer is not assuming and will not assume either hereunder or otherwise, any obligations to Seller's former or existing employees with respect to or arising out of any Plan or with respect to any employee benefit which Seller's former or existing employees may receive from Seller, including, but not limited to, any benefits that Seller's employees may be entitled to pursuant to any employment agreement, except as provided in Section 10.3(b).

(b) Hired Employees.

(i) Seller agrees that Buyer will not be obligated to employ any of the Seller's former or present employees; provided, however, that Buyer may determine, in its sole discretion, to offer employment to the employees listed on Schedule 10.3(b) (the "*Hired Employees*"), and Seller will, and Owner will use reasonable efforts to cause such Hired Employees to make available their employment services to Buyer and its Affiliates. Employment offered to the Hired Employees shall be offered on substantially similar terms (in the aggregate) to those under which the applicable Seller employed such Hired Employees as of the Closing; *provided* that, Buyer is making no assurances as to the length of such employment. Buyer will credit the Hired Employees with service, for eligibility and vesting purposes, under Buyer's employee benefits plans equal to the Hired Employee's service with Seller and their Affiliates as of the Closing Date.

(ii) Buyer agrees to provide comprehensive medical insurance benefits to the Hired Employees and their dependents, if applicable, which shall be determined without reference to waiting periods and "pre-existing condition" exceptions, except for those waiting periods and pre-existing conditions that were excluded under the applicable Seller's health insurance plan.

(iii) For purposes of determining each Hired Employee's unused calendar year 2003 vacation entitlement, the Hired Employee shall be deemed transferred as of close of business on December 31, 2003. Buyer shall not be obligated to carry-over any unused calendar year 2003 or pre-calendar year 2003 vacation entitlement nor be obligated to make any payment in lieu of such unused vacation entitlement. If any Hired Employee, who was allowed to carry-over unused vacation entitlement from year-to-year while in the employment of Seller or Seller's Affiliates, has unused vacation entitlement at the Closing Date, Seller shall be obligated to pay to such Hired Employee wages in lieu of such unused carry-over vacation entitlement within ten (10) days after the Closing Date.

(iv) The Hired Employees' calendar year 2003 vacation entitlement will be determined using Buyer's vacation policy in effect at January 1, 2004.

(c) No Solicitation. Seller covenants and agrees that, commencing on the Closing Date and continuing for a period of two (2) years thereafter, neither Seller nor any of its Affiliates or divisions will directly or indirectly (a) attempt to solicit employment from any Key Employee as set forth in Schedule 10.3(c) or (b) attempt to induce any Key Employee to terminate employment with Buyer. However, the preceding sentence shall not apply to those Key Employees who either are terminated by Buyer or independently respond to a general publication solicitation for employment by Seller or its Affiliates.

(d) Severance Obligations - Non-Hired Employees. Buyer and its Affiliates shall not be obligated to assume or pay, any obligation for severance or separation pay or benefits that becomes payable as a result of the termination of employment of Non-Hired Employees of the Business, or any claims arising therefrom.

(e) Severance Obligations - Hired Employees. Any severance indemnity obligation claimed by or awarded to a Hired Employee as the result of the termination of employment of the Hired Employee within two (2) years after the Closing Date, shall be allocated pro rata to Seller and Buyer based on the Hired Employee's pre-Closing Date period of employment and post-Closing Date period of employment. Buyer and Seller agree that the total period of employment is the measure for said claim or award.

#### 10.4 Non-Competition.

(a) Owner, Seller and Buyer acknowledge that (i) the Business is national and international in scope, (ii) the agreements and covenants in this Section 10.4 are essential to protect the Business and goodwill purchased by Buyer, and (iii) Buyer would not enter into this Agreement but for the covenants and agreements contained in this Section 10.4. Accordingly, Owner and Seller covenant and agree that, commencing on the Closing Date and continuing for a period of two (2) years thereafter, neither Owner nor Seller will, and nor will they cause Seller's Affiliates to, own, manage, operate, join, control or participate in, directly or indirectly, or be a partner or stockholder of, any business engaged in any activity that is in competition in any manner whatsoever with the Business as currently conducted by the Seller and has been conducted by the Seller in the three (3) years prior to the date of this Agreement, and neither Seller, nor any of Seller's Affiliates shall render assistance or advice to any Person that is so engaged.

(b) Owner and Seller both acknowledge that any breach of the provisions of this Section 10.4 by any of the Seller or any of their Affiliates will cause irreparable harm to Buyer for which there may be no adequate remedy at law and for which the ascertainment of damages would be difficult. Therefore, upon determination that Seller, Owner or Affiliate is breaching any of their obligations hereunder, Buyer shall be entitled, in addition to, and without having to prove the adequacy of, any remedies at law (including without limitation damages for prior breaches hereof), to specific performance of the obligations of Seller, Owner or Affiliates under this Section 10.4 as well as injunctive relief (without being required to post bond or other security).

10.5 Assignment of Contracts; Transfer of Purchased Assets. Except for Master Service Agreements requiring consent to assign, Seller agrees to use its best efforts (including the making of payments in connection therewith) in each case to obtain consent to the assignment to Buyer of Assumed Contracts, the Assumed Real Property Lease, Permits, commitments and sales orders to be assigned to Buyer as provided herein, to the extent such agreements or instruments required the consent of any other Person. Until such time as Seller obtains the consents required in the foregoing sentence, the Seller agrees to maintain any and all Assumed Contracts, the Assumed Real Property Lease and Permits, as set forth on Schedule 10.5, which are necessary for the operation of the Business for the benefit of Buyer and at Buyer's

cost and expense, provided that Buyer undertakes to perform its obligation under such Assumed Contracts, the Assumed Real Property Lease and Permits consistent with the terms set forth therein.

#### 10.6 Taxes and Expenses.

(a) Except as otherwise stated herein, any Taxes with respect to the Purchased Assets or the Business for any pre-Closing periods ending on or before the Closing Date shall be borne by Seller. Any tax returns or other reports relating to any Taxes with respect to the Purchased Assets or the Business for any pre-Closing periods ending on or before the Closing Date shall be filed or cause to be filed by the Sellers. Any taxes withheld or collected by the Seller but payable after the Closing Date, shall be paid by the Seller to the appropriate governmental authority.

(b) Ad valorem, property or similar taxes except for franchise taxes shall be prorated on a per diem basis through the Closing Date with the Seller being responsible for all of such prorated taxes attributable to the period up to the Closing Date and the Buyer being responsible for such prorated taxes attributable to the period or periods after the Closing Date. The portion of such tax that relates to the period ending as of the Closing Date shall be deemed to be the amount of such tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending as of the Closing Date and the denominator of which is the number of days in the entire taxable period. Promptly upon receipt of a Tax Statement or invoice, the Buyer or Seller, as appropriate, shall provide the other with copies of all bills for which the other Party is responsible in whole or in part pursuant to this section. The resulting amount payable by the Seller or the Buyer shall be paid promptly upon demand to the other Party to whom such payment is owed.

(c) Charges for water, electricity, sewer, gas, telephone and all other utilities shall be prorated on a per diem basis of the fiscal year or billing period of the authority, utility or other person levying or charging for the same.

(d) Except as may otherwise be specifically provided herein, each party shall be responsible for its own expenses, including without limitation the fees of accountants and attorneys, which are incurred in connection with the negotiation and execution of this Agreement and the consummation of the transactions herein contemplated.

#### 10.7 Access to Records and Premises After Closing Date.

(a) Seller and Buyer agree that, so long as the books and records retained by the Seller and any of its Affiliates relating to the Business or the Purchased Assets or the books and records delivered to Buyer hereunder remain in existence and available, each party shall have the right to inspect and, at its expense, to make copies of the same at any time during business hours for any proper purpose. For seven (7) years following the Closing Date, no party hereto will, without first having offered to deliver the same to the other party, destroy or permit the destruction of any of such books and records in its or its Affiliate's possession. Each party agrees that it will make available, and it will cause its Affiliates to make available, to the other and to any accountants or attorneys or tax agents authorized by such other party, at the expense of the party requesting the same, any such records or information needed in connection with any Tax matters, litigation or similar matters.

(b) Buyer shall afford the Seller' officers, employees and agents access at all reasonable times and upon reasonable notice from the date hereof until ninety (90) days after the Closing, to the Real Property Lease of which Buyer has assumed pursuant to this Agreement for the purpose of removing Excluded Assets from such real property; *provided* that, Seller shall be liable

for any Damages resulting from such removal of Excluded Assets. Seller shall afford, or cause to be afforded, Buyer's officers, employees and agents access at all reasonable times and upon reasonable notice from the date hereof until ninety (90) days after the Closing, to the real property upon which any of the Purchased Assets is located for the purpose of removing such Purchased Assets from such real property; *provided* that, Buyer shall be liable for any Damages resulting from such removal of Purchased Assets.

10.8 Payroll Agreement. The parties shall in good faith attempt to negotiate an agreement pursuant to the procedures issued by the IRS in Revenue Procedure 96-60, 1996-2 CB 399 to eliminate duplicate withholding and employer's contributions of FICA and Medicare Taxes with respect to any Hired Employees.

10.9 Actions of the Parties. Buyer and Seller agree to cooperate fully by taking all reasonable actions necessary to obtain all Permits from Governmental Entities, to obtain all consents, approvals and authorizations from other Persons and to affect all filings, applications, registrations and notifications that the parties hereto deem necessary or desirable to consummate the transactions contemplated hereby.

10.110 Product Warranty Work. Buyer is not assuming, and Seller shall retain and remain liable for, any product warranty obligations attributable to products or equipment sold or rented by Seller in connection with the Business prior to the Closing Date; *provided, however*, that Buyer hereby agrees to perform product warranty repairs on Seller's behalf, at Seller's request and at Seller's expense.

10.1 Environmental Liability. Notwithstanding Seller's representation in Section 4.10, Buyer is not assuming and will not assume either hereunder or otherwise, and Seller shall retain, any environmental liabilities or obligations whatsoever of Seller or its Affiliates, that may arise either before or after the Closing Date with respect to premises occupied or utilized by Seller or the Business, including specifically, but not limited to Seller's Belle Chase, Louisiana Facility, products manufactured by the Business, the use of Seller's products and services on drilling sites upon which Seller or its Affiliates has performed, on a contractual basis or otherwise, drilling fluid additive services, and the disposal of any chemicals, drums or other materials used in the Business, whether such disposal was on Seller's premises or not.

## ARTICLE XI

### INDEMNIFICATION; LIMITATION OF LIABILITY; SURVIVAL

#### 11.1 Indemnity.

(a) Subject to the provisions of this Article XI, Seller and Owner, who are solidarily liable to Buyer Indemnitees shall indemnify and hold Buyer and its Affiliates and the officers, directors, stockholders, employees and agents of Buyer and its Affiliates ("*Buyer Indemnitees*") harmless from and against Damages of the Buyer Indemnitees to the extent arising out of or based upon:

(i) the ownership, management, operation or use by the Seller or Seller's Affiliates of the Purchased Assets or the conduct of the Business by the Seller or Seller's Affiliates on or prior to the Closing Date, including without limitation any (a) Seller Product Liability Claim; (b) Taxes with respect to the Business or the Purchased Assets during the period before the Closing; and (c) except for Assumed Liabilities and liabilities and obligations under the Assumed Contracts arising after the Closing Date, liabilities and obligations of the Seller or their Affiliates or otherwise relating to or arising from the Business or the Purchased Assets with respect to the period before the Closing;

(ii) any actual or threatened violation or noncompliance by Seller or any of Seller's Affiliates of or with any statute, ordinance or other law, federal, state, local or foreign, or any rule or regulation of any Governmental Entity, including without limitation any Environmental Laws, in connection with the ownership, management, operation or use of the Purchased Assets or the conduct of the Business on or prior to the Closing Date;

(iii) any misrepresentation, breach of warranty or breach or nonfulfillment of any covenant of Seller in this Agreement, including the Schedules hereto; and

(iv) the application of any Plan of Seller to any employee of Seller.

(b) Subject to this Article XI, Buyer shall indemnify and hold Owner, Seller and Seller's Affiliates and the officers, directors, stockholders, employees and agents of Seller and Seller's Affiliates ("*Seller Indemnitees*") harmless from and against any Damages of the Seller Indemnitees to the extent arising out of or based upon:

(i) the ownership, management, operation or use by Buyer or its Affiliates of the Purchased Assets or the conduct of the Business following the Closing Date, including without limitation (a) any Buyer Product Liability Claim and (b) Buyer's payment or performance of the Assumed Liabilities or liabilities and obligations arising under the Assumed Contracts with respect to the period after the Closing;

(ii) any actual or threatened violation or noncompliance by Buyer or any of its Affiliates of or with any statute, ordinance, or other law, federal, state, local or foreign, or any rule or regulation of any Governmental Entity, including without limitation any Environmental Laws, in connection with the ownership, management, operation or use of the Purchased Assets or the conduct of Business following the Closing Date; and

(iii) any misrepresentation, breach of warranty or breach or non-fulfillment of any covenant of Buyer in this Agreement.

#### 11.2 Notice, Participation and Duration.

(a) If a claim, demand or Action is asserted by a third Person against a Person indemnified pursuant to this Article XI ("*Indemnitee*"), and if such Indemnitee intends to seek indemnity with respect thereto under this Article XI (which claim, demand or Action is herein called an "*Indemnified Claim*"), the Indemnitee shall promptly, and in any event within thirty (30) days as provided for in Section 12.2 of the assertion of such Indemnified Claim, notify the Person from whom indemnification is sought ("*Indemnitor*") of such Indemnified claim. Failure to notify the Indemnitor timely shall not relieve the Indemnitor of any liability which the Indemnitor might have to the Indemnitee except to the extent (and only to the extent) such failure materially prejudices the Indemnitor's position. Upon the assertion of any Indemnified Claim, Indemnitor, at its option, may assume the defense of any Indemnified Claim, and may assert any defense of Indemnitee or Indemnitor; *provided, however*, that Indemnitee shall have the right at its own expense to participate jointly with Indemnitor in the defense of any such Indemnified Claim. If Indemnitor elects to undertake the defense of any Indemnified Claim hereunder, Indemnitee shall cooperate with Indemnitor in the defense or settlement of the Indemnified Claim. The Indemnitor shall not be entitled to settle any Indemnified Claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, unless such settlement involves only the payment of money and the claimant provides to the Indemnitee, in form and substance satisfactory to such Indemnitee, a release from all liability in respect of such Indemnified Claim.

(b) If the Indemnitor, by the 30th day after receipt of notice of any Indemnified Claim (or, if earlier, by the tenth day preceding the day on which an answer or other pleading must be served to prevent judgment by default in favor of the Person asserting the Indemnified Claim) does not elect to defend against such Indemnified Claim, the Indemnatee will (upon further notice to the Indemnitor) have the right to undertake the defense, compromise or settlement of such Indemnified Claim on behalf of and for the account and risk of the Indemnitor, subject to the right of the Indemnitor to assume the defense of such Indemnified Claimed at any time prior to settlement, compromise or final determination thereof.

11.3 Indemnification Notwithstanding Investigation or Negligence. **NO INVESTIGATION BY OR ON BEHALF OF BUYER OR ITS AFFILIATES, NOR ANY INFORMATION THAT THEY MAY HAVE OR OBTAIN, NOR NEGLIGENCE ON THE PART OF ANY BUYER INDEMNITEE, WILL AFFECT THE INDEMNIFICATION PROVIDED IN THIS ARTICLE XI.**

11.4 Survival of Indemnification and Representations and Warranties. The respective obligations of the parties hereto to indemnify and hold harmless the other party, or any authorized representative thereof, imposed herein or in any certificate, agreement, document or other instrument delivered in connection herewith shall survive the Closing and remain in full force and effect until the later of (a) eighteen (18) months after the Closing Date or (b) the final resolution of any *bona fide* claim asserted before the end of such eighteen (18) month period, except as follows:

(i) Seller's indemnification obligations and representations and warranties shall survive indefinitely to the extent of claims (a) of fraud perpetrated by the Seller or any of their Affiliates; (b) for breach of the representations in (1) the first two sentences of Section 4.2 and (2) Section 4.6(a); and (c) except for Assumed Liabilities or liabilities and obligations pursuant to the Assumed Contracts with respect to the period after the Closing, for liabilities and obligations of the Seller or their Affiliates or otherwise relating to or arising from the Business or the Purchased Assets with respect to the period before the Closing (including, but not limited to, liabilities for environmental remediation and any claim for the violation of any Environmental Law), *provided* that, the liability or obligation of the Seller or any of its Affiliates to perform any covenants hereunder shall also survive for fifteen (15) years;

(ii) Seller's indemnification obligations and representations and warranties shall survive until the fourth anniversary of the Closing Date to the extent of claims for breach of the representations in the first sentence of the second paragraph of Section 4.10; and

(iii) Buyer's indemnification obligations and representations and warranties shall survive indefinitely to the extent of claims (a) of fraud perpetrated by Buyer or its Affiliates; (b) for breach of the representations in the first two sentences of Section 5.2; and (c) as to Buyer's payment or performance of the Assumed Liabilities or liabilities and obligations pursuant to the Assumed Contracts with respect to the period after the Closing, *provided* that, the liability or obligation of Buyer to perform any covenants hereunder shall also survive for fifteen (15) years.

(iv) Seller's indemnification obligations and representations and warranties made concerning tax liabilities shall survive thirty (30) days after the expiration of the applicable prescription period for those representations and warranties subject to Louisiana or Texas law (whichever is applicable), and thirty (30) days after the expiration of the applicable statute of limitations expires for all other tax representations and warranties.

11.5 Limitation of Liability: Except for Sections 4.1, 4.2, 4.2.1, 10.3 and 10.4, Sellers' and Owner's total maximum liability under this Article XI is limited to Three Million Five Hundred Thousand

and No/100 (\$3,500,000.00) Dollars, and then only to the extent that such unreimbursed claims are presented to Seller and Owner within the applicable time periods prescribed in Section 11.4; *provided however*, that notwithstanding any provision contained in this Agreement, Buyer shall not be entitled to receive any payment under this Article XI unless and until the total aggregate amount of all claims by Buyer against Seller and Owner under Article XI exceeds \$250,000.00. In the event the \$250,000.00 threshold is exceeded, Buyer shall have the right to seek reimbursement of any indemnity claims in excess of said threshold amount, but only for the amount that exceeds the \$250,000 threshold.

11.6 Buyer's Limitation of Liability. Buyer's and its Affiliates total maximum liability under this Article XI is limited to Three Million Five Hundred Thousand and No/100 (\$3,500,000.00) Dollars and then only to the extent that such unreimbursed claims are presented to Buyer within the applicable time periods prescribed in Section 11.4.

## ARTICLE XII

### MISCELLANEOUS

12.1 Waivers and Amendments. Any waiver of any term or condition of this Agreement, or any amendment or modification of this Agreement, shall be effective only if set forth in a written document executed by a duly authorized officer of each party. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's other rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

12.2 Notices. Any notice, request, instruction, demand or other communication to be given hereunder by either party hereto to the other shall be given in writing and shall be delivered either by hand, by telegram, telex, telecopy or similar facsimile means, or by registered or certified mail, postage prepaid, return receipt requested, as follows:

(a) If to Seller, addressed to:

Jerry J. Rayborn  
8391 Highway 23/P.O. Box 970  
Belle Chasse, LA 70037  
Telecopy No. (504) 394-5840

(b) If to Buyer, addressed to:

Richard E. Chandler, Jr.  
Vice President and General Counsel  
M-I L L C  
5750 North Course Drive/P. O. Box 42842  
Houston, Texas 77072/77242  
Telecopy No.: 832-295-2500

or to such other address or number as either party shall have previously designated by written notice given to the other party in the manner hereinabove set forth. Notices shall be deemed given when received, if sent by telegram, telex, telecopy or similar facsimile means and when delivered and receipted for, if mailed or hand delivered.

12.3 Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

12.4 Parties in Interest. This Agreement is made solely for the benefit of the Seller, Buyer and any subsidiaries of Buyer to which Seller transfers Purchased Assets, and their permitted successors and assigns, and no other Person shall acquire or have any right under or by virtue of this Agreement; *provided, however*, that Buyer Indemnitees and Seller Indemnitees are intended third party beneficiaries hereto to the extent provided in Sections 11.1(a) and 11.1(b), respectively.

12.5 Entire Agreement. This Agreement, and the Schedules, Exhibits and Annexes hereto and thereto constitute the entire agreement between the parties pertaining to the subject matter hereof and thereof and supersede all other prior and contemporaneous agreements and understandings, both oral and written, of the parties in connection therewith. No covenant or condition not expressed in this Agreement shall affect or be effective to interpret, change or restrict this Agreement.

12.6 Severability. If any term, provision, covenant or condition of this Agreement is held by any court of competent jurisdiction to be invalid, void or unenforceable in any respect, the remainder of such term, provision, covenant or condition in every other respect and the remainder of the terms, provision, covenant or conditions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid and unenforceable provisions as may be possible and be legal, valid and enforceable.

12.7 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF LOUISIANA WITHOUT REFERENCE TO THE CHOICE OF LAW PRINCIPLES THEREOF. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement will be brought against any of the parties in the United States District Court, Eastern Division of Louisiana, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding directly related to this Agreement and waives any objection to forum or venue, and further irrevocably waive any claim that any such suit, action or proceeding brought in any such jurisdiction has been brought in an inconvenient forum.

12.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall not be assignable without the express prior written consent of the parties hereto.

12.9 Disclosures for Tax Purposes. Notwithstanding anything to the contrary, each party to this Agreement (and each employee, representative, or other agent of such party for so long as they remain an employee, representative or agent) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction contemplated by this Agreement (the "Transaction") and all materials of any kind (including opinions or other analyses) that are provided to such party relating to such tax treatment or tax structure. Nothing in this Agreement, or any other agreement between the parties hereto express or implied, shall be construed as limiting in any way the ability of any of the parties to consult with any tax adviser (including a tax adviser independent from all other entities involved in the Transaction) regarding the tax treatment or tax structure of the Transaction.

12.10 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.11 Transfer of Certain Assets. Buyer may cause Seller to transfer to one or more of Buyer's Affiliates on the Closing Date all or any part of the Purchased Assets to be sold, conveyed, transferred, assigned and delivered to Buyer hereunder. Any such transfers shall be to Buyer's Affiliates designated by Buyer, and any such designation shall not relieve Buyer from any of its obligations under this Agreement and shall be made on or prior to the fifth (5<sup>th</sup>) business day preceding the Closing Date.

12.12 Owners' Guaranty. Subject to the provisions of Article XI, the Owners hereby guarantee any and all obligations and responsibilities of the Seller and its Affiliates arising from or pursuant to the terms of this Agreement.

12.13 Sellers' Knowledge. Any reference to "Sellers' Knowledge" shall be deemed to include the knowledge of Owners, whether actual or which could have been reasonably ascertained.

12.14 Seller's Reliance and Owner's Reliance. Seller and Owner both make all representations and warranties in this Agreement knowingly, freely and out of their own volition. Seller and Owner do hereby state that no representation, warranty or other covenant in this Agreement was made on their behalf because of any statement, coercion, duress, undue influence, promise or other inducement made by Buyer, its attorneys, accountants or officers. Seller and Owner are both fully aware of the consequences, financial and otherwise, of a breach of a representation or a warranty or a covenant. Seller and Owner sign this Agreement out of their own volition and without any statement, coercion, duress, undue influence, promise or other inducement from Buyer, its attorneys, accountants or officers. Seller and Owner were advised by Buyer to obtain legal representation and representation by a certified public accountant. To Buyer's knowledge neither legal representation nor representation by a certified public accountant was obtained by Seller or by Owner. Seller and Owner have represented to Buyer, and its accountants, attorneys and officers that Seller and Owner possess the necessary sophistication to enter into a transaction of this nature without legal representation or the representation by a certified public accountant, and that Seller and Owner are fully aware of the consequences of signing this Agreement and do so solely out of their own free will.

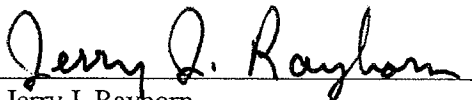
[NEXT PAGE IS SIGNATURE PAGE]

The parties hereto have duly executed this Agreement as of the date first above written.

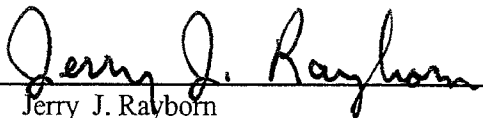
**M-I LLC**

By:   
Name: Bryan L. Dudman  
Title: Senior Vice President, Western Hemisphere

**ALPINE MUD PRODUCTS CORPORATION**

By:   
Name: Jerry J. Rayborn  
Title: President

**OWNER**

By:   
Name: Jerry J. Rayborn

## LIST OF SCHEDULES

- 1.1(a)(i) - Assumed Service, Sales, and Rental Contracts
- 1.1(a)(ii) - Assumed Real Property Leases
- 1.1(a)(iii) - Assumed Leased Rental Equipment
- 1.1(a)(iv) - Other Assumed Contracts, Agreements and Arrangements
- 1.1(a)(v) - Assumed Contracts; Intellectual Property Agreement List
- 1.1(b) - Assumed Liabilities
- 1.1(c) - Intellectual Property Agreement List
- 1.1(d) - Inventory
- 1.1(e) - Rental Equipment and Inventory in Transit
- 1.1(f) - Fixed Asset List
- 1.1(g) - Real Property
  
- 2.2 - Excluded Assets
  
- 4.1 - Organization and Good Standing
- 4.3 - Consent of Third Parties
- 4.4 - Financial Statements as of May 31, 2003
- 4.7 - Disclosures of Impaired Title to Intellectual Property
- 4.8 - List of Material Contracts and Commitments
- 4.9 - License and Permit List
- 4.9(a) - Licenses and Permits No Longer Valid
- 4.10 - Non-Compliance With Environmental Laws
- 4.11 - Legal Proceedings Against Seller
- 4.13 - List of Top Customers and Suppliers
- 4.14 - Change In Condition Since May 31, 2003
  
- 10.3(b) - Hired Employees
- 10.3(c) - Key Employees
- 10.5 - List of Assumed Contracts, the Assumed Property Lease and Permits that have not been assigned to Buyer at Closing
- 10.5(a) - Properly Payable Purchase Price

**M-I LLC and ALPINE MUD PRODUCTS CORPORATION**

**PURCHASE AND SALE AGREEMENT**

**Schedule 1.1 (c)  
Intellectual Property Agreement List**

11 Trademarks (attached)

9 U.S. Patent Applications (attached)

2 International Patent Applications (attached)

**PATENT**

**REEL: 019147 FRAME: 0460**

**M-I LLC and ALPINE MUD PRODUCTS CORPORATION**

**PURCHASE AND SALE AGREEMENT**

**Schedule I.1 (c)  
Intellectual Property Agreement List**

1. U.S. Patent application of a Water Based Drilling Fluid Containing Talc and a Carrier Serial # 10/090,201
2. U.S. Patent application of a Water Based Drilling Fluid Containing Talc and Cellulose Serial # 10/196,264
3. U.S. Patent application of a Drilling Fluid Additive System containing Talc and a Carrier. Serial # 10/196,265
4. U.S. Patent application of a Drilling Fluid Additive System containing Talc and a Cellulose. Serial # 10/196,266
5. U.S. Patent application of a Polymer Drill Bead Recovery System and Related Methods. Serial # 10/361,169
6. Canadian Patent application of a Water Based Drilling Fluid Additive Containing Talc and a Carrier
7. Canadian Patent application of a Drilling Fluid Additive System Containing Talc and a Carrier
8. Venezuelan Patent application of a Water Based Drilling Fluid Additive Containing Talc and a Carrier.
9. U.S. Trademark of name "Alpine Mud Products" and Design
10. U.S. Trademark of name "Alpine Chemical Fluids"
11. U.S. Trademark of name "Alpine Drill Beads"
12. U.S. Trademark of name "Aqua Lube"
13. U.S. Trademark of name "Black Fury"
14. U.S. Trademark of name "Cell U Seal"
15. U.S. Trademark of name "Clean Spot"
16. U.S. Trademark of name "Orange Aid"
17. U.S. Trademark of name "PA-10"
18. U.S. Trademark of name "Quick Slide"
19. U.S. Trademark of name "Sack Black"
20. U.S. Trademark of name "Stabil-izit"
21. U.S. Trademark of name "Triple Drill"

**MEMORANDUM:**

To: Jerry Rayborn & Joel Rayborn  
From: Dan M. de la Rosa, Esq.  
Date: September 22, 2003  
Re: Alpine Mud Products' Intellectual Property Portfolio & Docket

**TRADEMARKS:**

| Mark:                  | Serial Number: | Registration Number: | Class(es): |
|------------------------|----------------|----------------------|------------|
| 1) ORANGE AID          | 76/499,870     |                      | 1          |
| 2) ALPINE MUD PRODUCTS | 76/134,145     | 2,519,739            | 35         |
| 3) ALPINE DRILL BEADS  | 76/848,288     | 2,381,633            | 1          |
| 4) AQUA-LUBE           | 76/848,099     | 2,391,693            | 1          |
| 5) CELL-U-CELL         | 76/848,098     | 2,401,995            | 1          |
| 6) BLACK FURY          | 76/848,097     | 2,401,994            | 1          |
| 7) PA-10               | 76/848,096     | 2,401,993            | 1          |
| 8) TRIPLE DRIL         | 76/848,060     | 2,401,992            | 1          |
| 9) SACK BLACK          | 76/848059      | 2,401,991            | 1          |
| 10) STABIL-IZIT        | 76/848,056     | 2,400,016            | 1          |
| 11) QUICK SLIDE        | 76/847,410     | 2,391,688            | 1          |

**PATENT APPLICATIONS:**

| Title:                                                                | Serial No.: | Filing Date:  | Status: |
|-----------------------------------------------------------------------|-------------|---------------|---------|
| 1) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING TALC AND CARRIER | 10/090,201  | March 5, 2002 | Pending |

|                                                                                 |            |                |         |
|---------------------------------------------------------------------------------|------------|----------------|---------|
| 2) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC AND CARRIER                | 10/196,265 | July 27, 2002  | Pending |
| 3) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING TALC AND CELLULOSE         | 10/196,264 | July 17, 2002  | Pending |
| 4) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC AND CELLULOSE              | 10/196,266 | July 27, 2002  | Pending |
| 5) POLYMER DRILLING BEAD<br>RECOVERY SYSTEM AND RELATED METHODS                 | 10/361,169 | Feb. 10, 2003  | Pending |
| 6) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING TALC, GRAPHITE AND CARRIER | TBA        | Sept. 23, 2003 | Pending |
| 7) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC, GRAPHITE AND CARRIER      | TBA        | Sept. 23, 2003 | Pending |
| 8) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING GRAPHITE AND CARRIER       | TBA        | Sept. 23, 2003 | Pending |
| 9) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING GRAPHITE AND CARRIER            | TBA        | Sept. 23, 2003 | Pending |

**INTERNATIONAL PATENT APPLICATIONS:**

| Title:                                                                | Country:  |
|-----------------------------------------------------------------------|-----------|
| 1) WATER-BASED DRILLING FLUID ADDITIVE<br>CONTAINING TALC AND CARRIER | Canada    |
| 2) WATER-BASED DRILLING FLUID ADDITIVE<br>CONTAINING TALC AND CARRIER | Venezuela |
| 3) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC AND CARRIER      | Canada    |
| 4) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC AND CARRIER      | Venezuela |

**PATENT APPLICATIONS:**

| Title:                                                                                              | Serial No.: | Filing Date:   | Status: |
|-----------------------------------------------------------------------------------------------------|-------------|----------------|---------|
| 1) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING TALC AND CARRIER<br>(QUICK SLIDE)              | 10/090,201  | March 5, 2002  | Pending |
| 2) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC AND CARRIER<br>(QUICK SLIDE SYSTEM)            | 10/196,265  | July 27, 2002  | Pending |
| 3) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING TALC AND CELLULOSE                             | 10/196,264  | July 17, 2002  | Pending |
| 4) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC AND CELLULOSE                                  | 10/196,266  | July 27, 2002  | Pending |
| 5) POLYMER DRILLING BEAD<br>RECOVERY SYSTEM AND RELATED METHODS                                     | 10/361,169  | Feb. 10, 2003  | Pending |
| 6) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING TALC, GRAPHITE AND CARRIER<br>(BLACK FURY 1)   | TBA         | Sept. 23, 2003 | Pending |
| 7) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING TALC, GRAPHITE AND CARRIER<br>(BLACK FURY 1 SYSTEM) | TBA         | Sept. 23, 2003 | Pending |
| 8) WATER-BASED DRILLING<br>FLUID ADDITIVE CONTAINING GRAPHITE AND CARRIER<br>(BLACK FURY 2)         | TBA         | Sept. 23, 2003 | Pending |
| 9) DRILLING FLUID ADDITIVE<br>SYSTEM CONTAINING GRAPHITE AND CARRIER<br>(BLACK FURY 2 SYSTEM)       | TBA         | Sept. 23, 2003 | Pending |