

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

ASSIGNMENT

CONVEYING PARTY DATA

Name	Execution Date
PERFORMIX TECHNOLOGIES, LTD.	04/02/2007
101 TIDEWATER PROPERTIES, LLC	04/02/2007
8151 RANGER PROPERTIES, LLC	04/02/2007

RECEIVING PARTY DATA

Name:	HARSCO CORPORATION
Street Address:	350 POPLAR CHURCH ROAD
City:	CAMP HILL
State/Country:	PENNSYLVANIA
Postal Code:	17011

PROPERTY NUMBERS Total: 2

Property Type	Number
Patent Number:	5397379
Patent Number:	6174347

CORRESPONDENCE DATA

Fax Number: (412)566-6099

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: 412/566-1253

Email: djenkins@eckertseamans.com

Correspondent Name: David C. Jenkins

Address Line 1: 600 Grant Street, 44th Floor

Address Line 4: Pittsburgh, PENNSYLVANIA 15219

ATTORNEY DOCKET NUMBER:

282660-00357

NAME OF SUBMITTER:

David C. Jenkins

Total Attachments: 46

PATENT

500271387

REEL: 019254 FRAME: 0022

OP \$80.00 5397379

EXECUTION COPY

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement (this "Agreement") is dated this ___ day of April, 2007 among HARSCO CORPORATION ("Buyer") and PERFORMIX TECHNOLOGIES, LTD., an Ohio limited liability company ("Performix"), 101 TIDEWATER PROPERTIES, LLC, an Ohio limited liability company ("Tidewater"), and 8151 RANGER PROPERTIES, LLC, an Indiana limited liability company ("Ranger") (Performix, Tidewater, and Ranger shall be referred to herein collectively as "Seller").

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase Agreement dated April 2, 2007 (the "Purchase Agreement"); and

WHEREAS, in accordance with the terms of the Purchase Agreement, the parties desire to enter into this Agreement providing for the assignment by Seller to Buyer of all of its right, title and interest in, to and under all of the Intellectual Property (all capitalized terms used herein but not defined herein shall have the meanings provided for in the Purchase Agreement);

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Seller does hereby sell, assign, transfer, convey and deliver to Buyer and its successors and assigns forever all of its right title and interest throughout the world in, under and to all of the Intellectual Property, free and clear of all Encumbrances, and any all rights thereunder or in respect thereof in all countries where Seller has rights therein. The Intellectual Property includes, but is not limited to, all of Seller's right, title and interest in and to (a) all inventions and invention rights covered thereby and all common law rights associated therewith, (b) all rights to sue for and remedies and damages against past, present and future infringements thereof, (c) all rights of priority and protection of interest therein under the laws of any applicable jurisdiction and (d) all tangible embodiments thereof, in each case to the extent relating to the Intellectual Property, to be held and enjoyed by Buyer, its successors and assigns or their legal representatives. The parties acknowledge and agree that the trademarks are being transferred together with the goodwill symbolized thereby.

2. Each of the parties hereto shall execute and deliver, or cause to be executed and delivered, to the other party such additional instruments, assignments, documents, conveyances or assurances, in form and substance reasonably satisfactory to Buyer, as shall be reasonably requested by Buyer, and take such other action as shall be reasonably necessary to confirm and consummate more effectively the transactions contemplated hereby.

3. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to application of choice of law principles.

4. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of such counterparts shall together constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Intellectual Property Assignment Agreement to be executed and delivered, on the day and year first above written.

SELLER:

PERFORMIX TECHNOLOGIES, LTD.

By RH Bauer
Name: RH BAUER
Title: SEC., Manager & Member

101 TIDEWATER PROPERTIES, LLC

By RH Bauer
Name: RH BAUER
Title: Managing Member

1851 RANGER PROPERTIES, LLC

By RH Bauer
Name: RH BAUER
Title: Managing Member

BUYER:

HARSCO CORPORATION

By _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Intellectual Property Assignment Agreement to be executed and delivered, on the day and year first above written.

SELLER:

PERFORMIX TECHNOLOGIES, LTD.

By _____
Name:
Title:

101 TIDEWATER PROPERTIES, LLC

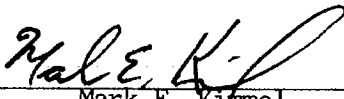
By _____
Name:
Title:

1851 RANGER PROPERTIES, LLC

By _____
Name:
Title:

BUYER:

HARSCO CORPORATION

By  _____
Name: Mark E. Kimmel
Title: General Counsel and Corporate Secretary

Schedule 2.1(m)

[Intellectual Property]

Please see attached:

1. Patent Number 5,397,379 - Process and Additive for the Ladle Refining of Steel
2. Patent Number 6,174,347 B1 - Basic Tundish Flux Composition for Steelmaking
3. List of Registrations for the Mark "PERFORMIX"
4. Correspondence with Attorney Greive dated April 26, 2006
5. Correspondence with Attorney Greive dated May 17, 2006 w/enclosures
6. Correspondence with Attorney Greive dated September 26, 2006 w/enclosures
7. 14 licenses for Windows XP Professional 32 bit version
8. 1 license for AutoCAD 2000i
9. 1 license for Xandros Linux Server
10. 1 20 user license for Macola which includes btrieve SQL, a 5 user license for Crystal Reports for Macola Software, and F9 The Financial Reporter
11. 2 licenses for Microsoft Windows NT Server 4.0
12. 5 licenses for Microsoft Windows 98
13. 1 license for Microsoft Millennium Edition
14. 1 license for Microsoft Windows 2000 Server
15. 4 licenses for Microsoft Windows 2000 Professional
16. 1 25 user license for Webroot Spy Sweeper Enterprise Edition
17. 1 license for Microsoft Proxy Server
18. 1 25 user license for Symantec Antivirus Enterprise Edition version 10
19. 1 license for Microsoft Visual Basic 6.0 Professional Edition
20. 2 5 user licenses for FAXServe for Windows NT
21. 1 license for Microsoft Visual Basic 6.0 Professional Edition
22. 6 licenses for Intersolve ODBC drivers for btrieve
23. 1 license for Visio Professional
24. 1 license for Microsoft Front Page 98
25. 1 license for Microsoft Exchange Server version 5.5
26. 3 licenses for Microsoft Windows NT 4.0 Workstation
27. 1 license for Microsoft Windows NT 4.0 Terminal Server
28. 2 licenses for Microsoft Windows XP Professional 64 bit version
29. 16 licenses for Microsoft Office 97
30. 1 license for Spy Sweeper Single User
31. 1 license for each of two different versions of Brightstor ARCServe Backup.
32. 1 Windows 2000 five user terminal services license

EXECUTION COPY

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made effective as of April 2, 2007 among **PERFORMIX TECHNOLOGIES, LTD.**, an Ohio limited liability company (hereinafter called the "**Vendor**"), **101 TIDEWATER PROPERTIES, LLC**, an Ohio limited liability company (hereinafter called "**Tidewater**"), **8151 RANGER PROPERTIES, LLC**, an Indiana limited liability company (hereinafter called "**Ranger**") (Vendor, Tidewater, and Ranger are hereinafter also referred to individually and collectively as the context requires as "**Seller**" or "**Sellers**") and **Harsco Corporation** or its nominee (hereinafter called the "**Purchaser**").

RECITALS

A. The Vendor carries on the business of preparing and selling metallurgical treatment materials at a plant owned by Ranger located in Kingsford Heights, Indiana and a plant owned by Tidewater located in Warren, Ohio; and

B. The Purchaser wishes to purchase from the Sellers and the Sellers wish to sell to the Purchaser, the Purchased Assets and the Real Property (each as defined below), upon the terms and subject to the conditions herein contained.

AGREEMENT

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of these presents, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and promise and agree with each other as follows:

ARTICLE I
DEFINITIONS

1.1 In this Agreement and in any amending or supplemental agreement hereto, unless the subject matter or context is inconsistent therewith, the following words and phrases shall have the meanings set forth below:

a. "**Accounts Receivable**" means accounts receivable, notes receivable, rights to receive payments, and other debts due or accruing due to Sellers generated by the Business and relating to work performed prior to the Time of Closing and any actions or proceedings which have been or which hereinafter are commenced in connection therewith;

b. "**Agreement**", "**this Agreement**", "**hereto**", "**herein**", "**hereof**", "**hereby**", "**hereunder**" and similar expressions refer to this Agreement as amended from time to time;

c. "**Assumed Liabilities**" shall have the meaning attributed hereto in Section 2.3 hereof;

d. "**Benefit Plans**" means the employee benefit plans as more fully described in Schedule 1.1(d) attached hereto;

o. **"Equipment"** means any and all equipment owned or beneficially owned by the Sellers and used in the Business, including, without limitation, the equipment set out in **Schedule 1.1(o)**;

p. **"Equipment Leases"** means any and all leases for equipment used in the Business by the Sellers, including, without limitation, the leases for equipment set out in **Schedule 1.1(p)**;

q. **"Final Adjustment"** shall have the meaning with respect to the Purchase Price as attributed hereto in **Section 3.3(c)** hereof;

r. **"Financial Statements"** means the (i) Vendor's audited balance sheets, statements of income and cash flows, together with the respective footnotes thereto, dated as of October 31, 2005 and October 31, 2006, and (ii) the unaudited interim balance sheet and statement of income of the Business for the period of November 1, 2006 through February 28, 2007, copies of which are attached as **Schedule 1.1(r)**;

s. **"GAAP"** means at any time, generally accepted accounting principles in the United States at such time.

t. **"Governmental Entity"** means: (i) any multinational, federal, state, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board, or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

u. **"Hazardous Substance"** means: (i) any flammable explosives; (ii) radioactive materials; (iii) substances included within the definitions of "hazardous substances", "hazardous materials", or "toxic substances" in the Environmental Laws or any regulations or rules promulgated pursuant to the Environmental Laws, all as enforced by authorities of competent jurisdiction as at the Time of Closing; (iv) asbestos; (v) polychlorinated biphenyls, (vi) radon and (vii) gasoline, waste oil and other petroleum products;

v. **"Independent Accountant"** shall have the meaning attributed hereto in **Section 3.3(d)** hereof;

w. **"Laws"** means all statutes, codes, ordinances, decrees, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, policies, voluntary restraints, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity; and "Law" means any one of them;

x. **"Leased Equipment"** means any and all equipment used in relation to the Business that is leased or subleased pursuant to the Equipment Leases;

y. **"License"** means any and all permits, licenses, certificates, approvals or

authorizations required under applicable Environmental Laws;

z. **"Loss"** means any and all losses whatsoever, including expenses, costs, damages, penalties, judgments, fines, charges, claims, demands, liabilities, interest and any and all legal fees and disbursements reasonably incurred in connection therewith;

aa. **"Material Adverse Effect"** means any state of facts, change, occurrence or development that (i) directly or indirectly prevents or materially impairs or delays the ability of any Seller to perform its obligations hereunder or (ii) has a material and adverse effect on the business, assets, liabilities, properties, operations, condition (financial or otherwise) or results of operations of the Purchased Assets and Real Property or the Business taken as a whole, but excludes any effect (a) resulting from general economic conditions (whether as a result of acts of terrorism, war, armed conflicts or otherwise) and (b) impacting companies in the industry in which the Business is conducted generally.

bb. **"Natural Environment"** means the air, land, subsoil, surface water and ground water, or any combination or part thereof in any jurisdiction in which the Sellers carry on business;

cc. **"Other Agreements"** shall have the meaning attributed hereto in Section 2.1(o), and shall include, but not be limited to, the other agreements set out in Schedule 2.1(o) hereof;

dd. **"Permitted Encumbrances"** means (a) Encumbrances for Taxes, assessments and other charges of Governmental Entities not yet payable or being contested in good faith by appropriate proceedings, (b) Encumbrances in respect of property or assets imposed by Law that were incurred in the ordinary course of business, such as carriers', warehousemen's, materialmen's and mechanics' liens and other similar liens, if the underlying obligations are not delinquent, (c) pledges or deposits made in the ordinary course of business to secure obligations under workers' compensation laws or similar legislation, (d) any matter that would be revealed by a current, accurate survey of real property and (e) any easements, restrictions, covenants or similar matters of record relating to real property; provided, that none of the foregoing described in clauses (d) and (e) above do or will, individually or in the aggregate, materially impair the value or use, occupancy and operation of the property to which they relate in the Business as presently conducted or the maintenance, existence, and use of any building or improvement on such property.

ee. **"Permits"** shall have the meaning attributed hereto in Section 2.1(h), including, but not limited to, the licenses, rights, and permits set out in Schedule 1.1(ee) hereof;

ff. **"Person"** includes an individual, partnership, limited liability company, corporation, trust or unincorporated organization, a Governmental Entity or political subdivision thereof, a regulatory body or agency or any combination of the foregoing;

gg. **"Purchase Price"** shall have the meaning attributed thereto in Section 3.1;

hh. **"Purchased Assets"** means the undertaking and assets used to conduct the Business, which are to be sold by the Sellers to the Purchaser pursuant to Section 2.1 hereof;

ii. **"Real Property"** means all the real property, the legal, of record and beneficial ownership of which is held by Tidewater and Ranger and used by Vendor in relation to the Business, which property is as described in Schedule 1.1(ii);

jj. **"Release"** means, without limitation, to deposit, leak, emit, add, spray, inject, inoculate, abandon, spill, seep, pour, empty, throw, dump, place and exhaust, and when used as a noun has a similar meaning;

kk. **"Retained Liabilities"** shall have the meaning attributed hereto in Section 2.5 hereof;

ll. **"Settlement Date"** shall have the meaning attributed hereto in Section 3.3(e) hereof;

mm. **"Supply Contracts"** shall have the meaning attributed hereto in Section 2.1(k), copies of which are more particularly set out in Schedule 2.1(k);

nn. **"Tax"** means all Federal, state, foreign or other governmental taxes, assessments, duties, fees, levies or similar charges of any kind, including all income, profit, franchise, excise, property (including real property), use, intangibles, sales, payroll, employment, withholding and other taxes, and including all interest and penalties imposed with respect to such amounts.

oo. **"Tax Return"** means any return, report, form or other information filed with any taxing authority with respect to Taxes.

pp. **"Time of Closing"** means 12:01 a.m. on the Closing Date;

qq. **"Transferred Employees"** shall have the meaning attributed hereto in Section 5.1(a) hereof;

rr. **"Vacation Accrual"** shall have the meaning attributed hereto in Section 2.3(c) hereof.

1.2 **Best of Knowledge.** Any reference herein to "the best of the knowledge" of a Seller will mean the actual knowledge of that Seller and the knowledge which it would have had if it had conducted a reasonably diligent inquiry into the relevant subject matter of all relevant officers, managers, and members of that Seller and on-site managers for each facility of the Business.

1.3 **Currency of Funds.** Unless otherwise indicated all dollar amounts referred to in this Agreement are in United States funds.

1.4 **Interpretation Not Affected By Headings or Party Drafting.** The division of this Agreement into articles, sections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer to this Agreement and the schedules hereto and not to any particular article, section,

paragraph, subparagraph, clause or other portion hereof and include any agreement or instrument supplementary or ancillary hereto. Each party hereto acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement.

1.5 Number and Gender. Words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.6 Calculation of Time. When calculating the period of time within or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next Business Day.

1.7 Schedules. The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be part hereof:

Schedule 1.1(d)	Benefit Plans
Schedule 1.1(o)	Equipment
Schedule 1.1(p)	Equipment Leases
Schedule 1.1(r)	Financial Statements
Schedule 1.1(ee)	Licenses, Rights, and Permits
Schedule 1.1(ii)	Real Property
Schedule 2.1(e)	Consignment Finished Goods Inventory
Schedule 2.1(k)	Supply Contracts
Schedule 2.1(l)	Contracts
Schedule 2.1(m)	Intellectual Property
Schedule 2.1(o)	Other Agreements
Schedule 2.2	Excluded Assets
Schedule 3.3(c)	Net Working Capital Calculation
Schedule 3.4	Allocation of Purchase Price
Schedule 4.1(a)(3)	Tax Matters
Schedule 4.1(a)(5)	Violations of Laws and Permits; Investigations
Schedule 4.1(a)(9)	Material Changes
Schedule 4.1(a)(11)	Agreements with Affiliates
Schedule 4.1(b)(1)	Encumbrances
Schedule 4.1(b)(5)	Real Property Leases
Schedule 4.1(b)(8)	Notices of Intent to Terminate Contracts
Schedule 4.1(b)(11)	Environmental Matters
Schedule 4.1(b)(12)	Violations of Licenses, Rights and Permits
Schedule 4.1(c)(1)	Litigation
Schedule 4.1(d)(1)	Employee Matters
Schedule 4.1(d)(2)	Collective Bargaining
Schedule 4.1(f)(1)	Top Ten Customers and Suppliers
Schedule 4.1(f)(2)	Customers and Suppliers Refusing to Do Business
Schedule 4.1(g)(4)	Broker Fees
Schedule 7.2(e)	Form of Non-Competition Agreement
Schedule 7.2(g)	Form of Deeds

ARTICLE 2

2.1 **Purchased Assets.** Subject to the terms and conditions hereof, the Sellers hereby agree to sell, assign, transfer and convey and deliver to the Purchaser or Purchaser's nominee as of the Closing Date, and the Purchaser hereby agrees to purchase from the Sellers as of the Closing Date, free and clear of Encumbrances, all legal and beneficial right, title and interest in, to and under the property, assets and undertakings (other than the property and assets described in Section 2.2 and other than as set forth on **Schedule 4.1(b)(1)** owned by Sellers and used or useful in the operation of the Business, including, without limiting the generality of the foregoing:

a. **Machinery, Equipment and Furniture:** all machinery, equipment, computer equipment (including any and all computer hardware, equipment and peripherals of any kind and of any platform and any and all computer programs, including operating systems and application software), tools, parts, furniture, furnishings, fixtures and other miscellaneous items used in or relating to the Business including, without limitation, all those listed in **Schedule 1.1(o)** attached hereto;

b. **Leased Equipment and Vehicles:** all right, title and interest of the Sellers in and under leases of equipment and vehicles used in or relating to the Business including, without limitation, all leases and other agreements listed in **Schedule 1.1(p)** attached hereto;

c. **Prepaid Expenses:** all prepaid expenses which are usable and consumable in the ordinary course of the Business relating to the Equipment, Leased Equipment and spare parts thereto of the Business as of the Time of Closing, except for all prepaid insurance expenses;

d. **Warranty Rights and Maintenance Contracts:** all rights of Sellers and the full benefit of all warranties and warranty rights (express and implied) against manufacturers or sellers which apply to any of the Purchased Assets and all maintenance contracts on machinery, equipment, and the other Purchased Assets; *provided, however*, that the parties hereto acknowledge that obtaining necessary consents may be required;

e. **Inventories:** all raw materials, work-in-progress, and finished goods which are used or held for use or sale by Sellers in the operation of the Business as of the Time of Closing, including, without limitation, consignment finished goods inventory at the customer sites listed on **Schedule 2.1(e)**;

f. **Business Records:** except as otherwise required to operate the Sellers' business after the Closing, all books, records, files (including personnel files, workers' compensation claim files and other employee books and records pertaining to Transferred Employees) and documents relating to the Business, including without limitation, books of account, ledgers, journals, sales and purchase records, lists of supplies, credit information, cost and pricing information, invoices, business reports, plans and projections and all other correspondence, data and information, financial or otherwise, in any format and media whatsoever, related to the Business:

g. **Goodwill:** all customer and supplier lists, files, data and information relating

to past and current customers and suppliers and prospective customers and suppliers of the Business as of the Time of Closing, the goodwill of the Business, together with the exclusive right of the Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Vendor;

h. **Licenses, Rights and Permits:** to the extent transferable, all licenses, permits, approvals, authorizations and other rights and privileges owned or held by the Sellers in relation to the Business and the Real Property, including, without limitation, those described in **Schedule 1.1(ee)**;

i. **Regulatory Licenses:** all licenses, registrations and qualifications of the Business required by any governmental or regulatory authority, to the extent transferable, including, without limitation, those described in **Schedule 1.1(ee)**;

j. **Insurance Benefits:** any benefits payable under all insurance policies relating to the Business or the other Purchased Assets in respect of claims based on occurrences prior to the Time of Closing;

k. **Supply Contracts:** the full benefit of all contracts providing for the supply of raw materials, goods and services to the Business which are referred to in **Schedule 2.1(k)**; *provided, however,* that the parties hereto acknowledge that obtaining necessary consents may be required;

l. **Contracts:** all right, title and interest of the Sellers in, to and under, and the full benefit of the customer contracts, all other revenue generating contracts, and all agreements of or pertaining to the Business to which a Seller is party, whether oral or written, including, without limitation, those set out in **Schedule 2.1(l)** attached hereto; *provided, however,* that the parties hereto acknowledge that obtaining necessary consents may be required;

m. **Intellectual Property:** except as otherwise listed in **Schedule 2.2**, all right, title, interest and benefit of Sellers in and to all patents, copyrights, registered and unregistered trademarks, trade names, logos, commercial symbols, industrial designs (including applications for all of the foregoing and renewals, divisions, extensions and re-issues, where applicable, relating thereto), inventions, licenses, trade secrets, patterns, drawings, computer software, formulae, technical information, concepts, methods, procedures, designs, service-marks, and all other intellectual or industrial property relating to the Business or the Purchased Assets, including without limitation the property listed in **Schedule 2.1(m)** ("Intellectual Property");

n. **Intellectual Property Claims:** the patent claim against North Star Bluescope Steel LLC with regard to Sellers' Intellectual Property as evidenced by the complaint filed by Sellers in the United States District Court for the Northern District of Ohio Eastern Division, including all causes of action, rights of recovery and rights of setoff of every type and kind relating to such Intellectual Property, in each case whether accruing before or after the Closing Date; and

o. **Other Agreements:** to the extent assignable, all of each Seller's right, title and interest to and under all contracts and agreements (written or oral) relating directly or indirectly to the Business as required for the operation of the Business, subject to the Purchaser's review and written acceptance of such contracts and agreements prior to the Closing Date including without

limitation those listed in Schedule 2.1(o) (the "Other Agreements"), and subject, in the case of Sellers' written and verbal arrangements with its sales representatives other than those sales representatives who are party to the sales representative agreements set forth in sections 4 and 5 of Schedule 2.1(o), to (i) Purchaser only purchasing (and assuming the right, title and interest in, to and under) the written and verbal arrangements with the sales representatives named on Exhibit A hereto and only to the extent of the commissions listed on Exhibit A hereto and (ii) such written and verbal arrangements conforming to the terms and conditions set forth in the form Sales Representative Agreement attached hereto as Exhibit B.

All of which property and assets are herein collectively referred to as the "**Purchased Assets**".

2.1.1 **Real Property.** In addition to the Purchased Assets, Tidewater and Ranger agree to sell, assign, transfer and convey to the Purchaser or Purchaser's nominee as of the Closing Date, and the Purchaser hereby agrees to purchase from Tidewater and Ranger as of the Closing Date, good and marketable fee simple title, free of Encumbrances, to the Real Property, including the entire estate held by any Seller in all oil, gas and other minerals thereon or thereunder, together with all buildings, improvements, fixtures, structures, facilities thereon and all appurtenances thereto owned by Tidewater and Ranger and located in Ohio and Indiana, respectively, as such Real Property is more fully described in Schedule 1.1(ii) hereto.

2.2 **Excluded Assets.** There shall be specifically excluded from the Purchased Assets the property and assets of the Sellers described in Schedule 2.2 (the "**Excluded Assets**").

2.3 **Assumed Liabilities.** Subject to the terms and conditions hereof, the Purchaser shall assume the following obligations of the Sellers pertaining to the Business upon Closing ("**Assumed Liabilities**"):

a. all obligations and liabilities relating to or based on events or conditions occurring or existing after the Closing Date under the Equipment Leases, the Supply Contracts, the Other Agreements, and all Contracts to be assigned to the Purchaser as at the Time of Closing subject, in the case of Sellers' written and verbal arrangements with its sales representatives other than those sales representatives who are party to the sales representative agreements set forth in sections 4 and 5 of Schedule 2.1(o), to (i) Purchaser only assuming the obligations with respect to the written and verbal arrangements with the sales representatives named on Exhibit A hereto and only to the extent of the commissions listed on Exhibit A hereto and (ii) such written and verbal arrangements conforming to the terms and conditions set forth in the form Sales Representative Agreement attached hereto as Exhibit B;

b. third party trade payables of the Business as at the Time of Closing and reflected on the Closing Balance Sheet;

c. all of Vendor's obligations under its vacation plans relating to the Transferred Employees, including Vendor's liability for vacation pay and benefits, as at the Time of Closing (the "**Vacation Accrual**") and Vendor's obligations under other ordinary business accruals but only to the extent set forth on the Closing Balance Sheet;

d. all property taxes with respect to the Real Property accrued but not paid as of

the Time of Closing, excluding any delinquent property taxes; and

e. all unpaid accruals relating to the operation of the Business by Sellers in the normal course prior to the Time of Closing as reflected on the Closing Balance Sheet.

2.4 Benefit Plan Assets and Liabilities. Except for the Vacation Accrual, Purchaser is not assuming any obligations, liabilities or assets arising under any Benefit Plans, including those relating to employees that are not Transferred Employees, and Sellers shall remain responsible for any such obligations and liabilities and the owner of such assets.

2.5 Retained Liabilities and Indemnity. The Purchaser will not assume and will not be responsible or liable for, and the Sellers will retain and indemnify, defend and save harmless the Purchaser, its affiliates, and its and their officers, directors, members, managers, employees, agents and shareholders from and against, all obligations, commitments, expenses, costs and liabilities of and claims against the Sellers (whether absolute, accrued or contingent) relating to the conduct of the Business by the Sellers, except for the Assumed Liabilities. Without limiting the generality of the foregoing, it is agreed that the Purchaser will have no liability for any of the following obligations and liabilities ("**Retained Liabilities**"):

a. all liabilities and obligations in respect of any loans made by any third party to any Seller;

b. all product liability claims and liabilities (whether or not arising from acts or omissions) for product claims arising out of, relating to or otherwise in any way in respect to any product or service of the Business produced, sold, performed, or delivered prior to the Closing Date and for any occurrences which take place prior to the Closing Date no matter when the claim is made;

c. except as otherwise set forth in Section 2.3(d) or reflected on the Closing Balance Sheet, all obligations and liabilities for all Taxes payable by a Seller to any federal, state, local or other governmental agency, authority, board, bureau, or commission, domestic or foreign.

d. except for the Vacation Accrual and balances reflected on the Closing Balance Sheet, and except as otherwise set forth in Section 5.1(b), all liabilities for salary, bonus and other compensation and all liabilities under employee benefit plans of the Sellers relating to employment of all persons in the Business prior to the Closing Date;

e. all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Sellers of the employment of any employee of the Business who does not accept the Purchaser's offer of employment and in respect of any employee of the Business who is not offered employment by the Purchaser;

f. all liabilities for claims for injury, accident, disability, death or workers' compensation arising from or related to employment in the Business prior to the Closing Date;

g. all liabilities which existed or arose prior to the Closing Date or arise after the Closing Date as a result of a condition or event which occurred prior to the Closing Date due to

contamination of the Real Property, any super fund liability, or any non-compliance with any Environmental Law;

h. all obligations and liabilities of the Sellers to the extent arising out of, relating to or otherwise in any way in respect of the Excluded Assets;

i. all obligations and liabilities of the Sellers relating to or based on events or conditions occurring or existing prior to the Closing Date in connection with, or arising out of the Contracts, the Equipment Leases, the Supply Contracts and the Other Agreements included in the Purchased Assets, except to the extent such obligations or liabilities are assumed by the Purchaser pursuant to Section 2.3 and reflected on the Closing Balance Sheet;

j. all obligations and liabilities of the Sellers relating to or based on events or conditions occurring or existing on or after the Closing Date in connection with, or arising out of Sellers' verbal or written contracts, agreements or arrangements with its sales representatives, except to the extent such obligations or liabilities are assumed by the Purchaser pursuant to Section 2.3(a) and reflected on the Closing Balance Sheet.

k. all obligations and liabilities in respect of lawsuits, actions and proceedings arising out of, relating to or otherwise in any way in respect of the Business or the operation of the Purchased Assets prior to the Closing Date, including any preference claims; and

l. all other obligations and liabilities of the Business which arose prior to the closing unless shown on the Closing Balance Sheet and specifically assumed by the Purchaser under this Agreement.

2.6 Payment of Taxes. The Purchaser shall be liable for and shall pay all applicable Taxes and all other taxes (other than income taxes of the Sellers), duties and other like charges properly payable upon and in connection with the conveyance and transfer of the Purchased Assets and Real Property to the Purchaser, other than real property conveyance fees and any other transfer taxes or conveyance fees relating to real property, which will be paid or shared by Purchaser and/or Sellers pursuant to local custom where such Real Property is located. The Sellers will do and cause to be done such things as are reasonably requested to enable the Purchaser to comply with such obligation in an efficient manner.

2.7 Sales Tax Clearance. Each Seller hereby represents and warrants to the Purchaser that all sales taxes and related interest and penalties in respect of the Business or the Purchased Assets have been fully paid or will be paid when due in the normal course.

ARTICLE 3

PURCHASE PRICE, ALLOCATION AND ADJUSTMENTS

3.1 Purchase Price. Subject to the adjustments provided for in this Agreement pursuant to Section 3.3, the Purchase Price payable by the Purchaser to the Sellers for the Purchased Assets (the "**Purchase Price**") shall be the sum of FIFTEEN MILLION SIXTY NINE THOUSAND FOUR HUNDRED SEVENTY TWO DOLLARS (\$15,069,472).

3.2 Payment. The Purchase Price shall be paid by the Purchaser and any of Purchaser's nominees that take title to the Purchased Assets to the Sellers by wire transfer at the Closing to accounts designated in writing by the Sellers not less than two (2) Business Days prior to the Closing.

3.3 Further Adjustment.

a. Either on or immediately before the Closing Date, the Vendor shall conduct a physical inventory. Within sixty (60) days after the physical inventory the Purchaser shall prepare and present to the Vendor a balance sheet of the Business as of the Time of Closing on the Closing Date (the "**Closing Balance Sheet**") setting forth the financial condition of the Business, which Closing Balance Sheet shall be prepared in a manner consistent with GAAP, the Financial Statements and the calculations contained in Schedule 3.3(c). Purchaser may, at its sole cost and expense, have their accountants or other representatives observe such physical inventory.

b. The parties shall give each other's accountants or representatives such assistance and access to the assets, books, records and employees of the Business as such accountants may reasonably request in order to enable the Purchaser to prepare the Closing Balance Sheet and the Sellers and their respective accountants or representatives to review the Closing Balance Sheet.

c. Within ninety (90) days after the physical inventory, the Sellers and Purchaser shall, based upon the Closing Balance Sheet, determine the adjustment, if any, to the Purchase Price, which adjustment shall be a reduction or increase, dollar for dollar, of the Purchase Price, in the event that the net working capital of the Business is less than or greater than the negative sum of **ONE MILLION TWO HUNDRED TWO THOUSAND EIGHT HUNDRED FORTY-SIX DOLLARS** (-\$1,202,846). For the purpose hereof, the term "net working capital" shall be equal to inventory, and prepaid expenses less accounts payable, employee-related accruals (including the Vacation Accrual) and other accruals (without regard to adjustments between LIFO and FIFO accounting), and accrued property taxes relating to the Real Property, calculated in a manner equivalent to the calculations contained in Schedule 3.3(c).

d. If Sellers and Purchaser cannot reach agreement as to the amount of any such adjustment to the Purchase Price as contemplated in Section 3.3(c) above within ninety (90) days after the physical inventory, the matters in disagreement shall be forthwith submitted to Meaden & Moore (the "**Independent Accountant**"), which shall conduct such additional review as is necessary to resolve the matters in disagreement referred to it and, based thereon, shall determine the adjustment in dispute as promptly as practicable but in no event later than 30 days following the Independent Accountant's appointment. The Independent Accountant's determination of the adjustment in dispute shall be confirmed by the Independent Accountant in writing to, and shall be final and binding on Sellers and Purchaser. The fees of and expenses incurred by the Independent Accountant shall be shared equally by Vendor and Purchaser and paid by each of them directly to the Independent Accountant.

e. Upon the Sellers and the Purchaser agreeing on the adjustment to the Purchase Price or upon the execution of the written confirmation of the Independent Accountant in Section 3.3(d) above (the "**Final Adjustment**"), the Final Adjustment amount will be paid within 140 days after the physical inventory (the "**Settlement Date**"), as follows:

(1) in the event of an increase in the Purchase Price, the Purchaser shall pay to the Sellers by certified check the amount of the Final Adjustment; or

(2) in the event of a decrease in the Purchase Price, the Sellers shall pay to the Purchaser by certified check the amount of the Final Adjustment.

f. The total amount paid by the Purchaser after taking into account the Final Adjustment shall be the Purchase Price.

3.4 Allocation. The Sellers and the Purchaser covenant to agree upon the allocation of the Purchase Price among the Purchased Assets and Real Property which allocation shall be set out in Schedule 3.4 and which allocation is subject to adjustment as agreed upon by the parties hereto pursuant to any adjustments under Section 3.3. Any such allocation shall be in accordance with the respective fair market values of the Purchased Assets and the Real Property and in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder. No party hereto shall take, nor permit any affiliate to take, for federal, state, local or foreign Tax purposes, any position inconsistent with the allocation set forth on Schedule 3.4, as adjusted under Section 3.3.

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ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Sellers. To induce the Purchaser to enter into this Agreement and to consummate the transaction of purchase and sale herein contemplated, the Sellers hereby jointly and severally expressly represent and warrant to the Purchaser as follows and hereby acknowledge and confirm that the Purchaser is relying on such express representations and warranties in connection with the purchase by it of the Purchased Assets:

a. as to the Sellers.

(1) each Seller is a limited liability company duly formed, validly existing, and in good standing and full force and effect under the laws of the state of its formation with full corporate capacity, power and authority (A) to own, lease and operate the Purchased Assets owned, leased, or operated by it, (B) to carry on the Business as heretofore conducted by it, (C) to execute and deliver this Agreement, and all other agreements, documents and instruments to be executed and delivered pursuant hereto, (D) to sell, assign, transfer, convey and deliver the Purchased Assets or Real Property owned or controlled by it to the Purchaser as herein contemplated, and (E) to otherwise observe, perform, satisfy and carry out its obligations hereunder. Except as otherwise provided herein, each Seller is duly authorized, qualified, permitted, and licensed under all applicable Laws to carry on the Business at the locations and in the manner in which such Business is now being conducted by it;

(2) the execution and delivery of this Agreement and all other agreements, documents and instruments to be executed and delivered by each Seller pursuant hereto or in connection with the completion of the transaction contemplated herein will have been duly

authorized and approved by all necessary action of the members of such Seller on or prior to the Closing Date and by any other necessary corporate action on the part of such Seller to comply with applicable law and when so executed and delivered will constitute the legal, valid and binding obligations of such Seller enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, and except that the availability of the remedy of specific performance or other equitable relief is subject to the discretion of the court before which any proceeding therefor may be brought:

(3) Sellers have each filed or caused to be filed on a timely basis all Tax Returns that are or were required to be filed pursuant to applicable Laws. All Tax Returns filed by Sellers are true, correct and complete in all material respects. Sellers have paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Sellers, except such Taxes, if any, as are listed in Schedule 4.1(a)(3) and are being contested in good faith. No Seller is currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made or is expected to be made by any Governmental Entity in a jurisdiction where Sellers do not file Tax Returns that any Seller is or may be subject to taxation by that jurisdiction. Other than delinquent real property taxes, if any, to be paid by Sellers to the Closing Escrow Agent for payment to the appropriate taxing authority, there are no Encumbrances on any of the Purchased Assets or Real Property that arose in connection with any failure (or alleged failure) to pay any Tax or any other tax, including real property tax, and Sellers have no knowledge of any basis for assertion of any claims attributable to taxes which, if adversely determined, would result in any such Encumbrance;

(4) No Conflicts.

(A) The execution and delivery of this Agreement and the other documents executed as of the date hereof by each Seller that is a party hereto or thereto does not, and the execution and delivery by each Seller of the other documents to be executed by such Seller at the Closing, the consummation by Sellers of the transactions contemplated hereby and thereby and the compliance by each Seller with the terms of this Agreement and the other documents to which such Seller is or will be a party will not, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or loss of a material benefit under, or result in the creation of any Encumbrance upon any of the Purchased Assets or the Real Property under any provision of (i) the certificates of formation or operating agreements (or comparable organizational documents) of any Seller, (ii) subject to the filings and other matters referred to in the following paragraph (B), any judgment, order, decree, or, to the best knowledge of Sellers, any law, permit, statute, ordinance, rule or regulation applicable to either Seller, the Acquired Assets, the Assumed Liabilities or the Business, or (iii) any Listed

(B) To the best knowledge of Sellers, no consent, approval, license, permit, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required to be obtained or made by any Seller with respect to the Purchased Assets, the Assumed Liabilities, or the Business in connection with the execution and delivery of this Agreement or the other documents or the consummation of the transactions contemplated hereby and thereby, *provided, however*, that the parties hereto acknowledge that obtaining necessary consents may be required for the assignment of any Contracts, Intellectual Property, or Other Agreements as contemplated in Section 2.1(f), Section 2.1(m), and Section 2.1(o) respectively.

(6) no suits, actions, or any other legal proceedings of any nature, kind or description whatsoever are pending or are threatened against any Seller which would restrain or otherwise prevent, in any manner, such Seller from effectually and legally transferring good and marketable title to the Purchased Assets and the Real Property to the Purchaser hereunder, nor are there any suits, actions or any other legal proceedings relative to any Seller or the Business, the effect of which would be to cause a lien to attach to such property or assets or to divest title to such property or assets from such Seller hereunder, pending or threatened, and in particular, and without restricting the generality of the foregoing, no Seller:

- (A) has had any petition or application for a receiving order in bankruptcy filed against it;
- (B) has filed a proposal under any applicable insolvency, bankruptcy or creditor's rights legislation or otherwise taken any proceedings with respect to a compromise or arrangement with its creditors;
- (C) has made a voluntary assignment in bankruptcy;

- (D) has taken any proceedings, nor has any person instituted proceedings, to have the Seller wound up or to have its charters canceled or its existence terminated;
- (E) has taken any proceedings, nor have any proceedings been filed or taken against it, to have a receiver appointed to all or any part of its property or assets;

which petition, application, proposal, compromise, arrangement or other proceeding is presently pending, and no execution has become enforceable against any Seller or become levied upon any of its property or assets nor has any encumbrance been placed on any of the property or assets of any Seller;

(7) no governmental or regulatory authorization, approval, order, consent or filing is required on the part of any Seller in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement or the performance of any Seller's obligations under this Agreement;

(8) Schedule 1.1(r) sets forth true and complete copies of the Financial Statements. The Financial Statements are correct and complete in all material respects, have been prepared from the books and records of the Sellers, and present fairly the results of operations and all of the assets, liabilities, and financial position of the Business for the periods then ended. The annual Financial Statements for the periods ending October 31, 2005 and October 31, 2006 were prepared in accordance with GAAP applied on a consistent basis and the interim Financial Statements include all adjustments necessary for a fair and accurate presentation consistent with the annual Financial Statements;

(9) except as otherwise set forth in Schedule 4.1(a)(9), since the date of the most recent audited balance sheet of the Business contained in Schedule 1.1(r), Sellers have conducted the Business in the ordinary course consistent with past practices and there has not been:

- (A) any material change in the financial condition, operations or prospects of the Business, the Purchased Assets or the Real Property other than changes in the ordinary and usual course of business, none of which has, individually or in the aggregate, had a Material Adverse Effect; or
- (B) any damage, destruction, loss, labor concerns or other event, development or condition of any character (whether or not covered by insurance) that, individually or in the aggregate, has had a Material Adverse Effect on the Purchased Assets, Real Property or future prospects of the Business;

(10) this Agreement and any ancillary documents pursuant hereto have been duly and validly executed and delivered by each Seller purporting to execute and deliver the same

and constitute valid and legally binding obligations of such Seller enforceable against it in accordance with the respective terms thereof, subject to the qualification that enforceability may be limited by bankruptcy, insolvency or other laws affecting the enforceability of creditors' rights generally and by general equitable principles; and

(11) no Seller is a party to any agreement, contract, understanding or arrangement with any of its officers, managers, members, or any other person or entity related to or affiliated with any of its officers, managers, or members, except for contracts described in **Schedule 4.1(a)(11)**;

b. as to the Purchased Assets and Real Property:

(1) except as otherwise set forth on **Schedule 4.1(b)(1)**, the Sellers, at the Time of Closing will be the sole unconditional owners of, and have good, valid and marketable title to, or valid leasehold interests in, all of the Purchased Assets free and clear of all Encumbrances, conditional sale or other title retention agreements, restrictions, demands, equities, Encumbrances, and rights of any Persons of every nature, kind and description whatsoever, including without limitation, rights of any Person (other than the Purchaser hereunder) to acquire any ownership interest in or right to possess or occupy any of the Purchased Assets, and the Sellers have the exclusive right and full power and authority to sell, assign, transfer, convey and deliver good and marketable title to such assets to the Purchaser as herein contemplated and will convey to Purchaser good and valid title (free and clear of any Encumbrances) to the Purchased Assets;

(2) Ranger has, and at Closing will have, good and marketable fee simple title to and is, and at Closing will be, the beneficial owner of the Real Property located in Kingsford Heights, Indiana, and Tidewater has, and at Closing will have, good and marketable fee simple title to and is, and at Closing will be, the beneficial owner of the Real Property located in Warren, Ohio. Each respectively owns, and at Closing will own, its Real Property free and clear of all Encumbrances;

(3) No condemnation or expropriation proceeding is pending or, to the best knowledge of any Seller, threatened which would preclude or materially impair the use of any Real Property or any part thereof for the purposes for which it is currently used;

(4) to the best of each Seller's knowledge, all of the Equipment and Leased Equipment used in the operation of the Business is currently in operable condition, having regard to the age and use thereof and wear and tear in the ordinary course of business of the Business;

(5) there are no leases, occupancy agreements or licenses, written or verbal, in respect to any Real Property used in the operation of the Business, other than leases between Sellers herein as set forth on **Schedule 4.1(B)(5)** hereof and which shall be unconditionally terminated at Closing by all Sellers who are parties to each such lease;

(6) each Equipment Lease is in full force and effect, no Seller is in material breach of any terms of any of the Equipment Leases applicable to it, and no Seller has received any notice of breach of any terms of any of the Equipment Leases applicable to

it;(7) all inventories will be of a quality and quantity usable or saleable in the ordinary course of the operation of the Business and are fit for their intended purpose consistent with past practices. All such inventories by Sellers are owned free and clear of all Encumbrances;

(8) the Contracts, Supply Contracts, and Other Agreements, true and complete copies of which (or, in the case of oral arrangements, brief and accurate summaries of which) have been delivered to the Purchaser, are in full force and effect and have not been modified or supplemented in any way and constitute the entire agreement between the Seller, on the one hand, and each other party thereto, on the other hand, such that there are no understandings, representations, warranties, allowances, concessions, or promises affecting the Sellers' rights or obligations thereunder except as set forth in the said agreements. Except as disclosed on Schedule 4.1(b)(8), as of the date of this Agreement, no Seller has received any notice of the intention of any party to terminate any Contract, Supply Contract or other Agreement. Sellers have made available to Purchaser true, complete and correct copies of each Contract, Supply Contract or other Agreement, including any amendments thereto. There exists no default or event of default or, to the best of any Seller's knowledge, any event, occurrence, condition or act (including the purchase of the Purchased Assets hereunder) which, with the giving of notice, lapse of time or the happening of any other event or condition, would become a material default or an event of default thereunder, except for the necessity of obtaining a consent for approval of the transactions contemplated hereunder;

(9) [Intentionally omitted.]

(10) Schedule 2.1(m) sets forth a true and complete list of all Intellectual Property used in or reasonably required for the carrying on of the Business in the manner heretofore carried on and are validly used by the Sellers as indicated in Schedule 2.1(m). Except as otherwise expressly stated in Schedule 2.1(m), the Seller purporting to sell such Intellectual Property, (i) has the right to use such Intellectual Property; (ii) is the owner of record of such Intellectual Property; and (iii) has not conveyed, assigned or encumbered any of them in any manner which would permit use in the ordinary course by any party other than such Seller. No Intellectual Property has been abandoned, canceled, or adjudicated invalid (excepting any expirations in the ordinary course) and, to the best knowledge of Sellers, all Intellectual Property is valid, subsisting, and enforceable.. No Intellectual Property is subject to any outstanding order, judgment or decree restricting its use or adversely affecting or reflecting any Seller's rights thereto. All registrations and filings necessary to preserve the rights of the applicable Seller in the Intellectual Property have been made and are in full force and effect. Schedule 2.1(m) sets forth a complete list of all actions, suits or proceedings pending or, to the Knowledge of Seller, threatened by or against any Seller that involves claims concerning the infringement or other violation, validity, enforceability or ownership of the Intellectual Property. No such actions, suits or proceedings have been decided or settled and to the Knowledge of Sellers, no valid basis for any such actions, suits or proceedings exists. To the knowledge of the Sellers, the Intellectual Property, the use thereof by Sellers and Sellers' conduct of the Business has not and does not infringe upon the intellectual property of any other Person;

(11) Sellers have conducted and are conducting the Business and have operated

(17) with the exception of an underground diesel fuel storage tank located at the Kingsford Heights, Indiana plant that was removed prior to May 15, 1998 and is now used as an aboveground storage tank at that location, to each Seller's knowledge there are no storage tanks which are located either in, on or under the Real Property;

(18) there are no outstanding work orders, non-compliance orders, deficiency notices or other such notices relative to the Real Property, the Purchased Assets or the Business which have been issued by any Governmental Entity, regulatory authority, police or fire department, sanitation, environment, labor, health or other governmental authorities or agencies. There are no matters currently pending before any such Governmental Entity, department or authority relating to work orders, noncompliance orders, deficiency notices or other such notices. The Business is not being carried on, and none of the Real Property or the other Purchased Assets are being operated, in a manner which is in contravention of any Law in any material respect. No amounts are owing by any Seller in respect of the Real Property to any Governmental Entity or public utility, other than current accounts which are not in arrears;

(19) except for the Real Property described in Schedule 1.1(ii), Sellers have no legal or beneficial ownership interest or leasehold interest in any real property; and

(20) the Purchased Assets and the Real Property together constitute all of the assets necessary and required to carry on the Business in substantially the manner in which it has been operated by Sellers in the ordinary course of business.

(21) [Intentionally Omitted];

(22) no application for preferential assessment for real property tax purposes of any of the Real Property has been made by Sellers under the provisions of applicable Law, and no preferentially assessed value has been granted to any Seller under any law with respect to any of the Real Property;

(23) there is no proceeding pending for the increase or decrease of the assessed valuation for real property tax purposes of any Real Property, and Sellers have not received any notice or order from any Governmental Entity with respect to any proposed change in valuation of any Real Property or any notice from any Governmental Entity of any action or proceeding designed to levy any special tax or assessment against any Real Property;

(24) Except as otherwise set forth on Schedule 4.1(b)(12), there are no verbal or written but unrecorded agreements between any Seller and any Governmental Entity which affect any of the Real Property, except those, if any, which are junior and subordinate to Purchaser's rights with respect to the Real Property and will be divested automatically on conveyance of the Real Property to Purchaser or are capable of being divested by Purchaser at Purchaser's election without consideration or cost at or following Closing;

(25) No Seller has received any written notice from any insurance company of any defects or inadequacies in the Real Property or any part thereof which have not been corrected and would adversely affect the insurability of any Real Property;

(26) Except as otherwise set forth on Schedule 4.1(b)(1) or Schedule 4.1(b)(12), Sellers have not been notified of any possible future improvements by any Governmental Entity, any part of the cost thereof which would or might be assessed against any Real Property, and no assessments for public improvements have been made against any of the Real Property and received by Sellers which are due and payable but remain unpaid;

(27) Except as otherwise set forth on Schedule 4.1(b)(12), no notices or citations of any violations of applicable private restrictive covenants or of the violation of any Law governing or regulating zoning, land use, land development, buildings and improvements or subdivision of land have been received by any Seller. Sellers have received no notices from any Governmental Entity concerning the making of any required alterations, repairs or corrections of any condition or act affecting any Real Property;

(28) [Intentionally Omitted];

(29) Except as otherwise set forth on Schedule 4.1(b)(12), to the best knowledge of Sellers the use of each tract, parcel or portion of the Real Property, in the manner and for the purposes currently conducted by Sellers in operation of the Business at the Real Property is permitted as a matter of right, without any variance, conditional use, special exception or other special permit, approval or zoning and land use relief, under applicable Laws governing and regulating zoning, use, occupancy and improvement of real property; and

(30) there are no outstanding agreements, written or verbal, pursuant to which any Seller has agreed to sell to any Person or has granted to any Person an option or right of refusal to purchase any of the Real Property.

EXCEPT AS OTHERWISE EXPRESSLY REPRESENTED AND WARRANTED BY A SELLER IN THIS AGREEMENT, THE PURCHASED ASSETS AND REAL PROPERTY ARE SOLD "AS IS, WHERE IS" WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS ALL SUCH EXPRESS AND IMPLIED WARRANTIES EXCEPT AS SET FORTH IN THIS AGREEMENT

c. as to the Condition of the Business:

(1) except as disclosed in Schedule 4.1(c)(1) attached hereto, during the period between November 1, 2003, and the date of this Agreement, there were, and there currently are, no claims, actions, suits, proceedings (including arbitration proceedings), or investigations (whether or not purportedly of a Seller) pending or, to Seller's best knowledge, threatened, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, bureau, agency or instrumentality, domestic or foreign, which involves the possibility of, individually or in the aggregate, having a Material Adverse Effect on the Purchased Assets, the Real Property or the Business;

(2) during the period between November 1, 2006 to the date of this Agreement:

(A) the Business was operated in the ordinary course thereof, consistent

with past practices;

- (B) no obligation or liability (fixed or contingent) was incurred except normal trade or business obligations incurred in the ordinary course of the Business, none of which has or is capable of, either individually or in the aggregate, having a Material Adverse Effect on the Business;

d. as to Employee matters:

(1) Schedule 4.1(d)(1) annexed hereto sets forth:

- (A) the names, current annual salaries, job positions, length of employment and date and amounts of the most recent increases in salaries of all Persons who are employed by the Sellers on a full-time or part-time basis in connection with the Business and including all independent commission agents;
- (B) material particulars of any contracts, commitments, arrangements or understandings, written or oral, with any such employees or agents, true and complete copies of which have been provided to Purchaser;
- (C) particulars of any agreements with any labor union or employee associations, true and complete copies of which have been provided to Purchaser; and
- (D) particulars of all employee insurance, hospital or medical expense program, pension, retirement, profit sharing, stock options or other employee benefit plans, programs or arrangements or any executive or key personnel incentives or other special compensation arrangements to which any Seller is a party or is bound in respect of the employees or agents contemplated in (A) above, true and complete copies of which have been provided to Purchaser;

(2) each of the above plans and agreements has been maintained, funded and administered in material compliance with its terms, the terms of any applicable collective bargaining agreement and the applicable provisions of ERISA, the Code and other applicable laws, rules and regulations. Save as disclosed in Schedule 4.1(d)(2), no Seller has any agreements with any labor union or employee association nor has it made commitments to or conducted negotiations with any union or employee association with respect to any future agreements, and no Seller is aware of any current attempts to organize or establish any labor union or employee association for the employees of any Seller;

(3) no Seller is engaged in any material dispute with any of the employees identified in Schedule 4.1(d)(1) annexed hereto and there is not now pending or threatened any strike, lockout, labor dispute or work stoppage which affects or may affect the Business or may interfere with its continued operations and there are no outstanding breaches of any

collective agreement or outstanding or potential grievances;

(4) the terms and conditions of employment of all such employees of the Business conform with the minimum federal employment and labor standards requirements and those laid down by the States of Ohio and Indiana, as applicable;

(5) all salaries, workers compensation assessments and surcharges, unemployment insurance assessments, and similar charges or amounts with respect to all of the employees owing by the Sellers to those employees identified in Schedule 4.1(d)(1) annexed hereto will have been paid up to the Closing Date or adjusted for as of the Closing Date;

e. as to Insurance:

(1) all of the Purchased Assets and all of the insurable buildings and improvements on the Real Property are insured and will be up to the Closing Date (subject to the amount of any deductibles under such policies) against loss or damage by all insurable risks and hazards customarily insured against by Persons owning and operating property and assets and/or carrying on a business similar to the Purchased Assets and the Business, in amounts consistent with the corporate practices of the Sellers. No Seller is in any breach or default with respect to any of the provisions contained in any such insurance policy which could result in the cancellation of any policy of insurance;

f. as to Suppliers and Customers:

(1) Schedule 4.1(f)(1) sets forth a list of the 10 largest suppliers of the Business (each, a "Top 10 Supplier") and the 10 largest customers of the Business (each, a "Top 10 Customer"), in each case measured by purchases, sales and service revenues, respectively, during the fiscal years ended October 31, 2005 and October 31, 2006 and the fiscal quarter ending January 31, 2007.

(2) Except as set forth on Schedule 4.1(f)(2), to the best of Vendor's knowledge, since January 1, 2007, no Top 10 Customer or Top 10 Supplier for the fiscal year ending October 31, 2006 or for the quarter ending January 31, 2007 has notified Vendor that it will no longer do business with Vendor or that it will no longer accept bids for business from Vendor or has reduced its supply of products or materials to the Business in a manner that has or will, individually or in the aggregate, have a Material Adverse Effect.

g. Miscellaneous:

(1) the computer systems utilized by the Business, including hardware and software are in good working condition (excepting normal wear and tear consistent with the age and expected useful life of such hardware and software and further consistent with its use in the environment in which it is used), and are to the best of each Seller's knowledge, free from viruses and, other than those errors and defects inherent in computer hardware that are generally known within the information technology industry, there has not been any material

and recurring malfunction with respect to the acquired computer hardware since January 1, 2005 that has not been remedied or replaced in all material respect;

(2) at the Time of Closing, all remittances with respect to state retail sales tax will have been made up to and including the Closing Date;

(3) except for those liabilities set forth on the Financial Statements or otherwise disclosed hereunder, and for those liabilities incurred in the ordinary course of business since the date of the Financial Statements, neither the Business nor the Purchased Assets are subject to any liabilities, absolute or contingent, and whether or not required in accordance with GAAP to be disclosed on a balance sheet;

(4) except as disclosed at Schedule 4.1(g)(4), neither Sellers nor any of their representatives have incurred any Liability for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of the Business or the Purchased Assets or the transactions contemplated by this Agreement.

4.2 Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants to the Sellers as follows and hereby acknowledges and confirms that the Sellers are relying on such representations and warranties in connection with the sale of the Purchased Assets:

a. the Purchaser and its nominees are each duly organized, validly existing and in good standing and full force and effect under the laws of their respective states of organization, with full capacity, power and authority to enter into this Agreement and carry out their respective obligations hereunder;

b. the execution and delivery of the Agreement, and all other agreements, documents and instruments to be executed and delivered by the Purchaser pursuant hereto or in connection with the completion of the transaction contemplated herein have been duly authorized and approved by all necessary action of the Purchaser on or prior to the Closing Date to comply with applicable law;

c. the execution and delivery of the Agreement and all other agreements, documents and instruments to be executed and delivered by the Purchaser pursuant hereto or in connection with the completion of the transaction contemplated herein, and the performance of this Agreement or any other such agreement by the Purchaser will not:

(1) violate any provision of the Purchaser's or its nominees' Articles of Incorporation, by-laws, or other charter documents, or

(2) result in the breach of violation of any provision of or constitute a default under any indenture, agreement or other instrument to which the Purchaser is a party or by which the Purchaser or any of its Property may be bound, or

(3) to the best knowledge of the Purchaser violate any law, rules or regulations to which the Purchaser is subject;

d. No investigations made by or on behalf of Purchaser or Sellers shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made in this Agreement. As of the date hereof, Purchaser is not aware of any facts, events or circumstances that would cause any of the representations or warranties of the Sellers set forth in Section 4.1 to be untrue or incorrect.

ARTICLE 5
OTHER COVENANTS OF THE PARTIES

5.1 Employees.

a. Employees of the Business who accept Purchaser's offers of employment, if any, and become employees of Purchaser shall be referred to herein as "**Transferred Employees**". Purchaser shall credit the service of all Transferred Employees with Sellers and their affiliates to Closing for purposes of eligibility and vesting under all employee Benefit Plans provided by Purchaser or its affiliates for the Transferred Employees. Purchaser or its affiliates will, on or before May 1, 2007, (i) continue the same hospitalization, medical plan coverage, life insurance, and disability insurance for the Transferred Employees as they currently receive according to substantially the same terms and conditions, or (ii) in compliance with such medical, life and disability insurance plans as Purchaser may otherwise make available to U.S. employees of Purchaser and its affiliates, make available to all Transferred Employees such medical plans and life and disability insurance which are otherwise available to similarly situated U.S. employees of Purchaser and its affiliates under terms that are at least as favorable to such Transferred Employees as the terms offered to all other U.S. employees of Purchaser and its affiliates. Purchaser may assume Sellers' current hospitalization and medical plan coverage and Sellers agree to cooperate with Purchaser to effectuate Purchaser's assumption of said plans if Purchaser so elects. Sellers agree to cause their existing hospitalization and medical plan coverage for Transferred Employees to continue through April 30, 2007 and shall forward all invoices for claims, costs and expenses related thereto to Purchaser. Purchaser agrees to promptly pay or settle all such invoices with the issuing party. Claims incurred on or after the Time of Closing and related costs shall be Purchaser's sole responsibility. Claims incurred prior to the Time of Closing and related costs shall be Sellers' sole responsibility and to the extent any such claim is paid by Purchaser such claim shall be attributed to Sellers and reflected as a liability on the Closing Balance Sheet; provided, however, that if a request or demand for payment with respect to such claim arises following settlement of the Closing Balance Sheet and Purchaser pays such claim, the parties hereto agree that Purchaser shall submit an invoice to Sellers requesting payment for such amounts, which invoice Sellers shall pay to Purchaser within 60 days of receipt thereof. If Sellers fail to pay any such invoice in whole or in part, Purchaser shall be entitled to make a claim against the funds escrowed in accordance with Section 8.6 hereof and such claim or claims shall not be subject to the \$75,000 threshold or basket set forth in Section 8.4(a) hereof.

b. Except for the Vacation Accrual, the Sellers shall be responsible for all wages, bonuses, sick leave, severance pay, and other benefits for all of the employees of the Business in respect of any period prior to the Closing Date. The Purchaser shall be responsible for the Vacation Accrual and all such compensation and benefits of any Transferred Employees in respect of any period as of and subsequent to the Closing Date. To the extent Vendor makes the payroll

payment due on April 6, 2007 to the Vendor's hourly employees for the pay period through April 1, 2007, Purchaser will credit Vendor for this amount against the corresponding accrual on the Closing Balance Sheet.

c. The Sellers shall be responsible for all notice of termination, severance and other obligations to the employees of the Business arising out of their termination of employment with the Sellers whether or not they are offered and accept employment with the Purchaser, and the Sellers shall indemnify and save the Purchaser harmless in respect of all such obligations.

d. The Purchaser will offer each Transferred Employee all vacation benefits due and owing him or her pursuant to the Vacation Accrual.

e. Within ninety (90) days after the Time of Closing, Purchaser shall provide the Transferred Employees eligibility to participate in employee benefit plans of the Purchaser which are in the aggregate substantially equivalent to those provided to similarly-situated employees of the Purchaser.

5.2 Cooperation. The Sellers agree to furnish or caused to be furnished, following the Closing Date, upon Purchaser's request, and as promptly as practicable, such information and assistance relating to the Purchased Assets and the Real Property or the prosecution or defense of any claim, suit or proceeding relating to the Purchased Assets or the Real Property. Purchaser agrees to reimburse Sellers for reasonable out-of-pocket expenses incurred in response to Purchaser's request under this Section 5.2.

5.3 Accounts Receivable. Following the Closing, Purchaser will assist Vendor with the collection of the Accounts Receivable, in the manner provided in the Letter Agreement to be entered into by Purchaser and Vendor on the Closing Date, substantially in the form attached hereto as Exhibit 5.4 (the "Letter Agreement"), and Vendor shall pay Purchaser \$75,000 for such assistance, as reflected in the Letter Agreement.

5.4 Bulk Sales. The Sellers and the Purchaser hereby waive compliance with the provisions of any applicable bulk sales legislation. Notwithstanding the foregoing, the Sellers shall indemnify and hold harmless the Purchaser from and against any and all claims which may be made or brought against the Purchaser or which the Purchaser may suffer or incur or which may result in any encumbrance against the Purchased Assets or the Real Property as a result of, or arising out of such non-compliance unless such non-compliance is a result of the Purchaser's non-satisfaction of assumed liabilities as described herein.

ARTICLE 6 [Intentionally Omitted]

ARTICLE 7 CLOSING ARRANGEMENTS AND CONDITIONS AND RISK OF LOSS

7.1 Place of Closing. The Closing of the transaction contemplated hereto shall take place at the Time of Closing on the Closing Date at the Vendor's office in Akron, Ohio, or at such other place as may be mutually agreed upon by the parties hereto or their respective attorneys.

7.2 Conditions of Closing. Completion of the purchase and sale of the Purchased Assets and Real Property contemplated hereto is subject to the following conditions having been satisfied. The conditions contained in Sections 7.2 (a) to (i), both inclusive, are for the exclusive benefit of the Purchaser. The conditions contained in Sections 7.2 (j) to (m), both inclusive, are for the exclusive benefit of the Sellers. Unless otherwise specified, all conditions referred to herein are to be satisfied at the Time of Closing. The following are the conditions:

a. all of the representations and warranties of the Sellers contained in the Agreement or contained in any certificate or other document delivered to the Purchaser pursuant hereto shall be true and correct on and as of the Closing Date, with the same force and effect as if those representations and warranties had been made on and as of such date, regardless of the date as of which the information in this Agreement or in any such certificate or document is given, and there shall have been compliance with the covenants and obligations on the part of the Sellers contained herein which were to have been complied with by the Sellers at or prior to the Time of Closing. The completion of the transaction of purchase and sale herein contemplated shall not be a waiver of the covenants, representations and warranties contained herein or in any certificate or other document given pursuant to this Agreement, which covenants, representations and warranties shall continue in full force and effect as provided in Section 8.1 hereof;

b. the Sellers shall deliver to the Purchaser all necessary deeds, conveyances, bills of sale, assurances, transfers, assignments, consents, releases, discharges and other documents, necessary or reasonably required in the opinion of the Purchaser, to transfer effectively to the Purchaser good and marketable title to the Purchased Assets and, except as otherwise set forth on Schedule 4.1(b)(1), such Purchased Assets shall be free and clear of all Encumbrances, adverse claims, conditional sale or other title retention agreements, restrictions, and rights of any Person of every nature, kind and description whatsoever;

c. the Sellers shall have delivered to the Purchaser possession of the Purchased Assets including documents relating to the Business contemplated in Section 2.1 hereof and all applicable releases of Encumbrances;

d. the Purchaser shall have obtained or received all licenses, permits, consents, approvals and authorizations from all Governmental Entities under all applicable Laws, as may be necessary and appropriate to enable the Purchaser to carry on the Business in the same manner in which such Business is now being carried on by the Sellers or as may be required to permit the change of ownership of the Purchased Assets herein provided for to be completed, without affecting or resulting in the cancellation or termination of any Permit or License held by the Purchaser;

e. the Sellers shall execute a non-competition agreement whereby each Seller agrees to refrain from engaging, directly or indirectly (whether through third parties or related entities), including as any shareholder (except as a shareholder controlling less than five percent (5.00%) of the voting shares of a publicly traded company), partner or in general under any other formula, in any similar company, business or enterprise whose principal or accessory business is

similar or identical to the Business within the United States and Canada for a period of five (5) years from the Closing Date (which time period shall be strictly construed hereunder); which agreement shall be in substantially the form as set forth in **Schedule 7.2(e)**;

f. the Sellers shall use best efforts to provide to the Purchaser on the Closing Date the written consent of each lessor or third party under the Equipment Leases, Supply Contracts, Contracts and Other Agreements to the assignment of same to the Purchaser and each of the lessors' and third party's acknowledgments that the applicable Seller is not in breach of the applicable Equipment Lease, Contract, Supply Contract and Other Agreement;

g. the applicable Sellers shall have executed warranty deeds ("Deeds") in the form attached hereto as **Schedule 7.2(g)** with respect to the transfer of the Real Property;

h. the Sellers shall have performed or complied with all of their obligations, covenants and agreements hereunder;

i. the Vendor and Purchaser shall have executed the Letter Agreement.

j. the Purchaser shall have secured the approval of its board of directors, authorizing and approving the transaction of purchase and sale herein contemplated, and shall have delivered to the Sellers a copy of such resolutions evidencing the due authorization of the Purchaser to enter into this Agreement, to consummate the transaction of purchase and sale herein contemplated and to otherwise perform its obligations hereunder;

k. all of the representations and warranties of the Purchaser contained in this Agreement or contained in any certificate or other document delivered to the Sellers pursuant hereto shall be true and correct on and as of the Closing Date with the same force and effect as if such representations and warranties have been made on and as of such date, regardless of the date as of which the information in this Agreement or in any such certificate or document is given, and there shall have been compliance with the covenants and obligations on the part of the Purchaser contained herein which were to have been complied with at or prior to Closing. The completion of the transaction of purchase and sale herein contemplated shall not be a waiver of the covenants, representations and warranties contained herein or in any certificate or document given pursuant to this Agreement, which covenants, representations and warranties shall continue in full force and effect as provided in **Section 8.1** hereof;

l. the Purchaser shall have paid to the Sellers the amount payable at Closing pursuant to Article 3;

m. the Purchaser shall have performed and complied with all its obligations, covenants and agreements hereunder.

7.3 Real and Titled Property Provisions. On or before the Closing Date, Sellers shall deposit each Deed and the title to any titled Purchased Assets, dated, executed, acknowledged and otherwise in recordable form, with escrow agents mutually acceptable to Sellers and Purchaser ("Closing Escrow Agent"). On the Closing Date, upon verification of transmission of the Purchase Price, Sellers and Purchaser shall instruct the Closing Escrow Agent to forward the titles to the Purchaser and file the Deeds for record and charge the cost of recording to Purchaser. Sellers and

8.2 Indemnification by Sellers. The Sellers jointly and severally covenant and agree to indemnify and save harmless the Purchaser and/or its nominees that take title to any of the Purchased Assets or any of the Real Property, their respective officers, directors, members, managers, employees, agents, and shareholders from and against any and all Loss suffered or incurred by the Purchaser or any other Person as a result of, in consequence of or arising out of, under or by reason of:

- 8.3 Indemnification by Purchaser. The Purchaser covenants and agrees to indemnify and save harmless the Sellers and their officers, managers, members, employees, agents, and shareholders from and against any and all Loss suffered or incurred by a Seller or any such other Person as a result of, in consequence of or arising out of, under or by reason of:

a. any representation or warranty of the Purchaser contained in this Agreement or in any document or certificate delivered by the Purchaser pursuant hereto or in connection with the completion of the transaction herein contemplated being untrue, inaccurate or misleading in any material respect; or

b. any other breach by the Purchaser in any respect of any of its covenants or obligations contained herein or contained in any document or instrument delivered by the Purchaser pursuant hereto or in connection with the completion of the transactions contemplated herein.

c. the Assumed Liabilities and any liability pertaining to the Business, which occurs or arises after the Time of Closing in respect of an event or occurrence in a period after the Time of Closing, except for the Retained Liabilities.

8.4 Limitations.

a. Purchaser shall not be entitled to indemnification for damages or reimbursement for any Loss unless and until the aggregate amount of all Losses incurred by Purchaser (which aggregate amount shall not include any adjustments to the Purchase Price pursuant to Section 3.3 or Retained Liabilities) exceeds \$75,000, at which time, subject to Paragraph (c) of this Section 8.4, Sellers shall be responsible for indemnifying Purchaser only for amounts of Losses in excess of \$75,000.

b. Sellers shall not be entitled to indemnification for damages or reimbursement for any Loss unless and until the aggregate amount of all Losses incurred by Sellers (which aggregate amount shall not include any adjustments to the Purchase Price pursuant to Section 3.3 or Assumed Liabilities), exceeds \$75,000, at which time, subject to Paragraph (c) of this Section 8.4, Purchaser shall be responsible for indemnifying Sellers only for amounts in excess of \$75,000.

c. Sellers and Purchaser shall not be required to indemnify each other for Losses for more than the Purchase Price.

d. IT IS MATERIAL TO THIS AGREEMENT THAT SELLERS AND PURCHASER EACH AGREE THAT EACH SHALL ONLY BE OBLIGATED TO INDEMNIFY THE OTHER FOR ACTUAL DAMAGES INCURRED AND NEITHER SHALL BE OBLIGATED TO INDEMNIFY THE OTHER FOR CONSEQUENTIAL DAMAGES ALLEGEDLY INCURRED BY EITHER OF THEM AS A RESULT OF ANY MATTER SUBJECT TO INDEMNIFICATION OF ONE PARTY BY THE OTHER UNDER THIS AGREEMENT.

8.5 Indemnification Procedure.

a. Any party seeking indemnification under this Article (the "indemnified party") shall promptly notify the party against whom a claim for indemnification is sought hereunder (the "indemnifying party") in writing, which notice shall specify, in reasonable detail, the nature and estimated amount of the claim. If a claim by a third party is made against an indemnified party, and if the indemnified party intends to seek indemnity with respect thereto under this Article, the indemnified party shall promptly (and in any case within 30 days of such claim being made) notify the indemnifying party of such claim with reasonable particulars. The failure to provide prompt

notice as provided herein will relieve the indemnifying party of its obligations hereunder only to the extent that such failure prejudices the indemnifying party hereunder. The indemnifying party shall have 30 days after receipt of such notice to undertake, conduct and control, through counsel of its own choosing and at its expense, the settlement or defense thereof, and the indemnified party shall reasonably cooperate with the indemnifying party in connection therewith; except that with respect to settlements, compromises or consents entered into by the indemnifying party that does not relate solely to monetary damages, (i) the consent of the indemnified party shall be required if the settlement provides for equitable relief against the indemnified party, which consents shall not be unreasonably withheld or delayed; and (ii) the indemnifying party shall obtain the approval of the indemnified party. If the indemnifying party undertakes, conducts and controls the settlement or defense of such claim (i) the indemnifying party shall permit the indemnified party to participate in such settlement or defense through counsel chosen by the indemnified party, provided that the fees and expenses of such counsel shall be borne by the indemnified party; and (ii) the indemnifying party shall promptly reimburse the indemnified party for the full amount of any Loss resulting from any claim and all related expenses (other than the fees and expenses of counsel as aforesaid) incurred by the indemnified party in respect of any valid claim for indemnification under this Agreement. The indemnified party shall not pay or settle any claims so long as the indemnifying party is reasonably contesting any such claim in good faith on a timely basis. Notwithstanding the two immediately preceding sentences, the indemnified party shall have the right to pay or settle any such claim provided that in such event it shall waive any right to indemnity therefor by the indemnifying party.

b. With respect to third party claims, if the indemnifying party does not notify the indemnified party within 30 days after the receipt of the indemnified party's notice of a claim of indemnity hereunder that it elects to undertake the defense thereof, the indemnified party shall have the right, but not the obligation, to contest, settle or compromise the claim in the exercise of its reasonable judgment at the expense of the indemnifying party.

c. In the event of any claim by a third party against an indemnified party, the defense of which is being undertaken and controlled by the indemnifying party, the indemnified party will use all reasonable efforts to make available to the indemnifying party those employees whose assistance, testimony or presence is necessary to assist the indemnifying party in evaluating and in defending any such claims.

d. With respect to third party claims, the indemnified party shall promptly make available to the indemnifying party or its representatives all documents, records and other materials in the possession of the indemnified party, at the expense of the indemnifying party, reasonably required by the indemnifying party for its use in defending any claim and shall otherwise cooperate with the indemnifying party in the defense of such claim.

e. With respect to any liability for income, corporate, sales, excise, or other tax or other liability which has resulted in an Encumbrance against the property of the indemnified party, the indemnifying party's right to so contest shall only apply after such payment of such re-assessment or the provision of such security as is necessary to remove such Encumbrance on the property of the indemnified party.

8.6 Escrow. Sellers shall, at the Time of Closing, establish an escrow account in the sum of \$630,000 with Wells Fargo Bank and appoint said bank as escrow agent (the "Escrow Agent").

The escrowed funds shall remain on deposit for the sole purpose of satisfying any obligation of Sellers under Section 5.1(a) or Section 8.2 hereof until the later of (a) thirty-six months from the Time of Closing, or (b) the resolution of any claims by Purchaser for indemnification disputed by the Sellers, which time periods shall be strictly construed hereunder. Notwithstanding the foregoing sentence, the Escrow Agent shall, on the first anniversary of the Closing Date, release to Sellers one-third of the escrowed funds then in the escrow account and not otherwise subject to claims asserted by the Purchaser and, on the second anniversary of the Closing Date, release to Sellers one-half of the escrowed funds then in the escrow account and not otherwise subject to claims asserted by the Purchaser. Sellers may cause the escrowed funds to be invested from time to time in securities offered by the U.S. Treasury or certificates of deposit, bonds, or marketable securities having a rating of A/F1 or better and all interest or gains on the escrowed funds shall inure to the benefit of Sellers and shall be released to Sellers upon request on a quarterly basis. Should such investment activities result in a diminution of the escrowed funds, Sellers shall immediately upon request of Purchaser deposit funds sufficient to return the escrow to its original level (giving due consideration for the annual release of principal to Sellers as contemplated in this section) and, if requested by Purchaser, re-invest all funds in securities offered by the U.S. Treasury. In accordance with the terms set forth in the escrow agreement to be entered into by the Sellers, the Purchaser and the Escrow Agent, if, at any time prior to the expiration of thirty-six months from the Time of Closing, an Indemnified Party shall make a claim for indemnification under Section 8.2 hereof in accordance with Section 8.5 hereof and Sellers shall neither indemnify such Indemnified Party nor give written notice of Sellers' good faith dispute of the duty to so indemnify, the Escrow Agent shall withdraw and pay over from the escrow account funds sufficient to indemnify the Indemnified Party. Upon the later of (a) thirty-six months from the Time of Closing, or (b) the resolution of any pending claims for indemnification disputed by the Sellers, the Escrow Agent shall release any remaining escrowed funds to the Sellers.

ARTICLE 9 GENERAL CONTRACT PROVISIONS

9.1 Notice.

a. Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is:

- (1) delivered personally to the party entitled to receive it;
- (2) sent to the party entitled to receive it by registered mail, postage prepaid; or
- (3) sent by telecopy machine to such party.

b. Notices shall be sent to the following addresses or fax numbers:

- (1) in the case of the Sellers:

Roland H. Bauer
The Cypress Companies
670 West Market Street
Akron, Ohio 44303
Fax: 330-762-5855

(2) in the case of the Purchaser:

Salvatore Fazzolari
President, Chief Financial Officer and Treasurer
Harsco Corporation
350 Poplar Church Road
Camp Hill, PA 17011
Fax: 717-763-6402

With a copy to:

Mark E. Kimmel
General Counsel and Corporate Secretary
Harsco Corporation
350 Poplar Church Road
Camp Hill, PA 17011
Fax: 717-763-6402

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall:

c. if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;

d. if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the third Business Day following the date of mailing, and,

e. if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

9.2 Time is of the Essence. The parties hereto agree that time is of the essence with respect to the purchase of the Real Property pursuant to this Agreement.

9.3 Further Assurances. The parties hereto shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions

contemplated hereby and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of this Agreement and to carry out its provisions, whether before or after the consummation of the transaction contemplated herein. Without limiting the generality of the foregoing, Purchaser shall provide Sellers with reasonable access to such employees of Purchaser as is reasonably required in order to enable Sellers to close the books of the Business.

9.4 Expenses. Each of the parties hereto shall bear its own respective expenses (including, but not limited to, all compensation and expenses of counsel, financial advisors, consultants, actuaries, auditors, brokerage finder's fees or other fees or commissions) incurred in connection with the negotiations, preparation and execution of this Agreement, the consummation of the transaction contemplated hereto and any post-closing matters. The Sellers shall indemnify and save harmless the Purchaser from any such fees or commissions payable by the Business.

9.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, which shall be deemed to be the proper law hereof. The Courts of Pennsylvania shall have jurisdiction to entertain and determine all disputes and claims, both at law and in equity, arising out of or in any way connected with the construction, breach or alleged, threatened or anticipated breach of this Agreement, and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability thereof. In the event of any dispute as between the parties hereto in the interpretation or operation of this Agreement, either party hereto may require that the matter be submitted to arbitration, which arbitration shall be governed by the provisions of the applicable Pennsylvania arbitration legislation.

9.6 Dispute Resolution. In the event of any dispute, controversy or claim arising out of or related to this Agreement or a breach hereof, whether based in contract, tort, or statute, including its interpretation, scope, formation, performance or termination (hereinafter, a "**Dispute**"), the parties shall settle such Dispute in accordance with the following:

a. The Parties shall first use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a just and equitable solution satisfactory to all Parties;

b. If no settlement is reached within thirty (30) days after one party notifies the other party of the existence of the Dispute, the parties shall attempt to resolve the Dispute by mediation administered by the American Arbitration Association (the "AAA") under the AAA's Commercial Mediation Rules; and then

c. If the Dispute is not resolved through mediation, the Dispute shall be finally resolved by arbitration administered by the AAA in accordance with the provisions of the AAA's then-current Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

9.7 Arbitration. The following provisions shall apply to any arbitration hereunder:

a. The arbitration shall be conducted by one (1) arbitrator appointed by the AAA;

b. If arbitration is requested by Sellers, the arbitration shall take place in Harrisburg, Pennsylvania, which shall be the exclusive forum for final resolution of the Dispute. If arbitration is requested by Purchaser, the arbitration shall take place in Akron, Ohio, which shall be the exclusive forum for final resolution of the Dispute. If both parties request arbitration, the first party to give notice of its request to the other party pursuant to Section 9.1 hereof shall be deemed to be the party requesting arbitration. The governing procedural and substantive Law of the arbitration shall be the internal Laws of the Commonwealth of Pennsylvania, without regard to conflicts of law principles. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce and that the United States Arbitration Act shall govern the interpretation and enforcement of, and any proceedings under, the arbitration provisions hereof;

c. The language of the arbitration shall be English;

d. At the request of a party, the arbitrator shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of six (6) days per party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator and for good cause shown. Each deposition shall be limited to a maximum of one day's duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information;

e. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator shall not award any consequential damages in any arbitration conducted hereunder;

f. Any monetary award initiated under this clause shall include per-award interest at a rate per annum equal to eighteen percent (18.00%), compounded annually, from the time of the act or acts giving rise to the award;

g. The fees, expenses and costs of the arbitration and legal fees and costs and other expenses in connection with the arbitration and in the enforcement of any arbitral award shall be paid by Sellers and Purchaser prorata in an inverse proportion to the extent (by dollar value) to which the award agrees with such parties, such amounts to be determined by the arbitrator at the time of the award;

h. The arbitral award shall be enforceable under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and

i. Performance of this Agreement shall continue unabated during the pending of any arbitration which may arise out of a Dispute, except with regard to the matter in Dispute.

9.8 Entire Agreement This Agreement shall constitute the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto, and there are no representations, warranties or agreements between the parties hereto except as set forth in contemplated herein or in any document or instrument delivered pursuant hereto. This Agreement shall not be amended except by a memorandum in writing signed by all of the parties hereto and any amendment hereof shall be null and void and shall not be binding upon any party

9.9 Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assignable by any party hereto without the prior written consent of the other parties hereto, except that the Purchaser shall, without any prior consent required, be entitled to assign this Agreement to a related or affiliated company to be incorporated or organized in the United States. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representative, successors and permitted assigns.

9.11 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such counterpart.

9.13 Interim Period. The Sellers and Purchaser hereby agree that during the Interim Period, they shall not enter into any discussions or negotiations with any third party in respect of the sale of the Business or the Purchased Assets, or substantially all of the assets or shares of the Sellers.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals as of the date first written above.

PERFORMIX TECHNOLOGIES, LTD.

By: *RH Bauer*
Name: *RH BAUER*
Title: *SEC., MANAGER & member*

101 TIDEWATER PROPERTIES, LLC

By: *RH Bauer*
Name: *RH BAUER*
Title: *Managing Member*

8151 RANGER PROPERTIES, LLC

By: *RH Bauer*
Name: *RH BAUER*
Title: *Managing Member*

HARSCO CORPORATION

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and seals as of the date first written above.

PERFORMIX TECHNOLOGIES, LTD.

By: _____
Name: _____
Title: _____

101 TIDEWATER PROPERTIES, LLC

By: _____
Name: _____
Title: _____

8151 RANGER PROPERTIES, LLC

By: _____
Name: _____
Title: _____

HARSCO CORPORATION


By:  _____
Name: **Mark E. Kimmel**
Title: **General Counsel
and Corporate Secretary**

Exhibit A

List of Sales Representatives and Commission Schedules

Exhibit B

Form of Sales Representative Agreement