

FORM PTO-1618A  
Expires 05/30/99  
OMB 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

- New
- Resubmission (Non-Recordation)  
Document ID # \_\_\_\_\_
- Correction of PTO Error  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_
- Corrective Document  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

**Conveyance Type**

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment
- Merger
- Change of Name
- Other \_\_\_\_\_

Effective Date  
Month Day Year  
4 22 99

**Conveying Party**

Mark if additional names of conveying parties attached

Name Gillette Foods Incorporated

Execution Date  
Month Day Year  
4 22 99

Formerly \_\_\_\_\_

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other \_\_\_\_\_
- Citizenship/State of Incorporation/Organization New Jersey

**Receiving Party**

Mark if additional names of receiving parties attached

Name Geneva Ingredients, Inc.

DBA/AKA/TA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 80 Field Point Road

Address (line 2) Third Floor

Address (line 3) Greenwich Connecticut 06830

Individual  General Partnership  Limited Partnership  Zip Code

Corporation  Association

Other \_\_\_\_\_

Citizenship/State of Incorporation/Organization Delaware

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

**FOR OFFICE USE ONLY**

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

FORM PTO-1618B  
Expires 06/30/99  
OMB 0651-0027

Page 2

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

**Number of Properties**

Enter the total number of properties involved. #

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

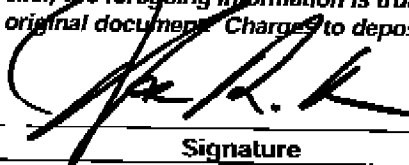
Deposit Account  
(Enter for payment by deposit account or if additional fees can be charged to the account.)  
Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Adrienne R. Moss  
Name of Person Signing

  
Signature

3/23/00  
Date Signed

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of April 22, 1999, is by and between GILLETTE FOODS, INC., a New Jersey corporation, with offices at 751 Rahway Avenue, Union, New Jersey 07083-6633 ("Seller") and GENEVA INGREDIENTS, INC., a Delaware corporation with offices at 80 Field Point Road, Third Floor, Greenwich, Connecticut 06830 ("Purchaser");

**W I T N E S S E T H:**

WHEREAS, in the Asset Purchase and Option Agreement (the "GFF Asset Purchase and Option Agreement"), dated as of February 25, 1999, among Seller, Purchaser and Gillette Food Flavorings, Inc., a New Jersey corporation, with offices at 751 Rahway Avenue, Union, New Jersey 07083-6633 ("GFF"). Seller granted and sold to Purchaser an option to purchase all of the assets used by Seller in the conduct of its business, exercisable for a term ending on March 31, 1999 (the "Option");

WHEREAS, Purchaser desires to exercise the Option;

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, selected assets of Seller consisting of all assets (excluding cash and cash equivalents) currently used or usable in the conduct of Seller's business as more fully described below, in each case on the terms and conditions hereinafter set forth; and

WHEREAS, in connection with the asset purchase described above Seller desires to assign to Purchaser, and Purchaser desires to assume from Seller, certain specified liabilities of Seller incurred in the conduct of Seller's business as more fully described below, in each case on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

331044.16

## ARTICLE I

Purchase and Sale

1.1 Purchase and Sale of Assets. On the Closing Date (as defined in Section 2.1) and upon the terms and subject to the conditions of this Agreement, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, the Assets (as defined in Section 1.3).

1.2 Asset Purchase Price. (a) The purchase price (the "Asset Purchase Price") for the Assets shall be (i) Two Million Five Hundred Thousand Dollars (\$2,500,000.00) minus (ii) the amount, if any, of all outstanding indebtedness for borrowed money of Seller, together with all accrued but unpaid interest thereon, as of the Closing Date (collectively, the "Closing Date Debt"). The Asset Purchase Price shall be paid as follows: (i) Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000.00) shall be paid on the Closing Date by wire transfer to an account designated in writing for such purpose by Seller at least three (3) business days prior to the Closing Date (the "Option Closing"); and (ii) the Option Purchase Price (as defined in the GFF Asset Purchase Agreement) of One Hundred Fifty Thousand Dollars (\$150,000.00), shall be applied as a credit to the balance of the Asset Purchase Price.

(b) In addition to the Asset Purchase Price, Purchaser agrees that if the Aggregate EBITDA for the EBITDA Measuring Period (as defined below) meets or exceeds One Million Two Hundred Thousand Dollars (\$1,200,000.00) (the "Aggregate EBITDA Threshold"), Purchaser will pay Seller an additional purchase price of One Million Dollars (\$1,000,000.00) (the "Contingent Seller Purchase Price"). The "Aggregate EBITDA for the EBITDA Measuring Period" means the sum of the following amounts attributed to the Business (as defined in Section 1.3) as conducted on the Closing Date and as it may be expanded thereafter for the period beginning on the first day of the calendar quarter immediately following the Closing Date and ending on the date immediately prior to the second anniversary of such first day (the "EBITDA Measuring Period") as derived from the internal financial statements of Purchaser, prepared in accordance with generally accepted accounting principles, and conclusively determined in accordance with clause (c) below: (i) net income; (ii) income taxes paid or accrued; (iii) net interest expense, (iv) amortization; (v) depreciation; (vi) the amount of any increase in the salaries and bonuses of Richard Englesbe, Paul Perreault or Vitas Roman from the amounts thereof paid by Seller as of the date immediately prior to the Closing Date; and (vii) the amount of any increased compensation expense incurred by Purchaser as a result of any increase in the aggregate number of employees associated with the Business from the number of such employees as in effect on the date immediately prior to the Closing Date. It is further understood and agreed that in determining the net income component of Aggregate EBITDA for the EBITDA Measuring Period Purchaser will not be entitled to add any

categories of expenses not utilized by Seller prior to the Closing Date or to change the percentage allocation of the expenses shared between the Business and the business of Gilette Food Flavorings, Inc. set forth on Schedule 1.7 (b) from the amounts set forth thereon, which Seller represents and warrants to be a true and correct reflection of the shared expense allocation used in the preparation of the Seller Financial Statements (as defined in Section 3.1(g)). In the event that the Aggregate EBITDA for the EBITDA Measuring Period is less than the Aggregate EBITDA Threshold, as conclusively determined in accordance with clause (c) below, Purchaser shall have no obligation to make any payment to Seller for the purchase of the Seller's assets other than the payment of the Asset Purchase Price.

(c) Purchaser agrees to cause its accountants to prepare a statement (which shall be derived from the internal financial statements of Purchaser) setting forth the calculation of the amount of the Aggregate EBITDA for the EBITDA Measuring Period (the "Accountants EBITDA Statement"). If such Accountants EBITDA Statement reflects Aggregate EBITDA for the EBITDA Measuring Period equal to or in excess of the Aggregate EBITDA Threshold, Purchaser shall pay the Contingent Seller Purchase Price to Seller by wire transfer to an account designated in writing for such purpose not later than June 30, 2001. If such Accountants EBITDA Statement reflects Aggregate EBITDA for the EBITDA Measuring Period of less than the Aggregate EBITDA Threshold, Purchaser shall deliver a copy of such Accountants EBITDA Statement to Seller not later than June 30, 2001. Seller must within ten (10) Business Days of receipt of same (the "Receipt Date") confirm whether or not it agrees with the results of the calculation of the Aggregate EBITDA for the EBITDA Measuring Period set forth on the Accountants EBITDA Statement and, if it does not, it will cause accountants selected by Seller, at Seller's cost, to review the same and to confirm to Purchaser's accountants within twenty (20) Business Days of the Receipt Date whether or not they agree with the results of the calculation of the Aggregate EBITDA for the EBITDA Measuring Period set forth on the Accountants EBITDA Statement and, if they do not, specifying in reasonable detail the points of disagreement. Purchaser and its accountants will provide Seller's accountants with reasonable access to the necessary books, records and working papers. The parties shall then instruct their accountants to seek to resolve the points of disagreement and agree upon the Aggregate EBITDA for the EBITDA Measuring Period. If Seller agrees to the calculation of the Aggregate EBITDA for the EBITDA Measuring Period set forth on the Accountants EBITDA Statement or if Purchaser's accountants and Seller's accountants agree upon the same (with such further adjustments as they may agree) within thirty (30) Business Days of the Receipt Date, the amount so agreed upon shall be final, conclusive and binding with respect to the Aggregate EBITDA for the EBITDA Measuring Period. If Purchaser's and Seller's accountants do not agree upon the results of Aggregate EBITDA for the EBITDA Measuring Period pursuant to the procedures set forth above, Purchaser's and Seller's accountants shall jointly select from the "Big Five" accounting firms (or their successors) a firm of independent public accountants which has not

performed any services since January 1, 1997 for either Purchaser or Seller or their respective Affiliates, to act as an arbitrator (the "EBITDA Arbitrator") to determine the Aggregate EBITDA for the EBITDA Measuring Period. All determinations made by the EBITDA Arbitrator shall be final, conclusive and binding. In the event that it is finally determined pursuant to the procedures set forth in this clause (c) that the Aggregate EBITDA for the EBITDA Measuring Period is equal to or in excess of the Aggregate EBITDA Threshold, Purchaser shall pay the Contingent Seller Purchase Price to Seller by wire transfer to an account designated in writing for such purpose not later than fifteen (15) Business Days after the date of such final determination. Fees and expenses of the EBITDA Arbitrator shall be paid by Purchaser in the event that the EBITDA Arbitrator determines that the Aggregate EBITDA for the EBITDA Measuring Period is equal to or in excess of the Aggregate EBITDA Threshold or by Seller in the event that the EBITDA Arbitrator determines that the Aggregate EBITDA Threshold for the EBITDA Measuring Period is less than the Aggregate EBITDA Threshold. As used in this Agreement, the term "Business Day" means a day other than a Saturday, Sunday or other day when banking institutions doing business in the State of New Jersey are authorized or required by law to be closed.

(d) Purchaser agrees to provide Seller with copies of its regularly prepared quarterly financial statements within forty five (45) days of the end of each calendar quarter during the EBITDA Measuring Period.

(e) As additional consideration for the purchase of the Assets, Purchaser shall assume the Assumed Liabilities (as defined in Section 1.4).

1.3 The Assets. (a) The term "Assets" means all the business, properties, assets, machinery, equipment, furniture, fixtures, franchises, goodwill and rights of Seller of whatever kind and nature, real or personal, tangible or intangible (but excluding cash and cash equivalents), owned, leased, used or held for use by Seller in connection with, or necessary to, Seller's business (the "Business"), wherever located and whether or not reflected on the books and records of Seller, including, but not limited to:

(i) all outstanding and unfilled orders for products from the Business;

(ii) all accounts and other amounts receivable and all other rights to payment due from any customer for products sold by the Business, whether or not billed and whether arising or accruing prior to, on or after the Closing Date ( the "Accounts Receivable");

(iii) all books, records, files and correspondence of Seller related to any customer or potential customer of the Business, including any books,

records and correspondence relating to payment history, credit information or analysis with respect to any such customer, except the corporate minute book, stock ledger and other documentation related to the corporate structure and governance of Seller;

(iv) all files, correspondence, books and records of Seller related to the Business or its customers, whether in written form or on magnetic tape, floppy disk or other form of media;

(v) all trade secrets, know-how, processes and other proprietary or confidential information used or held for use in connection with the Business (the "Proprietary Information");

(vi) all Intellectual Property (as defined in Section 3.1(m)) used or held for use in connection with the Business;

(vii) all inventories of finished goods held for sale by the Business (the "Inventory");

(viii) all raw materials, work in process, supplies, parts and other materials of Seller that are used or held for use by the Business;

(ix) all machinery, equipment, automobiles, vehicles, rolling stock, furniture and tangible personal property used or held for use in connection with the Business;

(x) all Permits (as defined in Section 3.1(u)) used or held for use in connection with the Business;

(xi) all leases, subleases, contracts, agreements, commitments and all other legally binding arrangements, whether oral or written, to which Seller is a party or by which Seller is bound that relate to the Business (the "Contracts");

(xii) all deposits, prepayments, rights, claims, credits or causes of action against third parties relating to or arising out of the foregoing; and

(xiii) the goodwill of or pertaining to the Business.

(b) Notwithstanding anything to the contrary in clause (a) of this Section 1.3, the Assets shall not include the items set forth on Schedule 1.3(b) of the Disclosure Schedules (collectively, the "Excluded Assets"). The Excluded Assets shall remain the property of Seller and shall not be transferred to Purchaser on the Closing Date (as defined in Section 2.1).

1.4 Assumption of Liabilities. (a) On the Closing Date Purchaser shall assume the current liabilities of Seller related to post-Closing obligations arising under the Contracts which are set forth on Schedule 1.4(a) of the Disclosure Schedules. Such assumed liabilities are hereinafter referred to as the "Assumed Liabilities."

(b) Purchaser shall not assume any Excluded Liabilities. The term "Excluded Liabilities" means all liabilities of any kind, liquidated or contingent, asserted or unasserted, known or unknown, other than the Assumed Liabilities, of Seller or any other Person (as defined in Section 3.1(e)), whether or not such liabilities are associated with the Business or the Assets.

## ARTICLE II Closing

2.1 Closing. The closing of the sale and purchase of the Assets and the assignment and assumption of the Assumed Liabilities (the "Closing") shall take place at the offices of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A., 911 Chestnut Street, Clearwater, Florida at 10:00 a.m. on the third business day after the date hereof, or at such other date, time and place as shall be mutually agreed by the parties (such date of Closing is hereinafter referred to as the "Closing Date"). All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed taken nor documents executed or delivered until all have been taken, executed and delivered.

2.2 Deliveries at Closing. At the Closing,

(a) Seller shall deliver or cause to be delivered to Purchaser the following:

(i) a Bill of Sale, in the form of Exhibit A hereto, duly executed by Seller;

(ii) an Assignment of Intangible Assets, in the form of Exhibit B hereto, duly executed by Seller;

(iii) an Assignment of Contracts, in the form of Exhibit C hereto, duly executed by Seller;

(iv) the originals of all Contracts and all books, records, files and correspondence included in the Assets;



(v) a Certificate of Good Standing of Seller issued as of a recent date by the Secretary of State of the State of New Jersey;

(vi) the certificates of Seller referred to in Section 5.2(a) and 5.2(b), duly executed by Seller;

(vii) the legal opinion of Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A., counsel to Seller, dated the Closing Date and addressed to Purchaser, in form and substance satisfactory to Purchaser and its counsel, covering the matters set forth on Exhibit D hereto;

(viii) the Non-Compete and Non-Disclosure Agreement, in the form of Exhibit E hereto, duly executed by each of Vytas Maceikonis, Gerda Maceikonis and Kurt Maceikonis;

(ix) the Indemnification Agreement, in the form of Exhibit E hereto, duly executed by each of Kurt Maceikonis and Gerda Maceikonis (collectively, the "Equity Owners");

(x) a certificate of Seller setting forth the amount of the Closing Date Debt, if any; and

(xi) all other documents required by the terms of this Agreement to be delivered to Purchaser at the Closing.

(b) Purchaser shall deliver or cause to be delivered to Seller the following:

(i) an Assumption of Liabilities, in the form of Exhibit G hereto, duly executed by Purchaser;

(ii) a Certificate of Good Standing of Purchaser issued as of a recent date by the Secretary of State of the State of Delaware;

(iii) the certificates of Purchaser referred to in Sections 5.3(a) and 5.3(b), duly executed by Purchaser;

(iv) the legal opinion of Patterson, Belknap, Webb & Tyler LLP, counsel to Purchaser, dated the Closing Date and addressed to Seller, in form and substance satisfactory to Seller and its counsel, covering the matters set forth on Exhibit H hereto;

(v) all other documents required by the terms of this Agreement to be delivered to Seller at the Closing; and

(vi) the Asset Purchase Price by wire transfer to an account designated in writing for such purpose by Seller at least three (3) Business Days prior to the Closing Date.

### ARTICLE III Representations and Warranties

3.1 Representations and Warranties of Seller. In order to induce Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Seller hereby represents and warrants to Purchaser, except as set forth on the disclosure schedules contained in Exhibit I hereto (the "Disclosure Schedules"), as follows:

(a) Organization, Good Standing and Power. Seller is a corporation duly organized, validly existing and in good standing under the laws of New Jersey and has the requisite corporate power and authority to own the Assets and to carry on the Business as now being conducted. The jurisdictions listed on Schedule 3.1(a) of the Disclosure Schedules hereto represent all of the jurisdictions in which Seller leases or owns any real property, maintains material quantities of inventory, equipment or other personal property or employs any person.

(b) Certificate of Incorporation and Bylaws. Seller has heretofore delivered to Purchaser a true and complete copy of the Certificate of Incorporation and Bylaws of the Seller.

(c) No Liens at Closing. All of the Assets are owned directly by Seller and upon the purchase and sale of the Assets at the Closing, Purchaser will receive good title thereto, free and clear of all Liens (as defined in Section 5.2(i)) other than Permitted Liens. The term "Permitted Liens" means such imperfections of title, liens and easements as do not, individually or in the aggregate, detract from or interfere with the present or future use of the properties subject thereto or affected thereby or detract from the value thereof, or otherwise similarly impair present or future business operations of the Business.

(d) Subsidiaries and Investments. Seller does not own or have any commitment to purchase any equity interest in any corporation, partnership, limited liability company, joint venture, trust, business association or other entity.

(e) Authority. Seller has all requisite corporate power and authority to execute this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Seller, and do not and will not require the approval of any other party. This Agreement has been duly executed and delivered by Seller and constitutes Seller's legal, valid and binding obligation, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by the effect of bankruptcy, insolvency or similar laws affecting creditors' rights generally or by general principles of equity. Except as set forth on Schedule 3.1(e) of the Disclosure Schedules, the execution and delivery of this Agreement by Seller does not, and the consummation by Seller of the transactions contemplated hereby and the compliance by Seller with the terms hereof will not, (i) violate any law, judgment, order, decree, statute, ordinance, rule or regulation applicable to Seller, (ii) conflict with any provision of Seller's Certificate of Incorporation or Bylaws, (iii) conflict with or cause the acceleration of any payment or performance obligation by, or the loss of any rights or privileges of, Seller under any Contract or Permit to which Seller is a party or by which Seller or any of its properties is bound or by which Seller derives any material benefit, (iv) result in the creation of any Lien on any of the Assets or any of the properties or assets of the Seller, or (v) require any consent, approval, order or authorization of, or the registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign ("Governmental Entity") or any individual, corporation, partnership, limited liability company, joint venture, trust, business association or other entity ("Person," which term shall include a Governmental Entity).

(f) Compliance with Applicable Laws. Seller has complied in all material respects with all laws, regulations, rules and orders of all Governmental Entities applicable to it which relate to the Business and the Assets except in the case where the failure to so comply would not, individually or in the aggregate, have a Material Adverse Effect. A "Material Adverse Effect" means any event or condition that has or is reasonably likely to have a materially adverse effect on the business, assets, results of operations or prospects of the Business. Seller has not received any actual or constructive notice of any asserted material violation of any such laws, regulations, rules or orders. Seller has not received any actual or constructive notice, nor does Seller have any reason to believe, that any investigation or review by any Governmental Entity with respect to Seller is pending or that any such investigation or review is contemplated.

(g) Financial Statements. Seller has heretofore delivered to Purchaser the following financial statements of Seller: (i) the statements of income for the years ending December 31, 1996 and 1997, (ii) the statement of income for the

eleven months ended November 30, 1998 (the "November 30, 1998 Income Statement") (iii) the balance sheets for the years ending December 31, 1996 and 1997, and (iv) the balance sheet as of November 30, 1998 (the "November 30, 1998 Balance Sheet" and, together with the November 30, 1998 Income Statement, the "November 30, 1998 Financial Statements") (collectively, the "Seller Financial Statements"). Except as set forth on Schedule 3.1(g) of the Disclosure Schedules, the Seller Financial Statements have been prepared from the books and records of Seller and fairly present in all material respects the income and assets and liabilities of Seller for the periods indicated in accordance with generally accepted accounting principles consistently applied throughout the periods presented.

(h) Related Party Transactions. Set forth on Schedule 3.1(h) of the Disclosure Schedules is a true and complete description of all transactions since January 1, 1997 between Seller and any affiliate as defined in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended (an "Affiliate"), with respect to the Business excluding salaries or other compensation paid for labor services rendered by any Affiliate but including partnership distributions made to any Affiliate.

(i) Inventory. Schedule 3.1(i) contains a true and complete list of the Inventory as of the date set forth thereon. Except as set forth on Schedule 3.1(i) of the Disclosure Schedules, the Inventory of Seller set forth on the November 30, 1998 Balance Sheet is properly valued in accordance with generally accepted accounting principles consistently applied throughout the periods presented and, except for obsolete items which have been fully written off or adequately reserved for, consists of items in good and merchantable condition of a quantity and quality currently saleable in the ordinary course of business as currently conducted by Seller, without markdown or discount.

(j) Accounts Receivable. Schedule 3.1(j) of the Disclosure Schedules contains a true and complete list of the Accounts Receivable as of the date set forth thereon. All of the Accounts Receivable (i) represent actual indebtedness incurred by the applicable customer or debtor, (ii) have arisen and are collectible in the ordinary course of business (without resort to litigation) and in accordance with their respective terms (subject to such reserves, as are set forth on the Seller Financial Statements) and (iii) are not subject to any prior assignment, claim or Lien whatsoever.

(k) Sufficiency of Assets. The Assets comprise all the assets, properties and rights which are employed in the Business and which are necessary for the conduct of the Business as currently conducted.

(l) Litigation, Decrees. Except as set forth in Schedule 3.1(l) of the Disclosure Schedules, (i) there is no lawsuit, claim, action, arbitration or

investigation or proceeding pending or, to the knowledge of Seller, threatened, against or affecting Seller, the Business, the Assets or the transactions contemplated hereby and (ii) there is not outstanding any order, writ, injunction, award or decree of any court or arbitrator or any federal, state, municipal or other governmental department, commission, board or agency to which any of Seller, the Business or the Assets is subject.

(m) Intellectual Property. Set forth on Schedule 3.1(m) of the Disclosure Schedules is a true and complete list of all trademarks, trademark registrations, service marks, trade names, patents, design patents and copyrights and pending applications therefor that are used in or relate to the operation of the Business, except those relating to mass market software (the "Intellectual Property"). Except as set forth on Schedule 3.1(m) of the Disclosure Schedules, Seller has not (i) received any notice from any other Person pertaining to or challenging the right of Seller to use or license any of the Intellectual Property or the Proprietary Information or any rights thereunder and (ii) has no knowledge of any facts which would support such a challenge by any Person to the right of Seller to use or license any of the Intellectual Property or the Proprietary Information or any rights thereunder. It is expressly understood and agreed that no representation and warranty is being made pursuant to this Section 3.1(m) that Seller's rights in the Intellectual Property or the Proprietary Information are exclusive or with respect to the rights of any Person other than Seller with respect to the Intellectual Property or the Proprietary Information. Except as set forth on Schedule 3.1(m) of the Disclosure Schedules, Seller has not granted any licenses or other rights and Seller has no obligation to grant licenses or other rights to any of the Intellectual Property or the Proprietary Information to any other Person. There are no interferences or other contested proceedings, either pending or, to the knowledge of Seller, threatened, in the United States Copyright Office, the United States Patent and Trademark Office or any federal, state or local court or before any other Governmental Entity, relating to any registration, grant, license or pending application with respect to any of the Intellectual Property.

(n) Insurance. All of the material assets and properties of Seller are insured for Seller's benefit and will be so insured through the Closing Date, in those amounts and against those risks set forth on Schedule 3.1(n) of the Disclosure Schedules. Schedule 3.1(n) of the Disclosure Schedules contains a true and complete list of all policies providing such insurance.

(o) Contracts. Schedule 3.1(o) of the Disclosure Schedules contains a true and complete list of all Contracts as of the date hereof. Except for contracts listed on Schedule 3.1(o) of the Disclosure Schedules, Seller is not a party to or bound by, or otherwise derives any benefit from, any contract (whether oral or written), which is a:

- (i) contract not made in the ordinary course of business;
- (ii) covenant not to compete or confidentiality agreement;
- (iii) contract for the sale of any of the assets of Seller (other than sales of inventory to customers in the ordinary course of business) or the grant of any preferential rights to purchase any assets of Seller or requiring the consent of any party to the transfer thereof;
- (iv) any loan agreement, indenture, promissory note or conditional sales agreement or any pledge, security agreement, deed of trust, financing statement or other document granting any Lien on any asset or property of Seller;
- (v) any revocable or irrevocable power of attorney to any Person for any reason;
- (vi) contract with or Permit by or from any Governmental Entity (except those which the failure to possess would not have a Material Adverse Effect);
- (vii) contract which involves or may involve aggregate future payments, obligations or revenues in excess of Five Thousand Dollars (\$5,000.00) (whether in payment of a debt, as a result of any guarantee or indemnification, for services or goods or otherwise and including any barter arrangements) or which, as of the Closing Date, will have a remaining term exceeding one year; or
- (viii) other contract to which Seller is a party by which Seller or any of Seller's assets or properties is bound or subject that is significant to the Business.

Except as disclosed in Schedule 3.1(o) of the Disclosure Schedules, each Contract is a valid and binding obligation of Seller and, to the knowledge of Seller, the other party thereto, enforceable in accordance with its terms, except as such enforceability may be limited by the effect of bankruptcy, insolvency or similar laws affecting creditors' rights generally or by general principles of equity, and is in full force and effect. Except as disclosed on Schedule 3.1(o) of the Disclosure Schedules, the sale and purchase of the Assets pursuant to this Agreement will not be deemed an assignment of any Contract, which assignment requires the consent of any third party. Except as disclosed in Schedule 3.1(o) of the Disclosure Schedules, Seller is not, nor to the knowledge of Seller, is any other party (with or without the lapse of time or the giving of notice, or both), in material breach or default under any Contract. Seller has not,

except as disclosed in Schedule 3.1(o) of the Disclosure Schedules, received or given any notice of the intention of any party to terminate or to modify any Contract. True and complete copies of all Contracts referred to in Schedule 3.1(o) of the Disclosure Schedules, together with all modifications, amendments and proposed modifications thereto, have been delivered or made available to Purchaser.

(p) Absence of Certain Changes or Events. Except as set forth in Schedule 3.1(p) of the Disclosure Schedules, since November 30, 1998 Seller has conducted the Business only in the ordinary course consistent with past practice, and there has not been any change, event or condition that individually, or when aggregated with all other changes, events and conditions, has resulted or is reasonably likely to result in a Material Adverse Effect.

(q) Employees. Schedule 3.1(q) of the Disclosure Schedules is a true and complete list of the name of each individual who is employed or retained or compensated as an independent contractor or consultant (either directly or indirectly) by Seller, or is so employed or retained by any Affiliate of Seller on the date hereof along with his or her current job title, compensation, date of hire, last date of increase in compensation, any employee benefit enjoyed which is not generally available to employees of Seller or the Affiliate employing such employee, and office address.

(r) Tax Matters. (i) Seller has timely paid all Taxes (as defined below) required to be paid, has timely withheld or collected all Taxes required to be withheld or collected, has timely deposited all Taxes required to be deposited, and has timely filed all Tax returns required to be filed with respect to such Taxes, (ii) no notice of any proposed adjustment or notice of underpayment has been issued by any Governmental Authority with respect to any such Taxes, (iii) no claim has been asserted, proposed or, to the knowledge of Seller, threatened with respect to any such Taxes that remain outstanding, (iv) no extensions of the time for assessment of any such Taxes have been requested or granted (other than any such extension that is no longer in effect), (v) no protests are pending with respect to any such Taxes and (vi) there are no Liens for Taxes on any of the Assets or on any other assets of Seller and no action, proceeding or, to the knowledge of Seller, investigation has been instituted against Seller or any of their respective Affiliates which would give rise to any such Lien. "Tax" means any obligation or liability (including any tax, withholding, fee or excise) imposed by any Governmental Entity, including any gross or net income, franchise, employment-related, real or personal property, transfer, intangibles, documentary, gains, sales or use tax, together with any and all interest, penalties and additions imposed with respect thereto. An "Affiliate" of any party means any Person controlling, controlled by or under common control with such party.

(s) Real Property. Seller does not own any real property. Schedule 3.1(s) of the Disclosure Schedules sets forth a true and correct list of all

leased real property currently occupied or otherwise used by Seller in connection with the Business. Each of the leases set forth on Schedule 3.1(s) of the Disclosure Schedules is in full force and effect and Seller is not, nor to the knowledge of Seller, is any other party (with or without the lapse of time or the giving of notice, or both), in material breach or default under any of such leases. True and correct copies of such leases, together with all modifications, amendments and proposed modifications thereto, have been delivered or made available to Purchaser.

(t) [Intentionally omitted.]

(u) Permits, Licenses. Seller has all permits, licenses, franchises, approvals and authorizations ("Permits") from whatever Governmental Entities have jurisdiction over, and which require the same in connection with, the operation or conduct of the Business as currently conducted, except where the failure to possess such Permits would not have a Material Adverse Effect.

(v) Employee Benefit Plans and Employment Agreements.

(i) Except for Seller's tax-qualified 401(k) Plan (the "401(k) Plan") and certain medical and other welfare benefit plans maintained currently by Seller, as set forth on Schedule 3.1(v) of the Disclosure Schedules (the "Welfare Plans", and with the "401(k) Plan," collectively, the "Plans"), Seller is not a party to, does not sponsor or maintain, or has any obligation or liability arising for any periods ending prior to, on or after the Closing Date under or in connection with, any salary or payroll practice, collective bargaining agreement, bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, retirement, vacation, severance pay, unemployment benefits, disability benefits, death benefits, hospitalization, insurance or other similar plan or arrangement or understanding (whether or not legally binding) providing benefits to any present or former employee, consultant or independent contractor of Seller, or to any beneficiary or dependent of any such person or any other obligation or liability arising from the employment or retention as a consultant or independent contractor, or termination of employment or such retention (including any severance obligations and any wages, salaries or benefits) of any present or former employee, consultant or independent contractor of Seller or to any beneficiary or dependent of any such person.

(ii) Except as set forth on Schedule 3.1(v) of the Disclosure Schedules, Seller has complied, and is now in compliance, in all material respects with all provisions of Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Internal Revenue Code of 1986, as amended, applicable Treasury regulations and all other federal and state laws



and regulations applicable to the Plans, except where the failure to so comply would not have a Material Adverse Effect.

(iii) Neither Seller nor any entity that is or was a member of the same controlled group (as defined in Section 4001(a)(14) of ERISA) as Seller maintains or, within the six-year period immediately preceding the Closing, has maintained a pension plan that is subject to Title IV of ERISA.

(iv) Seller has no liability for or obligation to provide any life, health, medical or other welfare benefits to former employees or beneficiaries or dependents thereof except for health continuation coverage as required by Section 4980B of the Code or Part 6 of Title I of ERISA.

(w) Environmental Matters.

(i) "Environmental Laws" means any and all federal, state or local laws, statutes, regulations, rules and policies having the force and effect of law, ordinances, administrative and court orders, decrees, judgments and agreements, Environmental Permits (as defined below) and common law which pertain or relate to environmental matters or pollution and contamination of any type whatsoever. Environmental Laws include, without limitation, those relating to or dealing with: manufacture, processing, use, distribution, operation, treatment, handling, storage, disposal, generation, transportation, cleanup, remediation, and removal of any Materials of Environmental Concern (as defined below); air (including noise and odor), land, soil, surface water, ground water pollution, protection and remediation; Releases (as defined below); protection, preservation or remediation of wildlife, endangered species, wetlands, or other natural resources; human health, safety or comfort; and any notification, reporting, monitoring or investigation requirements relating to the foregoing.

(ii) "Environmental Permits" means any and all licenses, permits, registration, notifications, approvals, agreements, consents, and orders which are required under or are made or issued pursuant to any Environmental Laws.

(iii) "Environmental Claims" means any and all claims, damages, losses, expenses, costs (including reasonable attorneys' fees, court costs, and interest paid or accrued), deficiencies, penalties, liens, interest, fines, assessments, charges, obligations, violations and liabilities of any kind imposed or incurred by, under, because of or pursuant to any Environmental Laws, whether based in negligence, strict liability, contract, or otherwise, under any theory or process of recovery or relief, at law or in equity, including, without limitation, those related to compliance, remediation, removal, response,

restoration, mitigation, abatement, investigation, testing, monitoring, personal injury, death and property damage.

(iv) "Materials of Environmental Concern" means any and all pollutants, contaminants, pesticides, oil, petroleum, petroleum by-products, or any fraction thereof, or wastes, asbestos, polychlorinated biphenyls, radioactive substances, solid wastes, or hazardous or extremely hazardous, special, medical, dangerous or toxic wastes, substances, chemicals or materials listed in, identified in or regulated by any Environmental Laws, including, without limitation, any (x) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and any and all amendments thereto and regulations promulgated thereunder ("CERCLA"), and (y) any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. § 6902 *et seq.*, and any and all amendments thereto and regulations promulgated thereunder ("RCRA").

(v) "Property" means any and all real property (including any and all fixtures, equipment, facilities, improvements and appurtenances thereto), personal property, equipment, machinery, inventory, or any asset which is or once was owned, leased, occupied or possessed, by Seller and used in the Business.

(vi) "Release" means any and all actual or threatened spills, discharges, leaks, emissions, escapes, injections, dumpings, pourings, or other releases or threatened releases of any Materials of Environmental Concern into the environment, whether or not notification or reporting to any government or regulatory authority was or is required, including, without limitation, any release defined under CERCLA or RCRA.

(vii) Except as set forth in Schedule 3.1(w) of the Disclosure Schedules, there are no Environmental Claims pending or, to Seller's knowledge, threatened, against or relating to Seller, the Business or the Assets and Seller has not received notice or otherwise have reason to believe that Seller, the Business or the Assets is, has been or may be in violation of, in non-compliance with, or otherwise subject to any liability whatsoever under any Environmental Laws in any material respect.

(viii) Except as set forth in Schedule 3.1(w) of the Disclosure Schedules, to Seller's knowledge (A) no Materials of Environmental Concern have ever been disposed of, buried, spilled, leaked, discharged, emitted or released in, on, from or under any Property; and (B) no Materials of Environmental Concern have been sent, transported or otherwise conveyed from any Property to any other location from which there is or was a Release or

threatened Release of Materials of Environmental Concern for which Seller has been notified that Seller has or may have liability or responsibility for Environmental Claims, whether as a potentially responsible party or otherwise.

(ix) Except as set forth in Schedule 3.1(w) of the Disclosure Schedules, the Property is not being used and, to Seller's knowledge, never has been used in connection with the business of manufacturing, generating, treating, storing or transporting any Materials of Environmental Concern, and, to Seller's knowledge, no Materials of Environmental Concern have been treated, accumulated, stored, discharged, Released, or disposed of there.

(x) Except as set forth in Schedule 3.1(w) of the Disclosure Schedules, there are not now and, to Seller's knowledge, never have been any underground or above ground storage tanks, or any sumps, ponds, pits, lagoons, wells, impoundments or other containment facilities of any kind (collectively, "containers") in, on, at or under the Property which contain or, to Seller's knowledge, ever did contain any Materials of Environmental Concern. Any and all containers which have been removed from the Property by or at the direction of Seller have been removed in accordance with all applicable Environmental Laws.

(xi) Except as set forth in Schedule 3.1(w) of the Disclosure Schedules, to the knowledge of Seller, the Property is not and never has been listed on the National Priorities List, the Comprehensive Environmental Response Compensation and Liability Information System, or any similar federal, state or local list, schedule, log, inventory or database related to Environmental Laws.

(xii) Except as set forth in Schedule 3.1(w) of the Disclosure Schedules, to Seller's knowledge, Seller operates the Business and at all times has operated the Business, and the Property is and has been constructed and operated, in material compliance with all applicable Environmental Laws.

(xiii) Except as set forth in Schedule 3.1(w) of the Disclosure Schedules, (A), to Seller's knowledge, there are no asbestos or asbestos containing materials contained in or forming part of any Property, including, without limitation, any building, building component, structure or office space owned or leased by the Seller for use in connection with the Business, and (B), to Seller's knowledge, no polychlorinated biphenyls are or ever have been used, stored or otherwise located at any Property.

(xiv) To Seller's knowledge, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that could form the basis of any Environmental Claim against Seller or, to Seller's knowledge, against any person or entity whose liability for any Environmental Claim Seller has or may have retained or assumed either contractually or by operation of law and Seller has not received notice from any Person of the existence of any of the above.

(xv) Schedule 3.1(w) of the Disclosure Schedules identifies and Seller has provided to Purchaser true and complete copies of any environmental audits, assessment or reports relating in whole or in part to Seller, the Business or to the Property and written communications with any party relating in whole or in part to Seller, the Business or to the Property, within the past six (6) years which describe the environmental compliance or liability status of the Property or the compliance or noncompliance of operation of the Property or of the conduct of the Business with respect to any Environmental Laws.

(xvi) Schedule 3.1(w) of the Disclosure Schedules contains a true and complete listing of all material Environmental Permits required for the lawful operation of the Business, and all Environmental Permits required pursuant to any Environmental Laws for the lawful operation of the Business are in the possession of Seller and are duly issued and in full force and effect. To Seller's knowledge, there is no material threat that any material Environmental Permits will be withdrawn, terminated, limited or materially changed pursuant to any Environmental Laws.

(xvii) Schedule 3.1(w) of the Disclosure Schedules contains a true and complete list of all current and past on-site and off-site locations where Seller has stored, disposed of or recycled or arranged for the disposal or recycling of any Materials of Environmental Concern.

(x) Undisclosed Liabilities. Seller has no liabilities or obligations, accrued, absolute, contingent, or otherwise, of a type which would be required to be reflected on a balance sheet of Seller prepared in accordance with generally accepted accounting principles, except: (i) to the extent reflected or reserved against on the November 30, 1998 Balance Sheet; (ii) to the extent specifically set forth on the Schedules hereto, or (iii) liabilities or obligations incurred by the Seller in the ordinary course of its business since November 30, 1998, none of which will, individually or in the aggregate, have a Material Adverse Effect.

(y) No Material Omissions. Neither this Agreement (including the Schedules) nor any certificate contemplated hereby contains any untrue statement

of fact or omits to state a material fact necessary to make the statements made, in light of the circumstances in which they are made, not misleading.

3.1 Representations and Warranties of Purchaser. In order to induce Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser hereby represents and warrants to Seller as follows:

(a) Organization, Good Standing and Power. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to carry on its business as now being conducted.

(b) Authority. Purchaser has the corporate power and authority to execute this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser enforceable in accordance with its terms, except as such enforceability may be limited by the effect of bankruptcy, insolvency or similar laws affecting creditors' rights generally or by general principles of equity. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, (i) violate any applicable law, (ii) conflict with any provision of the Certificate of Incorporation or Bylaws of Purchaser or (iii) require any consent, approval, order or authorization of, or the registration, declaration or filing with, any Governmental Entity or other Person.

(c) Compliance with Applicable Laws. Purchaser has complied in all material respects with all laws, regulations, rules and orders of all Governmental Entities applicable to it except in the case where the failure to so comply would not, individually or in the aggregate, have a material adverse effect on the assets, results of operations or prospects of the Purchaser's business. Purchaser has not received any actual or constructive notice of any asserted material violation of any such laws, regulations, rules or orders. Purchaser has not received any actual or constructive notice, nor does Purchaser have any reason to believe, that any investigation or review by any Governmental Entity with respect to Purchaser is pending or that any such investigation or review is contemplated.

(d) Litigation, Decrees. There is no lawsuit, claim, action, arbitration or investigation or proceeding pending or, to the knowledge of Purchaser, threatened, against or affecting Purchaser or the transactions contemplated hereby and there is not outstanding any order, writ, injunction, award or decree of any court or

arbitrator or any federal, state, municipal or other governmental department, commission, board or agency to which Purchaser is subject.

(e) Financial Statements. Purchaser has heretofore delivered to Seller an audited statement of income and an audited balance sheet for the year ending September 30, 1997, and an unaudited statement of income and an unaudited balance sheet for the year ending September 30, 1998 (collectively, the "Purchaser Financial Statements"). The Purchaser Financial Statements have been prepared from the books and records of Purchaser and fairly present in all material respects the income and assets and liabilities of Purchaser for the periods indicated in accordance with generally accepted accounting principles consistently applied throughout the periods presented.

#### ARTICLE IV Covenants

4.1 Covenants of Seller Relating to Conduct of Business. During the period from the date of this Agreement and continuing until the Closing, Seller covenants and agrees that without the prior written consent of Purchaser:

(a) Ordinary Course. Seller shall conduct the Business solely in the ordinary course consistent with past practice. Without limiting the generality of the foregoing, Seller shall:

(i) maintain its business records in substantially the same manner as presently maintained and use all reasonable efforts to preserve intact the present business organization of Seller;

(ii) use reasonable commercial efforts to keep available the services of employees, consultants and independent contractors to the extent necessary to carry on its operations as currently conducted, and shall not change the compensation or benefits of any such employee, consultant or independent contractor without the prior written consent of Purchaser;

(iii) not employ any new or additional employees, consultants or independent contractors without the prior written consent of Purchaser;

(iv) use reasonable commercial efforts to preserve its relationships with customers and others having business dealings with Seller;

(v) not amend, modify, change, alter, terminate, rescind or waive any rights or benefits under any of the Contracts or enter into any contract, agreement or commitment which, if in existence as of the date of this Agreement, would have been required to be listed on Schedule 3.1(o) of the Disclosure Schedules;

(vi) fail to maintain the Assets in substantially the same physical condition as exists on the date hereof, reasonable and ordinary wear and tear excepted; and

(vii) not pay any dividend or make any other distributions of cash, securities or other property to the holders of any class of its outstanding capital stock except for dividends paid to the Equity Owners with the prior written consent of Purchaser (such consent not to be unreasonably withheld or delayed) in amounts not in excess of their personal income tax liabilities consistent with past practice.

(b) Non-Solicitation. Seller shall not, nor shall it authorize or permit any of its Affiliates or any of Seller's or any such Affiliate's respective officers, directors or employees or any investment banker, attorney, accountant or other representative retained by Seller or any such Affiliate to, solicit or encourage (including by way of furnishing information), or take any other action to facilitate, any inquiries or the making of any proposal to merge or consolidate with the Seller or to otherwise acquire in any manner Seller, the Business or the Assets (other than inventory sold to customers in the ordinary course of business consistent with past practice), other than in connection with the transactions contemplated by this Agreement. Seller shall promptly advise Purchaser orally and in writing of any such inquiries or proposals. Seller shall also promptly advise any Person making such inquiry or proposal of the terms of exclusivity granted by Seller to Purchaser hereby.

(c) No Dispositions. Seller shall not sell, lease or otherwise dispose of, or agree to sell, lease or otherwise dispose of, or permit the creation of any Lien on, the Assets, except for sales of inventory to customers in the ordinary course of business consistent with past practice.

(d) Other Actions. Seller shall not take any action that would or might result in any of the representations and warranties of Seller set forth in this Agreement (including the Schedules) becoming untrue, incorrect or inaccurate or in any of the conditions set forth in Article V not being satisfied or in the Business or the Assets becoming materially less valuable.

(e) Advice of Changes. Seller shall promptly advise Purchaser in writing of the occurrence of any matter or event that is material to the business,

assets, financial condition, results of operations or prospects of the Business or of any change in, or any of the information contained in, any representations and warranties made by Seller pursuant to this Agreement or of any event or circumstance which, if it had occurred on or prior to the date hereof, would cause any of such representations or warranties not to be true and correct.

4.2 Access to Information. Seller shall provide Purchaser and its agents and representatives all financial and tax information and financial statements and tax returns related to Seller, shall make available to Purchaser and its agents and representatives such other contracts, leases, documents, books, records and other information relating to the legal and business affairs and financial condition of Seller, and shall make available to Purchaser such personnel, agents and representatives of Seller and its Affiliates, as shall be reasonably requested from time to time by Purchaser.

4.3 Legal Conditions to Closing. Each of Purchaser and Seller will take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on it with respect to the Closing.

4.4 Third Party Consents. Seller shall use reasonable commercial efforts before the Closing to obtain all consents from third parties which are required for the transfer of the Assets, including any consents to assignment of any material Contract to which Seller is a party where the transfer of the Assets to Purchaser may be deemed an assignment of such Contract. Seller shall deliver copies of such consents received prior to the Closing to Purchaser immediately upon the receipt thereof. This Section 4.4 shall in no way limit the condition set forth in Section 5.2(g).

4.5 Expenses. Whether or not the Closing takes place, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expense.

4.6 [Intentionally Omitted]

4.7 Bulk Transfer Laws. Purchaser hereby waives compliance by Seller with the provisions of the "bulk sales," "bulk transfer" or similar laws of any jurisdiction in connection with the sale of the Assets to Purchaser. Seller shall indemnify and hold harmless Purchaser against any and all liabilities that may be asserted by third parties against Purchaser as a result of non-compliance with any such "bulk sales," "bulk transfer" or similar laws except with respect to the Assumed Liabilities.

4.8 Transfer Taxes. Seller shall be solely liable for, and shall indemnify Purchaser against, any obligation or liability for Taxes attributable to, arising



from or associated with the sale or transfer from Seller to Purchaser of the Assets other than income taxes, if any, of Purchaser attributable to such sale or transfer.

4.9 Maintenance of Existence. Seller shall maintain its existence following the Closing Date until the expiration of all of its indemnification obligations pursuant to Article VII.

4.10 Further Assurances. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments reasonably necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence the consummation of the transactions contemplated hereby.

4.11 Brokerage or Finder's Fee. Purchaser represents and warrants to Seller, and Seller represents and warrants to Purchaser, that no Person is entitled to any brokerage commissions or finder's fees in connection with the consummation of the transactions contemplated by this Agreement as a result of any action taken by the representing party or any of its Affiliates, except for Miller Advisory Corp. Seller shall be solely and exclusively responsible for all commissions, fees and other compensation payable to Miller Advisory Corp. in respect of any of the transactions contemplated hereby.

4.12 Change of Name. Promptly after the Closing Date Seller shall change its corporate name to a name approved by Purchaser (such approval not to be unreasonably withheld or delayed) which does not include the word "Gillette Foods" or any variation thereof, and within five Business Days after the Closing Date shall provide Purchaser with evidence of the filing of such name changes in the State of New Jersey.

4.13 Semi-Annual Employee Bonuses. Immediately prior to the Closing on the Closing Date (i) Seller shall pay \$35,000.00, representing the full amount of the semi-annual incentive bonus amounts due to all employees associated with the Business to such employees as of the Closing Date plus a "closing bonus" to non-management employees and (ii) Purchaser shall reimburse Seller with respect thereto in an amount equal to \$5,833.33 by wire transfer of immediately available funds to an account designated in writing for such purpose by Seller at least three (3) Business Days prior to the Closing Date.

4.14 1998 Year End Financial Statements. Seller will provide to Purchaser the reviewed financial statements of Seller for the year ending December 31, 1998 (the "1998 Financial Statements") as soon as such financial statements are available and Seller and Purchaser hereby covenant and agree that such 1998 Financial Statements shall be deemed to be subject to the representations and warranties set forth in Section 3.1(g) of this Agreement.

ARTICLE V  
Conditions Precedent

5.1 Conditions to Each Party's Obligations. The obligations of Purchaser to purchase the Assets and assume the Assumed Liabilities and the obligation of Seller to sell, assign, convey and deliver the Assets and assign the Assumed Liabilities to Purchaser shall be subject to the satisfaction prior to the Closing of the condition that no temporary restraining order, preliminary or permanent injunction or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect and no application therefor shall be pending.

5.2 Conditions to Obligations of Purchaser. The obligation of Purchaser to purchase the Assets and assume the Assumed Liabilities is subject to the satisfaction on and as of the Closing of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of Seller set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing as though made on and as of the Closing, and Purchaser shall have received a certificate, dated the Closing Date, signed by the President of Seller to such effect.

(b) Performance of Obligations of Seller. Seller shall have performed or complied with all obligations, conditions and covenants required to be performed by it under this Agreement at or prior to the Closing, and Purchaser shall have received a certificate, dated the Closing Date, signed by the President of Seller to such effect.

(c) No Litigation. There shall not be any lawsuit, action, claim or proceeding against Purchaser or any of its Affiliates by any Governmental Entity pending or threatened, or by any other Person with a reasonable likelihood of success pending or threatened, seeking to restrain, prohibit, invalidate or set aside in whole or in part the consummation of the transactions contemplated by this Agreement.

(d) Opinion of Seller's Counsel. Purchaser shall have received the opinion dated the Closing Date of counsel to Seller described in Exhibit D hereto.

(e) Non-Compete and Non-Disclosure Agreement. Purchaser shall have received the Non-Compete and Non-Disclosure Agreement, in the form attached hereto as Exhibit E, duly executed by Vytautas Maceikonis and each of the Equity Owners.

(f) Indemnification Agreement. Purchaser shall have received an Indemnification Agreement, in the form attached hereto as Exhibit F, duly executed by each of the Equity Owners.

(g) Consents. Seller shall have obtained all required consents from any Governmental Entity or other Person required in connection with the assignment of the Contracts and the consummation of the transaction contemplated hereby and shall have delivered to Purchaser copies thereof.

(h) Environmental Report. Purchaser shall have received a written report from its environmental consultant, solely at its expense, with respect to the Business in form and content reasonably satisfactory to Purchaser.

(i) Release of Liens. Seller shall have provided to Purchaser instruments reasonably satisfactory to Purchaser and its counsel evidencing the release of all Liens other than Permitted Liens. The term "Liens" means all liens, charges, security interests, mortgages or other encumbrances.

5.3 Conditions to Obligations of Seller. The obligations of Seller to sell, assign, convey, and deliver the Assets and to assign the Assumed Liabilities is subject to the satisfaction on and as of the Closing Date of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of Purchaser set forth in this Agreement shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date, and Seller shall have received a certificate, dated the Closing Date, signed by the President of Purchaser to such effect.

(b) Performance of Obligations of Purchaser. Purchaser shall have performed all obligations required to be performed by it under this Agreement prior to the Closing Date, and Seller shall have received a certificate signed by the President of Purchaser to such effect.

(c) No Litigation. There shall not be any lawsuit, action, claim or proceeding against Seller or any of its Affiliates by any Governmental Entity pending or threatened, or by any other Person with a reasonable likelihood of success pending or threatened, seeking to restrain, prohibit, invalidate or set aside in whole or in part the consummation of the transactions contemplated by this Agreement.

(d) Opinion of Purchaser's Counsel. Seller shall have received the opinion dated the Closing Date of counsel to Purchaser described in Exhibit H hereto.

(e) Assumption of Liabilities. Seller shall have received an Assumption of Liabilities in the form of Exhibit G hereto, duly executed by Purchaser.

ARTICLE VI  
Termination, Amendment and Waiver

6.1 Termination. (a) Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(i) by mutual written consent of Seller and Purchaser;

(ii) by Seller if any of the conditions set forth in Sections 5.1 or 5.3 shall have become incapable of fulfillment, and shall not have been waived by Seller;

(iii) by Purchaser if any of the conditions set forth in Sections 5.1 or 5.2 shall have become incapable of fulfillment, and shall not have been waived by Purchaser; or

(iv) by Seller or Purchaser, if the Closing does not occur on or prior to March 31, 1999;

provided, however, that the party seeking termination pursuant to clause (ii) or (iii), is not in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement.

(b) In the event of termination by Seller or Purchaser pursuant to this Section 6.1, written notice thereof shall forthwith be given to the other party and the transactions contemplated by this Agreement shall be terminated, without further action by the other party upon receipt of such notice.

(c) If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in this Section 6.1, this Agreement shall become null and void and of no further force and effect, provided that nothing in

this Section 6.1 shall be deemed to release any party from any liability for any willful breach by such party of any of its covenants set forth in this Agreement which occurs on or before the date of the termination of this Agreement. If this Agreement is terminated and the transactions contemplated hereby are abandoned as described in this Section 6.1, each of Seller and Purchaser shall promptly return to the other party all written information received from such other party or its representatives in connection with the transactions contemplated by this Agreement which contains proprietary or confidential information relating to the business of such other party without retaining any copies of such information.

6.2 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing, Purchaser or Seller may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform. No such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

## ARTICLE VII Indemnification

7.1 Indemnification by Seller. Seller hereby agrees to indemnify Purchaser and its Affiliates and their respective officers, directors, employees, stockholders, agents and representatives against, and agrees to defend and hold them harmless from, any loss, liability, claim, judgment, settlement, award, penalty, damage, cost or expense (including reasonable attorneys' fees and expenses) (a "Loss"), as incurred, for or on account of or arising from or in connection with or otherwise with respect to:

- (a) any breach by Seller of any of its representations or warranties contained in this Agreement (including the Disclosure Schedules) or any certificate delivered in connection herewith,
- (b) any breach by Seller of any of its covenants or agreements contained in this Agreement, or
- (c) any Excluded Liability,

provided, however, that Seller shall not have any liability pursuant to clause (a) of this Section 7.1 unless the aggregate of all Losses for which Seller would, but for this proviso, be liable, exceeds on a cumulative basis, Thirty Eight Thousand Seven Hundred Fifty Dollars (\$38,750.00), in which case Seller shall be liable for the aggregate of all Losses; provided, however, that notwithstanding anything contained

herein to the contrary, in the absence of fraud, the Seller's aggregate liability pursuant to this Section 7.1 shall not exceed One Million One Hundred Eighty Thousand Dollars (\$1,180,000.00). In the event that Seller's indemnification obligation to Purchaser results from its breach of Section 3.1(j) by reason of an uncollected account receivable, upon receipt by Purchaser of Seller's indemnification payment in full with respect to such account receivable, Purchaser shall immediately assign, without recourse, such uncollected account receivable to Seller.

7.2 Indemnification by Purchaser. Purchaser hereby agrees to indemnify Seller, its Affiliates and their respective officers, directors, employees, stockholders, agents and representatives against, and agrees to defend and hold them harmless from, any Loss as incurred, for or on account of or arising from or in connection with or otherwise with respect to:

(a) any breach by Purchaser of any of its representations or warranties contained in this Agreement or any certificate delivered in connection herewith;

(b) any breach by Purchaser of any of its covenants or agreements contained in this Agreement;

(c) any Assumed Liability; or

(d) any liability arising out of Purchaser's conduct of the Business from and after the Closing Date;

provided, however, that Purchaser shall not have any liability pursuant to clause (a) of this Section 7.2 unless the aggregate of all Losses for which Purchaser would, but for this proviso, be liable, exceeds on a cumulative basis, Thirty Eight Thousand Seven Hundred Fifty Dollars (\$38,750.00), in which case Purchaser shall be liable for the aggregate of all Losses.

7.3 Procedure For Third Party Claims. (a) In order for a party (the "indemnified party"), to be entitled to any indemnification provided for under this Article VII in respect of, arising out of or involving a claim made by any Person not a party hereto against the indemnified party (a "Third Party Claim"), such indemnified party must notify the indemnifying party in writing of the Third Party Claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the indemnifying party actually shall have been prejudiced as a result of such failure (except that the indemnifying party shall not be liable for any expenses incurred during the period in which the indemnified party failed to give such notice). Thereafter, the indemnified party shall deliver to the indemnifying party, within five business days' time after the indemnified party's receipt thereof,

copies of all notices and documents (including court papers) received by the indemnified party relating to the Third Party Claim.

(b) If a Third Party Claim is made against an indemnified party, the indemnifying party will be entitled to participate in the defense thereof and, if it chooses, to assume the defense thereof at its own cost and expense with counsel selected by the indemnifying party and reasonably satisfactory to the indemnified party. Should the indemnifying party elect to assume the defense of a Third Party Claim, the indemnifying party will not be liable to the indemnified party for any legal expenses subsequently incurred by the indemnified party in connection with the defense thereof unless the indemnified party shall have reasonably determined that there may be one or more defenses which are available to it which are different from or in addition to those available to the indemnifying party. If the indemnifying party assumes such defense, the indemnified party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party, it being understood that the indemnifying party shall control such defense. The indemnifying party shall be liable for the fees and expenses of counsel employed by the indemnified party for any period during which the indemnifying party has not assumed the defense thereof (other than during any period in which the indemnified party shall have failed to give notice of the Third Party Claim as provided above). If the indemnifying party chooses to defend or prosecute a Third Party Claim, all of the parties hereto shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the indemnifying party's request) the provision to the indemnifying party of records and information which are reasonably relevant to such Third Party Claim, and making employees, consultants and independent contractors available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and to provide testimony. If the indemnifying party chooses to defend or prosecute any Third Party Claim, the indemnifying party shall not agree to any settlement, compromise or discharge of such Third Party Claim without the prior written consent of the indemnified party, unless such settlement, compromise or discharge provides solely for monetary relief and the full and complete release of the indemnified party is the result thereof. Whether or not the indemnifying party shall have assumed the defense of a Third Party Claim, the indemnified party shall not admit any liability with respect to, or settle, compromise or discharge, such Third Party Claim without the indemnifying party's prior written consent. If the indemnifying party does not elect to control or defend a Third Party Claim, or after so electing does not actively contest and defend the same in good faith, the indemnified party shall be entitled to contest, defend and/or settle such Third Party Claim on such terms and with such counsel as the indemnified party deems appropriate, and at the cost and expense of the indemnifying party.

**ARTICLE VIII**  
**General Provisions**

8.1 **Notices.** All notices and other communications hereunder shall be sent and shall be sent, delivered or mailed:

(a) if to Seller, to

Mr. Vytas Maceikonis  
Mrs. Gerda Maceikonis  
2110 Harbourside Drive  
No. 511  
Longboat Key, Florida 34228

with copies to

Mr. Ronald L. Miller  
Miller Advisory Corp.  
2601 Heron Lane North  
Clearwater, Florida 33762

and

Michael G. Little, Esq.  
Johnson, Blakely, Pope, Bokor,  
Ruppel & Burns, P.A.  
911 Chestnut Street  
Clearwater, Florida 33756

(b) if to Purchaser, to

Geneva Ingredients, Inc.  
c/o Brookside International Incorporated  
80 Field Point Road, Third Floor  
Greenwich, Connecticut 06830  
Attention: Mr. Philip L. Fitting



with a copy to

Patterson, Belknap, Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, New York 10036-6710  
Attention: Jeffrey E. LaGueux, Esq.

Each such notice, request or other communication shall be given (i) by hand delivery, (ii) by nationally recognized overnight courier service or (iii) by prepaid certified mail. Each such notice, request or communication shall be effective (i) if delivered by hand or by nationally recognized overnight courier service, when delivered at the address specified in this Section 8.1 (or in accordance with the latest unrevoked direction from such party) and (ii) if given by mail, three business days after the posting thereof.

**8.2 Interpretation.** When a reference is made in this Agreement to a Section, Schedule or Exhibit, such reference shall be to a Section, Schedule or Exhibit of this Agreement unless otherwise indicated. The Article and Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "included", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". All accounting terms not defined in this Agreement shall have the meanings determined by generally accepted accounting principles consistently applied. Any reference to "to the knowledge of Seller" shall be deemed to include the knowledge of the Equity Owners of Seller and each of the Significant Employees (as defined below). The "Significant Employees" are Richard Englesbe, Paul Perreault and Vitas Roman.

**8.3 Survival of Representations and Warranties.** The representations and warranties set forth in this Agreement shall survive the Closing and will expire on the earlier to occur of (a) March 31, 2000 and (b) the completion of the [second] post-closing audit of the Business, except for those representations and warranties contained in Section 3.1(c), 3.1(r), 3.1(v) and 3.1(w) and 4.11, all of which shall remain in force until the expiration of the applicable statute of limitations. Neither party shall be entitled to assert any claims against the other for misrepresentations or breaches of representations and warranties under or pursuant to this Agreement (or for indemnification under Article VII hereof for such misrepresentations or breaches of representations and warranties), unless the party asserting such claim shall notify the other of such claim within the survival period of the applicable representation and warranty.

**8.4 Severability.** If any provision of this Agreement, or the application thereof to any Person, place or circumstances, shall be held by a tribunal to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied

to other persons, places, and circumstances shall remain in full force and effect; provided, however, that in the event that the terms and conditions of this Agreement are materially altered as a result of this paragraph, the parties will renegotiate the terms and conditions of this Agreement to resolve any inequities.

8.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and all of which shall collectively constitute a single instrument.

8.6 Entire Agreement; No Third Party Beneficiaries. This Agreement (including the Schedules, Exhibits, documents and instruments referred to herein) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8.7 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, without regard to the choice of law provisions thereof.

8.8 Publicity. So long as this Agreement is in effect, neither Seller nor Purchaser shall issue or cause the publication of any press release or other public announcement with respect to the transactions contemplated by this Agreement without the consent of the other party, which consent shall not be unreasonably withheld or delayed, except as may be required by law, court process or obligations pursuant to any listing agreement with any national securities exchange.

8.9 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other party; provided, however, that notwithstanding the foregoing Purchaser shall be permitted to make a collateral assignment of its rights hereunder to its lender(s) in connection with the financing of a portion of the Asset Purchase Price.

8.10 Specific Performance. Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Purchaser will be irreparably injured if this Agreement is not specifically enforced. Therefore, Purchaser shall have the right specifically to enforce the performance of Seller under this Agreement without the necessity of posting any bond or other security, and Seller hereby waives the defense in any such suit that Purchaser has an adequate remedy at law and agrees not to interpose any opposition, legal or otherwise, as to the propriety

of specific performance as a remedy. The remedy of specifically enforcing any or all of the provisions of this Agreement in accordance with this Section 8.10 shall not be exclusive of any other rights which Purchaser may have to terminate this Agreement under any other provision hereof, or any other rights or remedies which it may otherwise have under this Agreement or otherwise, all of which rights and remedies shall be cumulative.

8.11 Access and Information. Seller and Equity Owners shall have the right following the Closing to have reasonable access to those documents, books, records and financial data of Seller that existed prior to the Closing for the purpose of complying with any applicable securities, tax, employment or other laws and regulations, and to defend itself or themselves in litigation with third parties, provided that Seller and Equity Owners agree to reimburse Purchaser for its reasonable costs and expenses in providing Seller and Equity Owners with such access.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

GILLETTE FOODS, INC.

By: *Gordon Muzickonis*  
Name: Gordon Muzickonis  
Title: President

GENEVA INGREDIENTS, INC.

By: *Geoff Spillane*  
Name: ~~Gordon Muzickonis~~ Geoff Spillane  
Title: Assistant Secretary

**EXHIBIT "I"**  
**SUMMARY DISCLOSURE SCHEDULE OF EXCEPTIONS**  
**TO**  
**REPRESENTATIONS AND WARRANTIES**  
**OF**  
**GILLETTE FOODS, INC.**

The following is the summary disclosure schedule of the representations and warranties of Gillette Foods, Inc. and its Shareholders ("Seller") set forth in the Asset Purchase Agreement ("Agreement") between Geneva Ingredients, Inc. ("Purchaser"), and Seller. Capitalized terms set forth herein have the meaning set forth in the Agreement.

Schedule 1.3(b) **Excluded Assets**

See attached Schedule 1.3(b).

Schedule 1.4(b) **Assumed Liabilities**

See attached Schedule 1.4(b).

Schedule 1.7(b) **Categories and Allocation of Expenses Between GFF and GFI**

See attached Schedule 1.7(b).

Schedule 3.1(a) **Organization; Good Standing; Qualifications**

No Schedule required.

Schedule 3.1(b) **Certificate of Incorporation and Bylaws**

No Schedule required.

Schedule 3.1(c) **No Liens at Closing**

Note payable to Fleet Bank as disclosed in the GFF Disclosure Schedules will be satisfied at closing.

There is also a loan to J. Burkhardt which will be retained by Seller.

Schedule 3.1(d) **Subsidiaries and Investments**

No Schedule required.

Schedule 3.1(e) Authority and Consent

1. Lease Agreement with Gelb Estate, Inc. requires consent to assign.
2. The sale of assets requires consent of Fleet Bank. This loan will, however, be satisfied at closing.

Schedule 3.1(f) Compliance with Laws

No Schedule required.

Schedule 3.1(g) Financial Statements

The Seller's Financial Statements have previously been delivered to Purchaser. The November 30, 1998 financial statements have been prepared internally and are not in accordance with generally accepted accounting principles.

Schedule 3.1(h) Related Party Transactions

The Seller has intercompany payable to GFF. The Seller also has a receivable from a management fee from GFI. These amounts are part of the Excluded Assets as set forth on Exhibit 1.3(b) of the Agreement and as set forth in the Asset Purchase and Option Agreement by and between Seller and Purchaser. The Seller has a note outstanding in the principal amount of \$50,000 due to Seller's shareholders. Such note is listed as an Assumed Liability on Schedule 1.4(b).

Schedule 3.1(i) Inventory

As of December 31, 1998, the inventory is as follows:

GFF Inventory	\$ 866,724.00
GFI Inventory	\$1,119,588.00

Such inventory amounts were derived from internal statements and are not in accordance with generally accepted accounting principles.

Schedule 3.1(j) Accounts Receivable

As of December 31, 1998, the accounts receivable are as follows:

GFF Accounts Receivable	\$433,320.31
GFI Accounts Receivable	\$314,255.02

Such receivable amounts were derived from internal statements and are not in accordance with generally accepted accounting principles.

**Schedule 3.1(k) Sufficiency of Assets**

Certain personal assets of Seller's shareholders will be excluded from sale, including 3 Dell Computers; 3 HP Laser Printers; 1 HP Laser Jet 3100 Fax Machine; 1 Panasonic Fax Machine; and 1 Lanier Copy Machine. See also Exhibit 1.3(b) for Excluded Assets.

**Schedule 3.1(l) Litigation Decrees**

Attached as Schedule 3.1(l) is a warning received from the Township of Union, Dept. of Public Safety, regarding the Seller's alarm system (see GFF Disclosure Schedules). This issue has been resolved as shown on the attached Schedule 3.1(l).

**Schedule 3.1(m) Intellectual Property**

See GFF Disclosure Schedules regarding trade names. In addition, the Seller has applied for a new trademark, "GILETTECH". Attached hereto as Schedule 3.1(m) is correspondence from Seller's intellectual property counsel.

See attached Schedule 3.1(m) for software product registration.

**Schedule 3.1(n) Insurance**

See attached Schedule 3.1(n) for a list of insurance policies. See also GFF Disclosure Schedules. The Seller's surety bond with Western Surety has been replaced with a bond from Zurich Specialties.

Seller has a workers' compensation policy with New Jersey Re-Insurance Company.

Seller's business insurance Renewal Insurance Proposal is attached as Schedule 3.1(n). The Seller's current insurer, Zurich-American Insurance Company, does not write insurance policies with premiums under \$25,000. Seller is in the process of extending coverage for next year. See correspondence from McDermott Boyer Group.

Complete copies of all insurance policies were previously furnished to Purchaser.

Schedule 3.1(o) Contracts

The following is a list of contracts entered into by Seller.

1. American Scale. Month-to-month, quarterly calibration of production scales.
2. NUI Energy. Two (2) year contract expires September, 1999, natural gas services (see attached).
3. Cintas Corp. Month-to-Month, biweekly floor mat cleaning and delivery.
4. Lanier Worldwide. Prepaid service agreement through January, 1999, as needed copier repair.
5. Lucent Technology. Post warranty service agreement through October, 1998, phone system maintenance.
6. U.S. Customs. \$50,000 bond expired November, 1998 (see attached).
7. Lieberman, Esposito & Co. As needed accounting services.
8. Iaciofano & Fiamingo. As needed legal services.
9. Westmount Pension Service. As needed pension service.
10. Ceridian Minidata Services. As needed payroll and payroll tax services.
11. Imperial Copy Products. One (1) year contract expired September, 1998, for fax maintenance.
12. Rahway Business Machines. One (1) year contract expires July, 1999, for typewriter maintenance.
13. Commissions. Broker/individual arrangements who receive commissions. See attached Schedule 3.1(o)(vii).
14. Bayonne Exterminating. Month-to-month pest control service.
15. Comp-U-Nite Computers. Prepaid "block" of consulting time for LAN questions.
16. SWK. Prepaid "block" of consulting for accounting software questions.
17. Palace Life. Month-to-month weekly cleaning of offices and production rooms.



18. Pitney Bowes. Month-to-month postage meter rental.
19. Poland Spring. Month-to-month water cooler rentals and bottled water delivery.
20. Barclay Brand Ferdon. Month-to-month quarterly preventative maintenance for forklifts and pallet jacks.
21. Hudson Jersey/DeCuollo. Month-to-month as needed roll off garbage and recycling container services.
22. American Express. Employees will be removed as cardholders.

The following are permits or contracts Seller deems material irrespective of any dollar amounts paid annually:

1. See Schedule 3.1(q) for proposed compensation (40%) for key employees.
2. Certificate of Recognition – Good Manufacturing Practices (Silliker Labs).
3. License to operate Food & Cosmetic Establishment (New Jersey Department of Health) License No. F-009974. This license is not assignable.
4. Certificate of Registration for Sources of Air Emissions (Union County Environmental Health Commission). This certificate is not assignable.
5. Sanitary Inspection Report (New Jersey Department of Labor).
6. Industry Verification Statement (New Jersey Department of Labor).
7. Certificate of Registration – Boiler and Pressure Vessel Compliance (State of New Jersey). This certificate is not assignable.
8. Wastewater Discharge Survey (Essex/Union County).
9. Alarm Permit (Township Union/Department of Public Safety), which is not assignable.
10. Uniform Construction Code Certificate (Township Union/Code Enforcement Agency).
11. Fire Protection Contraction Plan Review (Township of Union).
12. Year 2000 compliance with all customers. Attached hereto as Schedule 3.1(o) is a typical Seller response document.

13. Seller, upon request of customer, will enter into a Product and Food Guaranty with all customers. A sample document that is customary in food industry is attached as Schedule 3.1(o).

14. Equal Opportunity and Affirmative Action Compliance Program. Attached hereto is a sample document.

15. Insurance Certificate (typical sample document).

16. Indemnity Agreement typically entered into with Seller's customers.

3.1(o)(ii) Seller entered several non-disclosure/secretcy agreements with customers to possibly blend materials for them. No transaction (blending or toll work) followed the signing of the agreements. Copies of such agreements were previously delivered to Purchaser.

3.1(o)(iii) The following are contracts of Seller which would require consent to transaction or assignment by Seller:

1. Schedule 3.1(c) for loan agreement with Fleet Bank which will be paid at closing.
2. See Schedule 3.1(s) for Lease Agreement with Gelb Estate.

Copies of all written agreement and summaries of all oral contracts were previously delivered to Purchaser.

(vii) There are no other written contracts with brokers who work for Seller in the field, although commissions are paid on a monthly basis on specific business brought in by respective brokers. A list of all such broker and respective commissions have been previously furnished to Purchaser.

Seller maintains the following memberships:

1. FEMA. The Flavor and Extract Manufacturers' Association.
2. CSA. Chemical Sources Association.
3. IFT. Institute of Food Technologists (New York).
4. Union County Chamber of Commerce.

5. NJB. Business and Industry Association (part of having our workers' compensation policy with New Jersey Manufacturers).

Schedule 3.1(p) Absence of Certain Changes

Seller has added flood insurance, renewed term insurance for Richard Englesbe and Paul Perreault, and added a Crime Policy Declaration. There is also a change in premium for disability insurance for Perreault. Marek Lacki was added to Aetna group policy.

Schedule 3.1(q) Sellers' Employees

List of employees previously delivered to Purchaser. Included in the list is Rita Everett, who was to remain with Seller. Ms Everett's hourly wage is \$13.00. Her health insurance benefit is \$117.24 per month, with a qualified pension plan employer match of \$40.00 per month. Ms. Everett's bonus for 1998 is expected to be \$9,000.

Schedule 3.1(r) Taxes

In November, 1998, Seller received a payroll tax refund from the Internal Revenue Service in the amount of \$7,179.60 due to an overpayment in the 4<sup>th</sup> quarter of 1997. This matter has been resolved as per attached correspondence.

3.1(s) Real Property

Lease Agreement with Gelb Estate, Inc., dated as of March 1, 1995. Consent of landlord is required for assignment of lease. The lease security deposit in the amount of \$12,447.17 will be an Excluded Asset.

Schedule 3.1(u) Permits Licenses

See Schedule 3.1(o) as none of such permits or licenses are transferable to Purchaser.

Schedule 3.1(v) Employee Benefit Plans and Employment Agreements

(i) See GFF Disclosure Schedules.

Seller provides a disability insurance policy and term life insurance policy for a key employee John Nobile.

(ii) No Schedule required.

- (iii) GFF, formerly known as Gillette Foods, Inc., did have a defined benefit pension plan. It was terminated 12/31/95. Seller has no qualified benefit plans, but Seller's employees participate in the GFF plan. See GFF Disclosure Schedules.
- (iv) Seller has no obligations other than offering COBRA - health insurance (which would be paid by the terminated employee if he or she chooses to continue coverage).

Schedule 3.1(w) Environmental Matters

Seller believes Purchaser's lender requested an environmental study of the leased property of Seller. Otherwise, no schedule required.

Schedule 3.1(x) Undisclosed Liabilities

No Schedule required.

Schedule 3.1(y) No Material Omissions

No Schedule required.

#175623 v1 - GILLETTE.GFIDisclosureSchedules  
4/9/99 1:41 PM

**SCHEDULE  
3.1(m)**

**GILLETTE FOOD  
FLAV., INC.**

**INTELLECTUAL  
PROPERTY**

Date: 03/23/00

-----

PLEASE SEND OR FAX TO: STATE OF THE ART, INC.  
 PRODUCT REGISTRATION                      FAX: (714) 753-1778  
 56 TECHNOLOGY  
 IRVINE, CA 92618

-----

COMPANY NAME: GILLETTE FOODS, INC  
 REGISTRATION ID: 41359

-----

MODULE	SERIAL NUMBER	UNLOCKING KEY
S Library Master.....	WEWCLLMA228	KWYJRR
P Accounts Payable.....	WEWCLAPA257	SSPSQA
R Accounts Receivable.....	WEWCLARA221	WRQYWR
/M Bill of Materials.....	MUD3LBMA733	PNRYSN
/R Bank Reconciliation.....	W9WCLBRB076	SNQTMQ
/M Custom Office.....	W9WCLCMC059	SJPPPO
/X Explorer.....	M9D3LEXI776	WYTPUS
G/L General Ledger.....	WEWCLGLA248	RNRXWQ
I/M Inventory Management.....	WEWCLIMA147	SQSYKN
M90 MAS90 System Activation.....	0528622	936520E191446C090A68
P/O Purchase Order.....	WEWCLPOA179	NNSWRR
S/O Sales Order.....	WEWCLSOA168	QKTRXU

COMPANY NAME: GILLETTE FOODS, INC  
REGISTRATION ID: 41359

---

MAILING NAME:  
ADDRESS: 751 RAHWAY AVENUE

CITY: UNION

STATE/PROV: NJ

POSTAL/ZIP CODE: 07083-6633

COUNTRY: USA

PHONE: 9086880500

FAX:

CONTACT: VITAS ROMAN

---

TYPE OF BUSINESS: NOT APPLICABLE  
APPROXIMATE SALES VOLUME: NOT APPLICABLE  
NUMBER OF EMPLOYEES: NOT APPLICABLE  
TITLE OF DECISION MAKER: NOT APPLICABLE

FIRST HEARD OF M.A.S 90: NOT APPLICABLE  
PUBLICATION:

RESELLER CONTACT: SWK, INC

DID YOU SEE A WORKING DEMONSTRATION OF THE SOFTWARE? NO  
DID YOU SEEK ADVICE FROM AN OUTSIDE ACCOUNTING FIRM? NO

HOW MANY WORKSTATIONS ARE USED FOR ACCOUNTING:  
ARE YOU USING A CONSULTANT OR DEALER TO HELP INSTALL YOUR SOFTWARE: DEALER

HAVE YOU PREVIOUSLY OWNED ANOTHER COMPUTER ACCOUNTING SYSTEM? NO  
BRAND:

Mark Search Report

© 1998 MicroPatent/Mark Search

Reference: Gillette Foods and Gilnet Food Flavorings  
Owner: gilnet food

5 trademark records

Table of Contents

- 1. 74-654053 **GT** (and Design) Registered GILLETTE FOOD FLAVORINGS INC
- 2. 74-654052 **GT** (and Design) Registered GILLETTE FOOD FLAVORINGS INC
- 3. 74-429673 **GTBO** Registered GILLETTE FOODS INCORPORATED
- 4. 74-425115 **GT** (Stylized) Registered GILLETTE FOODS INCORPORATED
- 5. 74-419923 **GT** (Stylized) Registered GILLETTE FOODS INCORPORATED

Return to Table of Contents

Record 1



Mark **GT** (and Design)  
 Status Registered Jan 23, 1996  
 Registrar Principal  
 Serial No 74-654053 Registration No 31951560  
 Int'l Class 29 - Meats and Processed Foods  
 Goods/Services MEATS, FISH, POULTRY AND EXTRACTS OF THE SAME  
 U.S. Class 46  
 1st Use Jan 31, 1995  
 Commerce Use Jan 31, 1995  
 Int'l Class 30 - Staple Foods  
 Goods/Services SEASONINGS; FOOD FLAVORINGS NOT BEING ESSENTIAL OILS;  
 EXTRACTS, NOT BEING ESSENTIAL OILS, USED AS A FLAVORING  
 U.S. Class 46  
 1st Use Jan 31, 1995  
 Commerce Use Jan 31, 1995  
 Filed Mar 30, 1995  
 Published Oct 31, 1995  
 Registered Jan 23, 1996

<http://www.micropat.com/cgi-bin/unlist>

7/31/98



09/03/1998 13:01

583448115

MICHAEL J. WEINS

PAGE 05

Mark Search Report

Page 2 of 6

Design Codes 261101 - Rectangles as carriers of a single or multiple line borders

Correspondent MICHAEL J. WEINS

Last Owner GILLETTE FOOD FLAVORINGS, INC.  
751 RAHWAY AVENUE  
UNION, NJ 07083

Return to Table of Contents

Record 2



Mark **DFG (and Design)**

Status Registered Jan 23, 1996

Register Principal

Serial No. 74-654052 Registration No. 1951559

Int'l Class 42 - Miscellaneous Services

Goods/Services WHOLESALE DISTRIBUTORSHIP SERVICES IN THE FIELDS OF YEAST, FLAVORINGS, ADDITIVES AND FOOD INGREDIENTS

U.S. Class 100, 101

1st Use Feb 28, 1995

Commence Use Feb 28, 1995

Filed Mar 30, 1995

Published Oct 31, 1995

Registered Jan 23, 1996

Design Codes 261101 - Rectangles as carriers of a single or multiple line borders

Correspondent MICHAEL J. WEINS

Last Owner GILLETTE FOOD FLAVORINGS, INC.  
751 RAHWAY AVENUE  
UNION, NJ 07083

Return to Table of Contents

<http://www.micropat.com/cgi-bin/tmlist>

7/31/98

Mark Search Report

Record 3

**Mark:** XERO  
**Status:** Registered, Jun 21, 1994  
**Register:** Principal  
**Serial No.:** 74-129673 **Registration No.:** 1640753  
**Int'l. Class.:** 30 (Staple Foods)  
**Goods/Services:** YEAST; EXTRACTS USED AS FLAVORING AND FOOD FLAVORINGS  
**U.S. Class.:** 46  
**1st. Use:** Mar 2, 1990  
**Comm. Use:** Mar 27, 1990  
**Filed:** Aug 30, 1993  
**Published:** Mar 29, 1994  
**Registered:** Jun 21, 1994  
**Correspondent:** MICHAEL J. WEINS  
**Last Owner:** GILLETTE FOODS INCORPORATED  
 751 RAHWAY AVENUE  
 UNION, NJ 07083

ASSIGNMENTS

**Reel/Frame:** 1805/0932  
**Assignor:** GILLETTE FOODS, INC.  
**Assignee:** GILLETTE FOOD FLAVORINGS, INC.  
**Correspondent:** MICHAEL J. WEINS, 31 BANK STREET, LEBANON, NH 03766  
**Date Sent/Ack:** Mar 17, 1995  
**Date Recorded:** Mar 10, 1995  
**Brief:** CHANGE OF NAME EFFECTIVE 12-15-94  
**Reel/Frame:** 1464/0906  
**Assignor:** GILLETTE FOOD FLAVORINGS, INC.  
**Assignee:** GILLETTE FOODS, INC., UNION, NJ, 07083  
**Correspondent:** MICHAEL J. WEINS, 31 BANK STREET, LEBANON, NH 03766  
**Date Sent/Ack:** May 24, 1996  
**Date Recorded:** May 31, 1996  
**Brief:** Assigns the entire interest and goodwill

Return to Table of Contents

Record 4



08/03/1998 15:01

629442115

MICHAEL J WEINS

## Mark Search Report

Page 4 of 6

Mark: GR (stylized)  
 Status: Registered, Mar 14, 1995  
 Register: Principal  
 Serial No: 74-425115 Registration No: 1803710  
 Int'l Class: 29 - Meats and Processed Foods  
 Goods/Services: MEAT EXTRACTS, PROCESSED FRUIT AND BERRIES  
 U.S. Class: 46  
 1st Use: Aug 1, 1988  
 Commerce Use: Aug 1, 1988  
 Int'l Class: 30 - Staple Foods  
 Goods/Services: SEASONINGS, FOOD FLAVORINGS, NOT BEING ESSENTIAL OILS,  
 EXTRACTS USED AS A FLAVORING  
 U.S. Class: 46  
 1st Use: Aug 1, 1988  
 Commerce Use: Aug 1, 1988  
 Int'l Class: 32 - Light Beverages  
 Goods/Services: ESSENCES FOR THE PREPARATION OF MINERAL WATER OR SOFT  
 DRINKS; FRUIT JUICE CONCENTRATES  
 U.S. Class: 45  
 1st Use: Aug 1, 1988  
 Commerce Use: Aug 1, 1988  
 Filed: Aug 16, 1993  
 Published: Dec 20, 1994  
 Registered: Mar 14, 1995  
 Correspondent: MICHAEL J WEINS  
 Last Owner: GILLETTE FOODS, INCORPORATED  
 751 BRAUNWAY AVENUE  
 UNION, NJ 07083

## ASSIGNMENTS

Reel/Frame: 1305/0332  
 Assignor: GILLETTE FOODS, INC.  
 Assignee: GILLETTE FOOD FLAVORINGS, INC.  
 Correspondent: MICHAEL J WEINS, 31 BANK STREET, LEBANON, NH 03766  
 Date Sgnd/Ack: Mar 17, 1995  
 Date Recorded: Mar 10, 1995  
 Brief: CHANGE OF NAME EFFECTIVE 12-15-94  
 Reel/Frame: 1464/0908  
 Assignor: GILLETTE FOOD FLAVORINGS, INC.  
 Assignee: GILLETTE FOODS, INC, UNION, NJ 07083  
 Correspondent: MICHAEL J WEINS, 31 BANK STREET, LEBANON, NEW HAMPSHIRE  
 03766  
 Date Sgnd/Ack: May 24, 1996  
 Date Recorded: May 31, 1996  
 Brief: Assigns the entire interest and goodwill.

[Return to Table of Contents](#)  


---

Record 5

<http://www.micropat.com/cgi-bin/tmlist>

7/31/98

Mark Search Report

Page 5 of 6



**Mark** **GF (Stylized)**  
**Status** **Registered Mar 10, 1995**  
**Registrar** **Principal**  
**Serial No.** **74-418823** **Registration No.** **1884066**  
**Int'l Class** **42 - Miscellaneous Services**  
**Goods/Services** **DISTRIBUTORSHIP SERVICES IN THE FIELDS OF FRUITS,**  
**FLAVORINGS AND FOOD INGREDIENTS**  
**U.S. Class** **101**  
**1st Use** **Sep 25, 1989**  
**Commence Use** **Sep 25, 1989**  
**Filed** **Jul 30, 1993**  
**Published** **Nov 8, 1994**  
**Registered** **Mar 14, 1995**  
**Correspondent** **MICHAEL J. WEINS**  
**Legal Name** **GILLETTE FOODS INCORPORATED**  
**751 RAHWAY AVENUE**  
**UNION, NJ 07083**

ASSIGNMENTS

**Reel/Frame** **1305/0332**  
**Assignor** **GILLETTE FOODS, INC.**  
**Assignee** **GILLETTE FOOD FLAVORINGS, INC.**  
**Correspondent** **MICHAEL J. WEINS, 31 BANK STREET, LEBANON, NH 03766**  
**Date Sgnd/Ack** **MAY 17, 1995**  
**Date Recorded** **MAY 10, 1995**  
**Brief** **CHANGE OF NAME EFFECTIVE 12-15-94**  
  
**Reel/Frame** **1465/0687**  
**Assignor** **GILLETTE FOOD FLAVORINGS, INC.**  
**Assignee** **GILLETTE FOODS, INC., UNION, NJ, 07083**  
**Correspondent** **MICHAEL J. WEINS, 31 BANK STREET, LEBANON, NH 03766**  
**Date Sgnd/Ack** **MAY 24, 1996**  
**Date Recorded** **MAY 31, 1996**  
**Brief** **Assignment of a part of assignor interest**

<http://www.micropat.com/cgi-bin/tmhist>

7/31/98

08/03/1998 15:21 6694481115

MICHAEL J. WEINS

PAGE 09

Mark Search Report

Page 6 of 6

[Return to Table of Contents](#)

<http://www.micropat.com/cgi-bin/tmlist>

7/31/98

08/03/1998 15:01 6034481115

MICHAEL J WEINS

PAGE 02

**Michael J. Weins**

Intellectual Property Law Offices  
31 Bank Street  
Lebanon, New Hampshire 03766  
Phone (603) 448-1922  
Fax (603) 448-1115  
e-mail mjweins@aol.com

Michael J. Weins  
Patent Attorney  
Jeffery E. Campbell  
Patent Agent

August 3, 1998

VIA FACSIMILE AND MAIL

Mrs. Gerda Macsikonis, President  
Gillette Foods, Inc.  
751 Rahway Avenue  
Union, NJ 07083

Re: GF and Design Service Mark and Trademark  
RYBO Trademark  
Current Ownership of Marks

Dear Gerda:

You were interested in the chain of ownership of the marks GF and Design and RYBO. As you may remember, it was a complicated path that lead the marks to their present owner. When the applications were filed, the owner was listed as Gillette Foods, Inc. Later, the name of the company was changed to Gillette Food Flavorings, Inc. and subsequently, the applications were assigned to a new company, Gillette Foods, Inc.

I will be out of town the remainder of the week and thought that the enclosed summary would be helpful if the question of ownership arises. The enclosed summarizes the information maintained by the Trademark Office and was obtained from the Micropatent\* database. This database provides changes of company names and assignments which have been recorded at the Trademark Office. Unfortunately, a change in company name is listed as an assignment; however, when reviewing the records of your marks in greater detail, it is apparent that the first "assignment" listed for your marks is the recording of the change in company name.

Official Gazette listings and status updates through July 21, 1998 and new applications filed through June 11, 1998.

\*Member of the Bar in Illinois, Washington, DC and New York

Mrs. Gerda Maceikonis, President

Page 2

August 3, 1998

I think this information should be helpful to those interested in the state of the ownership of the marks. I would be happy to answer questions for you later today. I will take copies of these papers with me on my trip and could call you back during the course of the week. I will be in the office again next week.

Sincerely,

Michael J. Weins

MJW/eis  
Enclosure

**ASSIGNMENT OF INTANGIBLE ASSETS**

THIS ASSIGNMENT OF INTANGIBLE ASSETS, dated April 22, 1999, is by and between GILLETTE FOODS, INC., a New Jersey corporation ("Assignor"), and GENEVA INGREDIENTS, INC., a Delaware corporation ("Assignee");

**WITNESSETH:**

THAT, WHEREAS, Assignor and Assignee are parties to an Asset Purchase Agreement, dated as of April 22, 1999 (the "Purchase Agreement") (capitalized terms used herein and not otherwise defined are used herein with the meanings given to such terms in the Purchase Agreement), pursuant to which Assignee is purchasing from Assignor certain Assets of Assignor, as defined and more fully described in the Agreement, including the Proprietary Information and the Intellectual Property; and

WHEREAS, in accordance with the Purchase Agreement, the Assignor wishes to assign all of its right, title and interest in and to the Proprietary Information and the Intellectual Property to Assignee;

NOW, THEREFORE, in consideration of the mutual agreements contained in the Agreement and herein, and subject to all of the terms and conditions specified therein and herein, the parties hereto agree as follows:

1. Assignment. Assignor hereby sells, assigns and transfers to Assignee Assignor's entire right, title and interest in and to the Proprietary Information and the Intellectual Property, including, without being limited to, all registrations, applications and renewals associated therewith, together with the good will of Assignor's business in connection with which the Proprietary Information and the Intellectual Property is used, free and clear of all liens, claims and encumbrances.

2. Attorney-in-Fact. Assignor hereby irrevocably appoints Assignee, its successors and assigns, the true and lawful attorney of Assignor to execute such further documents and instruments, and do such other acts and things, as may be necessary or appropriate to effectuate the transfer of the Proprietary Information and the Intellectual Property contemplated by this Assignment of Intangible Assets and the Purchase Agreement. Assignee agrees to give Assignor prior written notice (at its address for notice pursuant to the Agreement) of any action to be taken pursuant to the foregoing power of attorney.



3. Counterparts. This Assignment of Intangible Assets may be executed in one or more counterparts, each of which shall be deemed on original, but all of which together shall constitute a single instrument.

4. Governing Law. This Assignment of Intangible Assets shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey without regard to the choice of law provisions thereof.

5. Conflict. To the extent that any term or provision of this Assignment of Intangible Assets conflicts with any term or provision of the Purchase Agreement, the Purchase Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Assignment of Intangible Assets on the date first above written.

GILLETTE FOODS, INC.

By: *George MacLellan*  
Name: George MacLellan  
Title: President

GENEVA INGREDIENTS, INC.

By: *G. Spillane*  
Name: George Spillane  
Title: Assistant Secretary

# Patterson, Belknap, Webb & Tyler<sup>LLP</sup>

1133 Avenue of the Americas, New York, NY 10036-6710 212-336-2000 Fax: 212-336-2222

---

## Fax Transmission

**Date:** March 23, 2000

**To:** U.S. Patent and Trademark Office  
Patent and Trademark Assignment System

**Fax Number:** 703-306-5995

**From:** Adrienne R. Moss

**Sender's direct line:** 212-336-2073

**Sender's Fax:** 212-336-2222

**Total # of pages:** 62  
(including this sheet)

**Sender's ID Number:** 1293

**Client/Matter number:** H3255-0001

---

## Message:

**Confidentiality Notice:** This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient or an employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail. We undertake to reimburse you for costs so incurred. Thank you.

**TRADEMARK**