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Docket No.: 1) \$

TDS-128



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To the Director of the United States Patent and Trademark Office

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original documents or copy thereof.

1. Name of conveying party(ies): 12-29-03
ACCUMED INTERNATIONAL, INC

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other _____

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: TREK DIAGNOSTIC SYSTEMS, INC
Internal Address: _____
Street Address: 982 Keystone Circle
City: Cleveland State: OH ZIP: 44131

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State Delaware
 Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: January 29, 1999

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s)
2310829 2337361
2277753
2301646

Additional numbers Yes No

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

Name: Howard M. Cohn, Patent Attorney
Internal Address: _____
Street Address: 21625 Chagrin Blvd. Suite 220
City: Cleveland State: OH ZIP: 44122

6. Total number of applications and registrations involved:..... 4

7. Total fee (37 CFR 3.41):.....\$ \$115.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
03-2415

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9. 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.

Howard M. Cohn Howard M. Cohn 12-23-03
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and

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TRADEMARK
REEL: 002891 FRAME: 0128

ASSET PURCHASE AGREEMENT

By and Between

ACCUMED INTERNATIONAL, INC.

and

AMI ACQUISITION CORP.

Dated as of November 20, 1998

CL 332259v6

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- Trademark Assignment
- Assumption of Assumed Liabilities
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- Sublease

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of November 20, 1995, is by and between AMI Acquisition Corp., a Delaware corporation ("Buyer"), and AccuMed International, Inc., a Delaware corporation ("Seller").

RECITALS

A. Seller and AccuMed UK (as defined in Section 1.1(q)) are engaged through the Microbiology Division in, among other things, the business (the "Business") of developing, manufacturing and marketing *in vitro* diagnostic clinical microbiology products, services and equipment for the human clinical laboratory, veterinary and pharmaceutical markets (collectively the "Products");

B. Seller desires to sell certain assets, properties, rights and interests relating to the Business, and to transfer certain liabilities relating to the Business, to Buyer; and

C. Buyer desires to purchase and acquire from Seller, upon the terms and subject to the conditions hereinafter set forth, such assets, properties, rights and interests of Seller, in consideration of certain payments by Buyer and the assumption by Buyer of certain liabilities and obligations of Seller specifically disclosed in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and warranties contained and other good and valuable consideration had and received, Buyer and Seller, on the basis of, and in reliance upon, the representations, warranties, covenants, conditions and agreements set forth in this Agreement, and upon the terms and subject to the conditions contained herein, hereby agree as follows:

ARTICLE 1. PURCHASE AND SALE OF ASSETS

1.1 Sale and Transfer of Assets. At the Closing and effective as of the Closing Date (as defined in Section 4.1), Seller will sell, assign, convey, transfer and deliver to Buyer free and clear of all Liens (as defined in Section 4.2 (a)), other than Permitted Liens (as defined in Section 4.2 (f)), and Buyer will purchase and acquire from Seller, all of the assets, properties, rights and interests of Seller related to the Business, wherever situated, as the same shall exist as of the Closing Date, including, without limitation, the following:

(a) Cash and Cash-Equivalents. All cash and cash-equivalents and marketable securities of Seller relating to the Business, cash in transit and cash, cash-equivalents and marketable securities in lockboxes or on deposit with or held by any financial institution;

(b) Prepays. All prepaid expenses, advance payments, deposits, surety accounts and other similar assets of Seller relating to the Business, including, without limitation, prepaid deposits with suppliers and utilities;

(c) Accounts Receivable. All accounts receivable (including royalties receivable and accounts receivable owed to AccuMed UK by Seller or any Affiliate thereof), any payments received with respect thereto after the Closing Date, unpaid interest accrued on any such accounts receivable and any security or collateral relating thereto (collectively, "Accounts Receivable") of Seller relating to the Business, provided that "Accounts Receivable" shall not include any intercompany accounts receivable owed to or from Sellers Chicago and Westlake facilities;

(d) Purchased Inventory. All raw materials and supplies, work-in-process and finished goods of Seller relating to the Business, including items purchased for distribution or resale and items which have been ordered for the Business;

(e) Fixed Assets. All tangible personal property, plant, machinery and equipment (collectively, "Fixed Assets") of Seller relating to the Business, including, without limitation, the Fixed Assets identified on Schedule 1.1(e) attached hereto;

(f) Intellectual Property Rights. All inventions, discoveries, trademarks, service marks, patents, trade names, copyrights, know-how, intellectual property, software and information systems, shop rights, licenses, developments, designs, technology, discoveries, trade secrets, test procedures, processes, research data, formulae and other confidential information intellectual and similar intangible property rights, whether or not patentable or otherwise subject to legally enforceable restrictions or protections against unauthorized third party usage), and any and all applications for, and extensions, divisions and continuances of, any of the foregoing, and rights therein relating to the Business, including, without limitation, (i) the names "AccuZone," "alamarBlue," "ARIS," "ESP," "Eura Sensing Power," "Flouretone," "EZ DRAW," "EZ VIEW," "INSIGHT," "InstOne," "Pathos," "Pipetar," "ReadAr," "SAMS," "Sensititre," "SensiTouch," "ViasOne," and all related trade names and trademarks (collectively, the "Tradenames"), (ii) the intellectual and intangible property rights described on Schedule 5.1(p), and (iii) the production methods, formulae, know-how and technical expertise relating to the manufacture of Products presently or previously manufactured or sold by the Business (collectively, the "Intellectual Property");

(g) Business Records. All books and records relating to the Business, including, without limitation, all files, invoices, forms, accounts, correspondence, production records, technical, accounting, manufacturing and procedural records and manuals (including all good manufacturing practice records and manuals), employment records relating to Employees (as defined in Section 5.1(s)), and other books and written and electronic records of Seller and relating to the Business, and any confidential information that has been reduced to writing or other tangible medium relating to the Business;

(h) Customer List. Any lists of Persons (as defined in Section 1.3(a)) to whom or to which Seller has sold or otherwise furnished Products, directly or indirectly, individually, a "Customer" and collectively, the "Customers," such terms to include any assignee or successor of any such Person, whether by consolidation, merger, sale of assets or otherwise), including related information as to the unit and dollar volume of such sales,

the type of Products so sold or furnished and other relevant marketing and product information for each Customer;

(j) Supplier List. Any lists of Persons from whom or from which Seller has purchased or otherwise received supplies, ingredients, equipment, materials or components ("Materials") used in the development or production of Products, directly or indirectly (individually, a "Supplier" and collectively, the "Suppliers," such terms to include any assignee or successor of any such Person, whether by consolidation, merger, sale of assets or otherwise), including related information as to the unit and dollar volume of such purchases, the type of Materials so purchased or received and other relevant product information for such Supplier;

(k) Catalogs and Advertising Materials. All promotional and advertising materials relating to the Business or to the Products, including, without limitation, all catalogs, brochures, plans, supplier lists, manuals, handbooks, equipment and parts lists, dealer and distributor lists, and labels and packaging materials;

(l) Contracts. All rights, benefits and interests of Seller in and to all licenses, purchase orders, contracts, agreements (including, without limitation, marketing, distribution and supply agreements), commitments and undertakings (collectively, "Contracts") identified on Schedule 1.1(k) attached hereto (the "U.S. Contracts");

(m) Permits. All licenses, permits, approvals, clearances, variances, waivers or consents (collectively, "Permits"), to the extent assignable, issued by any foreign, United States, state or local governmental entity or municipality or subdivision thereof or any authority, department, commission, board, bureau, agency, court or instrumentality (collectively, "Governmental Authorities") and related to the Business, including, without limitation, the Permits identified on Schedule 1.1(l) attached hereto;

(n) Insurance. All rights, claims and benefits of Seller in, to or under all insurance policies maintained by Seller for the Business or the Acquired Assets (as defined in Section 1.1(s));

(o) Goodwill. The goodwill of the Business;

(p) Real Property. All real property rights and interests of any kind whatsoever owned by Seller and relating to the Business, including the rights and interests identified under the heading "Seller Real Property" on Schedule 5.1(g)(i), which consist of (i) the land more particularly described under such heading, which descriptions are incorporated herein by reference, (ii) all buildings, structures and leasehold improvements located thereon and all appurtenances relating thereto, and (iii) all fixtures, machinery, apparatus or equipment attached to such premises, including, without limitation, all of the electrical, heating, plumbing, air conditioning, air compression and all other systems located on said premises, and all other structures, fences and improvements (collectively, "Real Property");

(p) Leased Property. All rights and interests under the leases (the "Leases") described under the heading "Seller Leased Property" on Schedule 5.1(g)(i), which descriptions are incorporated herein by reference;

(q) AccuMed UK. 2,000,000 ordinary shares of £1 each (the "Shares"), comprising the entire issued share capital of AccuMed International, Limited, a limited liability company organized under the laws of England and Wales with company number 088515 ("AccuMed UK"), and all tax loss carry-forwards relating to AccuMed UK, to the extent transferable; and

(r) Shared Tools and Equipment. All of the tools and equipment set forth on Schedule 1.1(r).

(s) Miscellaneous. All other assets, properties, rights and interests of Seller relating to the Business, of every kind, nature and description, whether tangible or intangible, real, personal or mixed, and wherever situated, including, without limitation, the assets, properties, rights and interests set forth on the Unaudited Balance Sheet (as defined in Section 5.1(i)), all of which are to be sold, transferred, conveyed, assigned and delivered to Buyer at the Closing pursuant to this Agreement, except as otherwise specifically set forth in this Agreement.

The assets, properties, rights and interests of Seller relating to the Business that are to be sold, transferred, conveyed, assigned and delivered by Seller to Buyer at the Closing as set forth herein, including without limitation, those described in clauses (a) through (s) above are referred to herein collectively as the "Acquired Assets."

(2) Retained Assets. Anything in Section 1.1 to the contrary notwithstanding, the assets (collectively, the "Retained Assets") shall be retained by Seller, and Buyer shall not be deemed to have purchased or acquired (or to be obligated to purchase or to acquire) any of the same in any of the following:

(i) Non-Assigned Contracts. All of the rights and interests, and all of the duties and obligations, of Seller in, under or pursuant to any Contract (i) that is listed in Schedule 1.2(a), or (ii) that Buyer, in a writing or writings delivered to Seller prior to the Closing Date identifies as not desired by Buyer to be included within, or to constitute any part of the Acquired Assets (collectively, the "Non-Assigned Contracts");

(ii) Retained Names. The name "AccuMed" (the "Retained Name"), except to the extent otherwise contemplated by Section 7.6 of this Agreement;

(iii) Corporate Records. Seller's minute books, stock books, stock ledger and corporate seal and all books, records and other data that relate primarily to (i) the Retained Assets, (ii) the Retained Liabilities (as defined in Section 2.2), or (iii) Seller's businesses other than the Business;

(d) Rights Under G&G Collaboration Agreement. All of the rights and interests, and all of the liabilities, debts and obligations, of Seller in, under or pursuant to, the Collaboration Agreement and Worldwide Exclusive License, between Seller and G&G Dispensing, Inc., dated March 22, 1994 (the "G&G Collaboration Agreement"); and

(e) Rights Under BioKit License Agreement. All of the rights and interests, and all of the liabilities, debts and obligations, of Seller in, under or pursuant to, the License & Distribution Agreement, dated as of February 20, 1996, between Seller and BioKit, S.A. (the "BioKit License").

13 Assignability and Consents

(a) Required Consents. Schedule 5.1(x) sets forth a list of all Acquired Assets, including Contracts and Permits, that are non-assignable or non-transferable or cannot be assigned to Buyer without the Consent (as defined below) of some other individual, partnership, corporation, association, joint stock company, trust, joint venture, limited liability company or Governmental Authority (collectively, a "Person"). Seller has commenced and shall continue to take, or cause to be taken by others, all necessary actions required to obtain or satisfy, at the earliest practicable date, all consents, approvals, authorizations, requirements (including filing and registration requirements), waivers and agreements ("Consents") from any Persons necessary to authorize, approve or permit the full and complete sale, conveyance, assignment, sublease or transfer of the Acquired Assets, and to consummate and make effective the transactions contemplated by this Agreement and to continue such efforts as may be required after the Closing Date to facilitate the full and expeditious transfer of legal title, or the sublease, as the case may be, of the Acquired Assets. Seller has executed or will execute letters in a form acceptable to Buyer that notify the Food and Drug Administration ("FDA") of the transfers of 10(k) Pre-Market Notifications ("510(k)s"), Pre-Market Approval Applications ("PMAs") and Investigative Device Exemptions ("IDEs") for the Products.

(b) Nonassignable Items. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to sell, convey, assign, sublease or transfer any Acquired Assets, including Contracts and Permits, if an attempted sale, conveyance, assignment, sublease or transfer thereof, without the Consent of another party thereto or a Governmental Authority, would constitute a breach of, or in any way interfere with the rights of Seller or Buyer with respect to, such Acquired Asset ("Nonassignable Items"). Seller shall use commercially reasonable efforts and Buyer shall cooperate in all reasonable respects with Seller to obtain and satisfy all Consents and to resolve all impracticalities of sale, conveyance, assignment, sublease or transfer necessary to convey to Buyer all Nonassignable Items. If any such Consents are not obtained and satisfied or if an attempted sale, conveyance, assignment, sublease or transfer would be ineffective, Seller and its appropriate Affiliates (as defined in Section 12.12(a)) shall at the Closing enter into such arrangements (including related written agreements) as Buyer may reasonably request in order to fairly compensate Buyer for the loss of, or to provide to Buyer the benefit of, any such Nonassignable Items (it being acknowledged that such arrangement may include obligations imposed on Seller and such Affiliates promptly to

pay to Buyer when received all monies and other items of value received by Seller and such Affiliates under any such Nonassignable Item).

ARTICLE 2. LIABILITIES

2.1 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, Buyer shall assume, at the Closing and effective as of the Closing Date, and shall hereafter pay, perform and discharge as and when due, the following, and only the following liabilities and obligations of Seller or AccuMed UK (collectively, the "Assumed Liabilities"):

(a) Certain Balance Sheet Liabilities. All liabilities and obligations of Seller or AccuMed UK existing on the Closing Date (i) that constitute non-interest bearing trade accounts payables due to Suppliers incurred by Seller solely on account of the Business and in the ordinary course of business of the Business consistent with past practice ("Trade Payables"); provided, that, "Trade Payables" shall not include any intercompany accounts payable owed to or from Seller's Chicago and Westlake facilities, (ii) on account of current accrued liabilities and deferred revenues as reflected on the books and records of Seller as of the Closing Date in the categories listed on Schedule 2.1(a) relating solely to the Business and of the type reflected on the Unaudited Balance Sheet, (iii) on account of Product warranty claims (but not Product liability claims or recall claims) arising from Products manufactured or sold by the Business prior to the Closing; provided, that, Buyer shall not assume any liabilities or obligations of Seller or AccuMed UK on account of such Product warranty claims in excess of (y) in the case of ESP blood culture Products (the "ESP Products"), \$967,299 (which includes \$600,000 reclassified as a reserve against the Fixed Assets), and (z) in the case of all other Products of the Business, \$25,000 and (iv) payables owed by AccuMed UK to Seller (the obligations and liabilities described in Section 2.1(a)(i) and (ii) are hereinafter referred to as the "Balance Sheet Liabilities");

(b) Contracts and Permits. All liabilities and obligations of Seller and AccuMed UK arising under the terms of the Contracts and Permits included in the Acquired Assets, other than contracts that constitute Non-Assigned Contracts or Nonassignable Contracts, but only to the extent such liabilities and obligations relate solely to the Business and arise or accrue after the Closing Date in the ordinary course of business of the Business and consistent with the representations, warranties, covenants, obligations and agreements set forth in this Agreement; provided, however, that Buyer shall not assume or be responsible for any such liabilities or obligations that arise from breaches thereof or defaults thereunder by Seller or AccuMed UK, all of which liabilities and obligations shall constitute Retained Liabilities; and

(c) Certain Other Liabilities. Up to an aggregate of \$10,000 in other liabilities or obligations of Seller and/or AccuMed UK not otherwise provided for in this Section 2.1, provided that such liabilities and obligations relate solely to the Business.

2.2. Retained Liabilities. Except as provided in Section 2.1, Seller shall assume or Buyer and AccuMed UK shall not assume, or be responsible or liable with respect to, debts or obligations of Seller or AccuMed UK relating to the Business or otherwise of present or former owner, operator or manufacturer thereof, whether or not of, associated with or arising from, any of the Acquired Assets, and whether fixed, contingent or otherwise, known or unknown (collectively, the "Retained Liabilities"), including, without limitation, the

(a) Pre-Closing. All liabilities and obligations relating to, based in whole or in part on events or conditions occurring or existing in connection with, or arising out of, the Business operated by Seller or AccuMed UK, prior to the Closing Date, or Seller's or AccuMed UK's ownership, possession, use, operation or sale or other disposition prior to the Closing Date of any Products or any of the Acquired Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing Date, with the Business operated by Seller or AccuMed UK);

(b) Liabilities Relating to this Agreement. All liabilities and obligations of Seller arising out of, or relating to, this Agreement or the transactions contemplated hereby, whether incurred prior to, at, or subsequent to the Closing Date, including, without limitation, all finder's or broker's fees and expenses, and any and all fees and expenses of any attorneys, accountants or other professionals retained by or on behalf of Seller or any of its Affiliates;

(c) Employee-Related Liabilities. Except to the extent reflected as an accrual on the books and records of Seller as of the Closing Date, all liabilities and obligations to any persons at any time employed by Seller, AccuMed UK, their respective Affiliates or their respective predecessors-in-interest in the Business or otherwise, at any time, or to any such person's spouse, children, other dependents or beneficiaries, with respect to incidents, events, exposures or circumstances occurring at any time during the period or periods of any such person's employment by Seller, AccuMed UK, their respective Affiliates or their respective predecessors-in-interest, whenever such claims mature or are asserted, including, without limitation, all liabilities and obligations arising (i) under any Employee Laws (as defined in Section 5.1(s)), (ii) under any employment, wage and hour restriction, equal opportunity, discrimination, plant closing or immigration and naturalization statutes, laws, rules, regulations, orders, ordinances, codes, judgments and decrees of Governmental Authorities (collectively, "Laws"), (iii) under any collective bargaining laws, agreements or arrangements, or (iv) in connection with any workers' compensation or any other employee health, accident, disability or safety claims;

(d) Litigation. All liabilities and obligations relating to any litigation, action, suit, claim, investigation or proceeding pending or threatened on the date of this Agreement, or constituted hereafter, based in whole or in part on events or conditions occurring or arising in connection with, or arising out of, or otherwise relating to, the Business as operated by Seller or any of its Affiliates (including, without limitation, AccuMed UK) (or any of their respective predecessors-in-interest), or Seller's or any of its Affiliate's (including, without limitation, AccuMed UK) ownership, possession, use, operation, sale

...disposition prior to the Closing Date of any Products (including Product recalls) of the Acquired Assets (or any other assets, properties, rights or interests of Seller or its Affiliates (including, without limitation, AccuMed UK) associated, at any time prior to the Closing Date, with the Business, the Products or the Acquired Assets);

(e) Product and Safety Liability. All liabilities and obligations relating to the Business operated by Seller or AccuMed UK, any Products or the Acquired Assets (or any other assets, properties, rights or interests of Seller or its Affiliates (including, without limitation, AccuMed UK) associated, at any time prior to the Closing Date, with the Business, Products or the Acquired Assets), based in whole or in part on events or conditions occurring or existing prior to the Closing Date and connected with, arising out of or relating to (i) any dispute for services rendered or goods manufactured, including, without limitation, Product warranty claims, Product liability claims and Product recalls, and claims for refunds, returns, personal injury and property damage, (ii) claims relating to product health and safety, including claims for injury, sickness, disease or death of any person, or (iii) compliance with any Laws relating to any of the foregoing;

(f) Taxes. All liabilities and obligations of Seller or AccuMed UK or any of their respective Affiliates (or any of their respective predecessors-in-interest) for any Taxes (as defined in Section 5.1(v)) for any taxable period or portion thereof, ending on or before the Closing Date due or becoming due by reason of (i) the conduct of the Business, or (ii) the ownership, possession, use, operation, purchase, acquisition, sale or disposition, of any Products or any of the Acquired Assets, including, without limitation, (A) Taxes attributable to the sale of inventory and employee withholding tax obligations; (B) Taxes imposed on, or accruing as a result of the purchase and sale of the Acquired Assets; and (C) Taxes attributable to, or resulting from, recapture of depreciation, other tax benefit claims, or otherwise arising from the transactions contemplated by this Agreement;

(g) Breach of Agreement. All liabilities and obligations, known or unknown, and contingent or otherwise, the existence of which is a breach of, or inconsistent with, any representation, warranty, covenant, obligation or agreement of Seller set forth in this Agreement or in any of the other documents or agreements contemplated hereby;

(h) Liabilities Relating to Retained Assets. All liabilities and obligations relating to, based in whole or in part on events or conditions occurring or existing in connection with, or arising out of, any and all assets, properties, rights and interests that are not being acquired by Buyer hereunder, including, without limitation, the Retained Assets;

(i) Post-Closing Liabilities. All liabilities and obligations incurred by Seller or its Affiliates or their respective directors, officers, shareholders, agents or employees after the Closing;

(j) Shutdown Costs. Any liabilities or obligations relating to, based in whole or in part on events or conditions occurring or existing in connection with, or arising out of, the shutdown of any of the operations and facilities utilized by Seller or AccuMed UK in connection with the Business, including, without limitation, any action that could be

construed as a "plant closing" or "mass layoff," as those terms are defined in the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 ("WARN"), or any employment loss," as defined in WARN, that any employee of Seller or any of its affiliates (including, without limitation, AccuMed UK) may suffer or may be deemed to suffer.

(k) Indebtedness. Any liabilities and obligations of Seller or AccuMed UK on account of any indebtedness or accrued interest thereon (i) in respect of borrowed money evidenced by bonds, notes, debentures or similar instruments, (ii) representing the balance deferred and unpaid of the purchase price of any property, including capital leases other than those capital leases listed on Schedule 2.2(k), (iii) obligations under interest rate and foreign exchange swaps, futures or similar agreements, or (iv) guarantees, direct or indirect, in any manner (including, without limitation, reimbursement agreements in respect of letters of credit), of all or any part of the indebtedness of any third party (collectively, "Indebtedness"), of Seller or AccuMed UK, whether or not relating to the Business.

(l) Liabilities Relating to the G&G Collaboration Agreement. All of the liabilities, debts and obligations of Seller in, under or pursuant to, the G&G Collaboration Agreement.

(m) Liabilities Relating to the BioKit License Agreement. All of the liabilities, debts and obligations of Seller in, under or pursuant to, the BioKit License;

(n) MDRs. Any and all liabilities and obligations associated with all Medical Device Reports ("MDRs") received by Seller from the FDA following the Closing for any Products manufactured or sold by Seller or AccuMed UK prior to the Closing; and

(o) Miscellaneous. The liabilities set forth on Schedule 2.2(o).

ARTICLE 3. PURCHASE PRICE

3.1 Payment

(a) Closing Payment. In addition to assuming the Assumed Liabilities, and in full consideration for the transfer of the Acquired Assets by Seller free and clear of all Liens, but subject to (i) the escrow described in Section 3.1(b) and (ii) the adjustment, if any, required by Section 3.2, at the Closing, Buyer shall deliver and pay to Seller a total purchase price of Fifteen Million Seven Hundred Fifty Thousand Dollars (\$15,750,000) (the "Purchase Price"); comprised as set forth in this Section 3.1(a) and in Section 3.1(b). At the Closing, Buyer shall pay to Seller Fifteen Million One Hundred Fifty Thousand Dollars (\$15,150,000) (the "Closing Payment") in immediately available funds by bank wire transfer to an account designated in writing for this purpose by Seller to Buyer at least two business days prior to the Closing. At the Closing, Seller shall deliver evidence of the then existing intercompany account balance (net to reflect the payables and

receivables due thereunder) between AccuMed UK and Seller. If such evidence indicates that there is a payable due Seller from AccuMed UK, then the Purchase Price shall be reduced by the amount of such payable, and Buyer will cause such payable to be paid as of the Closing. If such evidence indicates that there is a payable due AccuMed UK from Seller, then the Purchase Price shall be increased by the amount of such payable, and Seller will cause such payable to be paid at the Closing.

(b) Escrow Funds. At the Closing, Buyer shall deliver to National City Bank, Cleveland, Ohio (the "Escrow Agent"), into escrow, \$600,000 (the "Escrow Funds") to secure the Minimum Net Working Capital obligation described in Section 3.2. The Escrow Funds shall be held by the Escrow Agent pursuant to the terms of an Escrow Agreement in substantially the form of Exhibit A (it being understood that the parties intend that the Escrow Funds will be released within 90 days after the Closing Date absent dispute (the "Escrow Period")). The Escrow Funds will be disbursed to the parties after the adjustment described in, and in accordance with the procedures set forth in, Section

1.2 Adjustment of Purchase Price

(a) Closing Statement. At the Closing, Seller shall submit to Buyer an estimated statement of the Current Assets (as defined below) and the Current Liabilities of the Business as of the Closing Date (the "Closing Statement"). The Closing Statement shall be prepared (i) from the books and records maintained by Seller in connection with the Business, (ii) in accordance with generally accepted accounting principles consistently applied ("GAAP"), (iii) on a basis consistent with the audited consolidated balance sheet of Seller dated as of December 31, 1997 (the "Audited Balance Sheet"), and (iv) in accordance with the matters reflected on Schedule 3.2(a), and shall fairly present the Current Assets and the Current Liabilities of the Business as of the Closing Date. For purposes of this Section 3.2, "Current Assets" means current assets of the Business determined in accordance with GAAP, except that such current assets shall exclude (i) any company accounts receivable and (ii) any value for used ESP instrumentation and inventory with less than four months expiration dating.

(b) Closing Net Working Capital. On the basis of the Closing Statement, and within 30 days of the Closing Date, Ernst & Young, LLP (the "Buyer's Auditor") shall (i) confirm the inventory of the Business by means of a physical inventory as of the Closing Date and (ii) prepare a statement (the "Auditor Statement") containing a computation of the Closing Net Working Capital as of the Closing Date (as defined below) determined in accordance with, and to reflect such adjustments (if any) as may be required by, GAAP, and in accordance with the matters reflected on Schedule 3.2(a). The Closing Net Working Capital shall reflect terms consistent with the ordinary course of business of the Business and the Business's historical experience with respect to collection of accounts receivable, and payment of amounts due to employees, consultants, vendors, licensors and others. Other current accounts, as well the value of the inventory, shall be consistent with the Business's prior operations. Liabilities shall be adequately accrued, and deferred revenues from the normal course of business shall be recorded. The fees and expenses of

Buyer's Auditors will be borne solely by Buyer. For purposes of this Section 3.2, "Closing Net Working Capital" shall equal the excess of the Current Assets of the Business over Current Liabilities of the Business, each as determined in accordance with GAAP, as of the Closing Date. For purposes of this calculation, any change in the Balance Sheet Liabilities since December 31, 1997 due to changes in reserves established as a result of purchase accounting will be excluded.

(c) Cooperation. Seller shall cooperate fully and completely in responding to questions and requests for information submitted by Buyer or its representatives in connection with the preparation of the Auditor Statement, and shall, with reasonable prior notice, provide them with full access to the facilities and inventory of the Business and to all books and records of Seller and its Affiliates to the extent related to the Business or the calculation of the Closing Net Working Capital, as well as to the personnel and work papers of Seller's accountants, in any way relating to the preparation, review and audit of the Closing Statement.

(d) Review of Auditor Statement. Seller shall have 15 days from the date of the submission of the Auditor Statement in which to review the Auditor Statement, and if, in Seller's reasonable judgment, the Auditor Statement does not fairly present the items set forth in Section 3.2(b), Seller shall have the right to propose any adjustment thereto within such 15-day period. Any such proposed adjustment shall be in writing (the "Adjustment Request"), shall be submitted to Buyer within the 15-day period referred to in the first sentence of this Section 3.2(d), and shall specify (i) the amount of the proposed adjustment, (ii) the item to which such proposed adjustment relates, and (iii) the facts and circumstances supporting the reasonableness and propriety of such adjustment under the provisions set forth in this Section 3.2. Unless Seller notifies Buyer within such 15-day period that it objects to the findings contained in the Auditor Statement, the Auditor Statement shall be binding upon Seller and Buyer. Buyer and Seller shall use their reasonable efforts for 15 days after the submission of any Adjustment Request to agree to any proposed adjustments to the Auditor Statement. Any dispute as to the content or preparation of the Auditor Statement which is not resolved by Buyer and Seller during such 15-day period shall be submitted for resolution to a mutually acceptable independent Big Five public accounting firm (except the Auditor and KPMG Peat Marwick LLP). One-half of the fees, costs and expenses of such firm shall be paid by Buyer, and one-half of such fees, costs and expenses shall be paid by Seller. The decision of such firm shall be final and binding on Buyer and Seller.

(e) Adjustment and Payment Procedures. (i) If the amount of the Closing Net Working Capital is greater than \$4,500,000 (the "Minimum Net Working Capital"), the Purchase Price shall be adjusted, dollar for dollar, upward by the amount of such surplus, and the Escrow Agent shall, on the expiration date of the Escrow Period, disburse to Seller the full amount of the Escrow Funds.

(ii) If the amount of the Closing Net Working Capital is less than the Minimum Net Working Capital, the Purchase Price shall be adjusted, dollar for dollar, downward by such difference, and the Escrow Agent shall, on the expiration of the Escrow Period, (A)

to Buyer out of the Escrow Funds the amount of such difference and (B) disburse to Seller the remaining Escrow Funds, if any. If the Minimum Net Working Capital exceeds the Closing Net Working Capital by more than \$600,000, Seller shall remit to Buyer the excess amount in immediately available funds by bank wire transfer on the termination date of the Escrow Period.

(m) Interest earned on the Escrow Funds during the Escrow Period shall be paid to Buyer and Seller in proportion to the respective disbursements made to the parties pursuant to Sections 3.2(e)(i) and 3.2(e)(ii).

3.3. Purchase Price Allocation. The Purchase Price, as adjusted pursuant to Section 3.2, represents the amount agreed upon by the parties to be the aggregate value of the Acquired Assets, and shall be allocated among the Acquired Assets in accordance with the fair market values of the Acquired Assets, which the parties have agreed are or shall be as set forth on Schedule 3.3, which shall be prepared by Buyer, submitted to Seller for Seller's approval (which may be unreasonably withheld) and attached to this Agreement as a Schedule on or prior to the Closing Date. Any excess of the Purchase Price, as so adjusted, over the fair market value of the Acquired Assets shall be allocated to goodwill. Each of the parties shall report the purchase and sale of the Acquired Assets, including, without limitation, in all Federal, foreign, state, local and other tax returns and reports prepared and filed by or for either of Seller and Buyer, in accordance with the method of allocation described in this Section 3.3.

ARTICLE 4. CLOSING

4.1. General. As used in this Agreement, the "Closing" shall mean the time at which the parties consummate the sale, assignment, transfer and delivery of the Acquired Assets to Buyer, as contemplated herein by the execution and delivery by Seller of the documents and instruments referred to in Section 4.2 against delivery by Buyer of the payments and documents referred to in Sections 4.1 and 4.3. In the absence of a prior termination of this Agreement by one of the parties in accordance with Article 10, the Closing shall take place at the offices of Jones, Jones & Pogue, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114 at 10:00 A.M. on the third business day after all the conditions to the Closing set forth in Article 6 are satisfied, or at such other time and place and on such other day as shall be mutually agreed in writing by the parties hereto (the "Closing Date"). Legal title, equitable title and beneficial interest in the Acquired Assets shall not pass to Buyer until the Acquired Assets are transferred at the Closing, which transfer, once it has occurred, shall be deemed effective for all accounting and other computational purposes as of 11:59 P.M. (Eastern Time) on the Closing Date.

4.2. Documents to be Delivered by Seller. At the Closing, Seller shall deliver to Buyer:

(a) A bill of sale, in the form of Exhibit B, transferring the personal property included in the Acquired Assets and deeds for the transfer of the Seller Real Property to Buyer, free and clear of any and all liens, equities, claims (including any "adverse claim" as

such term is defined in the Uniform Commercial Code), prior assignments, mortgages, charges, options, calls, security interests, pledges, trusts, conditional sales contracts, collateral security arrangements and other title retention arrangements, restrictions or encumbrances and any other commitments, agreements or arrangements whatsoever (collectively, "Liens"), other than Permitted Liens;

(b) Copies of all Consents to the transfer, assignment or sublease to Buyer of each Acquired Asset, including Contracts and Permits, as contemplated by Sections 1.3(a) and 5.1(c);

(c) Instruments of assignment, in the forms of Exhibits C and D, to Buyer of all Intellectual Property, including all trademarks, trade names, service marks, patents, licenses and copyrights (and all applications for, and extensions and reissuances of, any of the foregoing and rights therein) identified on Schedule 5.1(p);

(d) Duly executed transfer of the Shares in favor of Buyer, together with all share certificates and any waivers and consents as are required to enable Buyer to be registered as the holder of the Shares;

(e) Releases, including, without limitation, termination statements under the Uniform Commercial Code of any financing statements filed against any Acquired Assets, evidencing discharge, removal and termination of all Liens, other than Permitted Liens;

(f) Such other deeds, bills of sale, endorsements, assignments, affidavits, and other good and sufficient instruments of sale, assignment, conveyance and transfer in form and substance satisfactory to Buyer and its counsel, as are required to effectively vest in Buyer good and marketable title in and to all of the Acquired Assets, free and clear of any and all Liens;

(g) The certificates and documents to be delivered pursuant to Section 6.2 and such other documents, certificates or instruments reasonably requested to be furnished to Buyer pursuant to the terms of this Agreement;

(h) Written resignations of all the directors and secretary of AccuMed UK, together with an acknowledgment under seal from each of them that he or she has no claim against AccuMed UK in respect of compensation for loss of office, breach of contract, redundancy, unfair dismissal or otherwise;

(i) Written resignation without compensation (except for fees for services performed prior to the Closing Date to the extent accrued on the Auditor Statement) of KPMG Peat Marwick LLP, as statutory auditors to AccuMed UK;

(j) The Certificate of Incorporation, the certificates of incorporation on change of name, the common seal and the statutory books and registers (all entered up to date) of AccuMed UK; and

(3) All deeds and documents relating to the title of AccuMed UK to any real property and all cheque books, papers, books, records, keys, credit cards and other property of AccuMed UK which are in the possession of or under the control of the Seller or any person who resigns as an officer of AccuMed UK in accordance with this Section 6.3.

(3) Documents to be Delivered by Buyer. At the Closing, Buyer shall deliver to

(i) An Instrument of Assumption of the Assumed Liabilities, in the form of Form B and

(ii) The certificates and documents to be delivered pursuant to Section 6.3, and all other documents, certificates or instruments reasonably requested to be furnished to Buyer pursuant to the terms of this Agreement.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of Seller. Subject only to those exceptions and qualifications listed and described (including an identification by section reference to the representations and warranties to which such exceptions and qualifications relate) on the Schedule, Seller hereby represents and warrants on behalf of itself and, as applicable, AccuMed UK to Buyer that:

(i) Organization, Standing and Authorization. Seller is a corporation, and AccuMed UK is a limited liability company, in each case duly organized, validly existing and to the extent that the concept of good standing exists in the relevant jurisdiction, in good standing under the laws of the jurisdiction of its organization, having full corporate power and authority to operate the Business, to own or lease the Acquired Assets, to carry on the Business as now being conducted, and, subject, with respect to the sale of the Acquired Assets, to approval of this Agreement by the affirmative vote of the holders of a majority of the outstanding shares of the common stock, par value \$0.01, of Seller entitled to vote hereon (such approval, the "Seller Stockholder Vote"), to enter into and perform this Agreement and the transactions and other agreements and instruments contemplated by this Agreement. Except for the Seller Stockholder Vote, the transactions contemplated by this Agreement have been duly authorized by all necessary corporation action. Except as disclosed on Schedule 5.1(a), Seller and AccuMed UK are the only business enterprises, firms or corporations through which the Business is conducted, or that owns, holds or uses assets related to the Business. Seller and AccuMed UK are duly qualified or licensed to do business as foreign corporations and are, to the extent that the concept of good standing exists in the relevant jurisdiction, in good standing, in each jurisdiction in which the ownership or lease of the Acquired Assets or the operation of the Business requires such qualification.

(b) Effect of Agreement. This Agreement and all other agreements and instruments executed and delivered or to be executed and delivered by Seller in connection herewith (collectively, the "Transaction Documents") have been, or upon execution hereof will be, duly executed and delivered by Seller. This Agreement and the transactions and other agreements and instruments contemplated hereby have been duly approved by the Board of Directors of Seller, and, subject to the Seller Stockholder Vote, constitute the valid and binding obligations of Seller, enforceable in accordance with their respective terms.

(c) Articles and By-Laws. The Certificate of Incorporation of Seller, certified by the Secretary of State of Delaware, and the By-Laws of Seller (together, the "Seller Charter"), copies of which have previously been provided to Buyer, are true, correct and complete. The Certificate of Incorporation, all certificates of incorporation on change of name and the Memorandum and Articles of Association of AccuMed UK (the "AccuMed UK Charter"), copies of which have previously been provided to Buyer, are true, correct and complete.

(d) Capitalization of AccuMed UK. Schedule 5.1(d) sets forth the authorized equity interests of AccuMed UK, the equity interests outstanding and the owners thereof. The Shares are in issue fully paid and are beneficially owned and, except as set forth on Schedule 5.1(d), registered in the name of Seller free and clear of all Liens. There are no outstanding options, warrants or other rights of any kind relating to the sale, issuance or buying of any equity interests or partnership interests of AccuMed UK that have been issued, granted or entered into by Seller or AccuMed UK, or any securities convertible into or evidencing the right to purchase any such equity interests or partnership interests. AccuMed UK does not have any ownership or other equity or partnership interest in any Person.

(e) Conflicts; Defaults. Except as set forth on Schedule 5.1(x), neither the execution and delivery of this Agreement or the Transaction Documents executed or to be executed in connection herewith by Seller or AccuMed UK, nor the performance by Seller or AccuMed UK of the transactions contemplated hereby or thereby, will (i) violate, conflict with, or constitute a default under, any of the terms of the Seller Charter or the AccuMed UK Charter or any provisions of, or result in the acceleration of any obligation under any contract, sales commitment, license, purchase order, security agreement, mortgage, note, deed, lien, lease, agreement or instrument, including, without limitation, the Contracts, or any order, judgment or decree, relating to the Business or the Acquired Assets; or by which any of Seller, AccuMed UK or the Acquired Assets are bound, (ii) result in the creation or imposition of any Liens in favor of any third Person upon any of the Acquired Assets, (iii) violate any Law, (iv) constitute an event that, after notice or lapse of time or both, would result in such violation, conflict, default, acceleration, or creation or imposition of Liens, (v) constitute an event that, after notice or lapse of time or otherwise would create, or cause to be exercisable or enforceable, any option, agreement or right of any kind to purchase any of the Acquired Assets. No consent, novation, approval, filing or authorization will be required to be obtained or satisfied for the continued performance by Buyer following the Closing of any contract, agreement,

commitment or undertaking included in the Acquired Assets. Seller and AccuMed UK are not in violation of or in default under the Seller Charter or the AccuMed UK Charter, respectively, or any material provision (including, without limitation, any provision imposing a financial obligation on Seller or AccuMed UK) of any Contract relating to the Business, including, without limitation, (i) the U.S. Contracts and (ii) the Contracts to which AccuMed UK is a party ("AccuMed U.K. Contracts," (a true and correct copy of which have been previously made available to Buyer) and together with the U.S. Contracts, the "Business Contracts"), or any order, judgment or decree, relating to the Business or the Acquired Assets, or by which any of Seller, AccuMed UK, or the Acquired Assets is bound, or in the payment of any of Seller's or AccuMed UK's monetary obligations or debts relating to the Business, and there exists no condition or event that, after notice or lapse of time or both, would result in any such violation or default.

(f) Acquired Assets; Title to the Acquired Assets. The Acquired Assets are the real estate, properties, rights or interests owned or used by Seller in connection with the Business. The Acquired Assets to be conveyed to Buyer under this Agreement constitute all of the assets, properties, rights and interests necessary to conduct the Business in substantially the same manner as conducted by Seller and AccuMed UK prior to the date of this Agreement. All of the Acquired Assets used in connection with the operation of the Business (including, without limitation, the assets reflected on the Unaudited Balance Sheet) are in good operating condition and repair and are adequate and sufficient for the uses to which they are put in the Business. None of the Acquired Assets have any material defects or are in need of maintenance or repair, except for ordinary, routine maintenance and repairs that are not material in nature or cost. Seller or AccuMed UK have good, marketable and exclusive title to, and the valid and enforceable power and unqualified right to use and transfer to Buyer, each of the Acquired Assets used in the Business, whether located at Seller's facilities, AccuMed UK's facilities, or at the facilities of their respective customers or suppliers, and, except as set forth on Schedule 5.1(f)(i), the Acquired Assets are free and clear of all Liens of any kind or nature whatsoever, except for Permitted Liens. The consummation of the transactions contemplated by this Agreement (including, without limitation, the transfer or assignment of the Acquired Assets and all rights and interests therein, to Buyer as contemplated herein) will not adversely affect such title or rights, or any terms of the applicable agreements (whether written or oral) evidencing, creating or granting such title or rights. None of the Acquired Assets are subject to, or held under, any lease, mortgage, security agreement, conditional sales contract or other title retention agreement, or are other than in the sole possession and under the sole control of (i) Seller or AccuMed UK or (ii) a vendor under the direction of Seller or AccuMed UK. Seller or AccuMed UK have the right under valid and existing leases to occupy, use or control all properties and assets leased by it and included in the Acquired Assets. The delivery to Buyer of the instruments of transfer of ownership contemplated by this Agreement will vest good, marketable and exclusive title to (as to all Acquired Assets owned by Seller or AccuMed UK) or full right to possess and use (as to all Acquired Assets not owned by Seller or AccuMed UK) the Acquired Assets to Buyer, free and clear of all Liens of any kind or nature whatsoever, except for (i) current real estate Taxes or governmental charges or levies that are a Lien but not yet due and payable, and (ii) Liens disclosed on Schedule 5.1(f)(i)(ii) (the Liens described in

clauses (i) and (ii), collectively, "Permitted Liens"). Schedule 5.1(f)(iii) contains true, correct and complete lists of all Fixed Assets relating to the Business as of the dates specified therein.

(g) Real Property. (i) The real property listed under the heading "Seller Real Property" on Schedule 5.1(g)(i) constitutes all of the Real Property used by Seller in the Business, including all buildings, improvements and fixtures thereon and other appurtenances thereto. Seller has title to the Seller Real Property indicated on Schedule 5.1(g)(i) as owned by Seller and a binding leasehold interest in the Seller Real Property indicated on Schedule 5.1(g)(i) as leased by Seller (subject to the terms of the applicable instruments governing Seller's interests therein, as listed on Schedule 5.1(g)(i)), free and clear of all Liens, other than Permitted Liens.

(ii) (A) The real property listed under the heading "AccuMed UK Real Property" on Schedule 5.1(g)(ii) constitutes all of the Real Property owned, used or held for use by AccuMed UK, including all buildings, improvements and fixtures thereon and other appurtenances thereto (collectively, the "AccuMed UK Real Property"; and together with the Seller Real Property, the "Business Real Property"). AccuMed UK has title to the AccuMed UK Real Property indicated on Schedule 5.1(g)(ii) as owned by AccuMed UK and a binding leasehold interest in the AccuMed UK Real Property indicated on Schedule 5.1(g)(ii) as leased by AccuMed UK (subject to the terms of the applicable instruments governing AccuMed UK's interests therein, as listed on Schedule 5.1(g)(ii)), free and clear of all Liens other than Permitted Liens and there are appurtenant to all AccuMed UK Real Property all rights and easements necessary for its use and enjoyment.

(B) No Person is in adverse possession of the AccuMed UK Real Property. All payments of rent and other payments due in respect of all AccuMed UK Real Property are paid up to date and there are no notices, negotiations or proceedings pending in relation to rent reviews. All licenses, consents and approvals required from any lessor have been obtained and the lessor has performed its covenants and obligations under any relevant lease by which such AccuMed UK Real Property is held. No notice to terminate the term of the lease by which the AccuMed UK Real Property is held has been served or received by AccuMed UK.

(C) AccuMed UK does not have any actual or potential continuing liability in respect of any other property formerly owned, leased or occupied by AccuMed UK either as original contracting party or by virtue of any direct covenant having been given on a sale or assignment to AccuMed UK or under an authorized guarantee agreement or as surety for the obligations of any other person in relation to any property.

(iii) No condemnation proceedings are pending, or to the Knowledge of Seller, threatened, with respect to any of the Business Real Property, nor has any such property been condemned.

(h) **Contracts.** The Business Contracts, together with the Non-Assigned Contracts, are all of the Contracts of Seller and AccuMed UK related to the Business. Except as disclosed on Schedule 5.1(h), Seller or AccuMed UK have performed (i) all material obligations and (ii) all other material obligations, required to be performed by Seller to date under the Business Contracts, and none of Seller, AccuMed UK, nor any other party to any Business Contract has breached or improperly terminated any Business Contract or is in default under any Business Contract by which it is bound, and there exists no condition or event that after notice or lapse of time or both, would constitute any such breach, termination or default. Each of the Business Contracts is in full force and effect, and is a legal binding and enforceable obligation of or against the parties thereto. At the Closing, each Business Contract of AccuMed UK will be legal, binding and enforceable by Buyer in accordance with its terms. Upon Buyer's assumption of Seller's liability, each Business Contract of Seller as is assigned at the Closing will be legal, binding and enforceable by Buyer in accordance with its terms.

(i) **Financial Statements; SEC Filings.** (i) Seller has heretofore delivered to Buyer the following financial statements (collectively, together with the notes thereto and the financial statements to be delivered pursuant to Section 7.2(b), the "Financial Statements")::

- (A) the unaudited Balance Sheet of the Business (the "Unaudited Balance Sheet") as of September 30, 1998 (the "Balance Sheet Date"), and the unaudited Statement of Income and Statement of Cash Flows of the Business for the nine-month period ended September 30, 1998 (collectively, the "Unaudited Business Financial Statements");
- (B) the consolidated unaudited balance sheets of Seller as of September 30, 1998 and the consolidated unaudited Statements of Income and Statements of Cash Flows for the nine-month period ended September 30, 1998 (collectively, the "Unaudited Consolidated Financial Statements");
- (C) the consolidated audited balance sheets of Seller as of December 31, 1997, 1996 and 1995 and the audited Statements of Income and Statements of Cash Flows for the years ended December 31, 1997, 1996 and 1995, together with the footnotes thereto and the report thereon by KPMG Peat Marwick LLP, certified public accountants.

To the best of Seller's knowledge, each of the Financial Statements is true, complete and correct in all material respects. Each of the Financial Statements was prepared from the books and records maintained by Seller, and fairly presents, as applicable, the (i) consolidated financial position of Seller as of such dates, and the results of Seller's operations and Seller's cash flows for the periods then ended in accordance with GAAP, and (ii) financial position of the Business as of such dates, and the results of the Business' operations and the Business' cash flows for the periods then ended, in accordance with GAAP. Since December 31, 1997, there has been no material adverse change in the condition (financial or otherwise), results of operations, properties, assets, liabilities,

Business or prospects of the Business, nor has there been any event or condition of any character that has materially and adversely affected, or that is likely to materially and adversely affect, the condition (financial or otherwise), results of operations, properties, assets, liabilities, business or prospects of the Business. The Unaudited Balance Sheet reflects all properties and assets, real, personal or mixed, that are currently used in connection with the Business, except for (x) inventory purchased or sold consistent with past practice and in the ordinary and normal course of business since the Balance Sheet Date; (y) other properties and assets (other than capital assets) not in excess of \$10,000 (in the aggregate) purchased or sold since the Balance Sheet Date consistent with past practice and in the ordinary and normal course of business, and (z) capital assets purchased since the Balance Sheet Date in an amount not in excess of \$10,000 (in the aggregate).

(j) SEC Filings. Seller has filed all required reports, schedules, forms, statements and other documents with the Securities and Exchange Commission (the "SEC") since January 1, 1995 (collectively, the "Seller SEC Documents"). As of their respective dates, or if amended, as of the date of the last such amendment, the Seller SEC Documents complied, and all documents required to be filed by Seller with the SEC after the date hereof and prior to the Closing (the "Subsequent Seller SEC Documents") will comply, in all material respects with the requirements of the 1933 Act or the 1934 Act, as the case may be, and the applicable rules and regulations promulgated thereunder, and none of the Seller SEC Documents contained, and the Subsequent Seller SEC Documents will not contain, any untrue statements of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(k) Disclosure Documents. (i) Each document required to be filed by Seller with the SEC in connection with the transactions contemplated by this Agreement (the "Seller Disclosure Documents"), including, without limitation, the Proxy Statement (as defined in Section 9.2), to be filed with the SEC in connection with the adoption of this Agreement by the Stockholder Vote, and any amendments or supplements thereto, will, when filed, comply as to form in all material respects with the applicable requirements of the 1934 Act.

(ii) At the time the Proxy Statements or any amendment or supplement thereto is first mailed to stockholders of Seller, and at the time such shareholders vote on the adoption of this Agreement, the Proxy Statement, as supplemented or amended, if applicable, will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. At the time of the filing of any Seller Disclosure Document other than the Proxy Statement and at the time of any distribution thereof, such Seller Disclosure Document will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties contained in this Section 5.1(k) will

do not apply to statements included in or omissions from the Seller Disclosure Documents based upon information furnished to Seller in writing by Buyer specifically for use therein.

(l) Liabilities. Except (i) as and to the extent disclosed in the Balance Sheet, (ii) liabilities incurred in the ordinary course of business subsequent to the date thereof in accordance with Section 7.1 and (iii) for liabilities not assumed by Buyer under this Agreement, none of the Business, Seller (with respect to the Business) or AccuMed UK has any liabilities (accrued, contingent or otherwise and whether or not reflected, accrued or provided for, or required to be reflected, accrued or provided for on a balance sheet of the Business prepared in accordance with GAAP) that relate to or arise out of the Business or any of its operations as heretofore or presently conducted, or any of the Acquired Assets or the past or present operation, condition or use of any of the Acquired Assets.

(m) Accounts Receivable; Collection; Trade Payables. All Accounts Receivable of Seller relating to the Business and (ii) AccuMed UK, that are outstanding as of the Closing Date will represent sales actually made in the ordinary and normal course of business of the Business. Except as provided for in reserves reflected on the books and records of Seller, there are no counterclaims or setoffs against (or any basis therefor), or any other matter or condition likely to interfere with full and timely collection of, any of such outstanding Accounts Receivable. Schedule 5.1(m) sets forth an aged listing by customer of the Accounts Receivable that are outstanding as of the Balance Sheet Date. Neither Seller nor AccuMed UK has experienced or suffered undue delay in its payment of liabilities and obligations to its trade creditors (including suppliers) or trade debt.

(n) Litigation. Except as set forth on Schedule 5.1(n), neither Seller nor AccuMed UK is subject to any order of, or written agreement or memorandum or understanding with, any Governmental Authority relating to the Business, and there exists no litigation, action, suit, claim or proceeding pending, or, to the best of Seller's knowledge, any litigation, action, suit, investigation, claim or proceeding threatened against or affecting Seller (with respect to the Business), AccuMed UK, the Business or the Acquired Assets, or any employee associated with the Business or the Acquired Assets (other than relating solely to the G&G Collaboration Agreement or the BioKit License), or that would affect the transactions contemplated by this Agreement, at law or in equity before any Governmental Authority, including, without limitation, claims for product warranty, product liability, antitrust, unfair competition, price discrimination, Product Quality, patent or trademark infringement, environmental issues, FDA issues or other liability or obligation relating to Products, whether manufactured or sold by Seller, AccuMed UK, any of their respective Affiliates or any of their respective predecessors-in-interest in respect of the Business, or that would adversely affect the transactions contemplated by this Agreement, and, to Seller's knowledge, no Person has grounds to assert any such litigation, action, suit, claim or proceeding. Set forth on Schedule 5.1(n) is a description of: (i) all litigation, actions, suits, investigations, claims and proceedings asserted or brought against Seller or its Affiliates or predecessors-in-interest in respect of the Business since December 31, 1995, together with a description of the outcome or

present status thereof, and (ii) all judgments, orders, decrees, writs or injunctions entered in or by or against Seller (with respect to the Business) or AccuMed UK.

(o) Regulatory Compliance. Except as set forth on Schedule 5.1(o), the Business has been conducted, the Acquired Assets have been maintained and Seller (with respect to the Business) and AccuMed UK are currently in compliance with all applicable Laws, and no material expenditures are or will be required to comply with any Laws. Neither Seller (with respect to the Business) nor AccuMed UK is in default under, and no event has occurred that, with the lapse of time or action by a third party, could result in default under the terms of any judgment, decree, order, writ or injunction of any Governmental Authority, whether at law or in equity. Seller has obtained all necessary approvals, licenses and authorizations from Governmental Authorities required by applicable Laws to engage in its current activities pertaining to the Products, including, without limitation, manufacturing, marketing, exporting and importing the Products.

(p) Intellectual Property. Schedule 5.1(p) sets forth a complete and correct list of patents, trademarks, trade names, service marks, copyrights and registrations and applications therefor used in the conduct of the Business. Except as set forth on Schedule 5.1(p), Seller or AccuMed UK is the sole owner and has the exclusive right to use, free and clear of any payment, restrictions or encumbrance, all Intellectual Property. Except as set forth on Schedule 5.1(p), no Intellectual Property that is or has been used in the conduct of, or that relates to, the Business is owned otherwise than by Seller or AccuMed UK. Except as set forth on Schedule 5.1(p), neither Seller nor AccuMed UK has received notice of any conflict with the asserted rights of others in connection with the conduct of the Business and, to the best of Seller's knowledge, the conduct of the Business as presently conducted does not conflict with or infringe upon any intellectual property rights of others. Except as set forth on Schedule 5.1(p), no Person has been granted any rights, licenses or interests in or to any of the Intellectual Property. Seller and AccuMed UK have taken reasonable actions to preserve and maintain its Intellectual Property relating to the Business.

(q) Permits. Schedule 5.1(q) contains a true, correct and complete list of all Permits issued to Seller or AccuMed UK that are currently used by Seller or AccuMed UK in connection with the Business. Seller and AccuMed UK have, and are in full compliance with, all Permits that are necessary or required for the operation of the Business, and its currently being operated and its present activities on its properties and facilities, all of which Permits are in full force and effect.

(r) Employee Relations; Collective Bargaining Agreements. There are no material controversies, including strikes, disputes, slowdowns or work stoppages, pending, or to the best of Seller's knowledge, threatened that involve any employees employed in connection with the Business. Seller and AccuMed UK have complied and are complying with all Laws relating to the employment of labor, including, without limitation, any provision thereof relating to wages, hours, collective bargaining, employee health, safety and welfare, and the payment of social security and similar taxes. Neither Seller nor AccuMed UK has experienced any material labor difficulties, including, without limitation,

strikes, slowdowns, or work stoppages, since December 31, 1995. Neither Seller nor AccuMed UK is a party to any collective bargaining or union contract, and to the best of Seller's knowledge, there exists no current union organizational effort with respect to any of the Employees.

(g) Employees and Employee Plans. (i) For purposes of this Agreement, (A) the term "Employee Plan" means each employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and each other material plan, program, agreement or arrangement, whether or not subject to ERISA, that (1) provides benefits for Employees and (2) is maintained by Seller, AccuMed UK or any of their respective Affiliates or to which Seller, AccuMed UK or any of their respective Affiliates contributes or is obligated to contribute, or under which Seller, AccuMed UK or any of their respective Affiliates is liable in respect of Employees and (B) the term "Employee" means each Person employed by Seller, AccuMed UK or their respective Affiliates in the Business, as listed on Schedule 5.1(s)(i), and each Person employed in the Business as of or at any time prior to the Closing, including by any predecessors-in-interest of Seller, AccuMed UK or their respective Affiliates. (The term "Employee" will include, where an Employee Plan provides benefits for beneficiaries or dependents, the beneficiaries and dependents of an Employee.) Schedule 5.1(s)(i) lists or describes all Employee Plans currently in effect other than Employee Plans mandated or implied by Law and usual and customary for a business such as the Business. None of the Employee Plans is a multiemployer plan within the meaning of Section 3(37) of ERISA or a multiple employer plan within the meaning of Section 413(c) of the Internal Revenue Code of 1986, as amended (the "Code").

(ii) With respect to each Employee Plan listed or described on Schedule 5.1(s)(i), Seller has delivered or made available to Buyer, to the extent applicable, a copy of (i) the plan document for each Employee Plan as currently in effect (or a description of any Employee Plan for which there is no written plan document), including any agreements entered into in connection with such Employee Plan, (ii) the most recent annual report (Form 990 Series) filed with the Internal Revenue Service, (iii) the most recent actuarial report and (iv) the most recent summary plan description, together with each summary of material modifications that has been distributed to Employees. Except as set forth on Schedule 5.1(s)(i), each Employee Plan that is intended to be qualified under Section 401(a) of the Code, and the trust (if any) forming a part thereof, has received a favorable determination from the Internal Revenue Service as to the qualification under the Code of each such Employee Plan. Seller has delivered to Buyer a copy of the most recent determination letter with respect to each such Employee Plan, and to Seller's knowledge nothing has occurred since the date of such determination letter that would adversely affect such qualification that cannot be corrected within the remedial amendment period provided under Section 401(b) of the Code.

(iii) Neither Seller nor any of its Affiliates has engaged in a transaction with respect to any Employee Plan that would reasonably be expected to subject any Employee Plan or Buyer to a material civil penalty under ERISA or a material tax under the Code. Each of the Employee Plans has been operated and administered in all material respects in

in accordance with applicable Laws, including without limitation, to the extent applicable, ERISA. Neither Seller nor any of its Affiliates has incurred any liability under Title IV of ERISA that would reasonably be expected to result in material liability to Buyer. With respect to each Employee Plan that is a group health plan benefitting any current or former employee of Seller, any of Seller's Affiliates or any other trade or business which, together with Seller, is treated as a single employer under Section 414(t) of the Code, that is subject to Section 4980B of the Code, or was subject to Section 162(k) of the Code, Seller, any of Seller's Affiliates and each other trade or business which, together with Seller, is treated as a single employer under Section 414(t) of the Code, have complied with (i) the continuation coverage requirements of Section 4980B of the Code and Section 162(k) of the Code, as applicable, and Part 6 of Subtitle B of Title I of ERISA and (ii) the Health Insurance Portability and Accountability Act of 1996. There is not pending or, to Seller's knowledge, threatened, any material claim by or on behalf of any Employee Plan, or any employee covered under any Employee Plan or otherwise involving any Employee Plan (other than routine claims for benefits).

(v) Except as set forth on Schedule 5.1(s)(iv), all contracts of employment between AccuMed UK and its directors and Employees are terminable by AccuMed UK without compensation (except under the Employment Rights Act of 1996 ("ERA")) by giving the applicable minimum period of notice specified in Section 86 ERA. No director or employee of AccuMed UK has given notice terminating his contract of employment or is under notice of dismissal. There are no arrears of remuneration due to any director or employee of AccuMed UK. AccuMed UK has complied in all material respects with all obligations imposed on it by all UK statutes and regulations relating to employment. AccuMed UK has not introduced any share incentive scheme, share option scheme or any other scheme or arrangement relating to the acquisition of any interest in shares of AccuMed UK or the Seller or profit related pay scheme for any of its directors or employees. AccuMed UK is under no obligation, nor is AccuMed UK a party to an express or implied arrangement or promise, to pay, nor is AccuMed UK accustomed to paying gratuities, superannuation allowances or the like, or otherwise to provide "relevant benefits" within the meaning of Section 612(l) Income and Corporate Taxes Act 1988, to any of its past or present officers or Employees, or their dependents.

(v) True and accurate copies of the trust deeds, rules and memoranda and booklet relating to the AccuMed UK retirement and death benefit scheme ("AccuMed UK Pension Scheme") have been delivered to Buyer. The AccuMed UK Pension Scheme is an exempt Approved Scheme within the meaning of Chapter I of part XIV of the Income and Corporation Taxes Act 1988 and there are no circumstances which will result in the withdrawal of the scheme's exempt approved status. A current contracting-out certificate under part III of the Pensions Act 1993 is in force in respect of the employment of the Employees and officers of AccuMed UK. Since the date of the last actuarial valuation of the AccuMed UK Pension Scheme, contributions have been paid at the rate recommended in that valuation. All contributions due to the AccuMed UK Pension Scheme have been promptly paid and duly accounted for by AccuMed UK. The AccuMed UK Pension Scheme has been administered and operated in accordance with the requirements of the Pensions Act 1995.

(i) Environmental Matters. (i) The Business Real Property and all activities thereon comply in all material respects with all applicable statutes, ordinances, regulations, codes and requirements of common law concerning the protection of human health, safety and the environment (collectively, "Environmental Laws").

(ii) No Contamination is present in, on or under any of the Business Real Property. "Contamination" shall mean the presence of Hazardous Substances that may require remediation under any Environmental Law. "Hazardous Substances" shall mean materials that are or contain substances regulated pursuant to any Environmental Law.

(iii) None of the following is present at any of the Business Real Property: polychlorinated biphenyls ("PCBs") or substances containing PCBs; asbestos or materials containing asbestos; radon exceeding the action level established by the U.S. Environmental Protection Agency ("EPA"); urea formaldehyde foam insulation; or Hazardous Substances storage tanks.

(iv) Neither Seller nor AccuMed UK has been notified by any Governmental authority or third party of, or has knowledge of, any violation by Seller or AccuMed UK of any liability of or any condition that could give rise to any liability of Seller or AccuMed UK under any Environmental Law. No civil, criminal or administrative action, claim or other legal proceeding pursuant to any Environmental Law has been filed against Seller or AccuMed UK, or is anticipated or threatened. Neither Seller nor AccuMed UK has entered into any consent order, consent decree, administrative order, judicial order or enforcement pursuant to any Environmental Law.

(v) Schedule 5.1(t) includes a correct and complete list of all of Consents and Permits relating to the Business pursuant to Environmental Law (collectively, "Approvals") copies of which have been delivered to Buyer. The Approvals listed on Schedule 5.1(t) are all Approvals that are necessary to conduct the Business in compliance with Environmental Law, are in full force and effect, and all fees payable in connection therewith have been paid. Neither the execution and delivery of this Agreement nor any of the transactions contemplated herein will cause any of the Approvals to be invalidated, terminated or otherwise adversely affected.

(vi) Seller has delivered to Buyer copies of all applications, reports, records, manifests, records of analyses or tests, notices of violation, summonses, orders, complaints, and any other documents relating to compliance with or liability under Environmental Law, or the environmental condition of the Business Real Property of which Seller or AccuMed UK has knowledge or possession.

(vii) Schedule 5.1(t) discloses a correct and complete listing of all facilities at which (i) Seller (with respect to the Business) or AccuMed UK has generated, treated, stored or disposed of Hazardous Substances; or (ii) any third party under contract with Seller (with respect to the Business) or AccuMed UK has generated, treated, stored or disposed of Hazardous Substances received from Seller (with respect to the Business) or AccuMed UK.

(viii) The generation, treatment, storage, transportation or disposal by or on behalf of Seller or AccuMed UK of any Hazardous Substance was and is in compliance with Environmental Law. Neither any facility at which such Hazardous Substances were generated, treated, stored or disposed of nor any of the Business Real Property, has been the subject of any listing by any governmental body or agency as a targeted hazardous site under any Environmental Law. No legal action under any Environmental Law has been brought against Seller or AccuMed UK by any governmental body, agency or third party.

(ix) Nothing has occurred prior to the date of this Agreement, and nothing will occur prior to the Closing Date, that could give rise to expenditures by, and/or the filing of any claim by any governmental authority against Seller or AccuMed UK or any of the Business Real Property pursuant to any Environmental Law.

(x) Except as set forth on Schedule 5.1(t), neither Seller nor AccuMed UK is required to obtain any Consent or file or record any environmental disclosure statement under any Environmental Law in connection with the transactions contemplated by this Agreement for any of the Business Real Property.

(u) Absence of Certain Changes. Except as disclosed in Schedule 5.1(u), since December 31, 1997, Seller and AccuMed UK (i) have conducted the Business and operated the Acquired Assets only in the ordinary and normal course consistent with past practice and (ii) have not taken action that if taken after the date of this Agreement would constitute a violation of Section 7.1.

(v) Taxes. Seller and AccuMed UK have prepared in good faith and duly filed or caused to be duly filed all Tax returns and reports relating to the Business and the Acquired Assets and required to be filed by Seller or AccuMed UK with any Governmental Authority. All such Tax returns were (or to the extent not yet filed will be) true, complete and correct in all material respects and filed on a timely basis. All Taxes owed to any Governmental Authority by Seller relating to the Business or by AccuMed UK for periods covered by such returns and reports, and all claims, demands, assessments, judgments, costs and expenses connected therewith, have been paid in full. Neither Seller nor AccuMed UK is a party to any action or proceeding, nor to the best of Seller's knowledge, is any such action or proceeding contemplated or threatened, for the assessment or collection of any Taxes relating to the Business or the Acquired Assets, and no deficiency notices or reports have been received by Seller or AccuMed UK in respect of any Tax relating to the Business or the Acquired Assets. For the purposes of this Agreement, "Tax" or "Taxes" means all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property or windfall profits taxes, customs duties, value added, or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority (domestic or foreign).

(v) Insurance. Schedule 5.1(w) contains a list of all insurance policies (specifying the location insured, insurer, amount of coverage, type of insurance and policy number) maintained by Seller or AccuMed UK for the Business or the Acquired Assets. All such policies are in full force and effect, all premiums with respect thereto have been paid, and no notice of cancellation or termination has been received with respect to any such policy.

(x) Approvals. Schedule 5.1(x) sets forth a list of all Consents that must be obtained or satisfied by Seller or AccuMed UK for the consummation of the transactions contemplated by this Agreement. All Consents prescribed by any Law, or any contract, agreement, commitment or undertaking, and that must be obtained or satisfied by Seller or AccuMed UK for the consummation of the transactions contemplated by this Agreement, and the continued performance by them of their rights and obligations thereunder, have been or by the Closing shall have been, made, obtained and satisfied.

(y) No Other Agreements to Sell the Acquired Assets or the Business. Neither Seller nor AccuMed UK nor either of their respective Affiliates has any legal obligation, whether contingent, to any Person other than Buyer to sell any Acquired Assets, the Business, any product line of the Business, or any other assets or properties of the Business, except inventory and Products in the ordinary course of business, consistent with past custom and practice.

(z) No Brokers. Neither Seller nor AccuMed UK has entered into and will not enter into any agreement, arrangement or understanding with any Person that will result in the obligation of Buyer to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby or any other transaction.

(aa) Solvency. Immediately after the consummation of the transactions contemplated by this Agreement, (i) Seller will be solvent (in that both the fair value of its assets will not be less than the sum of its debt and that the present fair saleable value of its assets will not be less than the amount required to pay its probable liability on its debts as they become absolute and matured), (ii) Seller will have adequate capital with which to engage in its business, and (iii) Seller will not have incurred and does not plan to incur debts beyond its ability to pay as they become absolute and matured. The Purchase Price (as adjusted pursuant to Section 3.2) is equal to or greater than the fair value of the Acquired Assets.

(bb) Millennium Compliance. (i) Schedule 5.1(bb) contains the material details of measures that have been implemented to determine the extent to which the computer systems used in the Business (the "Computer Systems") are not in Millennium Compliance, and the material details of any program undertaken with a view toward bringing the Computer Systems to achieve Millennium Compliance.

(ii) As used herein, "Millennium Compliance" means that the Computer Systems are capable of the following before, during and/or after January 2000:

(A) handling date information involving all and any dates before, during and/or after January 1, 2000, including accepting input, providing output and performing date calculations in whole or in part;

(B) operating, accurately without interruption on and in respect of any and all dates before, during and/or after January 1, 2000 and without any change in performance;

(C) responding to and processing two digit year input without creating any ambiguity as to the century; and

(D) storing and providing date input information without creating any ambiguity as to the century.

(c) **Confidential Information.** On or prior to the date of this Agreement, Seller referred to all parties, other than Buyer, with whom it discussed a potential sale of all or part of the Business, a letter attaching a copy of the press release issued with respect to the offer of intent by and between Seller, Key Equity Capital Corporation and Michael D. [redacted] dated June 11, 1998 (the "LOI"), and advising each recipient that the confidentiality agreement between Seller and such party remains in full force and effect.

1.4 Representations and Warranties of Buyer. Buyer represents and warrants to

(a) **Organization and Standing: Corporate Power and Authority.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has full corporate power and authority to make and perform this Agreement, and to perform the transactions contemplated by this Agreement. This Agreement and all other agreements and instruments executed and delivered by Buyer in connection herewith have been duly executed and delivered by Buyer. This Agreement and all other agreements and instruments contemplated by this Agreement have been duly authorized by all necessary corporation action, including approval by the Directors of Buyer, and constitute the valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

(b) **Conflicts: Defaults.** Neither the execution and delivery of this Agreement by Buyer, nor the performance of their respective obligations hereunder, will conflict with or constitute a default under any of the terms of the Articles of Incorporation or By-Laws of Buyer.

(c) **No Brokers.** Buyer has not entered into and will not enter into any agreement, arrangement or understanding with any Person that will result in the obligation of Seller to pay any underwriting fee, brokerage commission or similar payment in connection with the transactions contemplated hereby or any other transaction.

5.3 General. The representations and warranties of the parties hereto made in this Agreement, subject to the exceptions thereto, shall not be affected by any information furnished in connection with the investigation conducted by, any of them or their representatives in connection with the performance of this Agreement. The representations and warranties made in this Agreement or any instrument delivered pursuant to this Agreement shall survive the Closing.

ARTICLE 6. CONDITIONS TO CLOSING

6.1 Conditions to the Obligations of Each Party. The respective obligations of the parties to consummate the transactions provided for by this Agreement is subject to the satisfaction, on or before the Closing Date, of each of the following conditions:

(a) Seller Stockholder Approval. This Agreement shall have been approved by the Seller Stockholder Vote;

(b) No Injunction. No preliminary or permanent injunction, temporary restraining order or other judicial or administrative order or decree in any jurisdiction prohibiting the Closing shall have been entered and be continuing in effect; and

(c) Governmental Consents. All Consents of Governmental Authorities described in Section 9.5 shall have been obtained and satisfied.

6.2 Conditions to Buyer's Obligations. The obligation of Buyer to consummate the transactions provided for by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Buyer:

(a) Representations and Warranties. Each of the representations and warranties of Seller made in Section 5.1 shall be true and correct both on the date of this Agreement and on the Closing Date as though made at such time;

(b) Covenants. Seller shall have performed and complied with all covenants and agreements required to be performed or complied with by it at or prior to the Closing Date.

(c) Consents. All Consents of third parties (other than Governmental Authorities) described in Section 5.1(x) shall have been obtained and satisfied;

(d) Certificate of Seller. At the Closing, Seller shall have delivered to Buyer a certificate signed by Seller's President, and attested to by its Secretary or an Assistant Secretary, and dated the Closing Date, to the effect that the conditions specified in Sections 6.1(a), (b) and (c) and 6.2(a), (b) and (c) have been fulfilled;

(e) Documents; Approvals. Seller shall have delivered the documents required by Section 4.2 and evidence reasonably satisfactory to Buyer to the satisfaction of the conditions set forth in Sections 6.1(a), (b) and (c);

(j) Material Adverse Change. Since the date of the LOI, there shall have been no material adverse change in the condition (financial or otherwise), results of operations, properties, assets, liabilities, business or prospects of the Business, nor has there been any material adverse change in the condition, whether or not discovered, of any character that has materially and adversely affected, or that is likely to materially and adversely affect, the condition (financial or otherwise), results of operations, properties, assets, liabilities, business or prospects of the Business;

(k) Agreement with Akzo Nobel. Seller and Akzo Nobel shall have entered into an agreement not to sue, in form and substance satisfactory to Buyer, in connection with the pending litigation described on Schedule 5.1(n);

(l) Sun Prairie Facility. With respect to the Sun Prairie, Wisconsin facility (the "Sun Prairie Facility") owned by Becton Dickinson & Company or an Affiliate thereof, the following shall have occurred: (i) Seller and BD shall have entered into the following agreements, in form and substance reasonably satisfactory to Buyer, (a) a Purchase Agreement and Amendment, (b) Manufacturing Agreement, (c) Option to Purchase Agreement, and (d) Purchase and Sale Agreement, (ii) Buyer shall have completed a due diligence investigation of the environmental condition of the Sun Prairie Facility and shall be satisfied with the results of such investigation, and (iii) BD shall not have expressed an intention not to proceed with the consummation of the transactions contemplated by clause (b)(i) above;

(m) Elimination of Certain Liens. At or prior to the Closing, Seller shall take such actions as may be required to secure the release as of the Closing of all Liens on the Real Property and the assets of AccuMed UK;

(n) Sublease. Seller and Buyer shall have executed and delivered the Sublease (as defined in Section 7.13);

(o) UK Environmental Review. Buyer shall have completed such environmental assessments and investigations of the AccuMed UK Real Property and surrounding Real Property as Buyer or its advisors and consultants deem necessary or appropriate, including, without limitation, sampling and analysis of environmental media to detect the presence or confirm the absence of contamination, including any contamination that may be present in groundwater, and the sources of any such contamination;

(p) Solvency Letter. The Solvency Letter referred to in Section 7.16 shall have been returned in writing by the Appraiser as of the Closing Date;

(q) Release. Seller shall have executed and delivered to Buyer a release relating to AccuMed UK in substantially the form of Exhibit F (the "Release");

(r) Closing Statement. The Closing Statement shall be reasonably satisfactory to Buyer;

(c) Return of Confidential Information. Seller shall have delivered evidence reasonably satisfactory to Buyer that all parties, other than Buyer, with whom Seller has discussed a potential sale of all or part of the Business, have returned to Seller or destroyed all confidential information relating to the Business provided to such parties by Seller or AccuMed UK or their respective representatives; and

(d) Concerning Intellectual Property. Seller shall have taken all corrective action specified in Schedule 6.2(p) with respect to the Intellectual Property identified therein.

(e) Conditions to Seller's Obligations. The obligations of Seller to consummate the transactions provided for by this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Seller, except as otherwise set forth in Section 6.3(c):

(i) Representations and Warranties. Each of the representations and warranties of Seller made in Section 5.2 of this Agreement shall be true and correct both on the date of the Closing and as of the Closing Date as though made at such time;

(ii) Covenants. Buyer shall have performed and complied with all covenants and agreements required to be performed or complied with by them at or prior to the Closing Date.

(iii) Certificates of Buyer. At the Closing, Buyer shall have delivered to Seller a certificate signed by its President or a Vice President, and attested to by its Secretary or an Assistant Secretary, and dated the Closing Date, to the effect that the conditions specified in Sections 6.3(a) and (b) have been fulfilled; and

(iv) Certificates; Documents. Buyer shall have delivered the documents required in Section 6.3(d).

ARTICLE 7. COVENANTS OF SELLER

7.1 Conduct of Business. During the period from the date of this Agreement to the Closing Date, Seller shall, and shall cause AccuMed UK to, (i) conduct the Business and conduct the Business and maintain and operate the Acquired Assets in the ordinary and normal course and consistent with past custom and practice without limitation, using its commercially reasonable efforts to (A) preserve beneficial relationships between Seller and AccuMed UK and their respective employees, distributors, suppliers and customers and (B) continue normal maintenance, marketing, distributional and promotional expenditures in connection with the Business) and (ii) refrain from entering into any matters relating to the Business that are material or out of the ordinary course of business. Without limiting the generality of the foregoing and except as expressly provided in this Agreement, during the period from the date of this Agreement to the Closing Date, neither Seller nor AccuMed UK shall:

(a) Obligations for Borrowed Money. In connection with the Business or the Acquired Assets (i) create, incur or assume any debt (including obligations in respect of capital leases) or any debt for money borrowed (whether long- or short-term), except to the extent permitted under credit facilities existing on the date hereof; (ii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligation of any other Person; or (iii) make any loans, advances or capital contributions to any other Person, other than Trade Payables;

(b) Employee Matters. (i) Increase in any manner the rate of compensation of any officer or other employees employed or retained in connection with the Business; (ii) make or agree to make any payment pursuant to any Employee Plan, including without limitation, any payment of any bonus, incentive compensation, deferred compensation, pension, retirement allowance, severance or other employee benefit, except as required by any existing Employee Plan disclosed on the Schedules to this Agreement, to any such officers or employees, whether past or present; (iii) enter into or modify any collective bargaining agreement relating to the Business, except as required by Law; or (iv) enter into any agreement with any Person employed or retained in connection with the Business, or to modify any of such plans or agreements, except as required by Law;

(c) Sale of Assets. Sell, transfer, license or otherwise dispose of or agree to sell, transfer, license or otherwise dispose of any Acquired Assets, except inventory in the ordinary and normal course of business consistent with past custom and practice;

(d) Failure to Maintain Assets. Fail to maintain the Acquired Assets in good working condition, normal wear and tear excepted;

(e) Contracts. (i) Enter into any other agreements, commitments, contracts or undertakings relating to the Business or the Acquired Assets, except agreements, commitments, contracts or undertakings made in the ordinary and normal course of

Business consistent with past practice and the representations and warranties of Seller contained in this Agreement; or (ii) amend any Contracts;

(j) Encumbrances. Encumber or grant or create a Lien on any of the Acquired Assets;

(k) Insurance. Cause any of the policies of insurance referred to in Section 5.1(w) to terminate, lapse or be canceled, unless equivalent replacement policies, without lapse of coverage, shall be put in place;

(l) Litigation. Enter into any compromise or settlement of any litigation, action, suit, proceeding or investigation relating to the Business or the Acquired Assets, or any settlements made in the ordinary and normal course of business or by insurers, for any amounts not in excess of \$10,000 and (ii) settlements related solely to Retained Liabilities;

(m) Representations and Warranties. Take any action the taking of which, or omit to take any action the omission of which, would cause any of the representations and warranties contained in Section 5.1 to fail to be true and correct as of the Closing as if made at and as of the Closing;

(n) Affiliate Transactions; Dividends. Engage in any transactions in connection with the Business or the Acquired Assets, including transactions relating to the purchase of goods, raw materials, inventories or other operating or production items, or otherwise, with any of their respective Affiliates from the date of this Agreement until the Closing, except in the ordinary course of business of the Business. Seller or AccuMed UK shall (i) declare or pay any dividend, whether payable in cash or otherwise, or (ii) authorize for issuance, issue, sell or deliver any capital stock or subdivide its capital stock, except for shares of AccuMed common stock or conversion of options, warrants, preferred stock or 12% Convertible Stock outstanding on the date of this Agreement;

(o) Charter Amendments. Make any amendment to the AccuMed UK Charter;

(p) Accounting Methods. Make any change to its accounting (including tax accounting) systems, policies, principles, practices or methods, including, without limitation, any change in its method of computing reserves, or fail to maintain its books, accounts and records for the Business in accordance with GAAP;

(q) Permits. Terminate or fail to renew or preserve any existing Permits other than those which are no longer required, or fail to operate the Business under the terms of existing Permits and in compliance with all applicable Laws, or fail to file with the FDA any application, registration, filing, report, including, without limitation, any MDR or other document required to be filed in connection with the operation of the Business;

(n) Accounts Payable and Receivable. Delay or postpone the payment of accounts payable and other liabilities or institute any unusual or accelerated collection efforts with respect to its accounts receivable, in each case, beyond its normal practice;

(o) Transfer of Employees. Permit any of Seller's employees who are not employees of the Business to transfer employment to the Business; or

(p) Commitments. Agree or commit to do any of the foregoing.

7.2 Disclosure Supplements.

(a) From time to time prior to the Closing, Seller shall promptly supplement or amend the Schedules to this Agreement with respect to any matter (i) that may arise after and that, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the Schedules to this Agreement, or (ii) that makes it necessary to correct any information in the Schedules to this Agreement as a result of any representation and warranty of Seller that has been rendered inaccurate thereby. No supplement or amendment to the Schedules to this Agreement or any delivery of Schedules after the date of this Agreement, unless expressly consented in writing by Buyer, shall be deemed to (i) cure any breach of any representation or warranty made in this Agreement, (ii) modify, affect or diminish Buyer's right to terminate this Agreement pursuant to Section 10.1(c) of this Agreement or (iii) limit the indemnity provided in Section 11.2.

(b) During the period from the date of this Agreement to the Closing, Seller shall promptly (i) furnish or make available to Buyer copies of all operating reports and financial quarterly and year-end financial statements relating to the Business as soon as they become available, all certified by Seller's chief financial officer that such financial statements fairly present the financial position and results of operations of the Business for the periods covered by such statements in accordance with GAAP consistently applied (except to normally recurring year-end audit adjustments and without footnote disclosures), and (ii) notify Buyer of (A) any material change in the condition (financial or otherwise) business, assets, properties, operations or prospects of the Business, and (B) the institution or settlement of any litigation, action, suit, investigation, claim or proceeding involving the Business (other than those relating solely to Retained Liabilities) and of any developments therein.

(c) Closing. Seller shall use its reasonable efforts to cause the conditions set forth in Sections 6.1 and 6.2 to be satisfied by the Closing Date.

7.4 Confidentiality.

(a) Seller shall, and shall cause its Affiliates, officers, employees, representatives, consultants and advisors to, hold in confidence and not use all confidential information that remains in the possession of Seller or its Affiliates after the Closing concerning the Business and the Acquired Assets. Seller shall not release or disclose any such information

to any Person other than Buyer and its authorized representatives. Notwithstanding the foregoing, the confidentiality obligations of this Section shall not apply to information:

- (b) that Seller is compelled to disclose by judicial or administrative process (including arbitration or settlement negotiations), or, in the opinion of counsel, by other mandatory requirements of Law;
- (c) that can be shown to have been generally available to the public other than as a result of a breach of this Section; or
- (d) that can be shown to have been provided to Seller by a third party who obtained such information other than from Seller or other than as a result of a breach of this Section.

(i) Seller shall, and shall cause its Affiliates to, promptly notify Buyer if it learns of any unauthorized use or disclosure of any confidential information concerning the Business or the Acquired Assets by any Person that is subject to a confidentiality agreement with Seller, whether such use or Seller's discovery thereof occurs prior to or after the Closing (such unauthorized use or disclosure, a "CA Breach").

(ii) In the event Seller or Buyer discover a CA Breach, Seller shall, upon Buyer's request, take all commercially reasonable actions necessary to enjoin such Person's use or disclosure of the confidential information and to pursue all other remedies available pursuant to the parties' confidentiality agreement and at law; provided, however, that if Seller is required to take such enforcement actions after the Closing, Buyer shall reimburse Seller for its reasonable costs and expenses, including attorneys' fees, in connection therewith.

5. Maintenance of Insurance. Seller shall after the Closing use its reasonable efforts to maintain any policies of insurance that cover liabilities associated with the operation of the Business prior to the Closing; provided, that after the Closing Seller shall not be required to pay additional premiums in respect of such policies or maintain in effect any insurance coverage other than coverage disclosed on the Schedules hereto.

6. Trade Names.

(a) License. To the extent the Retained Name appears on (i) any plant, building or equipment, or (ii) any stationery, business form, packaging, container, sign or other property (real or personal) included in the Acquired Assets, Seller grants, and/or confirms its grant by its Affiliates of, a royalty-free license to Buyer to use the Retained Name with respect to and on such Acquired Assets until the later of (i) December 31, 1999 or (ii) the discontinuation of such materials.

(b) Use of Tradenames by Seller. After the Closing Date, Seller and its Affiliates shall not use any of the Tradenames for any reason, including use of such names in

connection with any product, business, subsidiary, division or other affiliated entity of

(c) Remedies. If this Section 7.6 is breached or threatened to be breached, Buyer and Seller expressly consent that in addition to any other remedy the other may have, Buyer and Seller shall be entitled to apply for and receive injunctive relief in order to prevent the continuation of any existing breach or the occurrence of any threatened

(d) Maintenance of, and Access to, Records. After the Closing Date, Seller shall provide Buyer with access (with an opportunity to make copies), during normal business hours, upon reasonable notice, to any records relating to the Business that are retained by Seller. Seller shall preserve and maintain any books and records relating to the Business and retained by Seller for five years after the Closing Date.

7.8 Non-Competition.

(a) Period and Conduct. As further consideration for the purchase and sale of the Restricted Assets and the transactions contemplated by this Agreement, during the period commencing on the Closing Date, and ending on the third anniversary thereof, Seller shall

(i) enter into or engage in any business that currently competes with the Business within the Restricted Territory (as defined below);

(ii) solicit customers, active prospects, business or patronage for any business wherever located, that competes with the Business within the Restricted Territory; or sell any products or services for any business, wherever located, that competes with the Business within the Restricted Territory;

(iii) solicit, divert, entice or otherwise take away any customers, former customers, active prospects, business, patronage or orders of the Business or attempt to do so; or

(iv) promote or assist, financially or otherwise, any Person engaged in any business that competes with the Business within the Restricted Territory.

(b) Restricted Territory. "Restricted Territory" means: (a) the geographic area within a 100 mile radius of any and all of the locations where the Business maintains an office or a manufacturing facility during the two years prior to the date of this Agreement; and (b) all of the specific customers, whether within or outside of the geographic area defined in (a) above, with which Seller (with respect to the Business) or AccuMed UK conducted business during the two years prior to the date of this Agreement.

(c) Tolling of Covenants. If it is judicially determined that Seller has violated any of its obligations under Section 7.8(a), then the period applicable to each obligation that

...has been determined to have violated automatically will be extended by a period of
...equal in length to the period during which such violation(s) occurred.

(d) Nonsolicitation. Seller shall not, and shall cause each of its Affiliates not to, directly or indirectly, at any time solicit or induce or attempt to solicit or induce any employee, representative or agent of the Business to terminate his, her or its employment, representation or other association with the Business.

(e) Non-Competition - Direct or Indirect. Seller will be in violation of this Section 7.8 if Seller engages in any or all of the activities set forth in Section 7.8 directly on its own behalf or indirectly for any other Person and whether as partner, joint venturer, agent or director of any Person or as an equity holder of any Person in which Seller owns, directly or indirectly, any of the outstanding equity interests; provided, however, that the Seller's indirect ownership by Seller of an interest constituting no more than five percent of the aggregate of the outstanding voting capital stock in any Person whose shares are listed on a recognized stock exchange or over the counter market shall not, of itself, be a violation of this Section 7.8.

(f) Remedies. Inasmuch as a breach, or failure to comply with, Section 7.8 will cause serious and substantial damage to Buyer, if Seller or any of its Affiliates should in any way breach or fail to comply with, the terms of this Section 7.8, Buyer shall be entitled to an injunction restraining Seller and such Affiliates from any such breach or failure. All remedies expressly provided for in this Section 7.8(d) are cumulative of any and all other remedies now existing at law or in equity. Buyer shall, in addition to the remedies provided in this Agreement, be entitled to avail itself of all such other remedies now, or hereafter exist at law or in equity for compensation, and for the specific enforcement of the covenants contained in this Agreement. Resort to any remedy provided for hereunder or provided for by law shall not preclude or bar the concurrent or subsequent employment of any other appropriate remedy or remedies, or preclude the recovery by Buyer of monetary damages and compensation.

(g) Subsidiaries, Division and Affiliates. For the purpose of this Section 7.8, Buyer shall include its subsidiaries, divisions and Affiliates as they may exist from time to time.

(h) Severability. Each subsection of this Section 7.8 constitutes a separate and distinct provision hereof. In the event that any provision of this Section 7.8 shall finally be judicially determined to be invalid, ineffective or unenforceable, such determination shall apply only in the jurisdiction in which such adjudication is made and every other provision of this Section 7.8 shall remain in full force and effect. The invalid, ineffective or unenforceable provision shall, without further action by the parties, be automatically amended to effect the original purpose and intent of the invalid, ineffective or unenforceable provision; provided, however, that such amendment shall apply only with respect to the operation of such provision in the particular jurisdiction in which such adjudication is made.

7.9 Accounts Receivable. In the event that Seller or any of its Affiliates receives any payment relating to any Account Receivable included in the Acquired Assets outstanding on the Closing Date, such payment shall be the property of, and shall be immediately transferred and remitted to, Buyer. Seller or such Affiliate will promptly endorse and deliver to Buyer all checks or other documents received by Seller on account of any such Accounts Receivable. Seller or such Affiliate shall advise Buyer (promptly following Seller's becoming aware) of any counterclaims or set-offs that may arise subsequent to the Closing Date with respect to any Account Receivable.

7.10 No Solicitation. From the date of this Agreement through and until the termination of this Agreement pursuant to Article 10 or Closing, except to the extent permitted by the letter agreement, dated September 25, 1998, between Seller and BD, none of Seller or its Affiliates, employees, officers, agents or advisors shall, directly or indirectly, solicit, encourage any inquiries, proposals or offers from any Person relating to any business opportunity (as the case may be) of the Acquired Assets or the Business, or any merger, consolidation or business combination with, Seller or AccuMed UK, or participate in any effort or attempt by any other Person to do or seek any of the foregoing. Seller shall (i) participate in any discussions or negotiations, (ii) furnish to any other Person any information with respect to, or afford access to the properties, books or records of or relating to, Seller or AccuMed UK, the Acquired Assets or the Business, or (iii) otherwise cooperate in any effort to assist or participate in, or facilitate or encourage any such effort. Seller shall promptly advise Buyer of any such proposal or offer or any inquiry or contact with any Person with respect to this matter.

7.11 Plant Closing Obligations. If Seller, AccuMed UK or any of their respective Affiliates takes any action that could be construed as a "plant closing" or "mass layoff," or that results in any employees retained or employed in connection with the Business suffering or being laid off, or who suffered any "employment loss," as those terms are defined in WARN or any similar Law of Seller or AccuMed UK, as the case may be, and such Affiliates shall be solely responsible for providing any notice required by WARN or any similar Law and for making any other filings that may be required under WARN or any similar Law for failure to provide such notice.

7.12 No Interference. From the date of this Agreement through and until the termination of this Agreement pursuant to Article 10 or Closing, Seller and its Affiliates, employees, officers, agents or advisors shall (a) not interfere, directly or indirectly, with Buyer's efforts to recruit the employment of, the individuals listed on Schedule 7.12 (the "Protected Employees"), and (b) shall use commercially reasonable efforts to retain the Protected Employees.

7.13 Sublease. Prior to the Closing, Seller and Buyer shall enter into an agreement (the "Sublease") by which Seller shall lease to Buyer a portion of Seller's Chicago, Illinois facility, substantially on the terms set forth in Exhibit G.

7.14 Further Assurances: Customer and Supplier Relationships; Assertion of Claims. (a) Seller shall use its reasonable efforts to implement the provisions of this

Agreement, and for such purpose Seller, at the request of Buyer, at or after the Closing, shall, without further consideration, promptly execute and deliver, or cause to be executed and delivered, to Buyer such deeds, assignments, bills of sale, Consents and other instruments in addition to those required by this Agreement, in form and substance satisfactory to Buyer, and take all such other actions, as Buyer may reasonably deem necessary or desirable to implement any provision of this Agreement or to more effectively transfer, convey and assign to Buyer good and marketable title to, and to put Buyer in full possession and operating control of, all of the Acquired Assets, free and clear of all Liens other than Permitted Liens.

(d) From and after the Closing, Seller shall use its reasonable efforts to assist in the transfer to Buyer of the goodwill and reputation associated with the Business.

(e) Seller covenants and agrees with Buyer that after the Closing Date, Seller shall give Buyer 10 days' prior written notice of any intent on the part of Seller or any of its Affiliates to assert any claim against any former customer (including the Customers) or supplier (including the Suppliers) of Seller or such Affiliate relating to the Business or the Acquired Assets.

15 Confidential Information. (a) Within three business days following the date of this Agreement, Seller shall deliver to Buyer copies of all written correspondence sent by Seller to any party with whom Seller discussed a potential sale of all or part of the Business informing such party that the LOI had been executed.

(b) Prior to Closing, Seller shall use its best efforts to cause all parties, other than Buyer, with whom Seller discussed a potential sale of all or part of the Business, to return to Seller or destroy all confidential information relating to the Business provided to such parties by Seller or AccuMed UK or their respective representatives.

16 Solvency Letter. Seller shall have delivered to Buyer no later than 30 days after the execution of this Agreement a letter (the "Solvency Letter") from an independent third party selected by Seller and reasonably satisfactory to Buyer (the "Appraiser") attesting that, as of the Closing Date: (i) Seller will be solvent (in that both the fair value of its assets will not be less than the sum of its debts and that the present fair saleable value of its assets will not be less than the amount required to pay its probable liability on its debts as they become due and matured); (ii) Seller will have adequate capital with which to engage in its business; (iii) Seller will not have incurred and does not plan to incur debts beyond its ability to pay as they become absolute and matured.

ARTICLE 8. COVENANTS OF BUYER

8.1 Maintenance of, and Access to, Records. From and after the Closing, Buyer shall, if reasonably requested by Seller, permit Seller to have access to such business records as may be required by Seller in connection with any audit or investigation by any Governmental Authority, or any matter relating to insurance coverage or third party claims, in each such case to the extent relating to the Business by Seller and AccuMed UK prior to the Closing. Buyer shall preserve the records relating to the Business that are part of the Acquired Assets for at least 60 days after the Closing Date.

8.2 Closing. Buyer shall use its reasonable efforts to cause the conditions set forth in Sections 5.1 (c) and 6.3 to be satisfied by the Closing Date.

ARTICLE 9. CERTAIN ADDITIONAL COVENANTS

9.1 Due Diligence Investigation.

(a) Access to Records and Properties. Prior to the Closing, (a) Buyer shall be permitted and Seller shall permit Buyer, to conduct such investigation of the condition (financial or otherwise), business, assets, properties, operations or prospects of the Business as Buyer shall reasonably deem appropriate, and (b) Seller shall (i) provide Buyer and its agents and representatives, including its independent accountants, internal auditors and attorneys, full and complete access to all the facilities, offices and personnel of Seller, and to all of the books and records of Seller with respect to the Business and the Acquired Assets including, without limitation, access to records related to the Business dating from January 1, 1995 to the Closing Date as necessary for tax and accounting purposes and to the papers of any independent accountant), (ii) cause Seller's officers, employees and agents to furnish Buyer with such financial and operating data (including the data described in Section 7.2(b)) and other information with respect to the condition (financial or otherwise), business, assets, properties, operations or prospects of Seller with respect to the Business as Buyer shall reasonably request, and (iii) permit Buyer to make such inspections and copies thereof as Buyer may reasonably require. In addition, Buyer shall be provided with full and complete access to the customers, suppliers and employees of the Business and the opportunity to make cooperative and investigative sales calls on purchasers of Products, for the purpose of both due diligence investigation of the Business and to seek confirmation of their intent to maintain an employment or business relationship with Buyer after the Closing.

(b) Confidentiality. Buyer shall maintain, and will cause its Affiliates and representatives to maintain, the confidentiality of proprietary information it learns as a result of its and their investigation in accordance with the terms of that Confidentiality Agreement, between Michael D. Burke and Seller, dated March 2, 1998 (the "Confidentiality Agreement"). Buyer and Seller agree that as of the date of this

Agreement, the Confidentiality Agreement shall be deemed to be amended to add Buyer and its Affiliates as parties thereto.

9.2 Proxy Material; Stockholder Meeting.

(a) Preparation of Proxy Statement. Seller and Buyer shall as promptly as practicable prepare and file with the SEC a proxy statement in definitive form relating to the meeting of Seller's stockholders to be held in connection with the approval of this Agreement, as amended or supplemented (such definitive proxy statement, as it may be amended or supplemented from time to time, the "Proxy Statement"). Seller shall use all reasonable efforts, and Buyer shall cooperate with Seller, to have the Proxy Statement cleared by the SEC as promptly as practicable. Seller shall, as promptly as practicable, provide copies of any written comments received from the SEC with respect to the Proxy Statement to Buyer and advise Buyer of any verbal comments with respect to the Proxy Statement received from the SEC. Seller shall use all reasonable efforts to cause the Proxy Statement to be mailed to its stockholders at the earliest practicable date and to obtain the necessary approvals by its stockholders of this Agreement and the transactions contemplated hereby. If at any time prior to Closing, any event with respect to Seller or any of its subsidiaries or with respect to other information supplied by Seller or mentioned in the Proxy Statement shall occur which is required to be described in an amendment of, or a supplement to, the Proxy Statement, such event shall be so described, and such amendment or supplement shall be promptly filed with the SEC and, as required by law, disseminated to the stockholders of Seller, with a copy to Buyer.

(b) Stockholder Meeting. Seller shall cause a meeting of its stockholders (the "Seller Stockholder Meeting") to be duly called and held as soon as reasonably practicable for the purpose of voting on the approval of the sale of the Acquired Assets and the Assumed Liabilities as contemplated by this Agreement, and the Directors of Seller shall recommend adoption of this Agreement by Seller's stockholders. Seller will comply with all legal requirements applicable to such meeting.

(c) Bulk Transfer Laws. Buyer hereby waives compliance by Seller with the laws and regulations relating to bulk transfers that may be applicable in connection with the transfer of Acquired Assets to Buyer. This provision shall not be deemed in any way to limit the rights provided in Section 11.2.

(d) Press Releases and Disclosure. Except (i) as otherwise expressly provided in this Agreement and (ii) as required by Law or the rules and regulations of the National Association of Securities Dealers, Inc., no party hereto and none of their respective Affiliates shall cause publication of any press release or other announcement or public communication with respect to this Agreement or the transactions contemplated hereby or otherwise disclose this Agreement or the transactions contemplated hereby to any third party (other than attorneys, accountants to Seller or Buyer) without (i) the prior written consent of the other party hereto and (ii) the prior written approval of the other party hereto on the timing and content of such press release, announcement or communication, which consent and approval shall not be reasonably withheld.

9.5 Regulatory Approvals. Seller will, and will cause its appropriate Affiliates to, in each case, commercially reasonable efforts (which shall not be construed to require Seller to divest any businesses or assets or enter into any hold separate agreement, consent decree or similar order) to obtain any authorizations, consents, orders and approvals of any Governmental Authority necessary for the performance of its respective obligations pursuant to this Agreement and any of the other Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, and will cooperate fully with each other in all respects in promptly seeking to obtain such authorizations, consents, orders and approvals. Neither Seller, on the one hand, nor Buyer, on the other hand, will take any action that has the effect of delaying, impairing or impeding the receipt of any required regulatory approvals which shall not be construed to require Buyer to divest any businesses or assets or enter into any hold separate agreement, consent decree or similar order). Seller will supply Buyer with all correspondence, filings or communications (or memoranda setting forth the substance of) between Seller or its representatives, on the one hand, and any Governmental Authority or members of their respective staffs, on the other hand, with respect to this Agreement and the transactions contemplated hereby.

9.6 Employee Matters.

(a) **Employee Benefits.** Seller shall retain all liabilities and obligations in respect of its past, present and future employees under the Employee Plans and applicable Laws. Without limiting the generality of the foregoing or of Section 2.2(c), Buyer shall have no liability or obligation whatsoever under the Employee Plans, nor shall Buyer have any obligation to provide any employee benefits to any Employees. Seller shall offer to all employees of the Business at the time of the Closing the right to continue their coverage under Seller's group health plan(s) (as defined in Section 5000(b)(1) of the Code), such offers to be made in accordance with the continuation coverage requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code.

(b) **Future Employment.** Except as set forth on Schedule 9.6, Buyer shall offer employment from and after the Closing to all Employees who are actively employed on the Closing Date, on such terms and conditions as Buyer may, in its sole discretion, determine, and will recognize for seniority purposes the past services of such Employees. Prior to the Closing, upon reasonable prior notice to Seller, Buyer may communicate with any of the Employees currently employed in the Business.

(c) **No Employment by Seller.** After the Closing, Seller shall not solicit or hire any Employee listed on Schedule 5.1(s)(i) that does not accept employment with Buyer.

(d) **Employee Information.** (i) Subject to applicable legal restrictions, Buyer and Seller shall provide each other, in a timely manner, with any information that the other may reasonably request with respect to any Employee of Seller or, after the Closing, any Person employed by Buyer in the Business, his employment with and compensation from Seller or Buyer, or rights or benefits under any Employee Plan or any personnel policy of Seller or Buyer relating to the Business.

(ii) Without in any way limiting the generality of Section 9.6(d)(i), and to the extent they may legally do so, Seller shall afford Buyer and its representatives such access to the medical, workers' compensation and other health-related records of the Employees (the "Employee Health Records") as are maintained by or available to Seller and as Buyer shall, in its sole discretion, deem reasonably necessary or desirable, and Buyer shall be permitted, to the extent Seller may legally give such permission, to make copies of such Employee Health Records as it may deem reasonably necessary or desirable. Promptly after the date of this Agreement, Seller shall use its reasonable efforts to obtain or cause to be obtained by consent of any Employee, health care provider, workers' compensation authority or other Person as may be necessary in order to permit Seller to afford Buyer and its representatives with access to and permission to copy Employee Health Records as provided in this Section 9.6(c).

ARTICLE 10. TERMINATION

(a) Termination. This Agreement and the transactions contemplated hereby may terminate at any time prior to the Closing:

(i) Mutual Consent. By mutual written consent of Seller and Buyer;

(b) Closing Date. By Seller or Buyer if the Closing shall not have occurred on or before March 31, 1999 (the "Termination Date");

(c) Seller Misrepresentation or Breach. By Buyer if there has been a material breach by Seller of any of its representations, warranties, covenants, obligations or agreements set forth in this Agreement or in any writing delivered pursuant hereto by Seller;

(d) Buyer Misrepresentation or Breach. By Seller, if there has been a material breach by Buyer of any of its representations, warranties, covenants, obligations or agreements set forth in this Agreement or in any writing delivered pursuant hereto by Buyer;

(e) Court Order. By Seller or Buyer if consummation of the transactions contemplated hereby shall violate any non-appealable final order, decree or judgment of any court or Governmental Authority having competent jurisdiction;

(f) Buyer's Conditions. By Buyer, if (i) any condition precedent to Buyer's obligation to effect the Closing set forth in Section 6.1(c) or 6.2 is not satisfied, or shall have become incapable of fulfillment, and such condition is not waived, if waivable, by Buyer on or prior to the Termination Date or (ii) any condition precedent to Buyer's obligation to effect the Closing set forth in Section 6.1(a) is not satisfied, or shall have become incapable of fulfillment, on or prior to the Termination Date;

(g) Seller's Conditions. By Seller, if (i) any condition precedent to Seller's obligation to effect the Closing as set forth in Section 6.1(c) or 6.3 is not satisfied, or shall have become incapable of fulfillment, and such condition is not waived, if waivable, by Seller on or prior to the Termination Date or (ii) any condition precedent to Seller's obligation to effect the Closing set forth in Section 6.1(a) is not satisfied, or shall have become incapable of fulfillment, on or prior to the Termination Date; or

(h) Solvency Letter. By Buyer if Seller shall fail to deliver, or cause to be delivered to Buyer, the Solvency Letter within 30 days after the date of this Agreement.

10.2 Effect of Termination. If this Agreement is terminated pursuant to Section 10.1, written notice thereof shall forthwith be given to the other party and this Agreement shall become void and have no further force and effect and all further obligations of Seller and Buyer under this Agreement shall terminate without further liability of Seller or Buyer, and (a) each party will return all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the termination of this Agreement, to the party furnishing the same, and all confidential information received by any party hereto with respect to the business of any other party shall be treated in accordance with Section 7.4; (b) the obligations of Seller and Buyer under Sections 7.4, 9.4, 12.4 and 12.5 shall survive such termination; and (c) such termination shall not constitute a waiver by any party of any claim it may have for damages caused by reason of, or relieve any party from liability for any breach of this Agreement prior to termination under Section 10.1.

ARTICLE 11. INDEMNIFICATION

11.1 Indemnification by Buyer. From and after the Closing, Buyer shall indemnify, defend and hold Seller, its Affiliates, and their respective directors, officers, representatives, employees and agents harmless from and against any and all claims, actions, suits, demands, assessments, judgments, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees and expenses, interest, penalties, attorneys' fees and expenses, accounting fees and litigation costs) (collectively, "Liabilities") that may be incurred by them resulting or arising from, related to, or incurred in connection with: (a) the failure of Buyer to assume, pay, perform and discharge the Assumed Liabilities, (b) the failure of Buyer to report the purchase of Acquired Assets in accordance with the allocations required by Section 3.3, (c) any breach of representation, warranty, covenant, obligation or agreement of Buyer contained in this Agreement or in any other Transaction Document and (d) the conduct of the Business following the Closing.

11.2 Indemnification by Seller

(a) From and after the Closing, Seller shall indemnify, defend and hold Buyer and AccuMed UK and their respective Affiliates, and their respective directors, officers, representatives, employees and agents harmless from and against any and all Liabilities that may be incurred by Buyer or AccuMed UK resulting or arising from, related to or incurred in connection with: (a) the failure of Seller to assume, pay, perform and

the Retained Liabilities, (b) the failure of Seller to report the sale of the Acquired Assets in accordance with the allocations required by Section 3.3, (c) any breach of any representation, warranty, covenant, obligation or agreement of Seller contained in this Agreement or in any other Transaction Document, (d) any failure to comply with the laws of any jurisdiction relating to bulk transfers that may be applicable in connection with the transfer of the Acquired Assets to Buyer and (e) any liability or obligation described in Section 11.2(a).

(b) In addition to the provisions of Section 11.2(a) and without limiting the generality of such provisions, Seller agrees to fully indemnify and hold harmless Buyer and its respective parent corporations and subsidiaries and all other members, if any, of any group of which Buyer is a member for Tax purposes (any subsequent reference to "Buyer" in this Agreement shall mean either Buyer individually or one or more of its affiliates as defined herein, as appropriate) against and in respect of and, on demand, will reimburse Buyer for any and all liability whatsoever, and however imposed (including any claim for deficiency assessed against or collected from Buyer), in respect of (1) any period in any and all taxable periods (or portion thereof) ending on or prior to the Closing Date, (2) any unpaid Taxes, whether determined on a separate, consolidated, combined or unitary basis, relating to Seller (or any member of a group for tax purposes in which Seller is or was included) (A) imposed under Treasury Regulation § 1.1502-6 or any comparable provision of state, local or foreign law with respect to any taxable period beginning prior to the Closing Date or (B) pursuant to any guaranty, indemnification, Tax sharing or similar agreement made on or before the Closing Date relating to the sharing of liability for the payment of, Taxes or (3) any Taxes payable by Seller pursuant to Section 12.4.

11.3 Notice of Claim; Right to Participate in and Defend Third Party Claim.

(a) If any indemnified party receives notice of the assertion of any claim, the commencement of any suit, action or proceeding, or the imposition of any penalty or assessment by a third party in respect of which indemnity may be sought hereunder (a "Third Party Claim"), and the indemnified party intends to seek indemnity hereunder, then the indemnified party shall provide the indemnifying party with prompt written notice of the Third Party Claim, but in any event not later than 10 calendar days after receipt of such notice of Third Party Claim. The failure by an indemnified party to notify an indemnifying party of a Third Party Claim shall not relieve the indemnifying party of any indemnification responsibility under this Article 11, unless such failure materially impairs the ability of the indemnifying party to defend such Third Party Claim.

(b) The indemnifying party shall have the right to control the defense, compromise or settlement of the Third Party Claim with its own counsel (reasonably satisfactory to the indemnified party) if the indemnifying party delivers written notice to the indemnified party within 10 days following the indemnifying party's receipt of notice of the Third Party Claim from the indemnified party, acknowledging its obligations to indemnify the indemnified party with respect to such Third Party Claim in accordance with this Article 11, and, to the extent litigation counsel to the indemnified party deems reasonable after assessing the merits of such Third Party Claim, establishes security in form and

substance reasonably satisfactory to the indemnified party to secure the indemnifying party's obligations under this Article 11 with respect to such Third Party Claim; provided, however, that the indemnifying party shall not enter into any settlement of any Third Party Claim (i) that would impose or create any obligation or any financial or other liability on the indemnified party if such liability or obligation is not covered by the indemnification provided to the indemnified party hereunder or (ii) that does not include as an unconditional term thereof the giving to such indemnified party by each claimant or claimants to such Third Party Claim of a release from all liability with respect to such Third Party Claim. In its defense, compromise or settlement of any Third Party Claim, the indemnifying party shall timely provide the indemnified party with such information with respect to such defense, compromise or settlement as the indemnified party shall request, and shall not assume any position or take any action that would impose an obligation of indemnification or restrict the actions of, the indemnified party.

(c) The indemnified party shall be entitled (at the indemnified party's expense) to participate in the defense by the indemnifying party of any Third Party Claim with its own counsel. In addition, in the event that the indemnified party shall in good faith determine, based upon the advice of counsel, that the indemnified party may have available to it one or more defenses or counterclaims that are inconsistent with one or more of those that may be available to the indemnifying party in respect of such Third Party Claim, the indemnified party shall have the right to participate in the defense thereof, in which case the indemnifying party shall be responsible for the reasonable fees and expenses of one separate counsel for all indemnified parties with respect to such Third Party Claim. In the event that the indemnifying party does not undertake the defense, compromise or settlement of a Third Party Claim in accordance with Section 11.3(b), the indemnified party shall have the right to control the defense or settlement of such Third Party Claim with counsel of its choosing.

(d) Any indemnifiable claim hereunder that is not a Third Party Claim shall be asserted by the indemnified party by promptly delivering notice thereof to the indemnifying party. If the indemnifying party does not respond to such notice within 30 days after its receipt, it shall have no further right to contest the validity of such claim.

ARTICLE 12. MISCELLANEOUS

12.1 Amendments. This Agreement may be amended only by a writing executed by all of the parties hereto.

12.2 Entire Agreement. This Agreement, the other agreements expressly referred to in this Agreement and the Confidentiality Agreement set forth the entire understanding of the parties hereto with respect to the subject matter of this Agreement, and supersede all prior contracts, agreements, arrangements, communications, discussions, representations and warranties, whether oral or written, between the parties, including, without limitation, the COI.

12.3 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Ohio, without regard to its conflicts of law. Seller hereby agrees to submit to the personal jurisdiction of the state or federal courts located in the State of Ohio. Notwithstanding the foregoing, any party may initiate and prosecute a legal proceeding or seek enforcement of any judgment in any proper court having jurisdiction in the United States or elsewhere.

12.4 Expenses. All legal, accounting and other costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense. All transfer, recording and documentary Taxes and fees that may be payable in connection with the transactions contemplated by this Agreement shall be borne by Seller.

12.5 Notices. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) when received if delivered or sent by registered or certified mail, return receipt requested, postage prepaid, within 2 hours after being sent by telecopy, with confirmed answerback, or (b) on the business day of being sent by priority delivery by established overnight courier, to the addresses in their respective addresses set forth below.

To Seller: AccuMed International, Inc.
 900 N. Franklin Street, Suite 401
 Chicago, Illinois 60610
 Telephone: (312) 642-9200
 Telecopy: (312) 642-3101

 Attention: Paul F. Lavalley
 Chairman, President and Chief Executive Officer

With a copy to: AccuMed International, Inc.
 1500 7th Avenue
 Sacramento, California 95818
 Telephone: (916) 443-6800
 Telecopy: (916) 443-6850

 Attention: Joyce L. Wallach
 General Counsel

To Buyer: Key Equity Capital Corporation
 127 Public Square
 Cleveland, Ohio 44114
 Telephone: (216) 689-5776
 Telecopy: (216) 689-3204

 Attention: Stephen R. Haynes
 Vice President

and Michael D. Burke
626 Blue Spruce Trail
Auburn Township, Ohio 44023
Telephone: (440) 708-0557
Telecopy: (440) 708-0558

With a copy to: Jones, Day, Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
Telecopy: (216) 579-0212

Attention: Charles W. Hardin, Jr.

By written notice to the others given in accordance with this Section 12.5 may change the Persons to whom notices or copies thereof shall be directed.

12.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together will constitute one and the same instrument.

12.7 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but no rights, obligations or duties hereunder shall be assignable by any party without the prior written consent of the other party, except that Buyer may effect any such assignment to (i) one or more of its Affiliates, (ii) a lender of all or substantially all of the Acquired Assets or (iii) any lender to the Buyer as provided in Section 12.11.

12.8 Waivers. Except as otherwise provided in this Agreement, Buyer or Seller (or any of them or their respective successors or assigns or their respective Affiliates) may waive in writing compliance by any party to this Agreement or by any other party hereto (to the extent such compliance is for the benefit of the party giving the waiver) with any of the terms, covenants or conditions contained in this Agreement or in any of the other Transaction Documents (except such as may be imposed by law). Any waiver by any party of any violation of, breach of, or default under, any provision of this Agreement or any of the other Transaction Documents, by any other party shall not be construed as, or constitute, a continuing waiver of such provision, or waiver of any other violation of, breach of or default under any other provision of this Agreement or any of the other Transaction Documents.

12.9 Third Parties. Nothing expressed or implied in this Agreement is intended, shall be construed, to confer upon or give any Person or entity other than Buyer or Seller any remedies under or by reason of this Agreement.

12.10 Schedules and Exhibits. The Schedules and Exhibits attached to this Agreement are incorporated into, and shall be part of, this Agreement for all purposes.

2.11 Headings; References. The headings in this Agreement are solely for reference and shall not be given any effect in the construction or interpretation of this Agreement. Unless otherwise indicated, all references to Articles, Sections and Schedules to this Agreement and the Schedules to this Agreement,

2.12 Certain Definitions.

(a) For purposes of this Agreement, the term "Affiliate" shall mean any Person directly or indirectly through one or more Persons, controls, is controlled by, or is under common control with, the Person specified or, directly or indirectly, is related to or otherwise associated with any such Person or entity; provided that the term "Affiliate," when used with reference to Seller, shall not be deemed to include AccuMed UK.

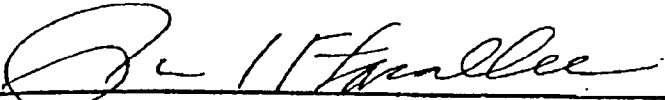
(b) For purposes of this Agreement and of any other Transaction Document, the term "to the best of Seller's knowledge" or "Seller's knowledge" shall be deemed to include all information that is actually known or, in the exercise of reasonable diligence in the normal course of their employment and/or assigned duties, should be known, by each of the following individuals: (i) the officers of Seller and all management who are employed or retained by Seller or any of its Affiliates in connection with the Business, whether or not such individuals were or are also officers, directors of employees of Seller or any of its Affiliates, and (ii) all other individuals employed or retained by Seller or any of its Affiliates who have (or should have) exercised by reason of their position, responsibilities or duties, the principal supervisory, monitoring or compliance function with respect to any of the particular subject matters addressed by the representations and warranties set forth in Article 5.

2.13 Remedies Not Exclusive. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter by law or in equity or by statute or otherwise. No remedy shall be deemed to be a limitation on the amount or measure of damages resulting from any breach of this Agreement. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.

2.14 Gender and Number. The masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

IN WITNESS WHEREOF, the parties have caused their duly authorized
executives to execute this Agreement as of the date first above written.

ACCUMED INTERNATIONAL, INC.

By: 
Name: Paul F. Lavalley
Title: Chairman, President and Chief Executive Officer

AMI ACQUISITION CORP.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties have caused their duly authorized
representatives to execute this Agreement as of the date first above written.

ACCUMED INTERNATIONAL, INC.

By: _____
Name: Paul F. Lavallee
Title: Chairman, President and Chief Executive Officer

AMI ACQUISITION CORP.

By: Stephen R. Hayes
Name: Stephen R. Hayes
Title: Vice President

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 Schedule 5.1 (p) - Intellectual Property

<u>Title</u>	<u>Country</u>	<u>Patent No.</u>
<u>Approved Patents</u>		
Detecting Microbiological Growth	U.S.A.	5,232,839
Culture bottle	U.S.A.	5,672,484
AlamarBlue	U.S.A.	5,501,959
Dispenser	U.S.A.	4,364,718
Fluorescent detection	U.S.A.	4,798,788
Dry Panel	U.S.A.	4,935,347
Fluorogenic reagent	U.S.A.	5,064,756
Fluorogenic reagent	U.S.A.	5,079,144
Therapeutic drug testing	UK	UK 0171168
Radiometer (renewed)	UK	2128204
Radiometer (renewed)		91837EP
Culture bottle	U.S.A.	5,852,143
Culture bottle	U.S.A.	5,607,860
Culture bottle	U.S.A.	5,580,786
Culture bottle	U.S.A.	5,573,951
<u>Patent Applications</u>		
Machine readable code	U.S.A.	08/584,287
Machine readable code	UK	951503-A
Plate design	Japan	JP 607196-DES
pH control		EP 89311875.2
Apparatus & Methods for Antimicrobial Susceptibility (AlamarBlue)	Germany, France, Italy, UK, Spain, Canada, Japan	EP 0 454 784 DT 690226602.2 SP 2089009 2E+06 JP 503076/90
Detecting Microbiological Growth	France, Italy, Germany, Spain, UK	EP 92/203183.6
Microbiological Culture Bottle, and Method of Making and Using Same	U.S.A.	8/576,050
Microbiological Culture Bottle, and Method of Making and Using Same	France, Italy, Germany, Spain, UK	EPC95909409.5
Microbiological Culture Bottle, and Method of Making and Using Same	Canada	2,182,611
Microbiological Culture Bottle, and Method of Making and Using Same	Japan	7-520,698
EP 00902984.7		
EP and UK and France 0592728		

Schedule 5.1 (p) - Intellectual Property (continued)

EP 83302129.8
EP 833028.2
France, Germany, Italy and Spain for 870,792

Growth Detector	Germany	6922 0940.2-08
Apparatus & Methods for	PCT	
Anti Microbial Suseptibility		US90/00149
Microbiological Culture Bottle	PCT	US95/01289
	Spain	208084

Schedule 5.1 (p) - Intellectual Property (Continued)

<u>Registered Trademarks</u>	<u>Application Filing Date</u>	<u>U.S. Reg Number</u>	<u>Reg Date</u>	<u>Class</u>	
				<u>Int</u>	<u>U.S.</u>
ESP	9/30/91	1,808,411	11/30/93	10	44
EZ Draw	12/18/91	1,794,215	9/21/93	10	18,44
EZ View	12/18/91	1,794,214	9/21/93	10	18,44
Accuzone					
Sensitouch					
Sensititre					
AlamarBlue					
Pathos					
Yeastone					
Lustone					
Aris					

Design Trademark allowed 7/2/96 pending statement of use; U.S. Serial Number 74/706367

Registered Trademarks (Sensititre product line):

Autoreader
AutoInnoculator

Copyrights

ESP related software source code and development tools and any and all copyrights thereto

software, and any and all copyrights therein, to the extent assignable.

Trademarks - AccuMed UK

As listed in assignment between Gibco Limited and Sensititre Limited dated November 2, 1986

Schedule 5.1 (p) - Intellectual Property (continued)

Exceptions as to Sole Ownership and exclusive right to use Intellectual Property

All patents pertaining to the Sensititre business are owned by Dade Microscan Inc. (Assignments between Radiometer Corporate Development Ltd. And Baxter Diagnostics Inc. and Sensititre Ltd. and Baxter Diagnostics Inc.). There is a royalty-free, non exclusive worldwide license to make use of the patent rights under the Assignment agreements. (License between Baxter Diagnostics Inc. and Sensititre Ltd.)

AccuMed has taken, and will take, no action that has or will terminate this agreement under section 11(b) therein.

AlamarBlue (1301) patent rights are licensed to Becton Dickinson and Company pursuant to the License Agreement, dated as of October 10, 1995 as amended between Becton Dickinson, the Company and Alamar Biosciences, Inc. (now AccuMed International, Inc.)

Non-Clinical License and Non-Competition Agreement, Base Media License Agreement, and Base Media Components License Agreement, dated March 3, 1997 between Difco Laboratories Incorporated (Michigan), Difco Microbiology Systems, Inc. and Difco Laboratories Incorporated (Wisconsin) and AccuMed.

Exclusive Distribution Agreement between alamarBlue and Solavo regarding in vitro diagnostic products and software for selected European and Mediterranean countries.

Non-Exclusive Manufacturing License and Non-Competition Agreement between AccuMed and Salcom regarding Europe and Japan regarding alamarBlue patents, trade secrets and know-how and related software.

Software License between Biokit and AccuMed for BIOSCAN software.

Exceptions as to Notice of Conflict

Akzo Nobel has notified the Company that Akzo believes that the ESP product infringes an Akzo patent.

The Company has been notified by Giles Scientific that it believes that the Accuzone product infringes a Giles Scientific patent.

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FIRST SCHEDULE

Country	No.	Class	Mark	Proprietor
Canada	250660	5,9	Sensititre Logo	Gibco Limited
Italy	355992	1,5,9	Sensititre Logo	UAC International Limited
Denmark	2639/1978	1,5	Sensititre Logo	Gibco Limited
Spain	896484	9	Sensititre Logo	Gibco Limited
Sweden	169231	1,5,9	Sensititre Logo	Gibco Limited
Switzerland	293433	1,5,9	Sensititre Logo	Gibco Limited
Australia	4315999	1	Sensititre Logo	Gibco Limited
Spain	896482	1	Sensititre	Gibco Limited
Spain	896483	5	Sensititre	Gibco Limited
Nepal	75/1941	5	Sensititre	Gibco Limited
Tanzania	75/1941	5	Sensititre	Gibco Limited
Zambia	75/1941	5	Sensititre	Gibco Limited
Nepal	75/1942	9	Sensititre	Gibco Limited

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Country	No.	Class	Mark	Proprietor
Switzerland	75/1942	9	Sensititre	Gibco Limited
Switzerland	75/1942	9	Sensititre	Gibco Limited
Switzerland	332399	5,9	Sensititre	Gibco Limited
Switzerland	74337	5,9	Sensititre	Gibco Limited
Switzerland	80126	1	Sensititre	Gibco Limited
France	927857	5,9	Sensititre	Gibco Limited
France	1118654	1	Sensititre	Gibco Limited
Germany	981467	5,9	Sensititre	Gibco Limited
Germany	999765	1,9	Sensititre	Gibco Limited
Ireland	87064	5	Sensititre	UAC International Limited
Ireland	87065	9	Sensititre	UAC International Limited
Ireland	95232	1	Sensititre	UAC International Limited
Japan	1476114	1	Sensititre	Gibco Limited
Japan	1552277	10	Sensititre	Gibco Limited
Nigeria	25544	5	Sensititre	UAC International Limited
New Zealand	129263	1	Sensititre	Gibco Limited

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P. 06/11

Country	No.	Class	Mark	Proprietor
Australia	4302752	1	Sensititre	Gibco Limited
Norway	97216	5,9	Sensititre	Gibco Limited
Australia	4302754	9	Sensititre	Gibco Limited
Norway	106310	1	Sensititre	Gibco Limited
Austria	81007	5,9	Sensititre	Gibco Limited
Belgium	359891	1	Sensititre	Gibco Limited
Sierra Leone	10003	8	Sensititre	Gibco Limited
Brazil	810576864	05,50	Sensititre	Gibco Limited
Sierra Leone	10002	3	Sensititre	Gibco Limited
Brazil	810538628	9,15,9,80	Sensititre	Gibco Limited
South Africa	75/1941	5	Sensititre	Gibco Limited
Canada	240051	5,9	Sensititre	Gibco Limited
South Africa	75/1942	9	Sensititre	Gibco Limited
Canada	257292	1	Sensititre	Gibco Limited
South Africa	79/3496	1	Sensititre	Gibco Limited
Spain	787582	9	Sensititre	Gibco Limited
Italy	330235	1,5,9	Sensititre	Gibco Limited
Italy	318632	1,5,9	Sensititre	Gibco Limited

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P. 07/11

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Country	No.	Class	Mark	Proprietor
Australia	A302752	1	Sensititre	Gibco Limited
Norway	97216	5,9	Sensititre	Gibco Limited
Australia	A302754	9	Sensititre	Gibco Limited
Norway	106310	1	Sensititre	Gibco Limited
Austria	81007	5,9	Sensititre	Gibco Limited
Luxembourg	359891	1,5,9	Sensititre	Gibco Limited
Sierra Leone	10003	8	Sensititre	Gibco Limited
Brazil	810576864	05.50	Sensititre	Gibco Limited
Sierra Leone	10002	9	Sensititre	Gibco Limited
Brazil	810538628	9.15,9.80	Sensititre	Gibco Limited
South Africa	75/1941	5	Sensititre	Gibco Limited
Canada	240061	5,9	Sensititre	Gibco Limited
South Africa	75/1942	9	Sensititre	Gibco Limited
Canada	257292	1	Sensititre	Gibco Limited
South Africa	79/3496	1	Sensititre	Gibco Limited
Spain	787582	9	Sensititre	Gibco Limited
Italy	330235	1,5,9	Sensititre	Gibco Limited
Italy	318632	1,5,9	Sensititre	Gibco Limited

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P. 08/11

Country	No.	Class	Mark	Proprietor
Denmark	4968/1975	5,9	Sensititre	Gibco Limited
Denmark	921133	1,7	Sensititre	Gibco Limited
Denmark	678/1980	1	Sensititre	Gibco Limited
Denmark	167023	5,9	Sensititre	Gibco Limited
Denmark	170047	1	Sensititre	Gibco Limited
Switzerland	301547	1,5,9	Sensititre	Gibco Limited
Switzerland	280052	1,5	Sensititre	UAC International Limited
Japan	1521781	1	Sensititre in Katakana	Gibco Limited
Japan	1679523	10	Sensititre in Katakana	Gibco Limited
Ireland	81018	1,5,9	Sensititre Logo	Gibco Limited
France	1069476	1,5,9	Sensititre Logo	Gibco Limited
Germany	987735	1,5	Sensititre Logo	Gibco Limited
China	21325	9	Sensititre Logo	Gibco Limited
China	21149	1	Sensititre Logo	Gibco Limited
China	21323	9	Sensititre Logo	Gibco Limited
Ireland	94550	1	Sensititre Logo	Blackfriars Chemicals Limited

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REGISTERED INTERNATIONAL

CLASS 310000

COUNTRY	No.	Class	Mark	Proprietor
Ireland	94551	9	Sensititre Logo	Blackfiars Chemicals Limited
New Zealand	122831	9	Sensititre Logo	Gibco Limited
New Zealand	122832	1	Sensititre Logo	Gibco Limited
Australia	4315998	9	Sensititre Logo	Gibco Limited
Norway	103138	1,5	Sensititre Logo	Gibco Limited
Sierra Leone	10707	8	Sensititre Logo	Gibco Limited
Austria	88081	1,5,9	Sensititre Logo	Gibco Limited
Sierra Leone	10705	1	Sensititre Logo	Gibco Limited
Belgium	350313	1,5,9	Sensititre Logo	Gibco Limited
Sierra Leone	10706	3	Sensititre Logo	Gibco Limited
United Kingdom	1102193	1	Sensititre Logo	Gibco Limited
United Kingdom	1090777	5	Sensititre Logo	Gibco Limited
United Kingdom	1090993	9	Sensititre Logo	Gibco Limited
United Kingdom	1102192	1	Sensititre	Gibco Limited
United Kingdom	1042296	5	Sensititre	Gibco Limited
United Kingdom	1077389	9	Sensititre	Gibco Limited
United Kingdom	1042297	9	Sensititre	Gibco Limited
United States of America	1126962	1	Sensititre Logo	Gibco Limited

Country	No.	Class	Mark	Proprietor
United States of America	1113936	5,9	Sensitive	Cisco Limited
Nigeria	25544	5	Sensitive	UAC International Limited
<u>SECOND SCHEDULE</u>				
Nigeria	67273	9	Sensitive	UAC International Limited
Nigeria	69229	1	Sensitive	UAC International Limited
Nigeria	32478	1	Sensitive Logo	UAC International Limited
Nigeria	32479	9	Sensitive Logo	UAC International Limited
Nigeria	32482	5	Sensitive Logo	UAC International Limited
Nigeria		9	Sensitive	UAC International Limited

IN WITNESS WHEREOF the Assignor and the Assignee have caused their respective Common Seals to be hereunto affixed the day and year first hereinafore written.

By Common Seal of CISCO
Signed and hereunto
affixed in the presence of:
Director
Secretary Director

Assignment and Assumption Agreement

This Assignment and Assumption Agreement (this "Agreement") was made as of January 29, 1999 among AccuMed International, Inc., a Delaware corporation (the "Seller"), Trek Diagnostic Systems, Inc., a Delaware corporation (formerly known as AMI Acquisition Corporation) (the "Purchaser"), and Becton, Dickinson and Company, a New Jersey corporation, through its Becton, Dickinson Microbiology Division ("BDMS"), its subsidiaries Difco Laboratories Incorporated, a Michigan corporation ("Difco Michigan"), Difco Laboratories Incorporated, a Wisconsin corporation ("Difco Wisconsin"), Pasco Laboratories, Inc., a Colorado corporation ("Pasco"), and collectively with Difco Michigan, Difco Wisconsin and Pasco, the "Becton Parties").

Whereas, pursuant to the Asset Purchase Agreement dated as of December 20, 1998 between the Seller and the Purchaser (the "Asset Purchase Agreement"), the Seller has agreed, among other things, to assign to the Purchaser, and the Purchaser has agreed to assume from the Seller, the Seller's rights and obligations under certain agreements related to Seller's Microbiology Division;

Whereas, Becton is a party to certain of such agreements set forth below and Becton's consent is required prior to such assignment and assumption thereof;

Now, therefore, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

Effective as of the Closing (as defined in the Asset Purchase Agreement) the Seller shall assign all its rights and interests, and the Purchaser shall assume all of the Seller's obligations to the extent such obligations arise or accrue after the Closing (as defined in the Asset Purchase Agreement and pursuant to a duly executed Assumption Agreement in the form attached as an exhibit to the Asset Purchase Agreement) under the following agreements to which the Becton Parties are a party:

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- (i) Exchange Agreement and Amendment dated, for reference purposes only, December 16, 1998 between the Seller and BDMS;
- (ii) Manufacturing Agreement dated to take effect upon sale of Difco Wisconsin's Sun Prairie facility between Seller and BDMS;
- (iii) Purchase and Sale Agreement dated, for reference purposes only, January 8, 1999 among the Seller, Difco Wisconsin, Difco Michigan and BDMS;
- (iv) Option to Purchase Real Property dated January 8, 1999 between Difco Wisconsin and the Seller, as amended by letter agreements dated January 8, and January 22, 1999, respectively;

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(v) License Agreement dated as of October 10, 1995, as amended, between Becton and Alamar Biosciences, Inc. (as the Seller formerly known);

(vi) Base Media License Agreement dated as of March 3, 1997 between the Seller and Difco Michigan;

(vii) Base Media Components License Agreement dated as of March 3, 1997 between the Seller and Difco Michigan;

(viii) Escrow Base Media Components Agreement dated as of March 3, 1997 among the Seller, Difco Michigan, and American Bank and Trust Company of Chicago as escrow agent, as amended by letter agreement dated January 8, 1999;

(ix) Non-clinical License and Non-competition Agreement dated as of March 3, 1997 between the Seller and Difco Michigan, Difco Microbiology Systems, Inc. and Difco Wisconsin;

(x) Settlement and Release Agreement dated as of February 26, 1998 between the Seller, Difco Michigan and Pasco (collectively the agreements listed in paragraphs (i) through (x) are referred to as the "Becton Agreements").

For the benefit of each of the Becton Parties, the Seller hereby expressly assumes (effective as of the Closing) all of the Seller's obligations under each of the Becton Agreements, to the extent such obligations arise or accrue after the Closing.

Notwithstanding the foregoing assignment and assumption, the Seller hereby expressly affirms that it shall remain fully liable to perform the obligations of the Purchaser to the relevant Becton Parties under the respective Becton Agreements.

Each of the Becton Parties hereby consents to the foregoing assignment and assumption of the Becton Agreements to which it is a party.

In witness whereof, the parties have caused this Agreement to be executed as of the date first above written.

ACCUMED INTERNATIONAL, INC.

By: Paul F. Lavallee
Paul F. Lavallee, Chairman
President and Chief Executive Officer

TREK DIAGNOSTIC SYSTEMS, INC.

By: Michael D. Burke
Michael D. Burke, President

BECTON, DICKINSON AND COMPANY,
through its Becton, Dickinson
Microbiology Systems Division

By: _____

(name) _____

(title) _____

DIFCO LABORATORIES INCORPORATED,
a Michigan corporation

By: _____

(name) _____

(title) _____

DIFCO LABORATORIES INCORPORATED,
a Wisconsin corporation

By: _____

(name) _____

(title) _____

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TREK DIAGNOSTIC SYSTEMS, INC.

By: Michael D. Burke
Michael D. Burke, President

BECTON, DICKINSON AND COMPANY,
through its Becton, Dickinson
Microbiology Systems Division

By: Vincent A. Forlenza

Vincent A. Forlenza
(name)

President
(title)

DIFCO LABORATORIES INCORPORATED,
a Michigan corporation

By: Vincent A. Forlenza

Vincent A. Forlenza
(name)

President
(title)

DIFCO LABORATORIES INCORPORATED,
a Wisconsin corporation

By: Vincent A. Forlenza

Vincent A. Forlenza
(name)

President
(title)

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JUNES DAY

REGISTERED

P.07

DIFCO MICROBIOLOGY SYSTEMS, INC.

By: Vincent A. Forlenza

Vincent A. Forlenza
(name)

President
(title)

PASCO LABORATORIES, INC.

By: Vincent A. Forlenza

Vincent A. Forlenza
(name)

President
(title)

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TRADEMARK

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TRADEMARK ASSIGNMENT

Trademark Assignment, dated as of January 19, 1999, by AccuMed
Inc., a Delaware corporation ("Assignor"), for Trek Diagnostic Systems, Inc., a
corporation (formerly known as AMI Acquisition Corp.) ("Assignee").

RECITALS:

- A. Pursuant to the terms and provisions of the Asset Purchase Agreement (the "Purchase Agreement"), dated as of November 20, 1998, by and between Assignor and Assignee, Assignor has agreed to assign all of its rights and interests in certain Intellectual Property (as defined in the Purchase Agreement), including certain trademarks and service marks, to Assignee.
- B. The execution and delivery by Assignor of this Trademark Assignment is a condition precedent to Assignee's obligation to consummate the transactions contemplated by the Purchase Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over unto Assignee and to its successors, assignees and nominees, all Assignor's right, title and interest in and to the trademarks and service marks and the registrations set forth in the annexed Schedule together with the goodwill of the Business (as defined in the Purchase Agreement) symbolized thereby, and the right to include but not be limited to the right to sue for past infringements, to apply for renewal of such registrations and to apply for registrations where available in all countries with the full benefit of such priorities as may now or hereafter be granted to it by treaty, including any international convention.

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IN WITNESS WHEREOF, the Assignor has caused its duly authorized
to execute this Agreement as of the date first above written.

ACCUMED INTERNATIONAL, INC.

By: *Paul Lavallee*

Name: Paul Lavallee
Title: Chairman, President and
Chief Executive Officer

before me this 29th day of
1999

"OFFICIAL SEAL"
DENISE Y. STANIEC
Notary Public, State of Illinois
My Commission Exp. 03/09/2002

Notary Public

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