

RE

05-11-2010

RE



103596777

To the Director of the U. S. Patent and Trademark Office

Comments or the new address(es) below.

1. Name of conveying party(ies):

De Nora North America, Inc.

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

Citizenship (see guidelines)

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance / Execution Date(s):

Execution Date(s) 3/13/07

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: PEMEAS USA, Inc.

Internal

Address:

Street Address: 39 Veronica Avenue

City: Somerset

State: NJ

Country: USA Zip: 08873-6800

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other

Citizenship New Jersey  
If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,335,073

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

E-TEK

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

Name: Charles A. Muserlian, Inc.

Internal Address:

Street Address: 317 Bliss Lane

City: Valley Cottage

State: NY Zip: 10989

Phone Number: 845 268 2462

Fax Number: 845 589 0080

Email Address: charlesmuserlian@yahoo.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_



**05-06-2010**

9. Signature:

Charles A. Muserlian  
Signature

May 4, 2010  
Date

Charles A. Muserlian Reg. No. 19,683 total number of pages including cover sheet, attachments, and document: 38

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

5/6/07



103593717

To the Director of the U. S. Patent and Trademark Office. Please record the attached documents or the new address(es) below.

3-29-10

1. Name of conveying party(ies):

De Nora North America, Inc.

- Individual(s)  Association
- General Partnership  Limited Partnership
- Corporation- State: Delaware
- Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) March 13, 2007

- Assignment  Merger
- Security Agreement  Change of Name
- Other \_\_\_\_\_

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Additional names, addresses, or citizenship attached?  Yes  No

Name: PEMEAS USA, Inc.

Internal \_\_\_\_\_

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

Street Address: 39 Veronica Avenue

City: Somerset

State: NJ

Country: USA Zip: 08873-6800

- Association Citizenship \_\_\_\_\_
- General Partnership Citizenship \_\_\_\_\_
- Limited Partnership Citizenship \_\_\_\_\_
- Corporation Citizenship \_\_\_\_\_
- Other \_\_\_\_\_ Citizenship \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

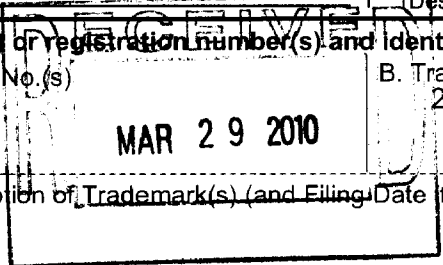
A. Trademark Application No.(s) \_\_\_\_\_

B. Trademark Registration No.(s)  
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E-TEK



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

Street Address: 317 Bliss Lane

City: Valley Cottage

State: NY Zip: 10989

Phone Number: 845 268 2462

Fax Number: 845 589 0080

Email Address: charlesmuserlian@yahoo.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers 1004  
Expiration Date 04/11

b. Deposit Account Number \_\_\_\_\_  
04/02/2010 LMUELLER 00000034 2335073  
01 FC:8521

Authorized User Name Charles A. Muserlian

9. Signature: Charles A. Muserlian

Signature

March 26, 2010  
Date

Charles A. Muserlian Reg. #19,683

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 34

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

# Delaware

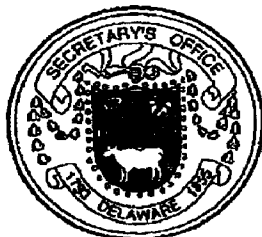
PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "PEMEAS USA, INC.", CHANGING ITS NAME FROM "PEMEAS USA, INC." TO "BASF FUEL CELL, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF MARCH, A.D. 2007, AT 1:06 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

3828345 8100  
070382672



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5577825

DATE: 04-09-07

TRADEMARK  
REEL: 004207 FRAME: 0923

**Sale and Purchase  
Agreement**  
relating to the E-Tek Business  
and assets of De Nora North  
America, Inc.

Dated

19 October 2005

De Nora North America, Inc. (1)

PEMEAS USA, Inc. (2)

PEMEAS GmbH (3)

**sjberwin** 

*M*

*Q*

# TABLE OF CONTENTS

INTRODUCTION	1
2 Sale and purchase of the Assets and transfer of the E-Tek Business	1
3 Consideration payable by the Buyer	4
4 Completion	4
5 Benefits and obligations under Contracts	5
6 Further obligations after Completion	7
7 Employees	8
8 Warranties	10
9 Non-disclosure of information and restrictions	10
11 Confidentiality	10
12 Costs and expenses	10
13 Waiver	10
14 Variation	10
15 Entire Agreement	10
16 Assignment	10
17 Notices	10
18 Governing law	10
19 Rights of third parties	10
20 Jurisdiction	10
21 Service of process	10
22 Release of liability	10

PARTIES

- (1) **De Nora North America Inc.** a Delaware corporation whose registered office is at 39, Veronica Avenue, Somerset New Jersey 08873 - USA (the "**Seller**");
- (2) **PEMEAS USA Inc.**, a Delaware corporation whose registered office is at 15 Loockerman Street, City of Dover, County of Kent, ZIP Code 19904 (the "**Buyer**"); and
- (3) **PEMEAS GmbH**, a German limited liability company (*Gesellschaft mit beschränkter Haftung*) with its registered seat in Frankfurt am Main, registered at the commercial register of the local court in Frankfurt am Main under HR B 73 080 ("**Company**") (the "**Buyer's Guarantor**").]

INTRODUCTION

- (A) Part of the Sellers' and its affiliated companies' business is to develop, manufacture and market intermediate products, catalysts, catalyst ink, gas diffusion means, gas diffusion electrodes, and all kind of assemblies of components thereof, including membrane electrode assemblies, to be used for fuel cells suitable to be operated up to 250 °C and to be fed with any type of gaseous and liquid fuel. This definition covers any type of fuel cells suitable to be operated up to 250°C, including but not limited to proton exchange membrane fuel cells and phosphoric acid fuel cells (the "**E-Tek Business**"). The Seller has agreed to sell the assets and certain liabilities of its E-Tek Business to the Buyer which shall take over the E-Tek Business as a going concern upon the terms and subject to the conditions of this Agreement.
- (B) The Buyer's Guarantor is the parent company of the Buyer and has agreed to guarantee the performance by the Buyer of its obligations under this Agreement, upon the terms and subject to the conditions set out herein.

1 NON APPLICABLE

2 **Sale and purchase of the E-Tek Business**

2.1 For the consideration specified in clause 3, the Seller shall sell as legal and beneficial owner and with full title guarantee and the Buyer shall purchase any and all of the Seller's assets and certain liabilities relating to the E-Tek Business as specified in clauses 2.2 et seq. (the "**Assets**" and the "**Liabilities**") free from all options, liens, charges, encumbrances and all other adverse rights and interests (except as disclosed specifically in **Schedule 2** attached to this Agreement), with economic effect as of 1 October 2005 (the "**Effective Date**"). In the case of any of the Assets which are capable of transfer by delivery, title to that Asset shall pass to the Buyer by delivery. The Buyer shall take over the E-Tek Business as a going concern upon with economic effect as of the Effective Date.

2.2 Included in the sale and purchase shall be such Assets and Liabilities which are specified below and which are set forth in the pro forma balance sheet for the E-Tek Business attached hereto as Part 1 of Schedule 2:

- (a) Accounts receivables pursuant to Part 2 of Schedule 2 plus any accounts receivables created in the ordinary course of the E-Tek Business since the Effective Date ("**Accounts Receivables**");

- (b) Unbilled services pursuant to Part 3 of Schedule 2 plus any unbilled services accrued or created in the ordinary course of the E-Tek Business since the Effective Date ("**Unbilled Services**");
- (c) Inventory – Precious metals pursuant to Part 4 of Schedule 2 plus any inventory acquired in the ordinary course of the E-Tek Business since the Effective Date ("**Inventory**");
- (d) Machinery & Equipments pursuant to Part 5 of Schedule 2;
- (e) Furniture and Fixtures pursuant to Part 6 of Schedule 2;
- (f) Computer Hardware and Software development pursuant to Part 7 of Schedule 2;
- (g) the motor vehicle pursuant to Part 8 of Schedule 2;
- (h) any and all other tangible assets (irrespective of whether included in the pro forma balance sheet or not) which are requested by the Buyer in writing within six months after the Completion Date and in respect of which the Buyer can provide adequate evidence that they were part of the E-Tek Business on the Effective Date and/or on the Completion Date.
- (i) the trade payables as set forth in the pro forma balance sheet for the E-Tek Business pursuant to Part 9 of Schedule 2 plus any trade payables arising from deliveries and services of the E-Tek Business in the ordinary course of business consistent with past practice since the Effective Date ("**Trade Payables**").

Part 10 of Schedule 2 is the list of certain additional furniture, fixtures and fixed assets which are not included in the pro forma balance sheet above but nevertheless are transferred to the Buyer with the E-Tek Business.

In respect of the Accounts Receivables, the Unbilled Services and the Inventory, Schedule 2 reflects the status as of the Effective Date.

If, as of the Completion Date, the aggregate value of the Accounts Receivables is less than 100 % of the aggregate value of the Accounts Receivables as listed in Part 2 of Schedule 2, the Seller will reimburse the Buyer any amount by which the aggregate value of the Accounts Receivables is less than 100% of the aggregate value of the Accounts Receivables as listed in Part 2 of Schedule 2. The same shall apply mutatis mutandis in the event that as of the Completion Date the aggregate value of the Unbilled Services and/or the Inventory is less than the aggregate value of the Unbilled Services and/or the Inventory as listed in Part 3/Part 4 of Schedule 2. If, as of the Completion Date, the aggregate amount of the Trade Payables exceeds 100 % of the aggregate amount of the Trade Payables as listed in Part 9 of Schedule 2, the Seller will reimburse the Buyer any amount by which the aggregate amount of the Trade Payables exceeds 100% of the aggregate amount of the Trade Payables as listed in Part 9 of Schedule 2.

In respect of any deficit of the Unbilled Services and/or the Inventory the Seller shall, however, not be obliged to make any reimbursement if the deficit of the Unbilled Services and/or the Inventory is offset by an increase of the Unbilled Services and/or the Accounts Receivables, as the case may be, as of the Completion Date.

For the purposes of valuing the relevant amount of the Accounts Receivables, the Unbilled Services and the Inventory as of the Completion Date the Parties hereby agree that such items will be mutually valued by the Parties in accordance with the valuation principles used in arriving at the consideration set forth in Sec. 3.1. Any disputes between the Seller and the Buyer as to the valuation which cannot be settled directly between them shall be settled, upon request of either Party, by an independent auditor acting as expert arbitrator. If the Parties cannot mutually agree on

such expert arbitrator within one (1) week after either Party has requested its appointment, the expert arbitrator shall be appointed by the American Arbitration Association, New York.

- 2.3 Included in the sale and purchase shall be any and all information or data known or used by the Seller as of the Effective Date and/or the Completion Date, not at present in the public domain, relating to the E-Tek Business including the know-how, marketing and sales research, surveys and reports, advertising and promotional information, financial information, customer lists and customer contact information, product data and information concerning the supply and pricing of products, raw materials or services. For the purposes of this clause, know-how shall mean any and all information owned or used by the Seller, or existing in the E-Tek Business, as of the Effective Date and/or the Completion Date relating to the E-Tek Business not at present in the public domain (including that comprised in or derived from formulae, designs, specifications, drawings, component lists, manuals, instructions and catalogues) in whatever form held relating to in particular, without limitation:
- (a) the production of goods or the provision of services;
  - (b) the design, selection, procurement, construction, installation or use of any plant, machinery or other equipment or process;
  - (c) tooling design;
  - (d) the repair, service or rectification of products or plant;
  - (e) the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; and
  - (f) quality control, testing or certification.
- 2.4 Included in the sale and purchase shall be any and all of the following, to the extent they relate to the E-Tek Business and they are owned or used by the Seller, or exist in the E-Tek Business, as of the Effective Date and/or the Completion Date: copyrights, trade marks, service marks, trade names, rights in logos and get-up, inventions (to the extent an invention has not been made subject to a patent application), trade secrets, all rights of any nature in computer software and data, all rights of privacy and all intangible rights and privileges of a nature similar to any of the foregoing, in every case in any part of the world and whether or not registered and including all granted registrations and all applications for registration in respect of any of the above, including, without limitation, the trade marks as set forth in **Schedule 2.4**.
- 2.5 If the Seller has made any advance payments regarding the E-Tek Business (e.g. insurance payments, etc.), these shall be deemed to be made for the benefit of the Buyer by the Seller, including, without limitations, payments pertaining to time periods after the Completion Date.
- 2.6 In so far as any of the Assets remain, after the Completion Date, under the possession of the Seller, the Buyer and the Seller hereby agree that, as from the Completion Date, such Assets shall be held in custody by the Seller in favour of the Buyer and transferred to the Buyer as soon as possible.
- 2.7 Except as provided for in clause 5 and except for liabilities related to the Assets for time periods after the Completion Date, all liabilities of the Seller shall be for the sole account of the Seller which undertakes to discharge such liabilities on the date on which they respectively fall due to be paid. The Seller shall indemnify and keep indemnified the Buyer in respect of all and any claims, damages, costs, charges, expenses and other liabilities (howsoever arising) which the Buyer may directly or indirectly suffer in connection with each and any of such liabilities and the performance by the Seller of its obligations under this clause 2.7.



2.8 Nothing in this Agreement shall make the Buyer liable in respect of anything done or omitted to be done by the Seller prior to the Completion Date and the Seller shall indemnify the Buyer and its successors in title and hold it harmless in respect of all and any claims, damages, costs, charges, expenses or other liabilities (howsoever arising) which it may directly or indirectly suffer as a result of anything so done or omitted to be done by Seller prior to the Completion Date. This shall in particular apply to the obligation under the lease agreement for the premises at 39 Veronica Avenue, 08873 Somerset, NJ (the "Lease Agreement") to remove the fixtures and fittings which have been built in by the Seller and which need to be removed upon termination of the Lease Agreement. The Buyer and the Seller are furthermore in agreement that the Seller shall procure that any fixtures, furniture and equipment stored by the Seller in the Property and/or on the premises of the Property and which is not sold under this Agreement ("Stored Equipment") is removed by the Seller at its expense as soon as possible after the Completion Date. If the Stored Equipment is not removed by the Seller within six months following the Completion Date, the Buyer may remove the Stored Equipment itself in which case the Seller shall reimburse any costs and expenses incurred in such context by the Buyer.

2.9 If the Seller has received, prior to the Completion Date, any deposit or prepayment under a Contract in respect of goods or services which shall not have been supplied or provided by the Seller at the Completion Date, the Seller shall account to the Buyer for such deposit or payment at Completion Date.

2.10 Except for any credit to be collected from the US Department of Energy – DOE, to the extent that the Buyer has not been able to collect any credit that has been sold to the Buyer under this Agreement and that is reflected in the accounts receivables pursuant to Part 2 of Schedule 2 within six (6) months after the date on which such credit become due and payable, the Seller shall indemnify the Buyer in respect of such shortfall. Such indemnity shall be due by the Seller within thirty days after receipt of a written request from the Buyer indicating the amount of the credit, the name of the debtor, the dates of any reminder or notice sent by the Buyer to such debtor and the confirmation that the credit is still outstanding. The Seller shall be allowed to contact the debtor and attempt to obtain payment in favour of the Buyer before the expiry of said thirty days period. Should no payment be received by the Buyer, the Buyer shall then transfer and assign the respective credit to the Seller upon receipt of the full indemnification payment by the Seller.

2.11 The Seller and the Buyer agree that the preliminary allocation of the purchase price for the Assets of the Seller shall be as determined by the allocation formula set forth in **Schedule 2.11** hereto. The Seller and the Buyer agree that the allocation may be amended or modified only by mutual agreement to establish a final allocation prior to the filing of the applicable Tax Returns of the parties. The parties shall use such final allocation in all Tax Returns, including, but not limited to, the asset allocation statement on Form 8594.

### **3 Consideration payable by the Buyer and the Buyer's Guarantor**

3.1 The total consideration payable by the Buyer to the Seller for the E-Tek Business and the Assets shall be EUR 1,279,268 (in words Euro One Million two hundred seventynine thousand twohundred sixty eight). The consideration shall be payable by the Buyer and the Buyer's Guarantor as joint and several debtors. The purchase price shall fall due for payment five business days following the Completion Date.

### **4 Completion**

4.1 Completion of the sale and purchase of the Assets and takeover of the E-Tek Business shall take place at the offices of the Seller on the date of this Agreement immediately following its exchange

(the "Completion Date") or at such other time and place as the Seller and the Buyer may agree in writing.

- 4.2 Immediately prior to the Completion Date the Seller shall deliver or cause to be delivered or make fully available (if the Buyer agrees) to the Buyer a statement relating to the Lease Agreement describing the fixtures and fittings which have been built in by the Seller and which need to be removed upon termination of the Lease Agreement, with such statement signed by the Seller and the landlord under such Lease Agreement.
- 4.3 Subject to the Seller having complied with the terms of clause 4.2 the Buyer shall pay the price due under and in accordance with clause 3.1.
- 4.4 NOT APPLICABLE
- 4.5 If by close of business on the Completion Date any document or thing required to be delivered to the Buyer under clause 4.2 is not delivered or if the Seller shall not otherwise have fully complied with its obligations under clause 4.2, the Buyer may (without prejudice to any other rights or remedies available to it) in its discretion elect either:
- (a) to terminate this Agreement forthwith by written notice to the Seller; or
  - (b) to effect Completion so far as practicable; or
  - (c) fix by notice to the Seller a new date for Completion (being not more than 28 business days after the original Completion Date).
- 4.6 Upon and after Completion the Seller shall (subject to and in accordance with the terms of this Agreement) do such things and execute all necessary deeds and documents within its power effectively to vest unencumbered title to the Assets in the Buyer; until then the Seller shall hold the legal estate in any Asset which shall not have so vested in trust absolutely for the Buyer and shall account to the Buyer forthwith upon receipt of any monies received relating to any of the Assets.

## 5 Benefits and obligations under Contracts

- 5.1 The Seller herewith sells and transfers to the Buyer all rights and the Buyer assumes all obligations, to the extent relating to the time period after the Completion Date, all rights and obligations under the agreements relating to the E-Tek Business as set forth in **Schedule 5**, in particular but not limited to the Lease Agreement, and in addition all pending customer orders received in the ordinary course of business consistent with past practice (the "Contracts"), and the Buyer herewith accepts such assignment and assumes said obligations.
- 5.2 If any Contract requires that the consent of the other contracting party is necessary for any transfer of the benefit of the Contract and such consent shall not have been obtained by or upon Completion the Seller shall take such action as the Buyer shall reasonably request to obtain such consent and until such consent is obtained shall hold the benefit of the Contract in trust absolutely for the Buyer, pay any monies received into a separate bank account, record it separately from other payments received on the account of the Seller and forthwith pay it to the Buyer.
- 5.3 If upon Completion the burden of any Contract shall not have been assumed by the Buyer with the consent of the other contracting party (if required by the Buyer):
- (a) the Buyer and the Seller shall write a letter in a form to be agreed to the other contracting party giving notice of the takeover of the E-Tek Business by the Buyer, stating that the Buyer will be assuming the burden of the E-Tek Business for liabilities arising after the Completion Date only, and where relevant giving details for remission or amounts payable under the Contract;

- (b) the Buyer and the Seller shall use all reasonable endeavours to obtain the consent of the other contracting party to the assumption by the Buyer of the burden of the Contract or to procure that the other contracting party agrees to a novation of the Contract in a form to be agreed.
- 5.4 Unless and until consent to the assumption by the Buyer of the burden of any Contract or a novation (if required by the Buyer) shall have been obtained from the other contracting party:
- (a) the Buyer shall exclusively and for its own benefit and to the exclusion of the Seller perform with effect from and after the Completion Date on behalf of the Seller at the expense of the Buyer all the obligations of the Seller under the Contract, provided the Buyer may require the Seller at any time to give notice of termination of any Contract in accordance with its terms in respect of which such consent or novation shall not have been obtained;
- (b) the Buyer shall indemnify and hold harmless the Seller against all liabilities and expenses incurred or suffered by the Seller as a result of any negligent act or omission or default by or on behalf of the Buyer in respect of the performance or compliance by the Buyer of the obligations arising from and after the Completion Date under the Contract after Completion;
- (c) the Seller shall indemnify and hold harmless the Buyer against all liabilities and expenses incurred or suffered by the Buyer as a result of any breach by the Seller of its obligations or restrictions above under this clause 5 and in addition shall indemnify and hold harmless the Buyer in relation to all liabilities or obligations pursuant to all Contracts arising before the Completion Date that shall be for the Seller's account.
- 5.5 Any fee, charge or financial penalty levied by a third party in respect of the granting of any consent or the termination of any existing Contract in order to permit the assumption of the burden by the Buyer or to agree to any novation shall be paid by the Seller which agrees to indemnify the Buyer against any such fee, charge or levy paid by the Buyer.
- 5.6 The Buyer shall without undue delay inform Seller as to any warranty claims made against the Buyer relating to products of the E-Tek Business sold before the Completion Date ("**Defective Products**"), and, on request of the Seller, render all services reasonably necessary and expectable to fulfil such warranty claims relating to Defective Products, provided however that the Seller shall pay to the Buyer an amount equal to the Buyer's costs for any such services plus a mark-up of 10 %. For the avoidance of doubt, the aforementioned agreement regarding Defective Products shall in no event create any liability of the Buyer regarding Defective Products produced or sold by the E-Tek Business prior to the Completion Date.
- 5.7 The Buyer shall not assume any liabilities or obligations of the Seller or attached or related to the Assets and/or the Liabilities or the E-Tek Business for all periods prior to and including the Completion Date (except for the Trade Payables). The Seller shall indemnify and hold harmless the Buyer for all costs, expenses and losses incurred by the Buyer arising from or related to obligations and liabilities of the Seller, or relating to the Assets, Liabilities or the E-Tek Business for all periods prior to the Completion Date (except for the Trade Payables). Vice versa the Buyer shall indemnify the Seller for all costs, expenses and losses incurred by the Seller, if any, arising from or related to obligations and liabilities of the Buyer, or relating to the Assets, the Liabilities or the E-Tek Business for all periods after the Completion Date, if and to the extent assumed by the Buyer under this Agreement.
- 5.8 All taxes, charges and fees (including without limitation sales and use taxes, VAT, registration and similar transfer taxes) which are levied on or as a result of the transfer of the Assets, if any, shall

be split equally between Seller and Buyer (whether or not collected by withholding by the other party) and such party shall indemnify the other party in order to reach an equal split.

## 6 Further obligations after Completion

6.1 As soon as is practicable after Completion, the Seller shall deliver or cause to be delivered or make fully available (if the Buyer agrees) to the Buyer:

- (a) duly executed assignment and or transfer forms regarding intellectual property rights (as set forth in Clause 2.4 and 2.5) of any kinds which have been or are to be transferred in connection with the transfer of the E-Tek Business to the Buyer, for purposes of effecting or evidencing such assignment and or transfer, in particular for purposes of registration of the assignment and or transfer with the relevant authorities;
- (b) all Assets capable of transfer by delivery or by physical transfer;
- (c) all consents in the agreed form necessary to transfer the benefit of the Contracts, in particular the Lease Agreement and consents of all third parties/novations in the agreed form to the assumption by the Buyer of the obligations under the Contracts, in particular the Lease Agreement;
- (d) duly executed conveyances, transfers and assignments together with the relevant documents of title and all necessary consents and licences, as the Buyer may require to vest in it the full benefit of the Assets and to take over the E-Tek Business (as a going concern and as conducted by the Seller prior to the Completion Date) and the Seller shall give possession of the Seller's leased property at 39 Veronica Avenue, 08873 Somerset, NJ (the "Property") to the Buyer and shall take all such other steps as may be required to complete the sale and purchase of the Assets hereunder;
- (e) the records and all subsisting and past contracts and licences under which the E-Tek Business is and has been carried on and all customer data and files, supplier data and files, books, accounts, records, payroll and fee records and other documents holding or referring to any of the foregoing information, as they are available to the Seller and kept in accordance with past practices of the Seller;
- (f) deeds of release of all fixed charges over any of the Assets, if any.

6.2 After Completion, the Seller shall at its own expense:

- (a) continue to give to the Buyer such information (including Confidential Information) and assistance as the Buyer may require and which is, from reasonable perspective, necessary to conduct the E-Tek Business as it was conducted prior to and up to the Completion Date;
- (b) pass on to the Buyer within two Business Days of receipt by the Seller any enquiry relating to the E-Tek Business or for the supply of goods and services under or in connection with the E-Tek Business;
- (c) retain all past accounting, VAT and payroll records relating to the E-Tek Business and/or the Employees for a period of not less than three years after the Completion Date; and
- (d) give the Buyer and its agents, advisers and representatives promptly on written request reasonable access (during reasonable working hours without interfering with any business or operation of the Seller) to all records retained by the Seller not transferred pursuant to this Agreement relating to the E-Tek Business. The Buyer shall bear its own

costs and expenses which it incurs in connection with the exercise of its rights under this clause 6.2 (d).

- 6.3 The Seller undertakes to procure that its subsidiaries and/or affiliated companies adhere to and observe the obligations under clause 6.2 as if such obligations were assumed by the subsidiaries and/or affiliated companies themselves.
- 6.4 Immediately after the Completion Date the Seller undertakes to agree with the landlord on all maintenance and repair work necessary to bring the building at 39 Veronica Avenue, 08873 Somerset, NJ up to the standard required under the Lease Agreement ("**Required Maintenance and Repair**"). Before the final agreement with the landlord on the list of Required Maintenance and Repair, the Seller shall consult with the Buyer. Within a period of six months from the Completion Date the Seller shall procure that all the Required Maintenance and Repair is effected at its costs and expenses (Except for repairs and maintenance which are required by reason of conditions arising after the Completion Date, which shall be Buyer's responsibility. After having completed the Required Maintenance and Repair the Seller shall furthermore use all reasonable endeavours to procure that the landlord confirms to the Buyer in writing that as of the date of such confirmation the state of the building is in full compliance with all requirements as to maintenance and repair under the Lease Agreement. In the event that the Seller fails to comply with its obligations under this Clause 6.4 within a period of six months following the Completion Date, the Buyer may effect the Required Maintenance and Repair itself in which case the Seller shall reimburse any costs and expenses incurred in such context by the Buyer. The obligation of the Seller to remove any Stored Equipment pursuant to Clause 2.9 shall remain unaffected.

## 7 Employees

- 7.1 The Seller represents and warrants (a) that Seller is the sole employer of each of the employees set forth on **Schedule 7** (the "**Employees**"); (b) that, with respect to the Employees, Seller is, and during the last three years has been, in material compliance with all federal, state and local employment laws, regulations and other requirements related to employment, employment practices, wages, hours and other terms and conditions of employment; (c) that none of the Employees is, or within the last three years has been, a member of a bargaining unit covered by a collective bargaining agreement to which Seller is a party; (d) that Seller is not now, and within the last three years has not been, the subject of any union organizing effort, strike, work stoppage, lock out or other labor dispute involving any of the Employees; (e) that none of the Employees is, or within the last three years has been, the subject of a representation petition before the National Labor Relations Board or any state labor board; (f) that Seller is not engaged in any unfair labor practice with respect to any of the Employees and does not have any employee grievance or other employee dispute pending which involves any of the Employees; and (g) that Seller is not now, and during the last three years has not been, the subject of any complaint, charge, investigation, audit, suit or other legal process with respect to any of the Employees, or any of the terms or conditions of their employment, by any state, federal or local governmental agency.
- 7.2 Schedule 7 contains a list of all Employees with current telephone numbers and home addresses. Said list identifies any Employee on a leave of absence, together with the basis of the leave (e.g., medical leave under Family and Medical Leave, military leave, maternity or family leave under state law, personal leave under employer policy) and the duration of the leave as of the date of that list. On the Completion Date, Buyer shall make a conditional offer of employment (subject to the provisions of Sec. 7.3 below and such other conditions as determined by Buyer) in writing to all of the Employees ("**Offerees**"), such employment to commence upon the Offeree's acceptance of the

Buyer's offer of employment, except that, in the case of any Offeree on leave of absence pursuant to the FMLA or for military service, such employment to commence on the date immediately following the Leave Expiration Date, as hereafter defined. The offer of employment shall be made contingent upon the waiver of severance payments the Offeree might have vis-à-vis the Seller under applicable law, their respective offer letters or otherwise. Offerees who actually commence employment with the Buyer are hereafter referred to as the "Hired Employees" and, individually, as a "Hired Employee". The terms and conditions of Buyer's offer to hire Offerees shall be made in writing and shall include pertinent conditions as determined in the sole discretion of Buyer.

- 7.3 Buyer shall have no duty to hire any Offeree who has not met the conditions set forth in Buyer's written offer of employment or who has not signed and returned to Buyer a written acceptance of the offered terms and conditions of employment within five (5) days after the date the offer was delivered to the Offeree. An Offeree who accepts Buyer's offer of employment, but is on leave of absence pursuant to the FMLA or for military service on the Completion Date shall be treated as a Hired Employee for purposes of this Agreement as of the start of the first business day following the date the leave expires (which date of expiration is elsewhere referred to herein as the "Leave Expiration Date"), provided, however, that (i) the Offeree has accepted Buyer's offer of employment within five (5) days after the date the offer was delivered to the Offeree; (ii) the Offeree applies for reinstatement to employment with the Buyer in a timely manner, in accordance with the terms of his/her leave and applicable law, and reports for work not later than the start of business on the first business day following the Leave Expiration Date; (iii) the Offeree has met, as of the Leave Expiration Date, all other applicable conditions precedent to employment; (iv) the Offeree, in the case of leave due to the Offeree's personal illness or injury, has been medically cleared to return to active employment without restrictions or with restrictions which constitute a reasonable accommodation under applicable law, and (iv) the termination of the leave is not the result of the misconduct of or a failure to act by such Offeree. An Offeree shall not be deemed to have failed to report to work on the date specified in such offer if the Offeree is absent due to vacation approved by Seller in advance of the Completion Date and in accordance with Seller's generally applicable policies or as a result of a personal illness or injury which results in the Offeree being absent from work for five (5) or fewer consecutive work days on or after the Completion Date, which illness is documented by medical certification reasonably acceptable to the Buyer, but such Offeree shall not become a Hired Employee until the date on which he/she actually commences employment with the Buyer
- 7.4 At least five business days after the Completion Date, Seller shall provide to the Buyer a copy of all personnel records of the Employees who have accepted employment with the Buyer and shall obtain all consents from such Employees necessary or desirable to permit the provision of such records to the Buyer.
- 7.5 On or prior to the Employee's last day of employment with the Seller, Seller shall pay the Employees, by lump sum payment, for the amount of their accrued but unused vacation as of the Completion Date.
- 7.6 Seller shall be responsible for any and all liability under The Worker Adjustment and Retraining Notification Act ("WARN") or under any state law concerning layoffs or the closing or relocation of worksites or the like which arises out of or results from any termination of employment by Seller of any of the Employees. Buyer shall be responsible for any and all liability under WARN or under any state law concerning lay-offs or the closing or relocation of work sites or the like which arises out of or results from any termination of employment by Buyer of any of the Hired Employees on and after the Completion Date.

7.7 Buyer hereby agrees to indemnify, defend, and hold harmless Seller, its Affiliates and their respective directors, officers, employees, agents, successors, and assigns against and in respect of any and all losses or liability (including damages, costs, expenses, and reasonable attorney's fees) that result from or relate to any claims, litigation, suit, action, investigation, proceeding, or controversy brought by or on behalf of any Hired Employee relating to any act or failure to act by Buyer on or after the Completion Date which is inconsistent with the obligations Buyer assumes under this Section 7.

7.8 Seller hereby agrees to indemnify, defend, and hold harmless Buyer, its Affiliates and their respective directors, officers, employees, agents, successors, and assigns against and in respect of any and all losses or liability (including damages, costs, expenses, and reasonable attorney's fees) that result from or relate to any claims, litigation, suit, action, investigation, proceeding, or controversy brought by or on behalf of (i) any Hired Employee relating to any act or failure to act by Seller, its agents or representatives before the Completion Date (including, but not limited to, any claim relating to the failure of Seller to provide any notices relating to the termination of any person required by applicable law); (ii) any employee, former employee or employment applicant of Seller or an Affiliate of Seller who is not a Hired Employee relating, directly or indirectly, to termination of employment, prospective employment or employment with Seller (including, but not limited to, any claim relating to the failure of Seller to provide any notices relating to the termination of any person required by applicable law); (iii) any Hired Employee relating to his accrued benefit under the Seller's benefit plans; (iv) any other obligation continuing on or after the Completion Date which Seller has to any Hired Employee under a benefit, compensation, or other employee plan, program, arrangement or agreement under the terms of such plan, program, arrangement or agreement; and (v) any employee or former employee of Seller or any third party relating to the administration or operations by Seller of any employee compensation or benefits plan, program, arrangement or agreement maintained by Seller at any time; and (vi) any Hired Employee relating to the Buyer's termination of the Hired Employee for his/her failure to meet the requirements described in Section 7.3.

7.9 No provision of this Section 7 shall create any right or benefit in any person not a party to this Agreement. No provision of this Agreement shall preclude the amendment or termination of any or all Buyer benefits or benefit plans or programs and the provisions of such plans and programs in which Hired Employees are eligible to participate on or after the Completion Date.

7.10 In respect of Mr. Bruce Blaisdell the Buyer shall make all reasonable efforts to provide that after the Completion Date until December 31, 2005, Mr. Bruce Blaisdell renders such services and assistance to the Seller as the Seller may reasonably require in connection with the performance of those functions which were performed by Mr. Blaisdell prior to the Completion Date. The Buyer and the Seller shall agree the amount of a reasonable remuneration payable by the Seller to the Buyer for such services and assistance. The undertaking of the Buyer pursuant to this Clause 7.10 terminates if Mr. Bruce Blaisdell ceases to be employed by the Buyer.

## 8 Warranties

8.1 The Seller acknowledges that the Buyer has been induced to enter into this Agreement and purchase the E-Tek Business and Assets and Liabilities on the basis of the Warranties and the other terms of this Agreement and hereby warrants, represents and undertakes to the Buyer that each of the Warranties in **Schedule 8** is correct and not misleading at the date of this Agreement and undertakes to the Buyer that each such Warranty will continue to be correct and not misleading throughout the period from the date of this Agreement up to and including the Completion Date.

- 8.2 The Seller confirms and agrees that each of the Warranties is a separate and independent warranty, representation and undertaking and that none of the Warranties shall be limited by reference to any of the other Warranties.
- 8.3 The Seller acknowledges that the Buyer in entering into this Agreement is relying on the Warranties and the Seller will indemnify and hold harmless the Buyer against any final depletion, diminution or shortfall in assets and against all other loss, damage, claims, costs and expenses (including without limitation reasonable legal expenses) which may occur as a result of any breach of the Warranties by the Seller. Buyer agrees to use reasonable efforts to mitigate any and all such loss, damage, claims, costs and expenses. This indemnity is in addition and without prejudice to any other remedies which the Buyer may have for any breach of any of the Warranties
- 8.4 The period of limitation for all claims of the Buyer under this clause 8 (in connection with Schedule 8) shall run until, and any claims shall be time barred, two (2) years from the Completion Date. The aforementioned period of limitation shall, however, not apply in respect of any claims as to breaches of the warranties in Schedule 8 Clause 5.10 (Defective Products) and Schedule 8 Clause 10 (Environment) which claims shall be time barred seven (7) years from the Completion Date.
- 8.5 The Seller shall not be liable in respect of warranty claims under this clause 8 (in connection with Schedule 8) unless the aggregate liability for all such warranty claims against the Seller exceeds USD 50,000, in which case the Seller shall be liable to compensate the whole amount.
- 8.6 All claims of the Buyer under this clause 8 (in connection with Schedule 8) shall be limited to the amount of the total consideration of the Seller under clause 3.1 above ("**Cap on Claims**"). The Cap on Claims shall, however, not apply in respect of Schedule 8 Clause 5.10 (Defective Products) and Schedule 8 Clause 10 (Environment) and in respect of wilful or gross negligent breaches of warranties.
- 8.7 The Buyer may assign the benefit of the Warranties and of the indemnity given in clause 8.3 in whole or in part and without restriction to any affiliated companies of the Buyer.
- 8.8 The rights and remedies of the Buyer in relation to the Warranties shall not be affected by Completion, any act or omission by or on behalf of the Buyer or any other event or matter other than the Buyer's express written waiver or release.
- 8.9 References in Schedule 8 to the "awareness" of the Seller " or "knowledge" of the Seller or any similar expression shall comprise the actual knowledge of the following persons and/or the knowledge such persons would have gained had they made due and careful enquiry to ascertain whether the warranty in Schedule 8 concerned is correct and not misleading. The relevant persons shall be Franco Ladavas, Luca Buonerba, Luciano Iacopetti and the Employees.

**9 Non-disclosure of information and restrictions**

- 9.1 The Seller shall not and shall use their best endeavours to procure that the directors and employees of the Seller shall not:
- (a) disclose or divulge any information or data not at present in the public domain relating to the E-Tek Business (the "**Confidential Information**") to any person or enable or permit any person to become aware of any Confidential Information;
  - (b) make use of any Confidential Information other than to comply with the provisions of this Agreement; or
  - (c) disclose or make copies of any documents (including any device or medium, whether electronic or otherwise used for storing or interpreting data) containing or referring to Confidential Information.



9.2 Except as specifically disclosed in **Schedule 9.2.**, in order to ensure that the Buyer receives the full value of the E-Tek Business and the full benefit of the goodwill of the E-Tek Business, the Seller undertakes and covenants with the Buyer that the Seller or any of its holding companies or subsidiaries, nor any enterprise under its control or under common control with Seller shall, and the Seller shall use its best endeavours to procure that none of its directors and employees shall for a period of three (3) years after the Completion Date (the "**Period**") directly or indirectly (whether as principal, agent, shareholder, partner, director, employee or otherwise):

- (a) carry on or be concerned or engaged or interested directly or indirectly (whether as principal, shareholder, partner, employee, agent or otherwise) in any trade or business which competes with any trade or business conducted by the E-Tek Business as conducted on the Completion Date, at any time during the Period; or
- (b) either on its own behalf or on behalf of any person, firm or company directly or indirectly endeavour to entice away from the E-Tek Business or interfere with any person, firm or company who at any time during the Period shall have been doing business with the E-Tek Business and who has been a regular customer, client, supplier, distributor or agent of the E-Tek Business with whom it shall have been engaged or involved at any time during the Period; or
- (c) either on its own behalf or on behalf of any person, firm or company directly or indirectly induce or seek to induce to leave the service of the Buyer any person who is a Key Employee of the E-Tek Business during the Period whether or not such person would commit any breach of his contract of employment by reason of so leaving the service of the Buyer; or
- (d) interfere or attempt to interfere with the supply or continued supply of goods or services to the Buyer; or
- (e) make use of any Confidential Information other than as set forth in Schedule 9.2.

9.3 Each of the restrictions contained in each paragraph of clause 9.2 is a separate and distinct restriction and is to be construed separately from the other restrictions. The Seller acknowledges that such restrictions are reasonable when taken together as well as individually, that the duration, extent and application of each restriction are no greater than is necessary for the protection of the goodwill of the E-Tek Business and that the purchase price paid by the Buyer for the Assets takes into account and provides adequate compensation for the restraints and restrictions imposed. Should any restriction be found to be void or unenforceable without the deletion of some part of it or the reduction in area or duration specified, that restriction shall apply with such modification as may be necessary to make it valid.

9.4 The parties agree that the benefit of the covenants and undertakings given in this clause shall be assignable in whole or in part by the Buyer to, and become enforceable by, any company which is a subsidiary or holding company of the Buyer which from time to time is the owner of the E-Tek Business or any material part of it.

9.5 After Completion, the Seller shall not without the Buyer's express agreement and save as expressly contemplated by this Agreement hold itself out as being interested in or in any way connected with the E-Tek Business or permit any person to hold out the Seller as being so interested.

10 NON APPLICABLE

**11 Confidentiality**

11.1 Each party shall keep confidential the existence and terms of this Agreement and all information received or obtained as a result of negotiating, preparing, executing, performing or implementing it

which relates to the other party or any agent or subcontractor acting on its behalf. Neither party shall use such information for any purpose other than to perform its obligations under this Agreement.

11.2 Notwithstanding the other provisions of this clause 11, either party may, after consultation with the other party whenever practicable, disclose confidential information, if and to the extent:

- (a) required by law; or
- (b) required by any securities exchange on which either party's securities are listed or traded; or
- (c) required by any regulatory or governmental or other authority with relevant powers to which either party is subject or submits (whether or not the authority has the force of law); or
- (d) required to vest the full benefit of this Agreement in that party or to enforce any of the rights of that party in this Agreement; or
- (e) required by its professional advisers, officers, employees, consultants, lenders, subcontractors or agents to provide their services (and subject always to similar duties of confidentiality); or
- (f) that information is in or has come into the public domain through no fault of that party; or
- (g) the other party has given prior written consent to the disclosure; or
- (h) it is necessary to obtain any relevant tax clearances from any appropriate tax authority.

11.3 The provisions of this clause 16 shall supersede and extinguish any other agreement between the parties relating to the subject matter of this clause 11.

## 12 Costs and expenses

12.1 Except as otherwise stated in this Agreement, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution, performance and implementation of this Agreement and each document referred to in it and other agreements forming part of the transaction, save that this clause shall not prejudice the right of either party to seek to recover its costs in any litigation or dispute resolution procedure which may arise out of this Agreement.

12.2 If the Buyer exercises any right conferred by this Agreement to rescind this Agreement, the Seller shall indemnify and keep the Buyer indemnified on demand against all losses suffered or costs incurred by it in investigating the affairs of the E-Tek Business or the Assets, and in the negotiation, preparation, execution, performance and implementation of this Agreement, each document referred to in it and other agreements forming part of the transaction.

12.3 Without prejudice to any right or remedy available to the Buyer, subject to the overall limitation of liability set forth in clause 8.6. above, the Seller shall be liable on an indemnity basis for all costs, claims and expenses reasonably incurred by the Buyer in connection with any claim arising out of any warranty, representation, undertaking or indemnity contained in this Agreement (or any breach of them) or any of the agreements in the agreed form.

## 13 Waiver

13.1 A waiver of any right, power, privilege or remedy provided by this Agreement must be in writing and may be given subject to any conditions thought fit by the grantor. For the avoidance of doubt, any omission to exercise, or delay in exercising, any right, power, privilege or remedy provided by this Agreement shall not constitute a waiver of that or any other right, power, privilege or remedy.

13.2 A waiver of any right, power, privilege or remedy provided by this Agreement shall not constitute a waiver of any other breach or default by the other party and shall not constitute a continuing waiver of the right, power, privilege or remedy waived or a waiver of any other right, power, privilege or remedy.

13.3 Any single or partial exercise of any right, power, privilege or remedy arising under this Agreement shall not preclude or impair any other or further exercise of that or any other right, power, privilege or remedy.

#### 14 Variation

Any variation of this Agreement or of any of the documents referred to in it is valid only if it is in writing and signed by or on behalf of each party.

#### 15 Entire Agreement

15.1 This Agreement and the documents referred to or incorporated in it constitute the entire agreement between the parties relating to the subject matter of this Agreement and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether or not in writing, between the parties in relation to the subject matter of this Agreement.

15.2 Each of the parties acknowledges and agrees that it has not entered into this Agreement in reliance on any statement or representation of any person (whether a party to this Agreement or not) other than as expressly incorporated in this Agreement.

15.3 Nothing in this Agreement or in any other document referred to herein (including the limitation of liability set forth in clause 8.3.) shall be read or construed as excluding any liability or remedy as a result of fraud.

#### 16 Assignment

16.1 This Agreement is personal to the parties and except as provided in clause 16.2, neither party may:

- (a) assign any of its rights under this Agreement; or
- (b) transfer any of its obligations under this Agreement; or
- (c) subcontract or delegate any of its obligations under this Agreement; or
- (d) charge or deal in any other manner with this Agreement or any of its rights or obligations.

Any purported assignment, transfer, subcontracting, delegation, charging or dealing in contravention of this clause 16.1 shall be ineffective.

16.2 Notwithstanding clause 16.1, the Buyer shall be entitled to assign its rights (in whole or in part) under this Agreement to any affiliated company of the Buyer and transfer its obligations to any successor to all or substantially of its business. Seller shall be entitled to assign its rights and transfer its obligations hereunder to any affiliate of Seller which succeeds to all or substantially all of its business and which has, after such transfer, the same capability, financial and/or otherwise, as Seller to perform the obligations of Seller under this Agreement.

#### 17 Notices

17.1 Any communication to be given in connection with this Agreement shall be in writing in English except where expressly provided otherwise and shall either be delivered by hand or sent by first class prepaid post or fax. Delivery by courier shall be regarded as delivery by hand.

17.2 Such communication shall be sent to the address of the relevant party referred to in this Agreement or the fax number set out below or to such other address or fax number as may previously have been communicated to the other party in accordance with this clause 17.2 . Each communication shall be marked for the attention of the person specified below.

Party	Fax number	email address	For the attention of
Seller	0039/02 2129 2380	matteo.lodrini@denora.it	Matteo Lodrini
With copy to	0039/02 8691 5468	cambarerig@coudert.it	Avv. Giuseppe Cambareri
Buyer	0049/69 305 47572	h.land@pemeas.com	Dr. Horst-Tore Land
With copy to	0049/89 89081 100	christoph.brenner@sjb-erwin.com	Dr. Christoph Brenner

17.3 A communication shall be deemed to have been served:

- (a) if delivered by hand at the address referred to in clause 17.2, at the time of delivery;
- (b) if sent by first class prepaid post to the address referred to in clause 17.2, at the expiration of two clear business days after the time of posting; and
- (c) if sent by fax to the number referred to in clause 17.2 or sent by email to the email address specified in that clause, at the time of completion of transmission by the sender.

If a communication would otherwise be deemed to have been delivered outside normal business hours (being 9:30 a.m. to 5:30 p.m. on a Business Day) in the time zone of the territory of the recipient under the preceding provisions of this clause 17.3, it shall be deemed to have been received at the next opening of such business hours in the territory of the recipient.

17.4 In proving service of the communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a first class prepaid letter or that the fax was despatched and a confirmatory transmission report received, whether or not opened or read by the recipient.

17.5 A party may notify the other parties to this Agreement of a change to its name, specified person, address or fax number for the purposes of clause 17.2 provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five clear Business Days after the date on which notice is deemed to have been served, the date falling five clear Business Days after notice of any such change is deemed to have been given.

17.6 For the avoidance of doubt, the parties agree that the provisions of clauses 17.1 to 17.5 shall not apply in relation to the service of any claim form, application notice, order, judgment or other document relating to or in connection with any proceeding, suit or action arising out of or in connection with this Agreement.

## 18 Governing law

This Agreement and all claims arising in whole or in part out of, related to, based upon, or in connection herewith or the subject matter hereof will be governed by and construed in accordance with the domestic substantive laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

**19 Rights of third parties**

Except as otherwise expressly stated, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement).

**20 Jurisdiction**

All disputes, claims, or controversies arising out of or relating to this Agreement or any other agreement executed and delivered pursuant to this Agreement or the negotiation, validity or performance hereof and thereof or the transactions contemplated hereby and thereby that are not resolved by mutual agreement shall be resolved by the American Arbitration Association before a single arbitrator in New York, New York. Such arbitration shall be conducted in accordance with the rules and regulations promulgated by the American Arbitration Association unless specifically modified herein. In the event the American Arbitration Association is unavailable, the arbitration shall be conducted before an arbitrator that is mutually agreeable to the parties and, in such event, all references to the American Arbitration Association herein shall apply to the arbitrator chosen by the parties, which such arbitrator shall conduct the arbitration in accordance with the rules and regulations promulgated by the American Arbitration Association unless specifically modified herein. The arbitrator hearing any dispute under this Section 20 shall be selected within 20 business days of written notice of the intent to arbitrate a dispute. The language of such arbitration shall be English.

The parties covenant and agree that they will participate in the arbitration in good faith and that they will share equally its costs, except as otherwise provided herein. Any party refusing to comply with an award order of the arbitrator shall be liable for costs and expenses, including attorneys' fees, incurred by the other party in enforcing the award. This Section 20 applies equally to requests for temporary, preliminary or permanent injunctive relief, except that in the case of temporary or preliminary injunctive relief any party may proceed in court without prior arbitration for the limited purpose of avoiding immediate and irreparable harm. The provisions of this Section 20 shall be enforceable in any court of competent jurisdiction.

The parties shall bear their own attorneys' fees, costs and expenses in connection with the arbitration; provided, however, that the prevailing party shall be entitled to, and the arbitrator shall award to the prevailing party, its attorneys fees, costs and expenses in the event such party completely prevails or prevails in all material respects in the arbitration.

**21 Service of process**

If any legal action in respect of this Agreement is commenced, the process by which it is commenced may be served on the defendant or, if specified in this Agreement, any other person on its behalf at the place at which and in the manner in which notices may be given to that party.

**22 Release of liability**

Notwithstanding any other provision in this Agreement, the Buyer may at its absolute discretion, in whole or in part, release, compound or compromise, or grant time or indulgence to the Seller for any liability under this Agreement without affecting its rights against the Seller under this Agreement or any other liability.

The Warranties

1 Information

- 1.1 The information contained or referred to in the Introduction and in each of the Schedules is true, complete and accurate and not misleading in all material respects as of the Completion Date.
- 1.2 All other information concerning or relating to the E-Tek Business or Assets given by or on behalf of the Seller to the Buyer or to any of the representatives, officials or professional advisers of the Buyer prior to the making of this Agreement was when given and remains true, complete and accurate and not misleading in any and all material respects.
- 1.3 The Seller is not aware of any material fact or matter in relation to the E-Tek Business or Assets which has not been disclosed to the Buyer the disclosure of which might have a material adverse effect on the condition, business, performance or operations of the Assets or the E-Tek Business. For the purpose of this Schedule 8 a fact or matter shall be deemed to be material or to have a material effect on the condition, business, performance or operations of the Assets or the E-Tek Business if the direct or indirect financial consequences exceed USD 50,000, or, if the effect or consequences are continuing, USD 50,000 p.a.

2 Capacity

- 2.1 The Seller has full power and capacity to enter into and perform this Agreement. This Agreement constitutes binding obligations on the Seller.
- 2.2 Except as otherwise set forth in this Agreement or in any Schedule thereto, the Seller is entitled to pass on to the Buyer the right to carry on the E-Tek Business and trade the Assets as a going concern in succession to the Seller on the terms of this Agreement without the consent of any third party.
- 2.3 Except as otherwise set forth in this Agreement or in any Schedule thereto, the Seller is not restricted from selling any of the Assets or from performing any of the Seller's obligations under this Agreement.
- 2.4 No administrative receiver, receiver, liquidator, administrator or similar official has been appointed of the whole or any part of the assets or undertaking of the Seller, and there are no circumstances likely to give rise to the appointment of any such administrative receiver, receiver, liquidator, administrator or similar official.

3 The Accounts

- 3.1 The pro forma balance sheet as of October 1, 2005, 0.00 a.m. for the E-Tek Business attached hereto (the "Accounts") has been prepared in accordance with the law, on a consistent basis and in accordance with accounting principles, standards and practices generally applied by the Seller prior to the Completion Date, is accurate in all material respects and gives a true and fair view of the assets and liabilities of the E-Tek Business at the date to which they were made up (the "Accounts Date") and of the profits or losses for the period concerned and contain full provision for or notes of all assets, actual, contingent, future or disputed liabilities, capital commitments (actual or contingent) and all bad and doubtful debts.
- 3.2 The records, ledgers and other books of account of the E-Tek Business have been duly entered and maintained and contain true, full and accurate records of all matters required to be dealt with therein.

- 3.3 Each of Stock and work-in-progress was treated in the Accounts in accordance with US-GAAP except that any redundant, slow-moving or obsolete stock was written off.
- 3.4 The profits (or losses) shown in the Accounts have not to a material extent been affected (except as disclosed therein) by any extraordinary or exceptional event or circumstance or by any other factor rendering such profits unusually high or low.
- 3.5 None of the book debts included in the Accounts or which have subsequently arisen have been outstanding for more than three months from their due dates for payment and all such debts have realised or will realise in the normal course of collection their full value (whichever is the highest) as included in the Accounts or in the books of the E-Tek Business.

#### **4 Operation of the E-Tek Business**

4.1 Since the Accounts Date, with respect to the Assets and the E-Tek Business:

- (a) the E-Tek Business has been carried on by the Seller in the ordinary course and so as to maintain it as a going concern;
- (b) no unusual or long-term commitments or contracts of an onerous nature or contracts otherwise than in accordance with past practices and ordinary course of business of the Seller or contracts between the Seller and any officer or shareholder or person connected to any of the aforesaid have been entered into in connection with the E-Tek Business;
- (c) the Seller has not paid any dividends or management charges;
- (d) the E-Tek Business has not been materially and adversely affected by any abnormal factor not affecting similar businesses to a like extent and, so far as the Seller is aware, no circumstances have arisen that are likely to give rise to any such factors;
- (e) no contractual or business relationship with any client, customer, supplier or contractor of the E-Tek Business has been terminated or damaged;
- (f) no material change has been made in the emoluments or terms of employment of any of the employees of the Seller; and
- (g) no debtor of the E-Tek Business has been released for less than the book value of any debt and no debt owing to the Seller for E-Tek Business has been deferred, subordinated or written off or has proved to be irrecoverable to any extent.

4.2 The E-Tek Business has at all times been conducted in compliance with:

- (a) all applicable laws, statutes, directives, statutory instruments, statutory duties, by-laws, regulations, rules, orders or decrees of each country or state in respect of whose laws the E-Tek Business is subject.

4.3 The Seller has not violated any order, decree or judgment of any court or governmental agency of any country or state having jurisdiction in respect of the Seller or the E-Tek Business.

4.4 All licences, approvals or consents (including planning consents) involved or that should be involved in the carrying on of the E-Tek Business, have been obtained and complied with and there is no contemplated revocation of any such licence or consent and all such licences or consents are transferable to the Buyer without consent or payment (except as otherwise stated in this Agreement or in any Schedule attached thereto).

4.5 Neither the Seller nor the E-Tek Business has committed or is liable for any criminal, illegal, unlawful, ultra vires, unauthorised, tortious or negligent act.

- 4.6 The E-Tek Business does not trade under any name, other than E-Tek and ELAT and no person, firm or company made any claim of infringement against Seller in relation to the name E-Tek or has requested or required the Seller to refrain from using such name or attempted to prevent such use by the Seller, except as disclosed in Schedule 4.6.
- 4.7 NOT APPLICABLE
- 4.8 All the accounts, books, ledgers and financial and other records of whatsoever kind of the Seller relating to the E-Tek Business have been properly kept and are in the possession of the Seller or directly under its control and record all transactions relating to the E-Tek Business.
- 4.9 To the best knowledge and belief of the Seller, the Seller's advertising for or in connection with any part of the E-Tek Business:
- (a) makes no inaccurate or misleading claims for the performance and quality of its products or services;
  - (b) makes no false or misleading statements with regard to the products or services of any other person; and
  - (c) has not been the subject of any complaint from any regulatory body, customer or other person that such advertising is misleading or deceptive or likely to cause confusion.
- 4.10 Except as indicated in the Schedule attached to this Agreement, there is no power of attorney, agency or authority outstanding or effective which has been granted to any person to enter into any contract or commitment or to do anything on behalf of the Seller or in respect of the E-Tek Business.
- 4.11 The Seller has not in relation to the E-Tek Business received any process, notice or communication (formal or informal) by or on behalf of the Antitrust Division of the U.S. Department of Justice, the Office of Fair Trading, the Competition Commission, the European Commission or any other authority in any country which has jurisdiction in anti-trust, monopoly, competition or consumer protection matters in relation to any aspect of the E-Tek Business or any contract to which the Seller is or is alleged to be a party or in which the Seller is concerned in connection with the E-Tek Business.
- 4.12 No person is entitled to receive any finder's fee, brokerage or other commission in connection with the sale and purchase of the Assets and E-Tek Business.
- 4.13 No consent, approval, authorisation or order of any court or government or local agency or body or any other policy is required by the Seller for the execution or implementation of this Agreement and the agreements in the agreed form and compliance with the terms of this Agreement and each of the agreements in the agreed form and the making or implementation of this Agreement or the documents in the agreed form does not and will not:
- (a) cause any contract to which the Seller is a party in relation to the E-Tek Business to become subject to avoidance, termination or material alteration or be otherwise adversely affected;
  - (b) cause any licence or consent to be withdrawn or grant or loan to be repayable other than listed in Schedule 4.13 b;
  - (c) cause the creation, imposition, crystallisation or enforcement of any lien, encumbrance or charge over any of the Assets;



- (d) conflict with, result in the breach of or constitute a default under any obligation by which the Seller or E-Tek Business may be bound or any provision of the Memorandum or Articles of Association of the Seller;
- (e) relieve any person from any material obligation to the Seller for the E-Tek Business;
- (f) result in any present or future indebtedness of the Seller for E-Tek Business becoming due, or capable of being declared due, and payable prior to its stated maturity;
- (g) cause any material supplier of the Company to cease or reduce or be entitled to cease or reduce its supplies to the E-Tek Business;
- (h) cause any material customer of the Company to, or be entitled to, cease dealing with or reduce the level of business as done prior to the Completion Date with the E-Tek Business.

**5 The Assets**

- 5.1 All the Assets are the absolute legal and beneficial property of the Seller and none of the Assets or any interest in any of the Assets is subject to any assignment, mortgage, charge, pledge, lien, hypothecation, option or encumbrance whatever or to any factoring arrangement, hire purchase, conditional sale or credit sale or lease agreement or retention of title arrangement or any other contract whereby title to any goods or any rights in the proceeds of sale of any goods is or may be reserved to the seller of the goods or to any third party except liens arising in the normal course of trading.
- 5.2 The Assets comprise all the assets used by the Seller and which are required for the proper performance and conduct of the E-Tek Business and its takeover as a going concern by the Buyer, as it was operated and conducted prior to the Completion Date.
- 5.3 All documents which are necessary to establish the Seller's absolute legal and beneficial title to each of the Assets are in its possession or under its control and capable of delivery to the Buyer at Completion.
- 5.4 All the fixtures and fittings are in good working order and good condition and have been properly and regularly maintained. None of the Assets have been acquired or otherwise dealt with except in the ordinary course of carrying on the E-Tek Business.
- 5.5 The items comprising the Inventory and the unfinished goods are all in good usable and merchantable condition and capable of being sold in accordance with the Seller's current price list without rebate, allowance or discount or as the case may be used by the Buyer in the ordinary course of the E-Tek Business for the purposes for which such items were purchased; the levels of stock and work-in-progress, trade debtors and trade creditors are not materially different from those which the Seller normally has at this stage of its trading year.
- 5.6 The Schedules attached to this Agreement set out all fixtures and fittings, plant and equipment owned by the Seller or used in the E-Tek Business.
- 5.7 Maintenance contracts are in full force and effect in respect of all the Assets which the Seller is obliged to maintain or repair under any leasing or similar agreement and in respect of all assets which it is necessary to have maintained by outside or specialist contractors.
- 5.8 The register of the Assets in the agreed form comprises a complete and accurate record of all plant, machinery, vehicles and equipment owned, used or possessed in the E-Tek Business (and such register or registers accurately reflect whether such plant, machinery, vehicles or equipment are owned or used or possessed in the E-Tek Business).

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5.9 All plant, machinery, vehicles or equipment used in the E-Tek Business are the absolute property of the Seller and are not subject to any leasing, hire or hire purchase agreement or agreement for payment on deferred terms or any similar agreement or arrangement nor are they loaned or otherwise unavailable to the Seller, except as indicated in Part 10 of Schedule 2.

5.10 The Seller or the E-Tek Business, prior to the Completion Date, has not sold, manufactured, leased, delivered or distributed any products or provided any services which (i) were, are or will become defective (subject to normal wear and tear) or which do not conform in any respect with all express and implied warranties or representations made by any person or with all applicable federal, state, local and foreign regulations, standards and requirements or with all contractual commitments and (ii) in respect of which products or services the Buyer is, or could become, liable after the Completion Date as new owner of the E-Tek Business and/or the Assets by law or otherwise, except with its express consent. The Seller does not and has not given express warranties, guarantees, representations, or indemnities as to the fitness for purpose, quality or otherwise of any of its products or services.

5.11 The accounts receivable set forth in Schedule 2 are good and collectible for their full value either on Completion or within a period of three months from Completion, except otherwise indicated in clause 2.10 of this Agreement.

## 6 Contracts

6.1 The terms of the Contracts have been duly complied with by all the parties.

6.2 The Seller has supplied the Buyer with true, complete and up-to-date copies of all relevant documents in connection with all the Contracts and there has been and will at Completion be no amendment or addition, whether express or implied, not contained in such documents.

6.3 Seller and to the Seller's best knowledge, no person is in breach of any obligations under any of the Contracts and the Seller has done all such things and acts as may be required under them, has complied with all the terms and obligations thereof and preserved all rights under them and can readily fulfil or perform all of its obligations under them on time without material expenditure of money, effort or personnel, other than in accordance with ordinary course of business.

6.4 None of the Contracts to which the Seller is a party or in which it has been concerned in connection with the E-Tek Business infringes or has been or was required to be registered or notified.

6.5 By the acquisition of the Assets, the Contracts and the other items pursuant to this Agreement, the Buyer is put into the position to continue the E-Tek Business of the Seller in the form and manner conducted by the Seller prior to the Completion Date except to the extent that any other party to any Contract may refuse to agree to the transfer of such Contract. The Assets comprise all of the material assets of the Seller used in the operation of the E-Tek Business in the ordinary course as conducted prior to the Completion Date.

## 7 Litigation

7.1 With respect to the E-Tek Business, the Seller is and no person for whose acts and defaults it may be vicariously liable is at present engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress, or is threatened in writing or orally (in substantiated form) or is pending (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds EUR 10,000 and which do not exceed EUR 20,000 in aggregate) or is being prosecuted for any criminal offence and no written notice of any claim in damages or for an injunction has been received by the Seller and no governmental, taxation, regulatory, professional trade or consumer or other official investigation or inquiry concerning the E-Tek Business is in progress or pending.

- 7.2 There are no circumstances known to the Seller which are likely to lead to any such claim or legal action, proceeding or arbitration, prosecution, investigation or enquiry and which are likely to have a material adverse effect on the condition, business, operations or performance of the E-Tek Business.
- 7.3 No distress, execution or other process has been levied in respect of the E-Tek Business nor is there any judgment or court order outstanding against the Seller.
- 7.4 No act, transaction or omission has occurred as a result of which the Seller or E-Tek Business are or may be held liable to refund in whole or in part any investment grant (or other grant or loan received from any governmental department or agency or any local or other authority by virtue of any statute) or any such grant or loan for which application has been made by them will or may not be paid or will or may be reduced.

8 NON APPLICABLE

9 **Environmental Matters**

- 9.1 The E-Tek Business has been conducted in compliance with and has no actual or contingent liability under all and every requirement of applicable environmental law in effect on or prior the Completion Date ("Environmental Laws") relating to:
- (a) waste;
  - (b) the emission, discharge, release or threatened release of substances to surface water, the ground, groundwater, any other body of water or to a drain, sewer or soakaway, except as disclosed in Schedule 9.1;
  - (c) the emission, discharge, release or threatened release of substances to the air;
  - (d) the emission, discharge, release or threatened release of substances to land;
  - (e) public, private or statutory nuisance;
  - (f) materials of environmental concern;
  - (g) health and safety; and
  - (h) any other matters concerning the environment.
- 9.2 The Seller in respect of the E-Tek Business and the Assets has obtained and is and has been in full compliance with the terms and conditions of all consents required for the E-Tek Business or Assets under any Environmental Law, which consents remain in full force and effect.
- 9.3 There are no facts or circumstances which would lead the Seller to believe that any works or other investment in respect of the E-Tek Business or the Assets will be required within two (2) years after Completion to secure compliance with any Environmental Law or to maintain or obtain any consents required for the E-Tek Business or the Assets under any Environmental Law.
- 9.4 All consents required for the E-Tek Business or Assets under any Environmental Law are capable of transfer to the Buyer, if and to the extent permitted by the relevant terms. The Seller will use its best endeavours to take any action in connection with such consents required by Environmental Law as a consequence of this Agreement for the Buyer to so enjoy such environmental consents.
- 9.5 There are no facts or circumstances indicating that any environmental consents required for the E-Tek Business or Assets and currently issued to the Seller would or might be revoked, suspended, varied, modified or not renewed and all appropriate or necessary action in connection with the application, renewal or extension of any such environmental consents has been taken by the Seller prior to the Completion Date.

- 9.6 Neither the signature nor the performance of this Agreement will itself cause any environmental consent required for the E-Tek Business or Assets to be withdrawn, suspended or modified.
- 9.7 The Seller in respect of the E-Tek Business is and has been in compliance with all conditions, limitations, obligations, prohibitions or requirements contained in any insurance or any indemnity policy relating to any liability under Environmental Law.
- 9.8 There are and have been no materials of environmental concern beyond an incidental amount disposed of, stored, kept or present on, in or under the Property nor in water or groundwater on or under the Property, except as in accordance with the terms of the relevant Environmental Law or permitted by the required environmental consents.
- 9.9 The condition of the Property is not such that any investigation, treatment, remediation or other works are currently be required under Environmental Law.
- 9.10 Except as in accordance with the terms of the relevant Environmental Law or permitted by the required environmental consents, there have not been and there are not now any releases or emissions or reasonable threats of any releases or emissions into the environment of any materials of environmental concern beyond an incidental amount from or at any facility on the Property including, without limitation, any migration or release or threatened release of such substances from one environmental medium to another.
- 9.11 Except as in accordance with the terms of the relevant Environmental Law or permitted by the required environmental consents, no waste is being or has been treated, kept, disposed of or accumulated on the Property or transported to and from the Property.
- 9.12 There is and has been no notice or other indication of any actual, pending or threatened claims, complaint, assessment or litigation against the Seller in respect of the E-Tek Business or the Assets with respect to any alleged non-compliance with or liability under any Environmental Law which is likely to have a material adverse affect on the business, condition, performance, operations or transactions of the E-Tek Business or the Assets (an "Environmental Claim"). For the purpose of this clause 9.12. Environmental Claim shall include but shall not be limited to (i) the receipt of any notice from any government body or regulatory authority claiming any breach for liability under Environmental Law or the need for any investigation, treatment, remediation or other works; or (ii) any notice concerning a claim, complaint, assessment or litigation by any third party under Environmental Law. There is and has been no act, omission, event or circumstance giving rise or likely to give rise to any action, claim, investigation, proceeding or suit or any liability or any liabilities including the cessation, closing down or restriction of any business under any Environmental Law.
- 9.13 No liens or any other filing, notice, charge or restriction on the ownership, occupancy, use or transferability are being or have been asserted against any of the Assets or the E-Tek Business for all or any part of the costs or expenses associated with any investigation, treatment, remediation or other works under Environmental Law.
- 9.14 There are and have been no environmental audit reports, assessments, studies or tests, insurance appraisals, environmental consents, applications for environmental consents, health and safety reports and a associated documentation and correspondence relating to the Assets or the E-Tek Business other than those which have been disclosed or supplied to the Buyer.
- 9.15 There are and have been no underground storage tanks located on, in or under the Property.
- 9.16 No polychlorinated biphenyls, lead, polychlorinated terphenyls or asbestos or other deleterious or potentially deleterious materials have been or are present in or under the Property in breach of any Environmental Law.

9.17 The Seller in respect of the E-Tek Business complies and has complied with all and every requirement of Environmental Law relating to the recovery and reuse of packaging waste.

9.18 The Property does not contain any landfill, nor has any mining operation been carried out on, in or under the Property or within the immediate vicinity of the Property.

## 10 Intellectual Property

10.1 The Seller has taken all steps necessary or desirable for the ordinary protection of the intellectual property rights listed in the Schedule 2.4 thereto, including applying for and maintaining in force all design registrations in the countries listed in Schedule 2.4.

10.2 To the knowledge and reasonable belief of the Seller, the E-Tek Business and the processes, data, material and software employed by it and the products, services and software supplied under and to the E-Tek Business, as listed in the Schedule 2.4 attached thereto, do not use, infringe or embody the subject matter of any right in intellectual property, including without limitation, any patent, registered design, trade mark, service mark, copyright, know-how, trade secrets or other intellectual property right whether registered or not, in each case of any other person or require the licence from any other person, except for those licenses the E-Tek Business has..

10.3 All intellectual property as listed in the Schedule 2.4 attached thereto, and all pending applications therefore are legally and beneficially vested in the Seller, valid and enforceable and, so far as the Seller is aware, not being infringed by any person and do not infringe the rights of another person.

10.4 The Seller does not use or have any rights to any trade or business names in connection with the E-Tek Business, other than set out in Schedule 2.4.

10.5 Save as detailed in Schedule 2.4, no licence has been granted in respect of the E-Tek Business or Assets to any third party in respect of any of the intellectual property listed in Schedule 2.4 and there are no circumstances known to the Seller which could entitle a third party to call for such a licence.

10.6 No disclosure has been made of any Confidential Information or know-how save in the ordinary and proper course of the E-Tek Business or under express confidentiality obligations placed upon the recipient on terms which have been disclosed in writing to the Buyer.

10.7 All domain names used in the E-Tek Business are set out in the attached list and have been (and remain) registered with all applicable domain registrars

10.8 The contents of any E-Tek Business Website complies with all US laws and regulations and codes of practice.

10.9 The design and operation of any E-Tek Business Website does not infringe or give rise to any material claim under the intellectual property rights of any third party and the Seller has obtained all relevant rights, if required, to use any text, photographs, graphics, sound, video or designs or any other material in which intellectual property rights subsist featured on any such E-Tek Business Website.

10.10 A list of the websites to which any E-Tek Business Website is hypertext linked is attached.

10.11 To the knowledge and reasonable belief of the Seller, there are no third party claims that any domain name registered by the Seller and used in the E-Tek Business is in infringement of a third party's domain name.

## 11 Insurances

11.1 Schedule 11 accurately describes the insurance cover maintained by the Seller in connection with the E-Tek Business.

11.2 All the Assets which are of an insurable nature have been at all material times and are at the date of this Agreement insured to customary replacement value against fire and other risks normally insured according to the past practices of the Seller and its group. In respect of all such insurances:

- (a) all premiums have been duly paid to date;
- (b) all the policies are in full force and effect and are not voidable on account of any act, omission or non-disclosure on the part of the insured party;
- (c) particulars are contained in Schedule 11;
- (d) as far as Seller is aware, there are no circumstances which would or might give rise to any material claim and no material insurance claim is outstanding; and
- (e) all policies are held in the name of the Seller or its holding company.

11.3 To the knowledge and reasonable belief of the Seller, there are no material claims outstanding and none is capable of arising against the Seller or in respect of the E-Tek Business, by an employee, agent or a third party, in respect of any accident or injury occurring, which may have a material adverse effect on the condition, business, operations or performance of the E-Tek Business or the Assets.

## 12 Taxes

The Seller has filed or caused to be filed, within the times and within the manner prescribed by law, all material Federal, state, local and foreign reports, declarations, statements and returns of any kind for Taxes ("Tax Returns") which are required to be filed by, or with respect to, the income or operations of the business of the Seller and ownership of the Assets on or prior to the Completion Date. Such Tax Returns reflect accurately, in all material respects, all liability for Taxes for the periods covered thereby. The Seller has paid in full all material Taxes required to be paid (whether or not shown on such Tax Returns) before payment became delinquent. No material claim has ever been made by an authority in any jurisdiction where the Seller does not file a Tax Return that the Seller is or may be subject to taxation by that jurisdiction, except where a Tax Return has been filed to resolve the claim, and, to Seller's knowledge, there is no basis for any such claim to be made. All material Taxes which the Seller has been required to collect or withhold have been duly collected or withheld and, to the extent required when due, have been or will be duly paid to the proper taxing authority. All material deficiencies asserted by the Internal Revenue Service or any other taxing authority have been paid or finally settled. No issue has been raised by the Internal Revenue Service or such other taxing authority which, by application of similar principles, reasonably could be expected to result in a proposed deficiency for any other period not subject to such assertion. The Seller is not party to any currently pending audit, dispute, investigation, proceeding, claim or any other administrative or court proceedings regarding Taxes. There are no claims which have been or may be asserted relating to any of the Seller's Tax Returns filed for any year which if determined adversely would result in the assertion by any taxing authority of a material deficiency. There are no waivers of statutes of limitations by the Seller. The Seller is not a party to any tax-sharing agreement or similar arrangement. The Seller has no material liability resulting from, arising out of, relating to, in the nature of, or caused by Taxes of any Person other than the Seller (i) under Reg. §1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor, (iii) by contract, or (iv) otherwise.

For the above purpose "Taxes" means any and all federal, state, county, local, foreign and other taxes, including, without limitation, income, profits, excise, sales, use, occupancy, gross receipts, franchise, ad valorem, transfer, withholding, employment and payroll related, personal or other tax,

levy, impost, fee, imposition, assessment or similar charge or levy, whether attributable to statutory or nonstatutory rules and whether or not measured in whole in part by net income, together with (i) any related addition to tax, interest or penalty thereon, and (ii) expenses (including reasonable costs of investigation and reasonable attorney's fees) associated with contesting any proposed or actual adjustment related to any of the foregoing.

**13 Other**

13.1 The E-Tek Business has been conducted by the Seller until the Completion Date in all material respects in compliance with all applicable laws (including rules, regulations, codes, plans, injunctions, orders, decrees, rulings and charges thereunder), including without limitation occupational health and safety regulations. The Seller is not aware of any circumstances or facts which might prevent the Buyer from obtaining any permits required for the continuation of the E-Tek Business in the form and manner as conducted by the Seller prior to the Completion Date or from otherwise being able to comply in all material respects with all applicable laws.

This Agreement is entered into by the parties on the date at the beginning of this Agreement.

Signed by:

R. Gazzaniga

[signature of duly authorised  
representative of the Seller]

RENATO GAZZANIGA

[print name of duly authorised  
representative of the Seller]

\_\_\_\_\_  
on behalf of [the Seller]

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Signed by:

Horst - Torie

signature of duly authorised  
representative of the Buyer

HORST - TORIE LAND

print name of duly authorised  
representative of the Buyer

on behalf of the Buyer

Signed by:

GARY BOETHIG

signature of duly authorised  
representative of the Buyer's  
Guarantor

GARY BOETHIG

print name of duly authorised  
representative of the Buyer's  
Guarantor

on behalf of the Buyer's Guarantor

TRADEMARKS IN THE NAME OF DE NORA NORTH AMERICA

TRADEMARK	COUNTRY	Application No.	Filing Date	Registration No.	Issue Date	Internat. Class	Goods / services covered by the TRADEMARK
ELAT	USA	198,872	14/11/1996	2,212,162	22/12/1998	9	Gas Diffusion Electrodes for Laboratory and Industrial Use
E-TEK	USA	75/602,479	10/12/1998	2,335,073	28/03/2000	9 -  40	Electron and Laser Beam Exposure Apparatus for Industrial Use, Instruments Using Electron or Laser Beam Technology for Research or Manufacturing in the Areas of Electronic Components and Materials Development and Parts thereof Custom Manufacture of Electron and Laser Beam Exposure Apparatus and Instruments to the Specifications and Order of Others

WEBSITE

- Design Source - Web Site
- Design Source - Web Setup, 26878,26879,26880 invoices
- Design Source - Web Site Logo Update - 26934
- Design Source - Web Site Design Schema - 30047
- Design Source - Web Site Phase I - Inv. 30068
- Design Source - Web Development - Inv. 30077
- Design Source - Web site design - 30081
- Design Source - Web Site Development - #30086
- Design Source - Web Site Development - #30097
- Design Source - Web Site Development - #30091
- Design Source - ET-69 Web Site Development - 30104
- Design Source - ET-69 Web Site Development - 30105
- Clients First - Visual Integrator for Web Site - 53007-0105 Amex
- Design Source - Web Updates - #30140
- Design Source - E-Tek Website - #30143