

**OFFER TO PURCHASE
(BUSINESS ASSET PURCHASE)**

[PURCHASER] (the "Purchaser") hereby offers to purchase from [VENDOR] (the "Vendor"), all of the undertaking, property and assets of the Vendor of every kind and description and wherever situated used in its [location] business (the "Business"), which it carries on from rented premises at [address] (the "Premises"), as a going concern, including but not limited to the assets described in Schedule "A" hereto (the "Purchased Assets"), upon and subject to the following terms and conditions, provided that the Business assets set out in Schedule "B" shall be excluded from this Agreement (the "Excluded Assets"):

- 1 **Purchase Price.** The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be \$_____, plus such other sums payable under the terms of this Agreement (the "Purchase Price"). In addition to the Purchase Price, the Purchaser will assume the liabilities of the Business outlined in Schedule "C" on Closing ("Assumed Liabilities").
- 2 **Inventory and Supplies.** In addition to the other sums payable under this Agreement, the Purchaser will pay the Vendor on Closing the value of the then current inventory and supplies of the Business on hand as of the Closing Date, valued at lower of cost and net realizable value, as determined by the Vendor and Purchaser by conducting of a physical inventory thereof on or immediately before the Closing Date, and excluding opened cases or obsolete or unusable inventory and supplies. If the Vendor and the Purchaser cannot agree on the value of inventory or supplies the average of their assessments shall be used on Closing, the parties shall undertake to readjust following Closing, and an independent appraiser of such inventory agreeable to both parties shall be hired and his or her decision shall be final and binding.
- 3 **Payment of Purchase Price.** The Purchase Price shall be paid and satisfied at Closing by the Purchaser as follows:
 - (a) immediately upon acceptance of this Offer the Purchaser will deliver to the Vendor's solicitors a certified cheque or bank draft payable to the Vendor's solicitors in trust in the amount of \$_____ as a deposit (the "Deposit"); and
 - (b) on Closing the Vendor will pay the balance of the Purchase Price, subject to the usual adjustments and any adjustments set out in this Agreement, by certified cheque or bank draft.
- 4 **Deposit.** If the Purchaser fails to complete this transaction as a result of the breach by the Purchaser of any of its obligations in this Offer, the Deposit together with interest thereon (if any) may be retained by the Vendor as liquidated damages without prejudice to any other claims of the Vendor against the Purchaser, and the Deposit shall be obtained by the Vendor making the requisite demand upon the Vendor's Solicitors. If the Purchaser fails to complete this transaction for any other reason, including but not limited to the non-fulfillment of any of the conditions for the Purchaser's benefit set forth in this Offer, the Vendor shall not be entitled to the Deposit and it shall be forthwith released to the Purchaser with any accrued interest thereon.
- 5 **Assumed Liabilities:** The Vendor represents that the Assumed Liabilities are accurately and completely set out in Schedule "C" attached, and hereby indemnifies and saves the Purchaser and the Business harmless from any claims of the said creditors in excess of the limits set out in Schedule "C". The Purchaser agrees to assume the Assumed Liabilities on Closing, and hereby indemnifies the Vendor from any and all liability and obligation therefore accruing or arising following Closing.
- 6 **Adjustments.** The Purchase Price shall be subject to adjustment for insurance, rent, utilities, Purchaser's maximum obligations under s. 9 of the *Employment Standards Act* (if any), deposits, prepaid items being transferred to Purchaser and utility deposits, such adjustments being made to the amount payable at the time of Closing. If any adjustments are made for the Purchaser's obligations under s. 13 of the *Employment Standards Act*, then the Purchaser will assume all such

obligations for and on behalf of the Vendor to the extent therein set out and hereby indemnifies the Vendor from all liabilities or obligations to those employees to the extent adjusted.

- 7 **Allocation.** The Purchase Price and Assumed Liabilities shall be allocated between the Purchased Assets by the parties prior to Closing. If the parties cannot agree on the allocation prior to Closing, the accountants for the parties shall make such determination acting together; if they cannot agree, a Chartered Accountant acceptable to both shall make the determination and his/her decision shall be final and binding. The Vendor and the Purchaser agree that the amounts so attributed to the Assets are the respective fair market values thereof, and shall file in mutually agreeable form all elections required or desirable under the *Income Tax Act* (Canada) in respect of the foregoing allocations.
- 8 **Goods and Services Tax.** The Purchase Price does not include GST. The Purchaser shall pay and remit all GST exigible as a result of this transaction, and indemnifies the Vendor in that regard. The Vendor and the Purchaser shall each be GST registrants at the time of Closing, and shall complete and execute a valid joint election as provided in subsection 167(1) of *The Excise Tax Act* (Canada). The Purchaser shall file such election with Revenue Canada with the Vendor's GST return for the reporting period in which the Closing occurs.

THIS IS AN 8-PAGE DOCUMENT.