

**Instruction: This is a model letter. Adapt to fit your facts and circumstances.**

<date>

<Name>

<address>

<address>

Dear <Name>:

The purpose of this letter is to outline the manner in which [name of buyer] ("Buyer"), purposes to purchase certain assets of [name of seller] ("Seller"). Buyer and Seller recognize that the transaction will require further documentation and approvals, including the preparation and approval of a formal agreement setting for the terms and conditions of the proposed purchase in more detail (the "Purchase Agreement"); but buyer and Seller execute this letter to evidence their intention to proceed in mutual good faith to carry out the transaction substantially in the manner outlined herein. The proposed terms and conditions include, but are not limited to, the following:

1. Assets To Be Sold. Seller will sell to Buyer its inventories ("Inventory"); fixed assets, including, without limitation, furniture, equipment, machinery, automobiles, leasehold improvements, and supplies and tools; manuals; catalogs; sales literature; files; records; customer lists; patents and trademarks (if any); registrations; its name "\_\_\_\_\_"; and the right to use its telephone numbers. In addition, Seller will assign and transfer to Buyer the following:

(a) All equipment leases, if any, under which Seller is the lessee, relating to equipment used in its business;

(b) All purchase contracts, if any, under which Seller is the purchaser, relating to equipment used in its business;

(c) All purchase contracts, if any, under which Seller is the purchaser, relating to inventory sold in its business;

(d) All sales contracts, if any, under which Seller is the purchaser, relating to inventory sold in its business;

(e) All contracts, if any, which Seller has with its suppliers.

2. Assets To Be Retained. Seller will retain its cash, checking, savings, and trust accounts; accounts and notes receivable; advances to employees; prepaid expenses; and all its other current assets except inventories.

3. Liabilities. Buyer will assume only certain liabilities and obligations of Seller relating to the contracts and leases of equipment and the contracts of purchase and sale of inventory

mentioned in section 1, above. All other liabilities and obligations of Seller, including trace accounts payable, accrued wages, and tax liabilities, shall remain the sole obligation of the Seller.

4. Purchase Price. The Purchase Price for the assets described in section 1 shall be \$ \_\_\_\_\_ (the "Purchase Price"), which shall be increased or decreased by the positive or negative difference between the value of the Inventory and the sum of \$ \_\_\_\_\_ (the value of the Inventory shown on the balance sheet of Seller on \_\_\_\_\_, 20\_\_\_\_). A physical inventory for the purpose of determining the value of the Inventory will be taken as follows:

a. Between \_\_\_\_\_ and \_\_\_\_\_, 20\_\_\_\_, Seller will cause a physical count to be taken of the Inventory. The physical count will be adjusted to reflect purchases and sales in the ordinary course of business through \_\_\_\_\_, 20\_\_\_\_. Buyer may appoint a representative or representatives to verify the physical count, and those representatives shall be entitled to be present at all times during the taking of the count.

b. Each item of Inventory will be priced in accordance with the supplier's latest price list in effect for Seller for shipments received before \_\_\_\_\_, 20\_\_\_\_, (including freight), provided that prior to the execution of the Purchase Agreement, Seller and Buyer will segregate certain items that in their opinion should be valued separately for the purpose of computing the value of the Inventory.

5. Allocation of Purchase Price. The Purchase Price, as adjusted, will be allocated to the Inventory and to other assets as follows:

a. Inventory: \$ \_\_\_\_\_, as adjusted pursuant to section 4.

b. Furniture, fixtures, equipment, tools, supplies, machinery, leasehold improvements, and other fixed assets: \$ \_\_\_\_\_.

c. Sale Catalog: \$ \_\_\_\_\_.

6. Closing and Payment. The closing will occur on \_\_\_\_\_, 20\_\_\_\_ ("Closing Date"). The Purchase Price as adjusted, will be paid as follows:

a. Up to \$ \_\_\_\_\_ of the Purchase Price, as adjusted, will be paid on the Closing Date.

b. The balance of the Purchase Price, as adjusted, will be paid, with interest accruing on the unpaid balance at the rate of \_\_\_\_\_% per annum, over a period of \_\_\_\_\_ years from the Closing Date.

7. Property To Be Leased. Lessor will lease to Buyer the building in which Seller currently operates its business at a monthly rental of \$ \_\_\_\_\_ per month for term of \_\_\_\_\_ years, under a written lease satisfactory to lessor and Buyer, which will be executed and delivered on the Closing Date.

8. Bulk Sales Law. Assuming Seller has no contingent liabilities, Buyer will waive the

requirements of the Uniform Commercial Code - Bulk Transfers Act with respect to notification of Seller's creditors, and Seller will hold Buyer harmless from any liability of Seller not assumed by Buyer and any liability to creditors of Seller arising out of its failure to comply with the Uniform Commercial Code - Bulk Transfers Act.

9. Conduct of Business. Until the Closing Date, Seller will use its best efforts to conduct its business in a reasonable and prudent manner in accordance with past practices; will engage in no transaction out of the ordinary course of business; will enter into no agreement or transaction extending beyond \_\_\_\_\_, 20\_\_\_\_; will use its best efforts to preserve its existing business organization and relations with its employees, customers, suppliers, and others with whom it has a business relationship; will not dispose of any of the assets, except such as are retired and replaced in the ordinary course of business; will conduct its business in compliance with all applicable laws and regulations; will not make any distribution to shareholders; and will not pay any bonuses or make any salary or wage increases.

10. Access. During reasonable business hours, Seller will permit Buyer to have access to the premises in which Seller conducts its business, and to all its books, records, and personnel. Seller will furnish to Buyer such financial data, operating data, and other information as Buyer shall reasonably request, and will immediately hand to Buyer or its representatives for review its stock book, minute book, and copies of all retirement plans, employment agreements, leases, contracts with suppliers, and other contractor or documents to which it is a party.

11. Warranties. The Purchase Agreement will contain the warranties by Seller, including without limitation the following:

- a. Warranties relating to the organization and good standing of Seller.
- b. Warranties as to the accuracy of the financial statements of Seller provided to Buyer.
- c. Warranties against any litigation or liabilities, including tax liabilities for prior years, other than those items disclosed to Buyer.
- d. Warranties that all contracts, leases, and other agreements of Seller, if any, have been disclosed.
- e. Warranties that Seller has good title to the assets, unencumbered by any liens except those disclosed.
- f. Warranties that no brokerage commission will be due as a result of this transaction.
- g. Warranties that the operation of all the assets will be in full compliance with all applicable federal, state, and local statutes, ordinances, and regulations.

12. Covenant Not to Compete. Seller and [individual], for themselves and any of their affiliates, will agree not to compete with Buyer in [describe area] for a period of \_\_\_\_\_ years commencing on the Closing Date. As consideration for this agreement not to compete, Buyer

will pay [individual] \$ \_\_\_\_\_ per month for 60 months, payable on the \_\_\_\_\_ day of each month commencing \_\_\_\_\_, 20\_\_\_\_\_.

13. [Individual's] Employment. After the Closing Date, [individual] will work for Buyer at an annual salary of \$ \_\_\_\_\_ until either [he] [she] or Buyer desires to terminate such employment.

14. Negotiations With Others. Until \_\_\_\_\_, 20\_\_\_\_\_, Seller will not offer the assets to, entertain offers for the assets Seller will not offer the assets to, entertain offers for the assets from, negotiate for the sale of the assets to, or make information about the assets available to, any third party.

It is understood that this letter sets forth an agreement in principle only, is not binding on the parties hereto, and may not be relied upon as the basis for a contract by estoppel; provided that the parties intend that sections 10 and 14 will be enforceable until \_\_\_\_\_, 20\_\_\_\_\_, With the exceptions of sections 10 and 14, it is understood that no party shall be bound until a Purchase Agreement has been duly executed and delivered.

[Buyer]

BY: \_\_\_\_\_

Agreed to in principle:  
[Seller]

By: \_\_\_\_\_  
[title]