

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of _____, 200_, between Emptor Corporation, a Delaware corporation (“Buyer”), and Seller Company, Inc., a Delaware corporation (“Seller”).

W I T N E S S E T H:

WHEREAS, Seller is in the business of manufacturing and marketing noisivid and other products in the United States, Canada, Switzerland and France through unincorporated divisions of Seller and the wholly-owned foreign subsidiaries of Seller identified on Schedule 1 hereto (the “Foreign Subsidiaries” and together with Seller, the “Sellers”; and the business and operations of such unincorporated divisions of the Seller and of the Foreign Subsidiaries, the “Business”) (capitalized terms used herein without definition are defined in Section 9.1);

WHEREAS, Buyer wishes to purchase (directly or indirectly through subsidiaries) from Sellers, and Sellers wish to sell, assign and transfer to Buyer, substantially all of the assets and properties held in connection with, necessary for, or material to the Business, and Buyer has agreed to assume (directly or indirectly through its subsidiaries) the Assumed Liabilities; and

WHEREAS, promptly following the execution and delivery of this Agreement, each of the Foreign Subsidiaries will enter into a Foreign Acquisition Agreement and certain related agreements with one or more of the Buyer Parties collectively providing for the purchase and sale of all of the Foreign Assets and for certain other arrangements.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

Sale and Purchase

1.1. Purchase of Assets. Subject to the terms and conditions hereof, at Closing Sellers will sell, transfer, assign and deliver to the Buyer Parties, and Buyer Parties will purchase from Sellers, all right, title and interest of Sellers in and to (i) the Specified Assets and (ii) the properties, assets and rights of every nature, whether real, personal, tangible, intangible or otherwise and whether now existing or hereinafter acquired (other than the Excluded Assets), wherever located, primarily relating to or used or held for use in connection with the Business as the same may exist on the Closing Date (collectively, the “Assets”), including all such items in the following categories.

(a) inventories, spare, replacement and component parts, and office and other supplies (collectively, the “Inventories”), including Inventories held at any location controlled by any Seller and Inventories previously purchased and in transit to any Seller at such locations, and rights in and to products sold or leased;

(b) accounts receivable, notes, bonds and other evidences of indebtedness of and rights to

receive payments from any Person;

(c) rights relating to prepayments, deferred charges, security deposits and similar items;

(d) machinery, equipment, furnishings, vehicles, tools, dies, molds and parts and similar property;

(e) Real Property and permits, approvals and other qualifications relating to Real Property;

(f) Intellectual Property, tangible embodiments thereof and rights thereunder or in respect thereof primarily relating to or used or held for use in connection with the Business (including rights and remedies in respect of infringements) (together with all Intellectual Property rights included in the other clauses of this Section 1.1, the "Intellectual Property Assets");

(g) rights under contracts, licenses, leases and other agreements ("Contracts"), including rights to receive payment, goods or services and to assert claims and take other actions;

(h) Books and Records (provided that Seller shall retain a right of reasonable access to Books and Records to the extent reasonably required with respect to rights or liabilities retained by Seller);

(i) Governmental Approvals, including pending applications therefor or renewals thereof, to the extent their transfer is permitted by law;

(j) rights to claims, demands, lawsuits and judgments with respect to the Business or the ownership, use or value of any Asset; and

(k) insurance benefits, including rights and proceeds, arising from or relating to the Assets or Assumed Liabilities prior to Closing.

Subject to the terms and conditions hereof, at the Closing, the Assets shall be transferred to the Buyer Parties free and clear of all liabilities, obligations, liens and encumbrances excepting only Assumed Liabilities and Permitted Liens.

1.2. Excluded Assets. Sellers will retain and not transfer, and none of the Buyer Parties will purchase or acquire, the following assets (collectively, the "Excluded Assets");

(a) the assets listed on Schedule 1.2;

(b) (i) the name and mark "Seller Corporation", (ii) the name and mark "Seller", in whole or in part (other than the name "Noisivid"), (iii) any name or mark derived from or including any of the foregoing and (iv) all of Seller's right, title and interest in the cross-licensing agreement, dated _____, 20__, between Ultimate Technology Company and Seller with respect to certain Intellectual Property;

(c) all cash and cash equivalents, other than petty cash held on ____, 20__; and

(d) the Real Property located at _____ and the personal property located thereon.

1.3. Assumption of Liabilities.

(a) Subject to the terms and conditions hereof, at Closing the Buyer Parties shall assume and agree to pay and discharge when due the following liabilities relating to the Assets and existing at or arising on or after the Closing Date (collectively, the “Assumed Liabilities”):

(i) liabilities, obligations and commitments relating exclusively to the Business or the Assets that are (x) reflected on the Audited Balance Sheet or (y) incurred after the date of the Audited Balance Sheet in the ordinary course of business consistent with prior practice and in accordance with the terms of this Agreement, except, in each case, for (A) liabilities related to product liability claims, (B) Environmental Liabilities and Costs, (C) liabilities for Taxes, (D) liabilities in respect of Employees or Seller Benefit Plans except to the extent specifically assumed by Buyer pursuant to Article VI, and (E) intercompany accounts payable which do not represent trade accounts payable;

(ii) liabilities, obligations and commitments (x) arising out of the agreements set forth on Schedule 2.7(a) (or not required to be set forth therein because of the amount involved), but not including any obligation or liability for any breach thereof occurring prior to the Closing Date or (y) listed on Schedule 1.3(a)(ii); and

(iii) liabilities in respect of Transferred Employees to the extent specifically assumed by Buyer pursuant to Article VI.

(b) At Closing, Buyer shall, or shall cause one of the Buyer Parties to, assume the Assumed Liabilities by executing and delivering to Seller an assumption agreement in a form reasonably satisfactory to Seller (the “Assumption Agreement”) or shall assume the foreign Assumed Liabilities in accordance with the respective Foreign Acquisition Agreement.

1.4. Excluded Liabilities. Notwithstanding the provisions of Section 1.3 or any other provision hereof or any schedule or exhibit hereto (and regardless of any disclosure to Buyer), Buyer shall not assume any liabilities, obligations or commitments of any Seller relating to or arising out of the operation of the Business or the ownership of the Assets prior to the Closing other than the Assumed Liabilities (the “Excluded Liabilities”).

1.5. Consent of Third Parties. Notwithstanding anything to the contrary herein, this Agreement shall not constitute an agreement to assign or transfer any interest in any Governmental Approval or Contract or any claim or right arising thereunder if such assignment or transfer without the consent or approval of a third party would constitute a breach thereof or affect adversely the rights of Buyer thereunder, and any such transfer or assignment shall be made subject to such consent or approval being obtained. In the event any such consent or approval is not obtained prior to Closing, Seller shall continue its reasonable best efforts to obtain any such consent or approval after Closing, and Seller will cooperate with Buyer in any lawful and economically feasible arrangement to provide that Buyer shall receive the interest of Seller in the benefits under any such Governmental

Approval or Contract, including performance by Seller as agent, provided that Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent Buyer would have been responsible therefor if such consent or approval had been obtained. Seller shall pay and discharge, and shall indemnify and hold Buyer harmless from and against, any and all out-of-pocket costs of seeking any such consent or approval whether before or after Closing. Nothing in this Section 1.5 shall be deemed a waiver by Buyer of its right to receive prior to Closing an effective assignment of all of the Assets nor shall this Section 1.5 be deemed to constitute an agreement to exclude from the Assets any assets described under Section 1.1.

1.6.Closing. The closing of the sale and purchase of the Assets (the "Closing") shall take place at the offices of _____, _____, 10:00 a.m. on the date that is two Business Days after the conditions set forth in Article _____ have been satisfied or waived (other than conditions that by their terms are to be satisfied at Closing but subject to the satisfaction or waiver of such conditions), or on such other date as the parties may agree to in writing (the "Closing Date").

1.7.Purchase Price. Subject to the terms and conditions hereof, at Closing Buyer shall pay or cause to be paid to Seller and the Foreign Subsidiaries an aggregate of U.S. \$ _____ (the "Purchase Price"), by wire transfer of immediately available funds to an account designated by Seller at least two Business Days prior to the Closing Date, and to assume or cause one of the Buyer Parties to assume the Assumed Liabilities as provided in Section 1.3.

1.8.Allocation of Purchase Price. The parties agree to allocate the Purchase Price and the Assumed Liabilities among the Assets acquired from each Seller, on a Seller-by-Seller basis, in accordance with an allocation schedule to be prepared by Buyer. Such allocation schedule shall be prepared in accordance with section 1060 of the Code (and requirements of any applicable tax laws of the applicable foreign country in the case of foreign Assets) and shall be based on an appraisal or appraisals conducted by Real Certain Appraisal Company or other independent appraiser or appraisers chosen by Buyer. No Seller shall be entitled to receive from any Buyer Party any amount in excess of the respective amounts set forth on such allocation schedule on account of the sale to the Buyer Parties of such Seller's Operations. In connection with the determination of the foregoing appraisal or appraisals and allocation schedules, the parties shall cooperate with each other and provide such information as any of them shall reasonably request. The parties will each report the federal, state and local and other Tax consequences of the purchase and sale contemplated hereby (including the filing of Internal Revenue Service Form 8594) in a manner consistent with such allocation schedules.

ARTICLE II

Representations and Warranties of Seller

As of the date hereof and as of the Closing Date, Seller represents and warrants to Buyer as follows:

2.1.Authorization, etc. Each Seller has the corporate power and authority to execute and

deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform fully its obligations thereunder, and to consummate the transactions contemplated thereby. The execution and delivery by Seller of this Agreement, and the consummation of the transactions contemplated hereby, have been, and on the Closing Date the execution and delivery by each of the Foreign Subsidiaries of each of the Ancillary Agreements to which it will be a party and the consummation of the transactions contemplated thereby will have been, duly authorized by all requisite corporate action of such Seller. Seller has duly executed and delivered this Agreement and on the Closing Date each of the Foreign Subsidiaries will have duly executed and delivered each of the Ancillary Agreements to which it is a party. This Agreement is, and on the Closing Date each of the Ancillary Agreements to which Seller is a party will be, legal, valid and binding obligations of Seller, enforceable against it in accordance with their respective terms. On the Closing Date, each of the Ancillary Agreements to which any Seller is a party will be legal, valid and binding obligations of the Seller executing such agreements, enforceable against it in accordance with their respective terms.

2.2. Corporate Status.

(a) The names of the Sellers are set forth in Schedule 2.2(a). Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, as set forth in Schedule 2.2(a), with full corporate power and authority to carry on its business (including its portion of the Business) and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated.

(b) Each Seller is duly qualified or licensed to do business and is in good standing in each of the jurisdictions specified opposite its name in Schedule 2.2(b), which are the only jurisdictions in which the operation of its portion of the Business or the character of the properties owned, leased or operated by it in connection with the Business makes such qualification or licensing necessary.

(c) Each Seller has delivered to Buyer complete and correct copies of its certificate of incorporation and by-laws or other organizational documents, in each case, as amended and in effect on the date hereof. None of the Sellers is in violation of any of the provisions of its certificate of incorporation or by-laws or other organizational documents.

2.3. No Conflicts, etc. The execution, delivery and performance by each Seller of its respective Acquisition Agreement and each of the Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not conflict with, contravene, result in a violation or breach of (with or without the giving of notice or the lapse of time or both), give rise to a right or claim of termination, modification or vesting, or result in the creation of any Lien upon any of the Assets under (i) any applicable Law, (ii) the certificate of incorporation or by-laws or other organizational documents of such Seller or (iii) except as set forth in Schedule 2.3, any Contract or other agreement or instrument to which any Seller or any Affiliate thereof is a party or by which any Seller or any of their properties or assets may be bound or affected. Except as specified in Schedule 2.3, no Governmental Approval or other Consent is required to be obtained or made by any Seller in connection with the execution and delivery of the Acquisition Agreements and the Ancillary Agreements or the consummation or performance of the transactions contemplated thereby.