



	Date

## Stock Purchase Agreement

INTRODUCTION: This is an offer and agreement dated \_\_\_\_\_, 20\_\_\_\_.

1. DEFINITIONS: The following definitions and designations shall apply regardless of number or gender:

CORPORATION \_\_\_\_\_  
State of Registration \_\_\_\_\_

BUSINESS \_\_\_\_\_  
Address \_\_\_\_\_  
City/State \_\_\_\_\_ Zip \_\_\_\_\_

BUYER \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_  
Address \_\_\_\_\_  
City/State \_\_\_\_\_ Zip \_\_\_\_\_

SELLER \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_  
Address \_\_\_\_\_  
City/State \_\_\_\_\_ Zip \_\_\_\_\_

BUYER'S BROKER \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_  
AGENT \_\_\_\_\_

SELLER'S BROKER \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_  
Email \_\_\_\_\_  
AGENT \_\_\_\_\_

SIGNING: Signing of this Agreement by both Buyer and Seller.  
CLOSING: Transfer of Stock from Seller to Buyer through escrow or otherwise.  
STOCK: All the outstanding Stock of the Corporation, which is now owned by Seller and is to be purchased by Buyer.  
BALANCE SHEET AT SIGNING: Corporation's latest balance sheet disclosed to Buyer prior to Signing, dated \_\_\_\_\_, which is attached as Exhibit A.  
BALANCE SHEET AT CLOSING: Corporation's balance sheet as of Closing.  
NET CURRENT ITEMS: The sum of cash, accounts receivable and inventory less accounts payable, but not to include any items excluded in paragraphs 8.c.vii. and 8.d.v., hereinafter "NCI".  
SALES ORDER BACKLOG: The sum of all unfulfilled sales orders at net invoice amount.  
GROSS PROFIT MARGIN: Gross profit divided by revenue expressed as a percentage based on the most recent Federal Tax Return.

2. SALE OF STOCK: Seller hereby agrees to sell to Buyer and Buyer agrees to buy from Seller the Stock on the terms and conditions set forth below.

3. CONSIDERATION: The total consideration, which includes the liabilities of the Corporation, shall be \$ \_\_\_\_\_, paid or credited as follows:

- a. \$ \_\_\_\_\_ as a deposit to be held by the Broker and, if a check, cashed when this offer is accepted. This deposit will be a part of the down payment.
- b. \$ \_\_\_\_\_ additional deposit upon opening of escrow, also included in the down payment.
- c. \$ \_\_\_\_\_ balance of the down payment to be deposited in escrow in cash or cash equivalent before Closing. (Estimated Closing costs will also be deposited.)
- d. \$ \_\_\_\_\_ additional down payment included in third party financing as described in paragraph 4.d.
- e. \$ \_\_\_\_\_ total down payment.  
(a + b + c + d)
- f. \$ \_\_\_\_\_ approximate balance payable in the form of a non-negotiable promissory note to Seller in equal monthly installments, including \_\_\_\_\_% per annum interest computed from Closing, so as to fully amortize over \_\_\_\_\_ months (i.e., \$ \_\_\_\_\_ per month), payments to begin one month from Closing. Note shall be secured by a pledge agreement on the Stock and a security agreement on the assets of the Business with right of offset and subordinated to third party financing in 3.d. Note shall contain a right to prepay without penalty and be assumable with Seller's consent, which shall not unreasonably be withheld. If Buyer is a corporation or other entity, its owners shall personally guarantee this note.
- g. \$ \_\_\_\_\_ purchase price of the Stock and any covenant not to compete and/or consulting or employment agreement.  
(e + f)
- h. \$ \_\_\_\_\_ approximate credit to Buyer for liabilities of the Corporation remaining after Closing.
- i. \$ \_\_\_\_\_ total consideration  
(g + h)

At Closing or before disbursement, if there is any variation in the NCI as shown on the Balance Sheet at Closing from the NCI as shown on the Balance Sheet at Signing, then to the extent NCI have decreased, the consideration and down payment shall be decreased accordingly and to the extent the NCI have increased, then the consideration and note due Seller shall be increased accordingly. If NCI have increased and there is not a note due to Seller, Buyer shall execute a non-negotiable promissory note to Seller with right of offset and right to prepay without penalty, payable in equal monthly installments, including \_\_\_\_\_% per annum interest computed from Closing, so as to fully amortize over \_\_\_\_\_ months, payments to begin one month from Closing. Note shall be assumable with Seller's consent, which shall not unreasonably be withheld, secured by a security agreement on the assets of the Business and a pledge agreement on the Stock. If Buyer is a corporation or other entity, its owners shall personally guarantee the obligations to the Seller under this Agreement.

If the Sales Order Backlog at Closing is less than the Sales Order Backlog at Signing, then the purchase price and down payment shall be reduced by the difference multiplied by the Gross Profit Margin.

4. **CONDITIONS:** This Agreement is subject to the following conditions:
- a. Buyer's inspection of and reasonable satisfaction with all material aspects of the Business including, but not limited to, the assets, financial and other records, contracts, leases of the Corporation and Seller's Disclosure Statement (see ¶ 7) which shall promptly be made available for Buyer's inspection, and
  - b. Seller's reasonable satisfaction with Buyer's qualifications to purchase and operate the Business successfully, Buyer's creditworthiness and Buyer's Disclosure Statement (see ¶7).

The parties' satisfaction with items a and b, respectively, shall be conclusively presumed unless contrary written notice is given to the escrow holder or the other party's Broker  within \_\_\_\_\_ days from Signing or upon Closing if sooner, or  within \_\_\_\_\_ days of receipt, but not more than 30 days from the signing of this Agreement.

- c. Buyer's and Seller's attorneys' review and approval of this Agreement. Such approval shall be conclusively presumed unless contrary written notice is given to the escrow holder or the other party's Broker within five days from Signing or upon Closing if sooner.
- d. Buyer receiving a commitment letter for third party financing in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ days after Signing.
- e. Buyer receiving funding in the amount indicated in 4.d within \_\_\_\_\_ days after Signing.
- f. Other (liquor license, franchise agreement, etc.) \_\_\_\_\_

Buyer shall use its best efforts to obtain said financing and Seller shall fully and promptly comply with lender requests for information and requests to inspect the Business. If Buyer is unable to satisfy the conditions in 4.d or 4.e within the specified time limits, either party may terminate this Agreement by giving written notice to the other party's Broker.

5. **ESCROW:** The purchase price and closing adjustments shall be paid through an escrow to be established with \_\_\_\_\_, the escrow holder. Separate escrow instructions may be signed to define the duties of the parties and the escrow holder. All parties shall cooperate with the escrow holder in performing any acts and completing any papers necessary to complete this transaction. The Brokers are parties to the escrow as to the payment of any Broker's fees and an irrevocable assignee of the sales proceeds to the extent of such fees.

6. **CLOSING DATE AND POSSESSION:** The estimated date for Closing is \_\_\_\_\_, 20\_\_\_\_. Buyer and Seller shall make their best efforts to close on or before that date. Seller shall deliver possession of the Business to the Buyer at Closing.

7. **SELLER'S AND BUYER'S DISCLOSURE STATEMENTS:**
- a.  Buyer has received and read the completed Seller's Disclosure Statement, or  Seller shall provide to Buyer the completed Seller's Disclosure Statement within three days after Signing.
  - b.  Seller has received and read the completed Buyer's Disclosure Statement, or  Buyer shall provide to Seller the completed Buyer's Disclosure Statement within three days after Signing.

The parties warrant the accuracy and completeness of their respective Disclosure Statements. The parties warrant that these representations are true, shall be true as of Closing and shall survive Closing.

8. **SELLER REPRESENTATIONS AND WARRANTIES:** Except as noted in paragraph 8.i., Seller represents and warrants as follows:
- a. **STATUS OF CORPORATION AND STOCK**
    - i. Corporation is a corporation duly organized, validly existing, and in good standing with the State of California and has all corporate powers and authority to conduct the Business as it is now being conducted. All the Stock is owned by the Seller and is validly issued, fully paid and non-assessable. The Corporation has no commitments to issue additional shares.
    - ii. All restrictions on the transfer of the Stock will be duly complied with or effectively waived.
    - iii. This sale will not (a) cause the acceleration of any note balance or lease-purchase obligation, (b) cause the landlord to modify or end the premises lease, (c) end any financing or credit extended to the Corporation by any third party not listed in paragraph 8.d.v., or (d) affect any of the following leases or contracts to which the Business is a party due to a change of control of the Corporation:
 

<input type="checkbox"/> Alarm system lease or maintenance agreement	<input type="checkbox"/> Other equipment lease(s) or purchase contract(s)
<input type="checkbox"/> Telephone system lease or purchase contract	<input type="checkbox"/> Equipment or software maintenance agreement(s)
<input type="checkbox"/> Vehicle lease(s) or purchase contract(s)	<input type="checkbox"/> Music service contract
<input type="checkbox"/> Vending machine contract(s)	<input type="checkbox"/> Advertising contract(s), including Yellow Pages
<input type="checkbox"/> Other _____	

- b. **FINANCIAL STATEMENTS**
  - i. All the financial information and statements furnished to Buyer are complete, accurate, and prepared in a manner consistent with prior statements, and they fairly present the financial condition of the Business as of the dates stated on them.
  - ii. Since the date of the last financial statements furnished, there have been no material adverse changes in the aggregate in the assets, liabilities, revenues, expenses or any other items shown on such statements.

- c. ASSETS OF THE BUSINESS
  - i. All assets currently used in the Business are owned by the Corporation free from liens and encumbrances.
  - ii. All assets are in good and operable condition and conform with all applicable building and zoning ordinances and regulations and other laws.
  - iii. All accounts receivable of the Corporation arose from the normal course of business, none have been previously assigned and they are fully collectable.
  - iv. All resale inventory of the Business is marketable and in good condition.
  - v. All leases and contracts relevant to the ownership and operation of the Business are complete and in effect and there are no undisclosed amendments.
  - vi. All insurance policies and other agreements of the Corporation are in full force and effect and Seller is not in default as to any of their provisions.
  - vii. Assets currently used in or owned by the Corporation which are not included in this sale are \_\_\_\_\_ (Attach Exhibit \_\_\_\_\_ if more space is needed.)
- d. LIABILITIES
  - i. The financial and other information furnished to Buyer includes a full disclosure of all liabilities of the Corporation and all facts which might reasonably give rise to liability.
  - ii. There are no claims or investigations existing which would affect the Business or its assets or the transfer of good title, and all pending or threatened litigation involving the Corporation has been disclosed.
  - iii. There are no claims by distributors, sales representatives or customers because of defective products or services already delivered or rendered by Corporation, arising either now or in the future, which will be asserted against the Corporation. This warranty shall only apply so long as the Corporation maintains liability insurance comparable to that presently in force.
  - iv. Corporation will have no contracts or other commitments (including but not limited to collective bargaining agreements, employment contracts, pension or profit sharing plans) remaining effective after Closing.
  - v. Seller shall remove the following liabilities from the Corporation prior to Closing: \_\_\_\_\_ (Attach Exhibit \_\_\_\_\_ if more space is needed.)
- e. COMPLIANCE
  - i. Corporation has all necessary permits and authority and is operating the Business in compliance with all applicable laws and contracts. This compliance will not be violated by this sale. The Business will pass all applicable inspections upon Closing.
  - ii. The Business and its premises are in compliance with all applicable hazardous waste and other environmental regulations.
- f. TAXES: All tax returns required to be made by Corporation have been properly prepared, signed and timely filed, and all tax liabilities have been paid.
- g. EMPLOYEES
  - i. There are no material facts known to Seller or Corporation indicating employee or labor disputes which could adversely affect Corporation's business operations.
  - ii. Balance sheet at Closing will reflect all accrued payroll, vacation pay, bonus, pension, profit sharing or other benefits accrued or owing to employees, and all employee advances and loans (See ¶14.a.).
- h. SURVIVAL: All representations and warranties will be true at Closing as if made then and will survive Closing.
- i. EXCEPTIONS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 9. SELLER COVENANTS: Seller and Corporation covenant jointly and severally that from signing until Closing:
  - a. The Corporation's articles, by-laws and ownership will not change in any way.
  - b. The Corporation will not incur or permit any additional encumbrances on the assets of the Business or dispose of any such assets, except in the normal course of business.
  - c. The Corporation will not enter into any material or long-term contracts or any other transactions except in the normal course of business, and will make no changes in its labor or employment agreements.
  - d. Corporation will continue to operate the Business in the usual way, protect its assets and goodwill, allow the Buyer to make reasonable inspections, and maintain good relations with suppliers, customers, and employees.
  - e. The Corporation will hold appropriate director and stockholder meetings and take all other steps necessary to legally perform this Agreement.
  - f. Prompt notice will be given to Buyer of any event that materially alters the accuracy of the above Seller Representations, Warranties and Covenants.
- 10. SELLER INDEMNITY: Seller and Corporation shall hold Buyer harmless from any damage resulting from the falsity of the above Seller Representations or the breach of the above Seller Warranties or Covenants. Without in any way limiting the above Representations, Warranties and Covenants or the rights or remedies available to the Buyer for their breach, Seller and Corporation hereby hold Buyer harmless from all loss, liability, tax, or expense resulting directly or indirectly from the assertion against Buyer or Corporation of claims by government or any person or other entity based on facts existing before Closing, except as provided herein.
- 11. BUYER REPRESENTATIONS AND WARRANTIES: Buyer represents and warrants as follows:
  - a. Buyer has the full right, power, legal capacity and authority to enter into and perform Buyer's obligations under this Agreement and Buyer is legally bound by this Agreement.
  - b. Buyer has the financial ability to accomplish the purchase described in this Agreement.
- 12. BUYER COVENANTS: Buyer covenants that from signing until Closing:
  - a. Buyer will take all steps necessary to legally perform this Agreement.
  - b. Prompt notice will be given to Seller of any event which materially alters the accuracy of the above Buyer Representations, Warranties and Covenants.
- 13. BUYER INDEMNITY: Buyer shall hold Seller harmless from any damage resulting from the falsity of the above Buyer Representations or the breach of the above Buyer Warranties or Covenants.

14. TAXES and EXPENSES:

- a. Utilities, personal property taxes, income taxes, other taxes, insurance, rent, and other accrued expenses of the Business not otherwise provided for in this Agreement shall be included in the Closing Balance Sheet.
- b. Buyer shall remit to Seller upon receipt any refund of overpayments of worker's compensation premiums, taxes, trade payables or the like which relate to the period prior to Closing and are not reflected on the Balance Sheet at Closing.
- c. Except as otherwise noted in this Agreement, each party shall pay when due all operating costs incurred while that party is in possession and hold the other party harmless therefrom.
- d. Any liquor or other license or franchise fees shall not be prorated and Buyer shall pay any transfer or issue fees for permits and licenses required.
- e. The Buyer and Seller shall pay equally all escrow fees and costs and other transfer costs except \_\_\_\_\_ . Each party shall pay its own accountants, attorneys and other advisors.

15. BROKER: Buyer acknowledges that Brokers have furnished to Buyer financial and other information obtained from Seller and other sources, the accuracy and completeness of which have not been verified by Brokers. Brokers have no knowledge of or any duty to discover contingent liabilities. Buyer is relying solely on its own inspection and due diligence of the Business, its assets, financial statements, business records, contracts, any assumed liabilities, operational history, future profitability and the representations by the Seller, and not on any representations of the Brokers. Seller acknowledges that it is relying solely on its own investigation of the Buyer's creditworthiness and ability to complete this transaction and to successfully operate the Business, and not on any representations of the Brokers. Should any such representations of Seller or Buyer be untrue, Buyer and Seller agree to look solely to each other for relief and shall release, hold harmless, indemnify and defend the Brokers from any such claims. Buyer and Seller acknowledge that Brokers may receive a referral fee from an institutional lender.

16. TRAINING/CONSULTING: Seller and \_\_\_\_\_, individually, shall train Buyer in the operation of the Business for a period of \_\_\_\_\_ consecutive weeks from Closing, for \_\_\_\_\_ hours per week, without additional cost to Buyer.

17. COVENANT NOT TO COMPETE: Seller and \_\_\_\_\_, individually,

within a radius of \_\_\_\_\_ miles of the present location of the Business, or

within the counties of \_\_\_\_\_,

shall not directly or indirectly carry on a similar business, attempt to hire any existing employees of the Business, solicit any customers of the Business nor assist anyone else except the Buyer to do so within these limits or have any interest, directly or indirectly, in such business, except as an employee of the Buyer, for a period of \_\_\_\_\_ consecutive years from Closing. This covenant shall become an asset of the Business, is consideration for all obligations of the Corporation as reflected herein and may be transferred as part of any future sale of the Business. Any portion of the Consideration to be allocated to this covenant shall be agreed upon by the parties in writing prior to Closing.

18. CONDITIONS TO SELLER CLOSING: Seller's obligations at Closing are subject to the satisfaction of the following conditions:

- a. As of Closing, all the Buyer Representations and Warranties shall be true and all the Buyer Covenants shall be complied with and performed in all material respects.
- b. All consents of third parties necessary to the performance of this agreement by Buyer shall have been received.

19. CONDITIONS TO BUYER CLOSING: Buyer's obligations at Closing are subject to the satisfaction of the following conditions:

- a. As of Closing, all the Seller Representations and Warranties shall be true and all the Seller Covenants shall be complied with and performed in all material respects.
- b. All consents of third parties necessary to the performance of this agreement by Seller shall have been received.

20. MEDIATION OF DISPUTES: Buyer and Seller shall mediate any dispute or claim between them arising out of this Agreement or any resulting relationship or transaction between these parties. The mediation shall be held prior to any court action or arbitration. The mediation shall be confidential and in accordance with applicable sections of the California Evidence Code. In the event the parties are not able to agree on a mediator within thirty (30) days of the first party seeking mediation, the presiding judge of the Superior Court of the county in which venue would lie for the filing of a complaint for relief in such dispute shall have jurisdiction to appoint a mediator. In the event the mediator determines that a second mediation is necessary, it shall be conducted in accordance with this paragraph. Should either party attempt a court action or an arbitration before attempting to mediate, that party shall not be entitled to attorney fees that might be otherwise available to it in a court action or arbitration and the party who is determined by the arbitrator or judge to have resisted mediation may be sanctioned by the arbitrator or judge. Mediation fees, if any, shall be divided equally between Buyer and Seller.

21. BROKER'S FEES: The Broker(s) identified in paragraph 1 has/have acted as the only Broker(s) for this sale and earned a Broker's fee. Seller agrees to pay a fee to Broker(s) for services as follows:

\_\_\_\_\_ percent of total purchase price to \_\_\_\_\_, Broker and

\_\_\_\_\_ percent of total purchase price to \_\_\_\_\_, Broker, or

as per the representation agreement between Seller and Seller's Broker.

Broker's fees shall be payable (a) at Closing, or (b) if completion of sale is prevented by default of Seller, upon Seller's default. If Closing is prevented by default of Buyer, the Buyer shall be responsible for and agrees to pay the total Broker's fee immediately upon default. Any amount that the Buyer has deposited with the escrow holder may be applied against Buyer's obligation under this paragraph. In any action, proceeding or arbitration relating to the payment of such a fee, the prevailing party shall be entitled to reasonable attorney's fees and costs.

GENERAL PROVISIONS: The entire agreement of the parties relating to the sale of the Stock is set forth in this Agreement and can only be modified in writing signed by the parties. There are no other representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. This Agreement shall bind and benefit the parties and their legal successors and shall supersede any prior written or oral agreements. This Agreement may be signed in counterparts and faxed and electronic signatures may be considered as originals. Captions in this Agreement are for convenience only and shall not be considered in construing its meaning. In any action, proceeding or arbitration between Buyer and Seller arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, except as provided in paragraph 20.

22. ACKNOWLEDGMENT AND PERSONAL GUARANTEE: By signing below, the Buyer and Seller each acknowledge that they have carefully read and fully understand this Agreement and have received a copy of it. The undersigned warrant that their signatures are legally sufficient to bind the Buyer and Seller. If the Buyer and/or Seller is a corporation or other entity, the undersigned personally guarantee the performance of this Agreement and any other agreements necessary to complete the purchase.

23. ACCEPTANCE: This offer shall expire unless it is accepted in writing by Seller and that acceptance is communicated to Buyer by 11:59 p.m. on \_\_\_\_\_, 20\_\_\_\_. Any later acceptance shall constitute a counteroffer. The undersigned Seller accepts and agrees to sell the Business on the above terms and conditions.

THE CALIFORNIA ASSOCIATION OF BUSINESS BROKERS MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. THE BROKER IS NOT QUALIFIED TO GIVE LEGAL OR TAX ADVICE. FOR SUCH ADVICE, THE PARTIES SHOULD CONSULT THEIR ATTORNEYS OR ACCOUNTANTS.

Subject to attached addendum

Subject to attached counteroffer

_____	_____	_____	_____
Buyer	Date	Seller	Date
_____	_____	_____	_____
Buyer	Date	Seller	Date
_____		_____	
Corporation (or other entity)		Corporation (or other entity)	
by: _____	_____	by: _____	_____
Name and Title	Date	Name and Title	Date
_____	_____	_____	_____
Broker's Agent	Date	Broker's Agent	Date

LIST OF ATTACHMENTS

Exhibit

- A. Balance sheet at signing
- B. Equipment List
- C. Seller's Disclosure Statement
- D. Buyer's Disclosure Statement
- E. \_\_\_\_\_
- F. \_\_\_\_\_
- G. \_\_\_\_\_
- H. \_\_\_\_\_