**Notice of Confidentiality**

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**Requirement of Timely Response**

**The proposal contained herein shall be deemed rejected if not accepted in writing within seven (7) days of the date hereof.**

[Date]

|  |  |
| --- | --- |
| [SELLER] | Via Electronic Transmission |

RE: Acquisition of Substantially all the Assets of [SELLER]

Dear \_\_\_\_\_\_:

This letter is in furtherance of our discussions concerning the purchase of substantially all of the assets (the “Purchased Assets”) of [SELLER] (the “Seller”) by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or its designated affiliate (the “Purchaser”) under certain terms and conditions.

The fundamental elements of the proposed transaction are as follows:

1. The obligations of the parties to close the contemplated transaction shall be expressly conditioned upon (a) the completion by Purchaser, to its satisfaction, of its due diligence review of the business operated by Seller (the “Business”), (b) the negotiation and execution by Purchaser and Seller of a definitive asset purchase agreement (the “Definitive Agreement”), and (c) obtaining all necessary consents and approvals, as applicable (including as necessary shareholder and director approvals) of the transactions contemplated herein.
2. It is the parties’ intent to proceed expeditiously with due diligence, and the negotiation and execution of the Definitive Agreement and with the closing (the “Closing”) of the transaction contemplated by this letter of intent occurring effective 11:59 p.m. on \_\_\_\_\_\_\_\_\_ or such other date as the parties mutually agree.
3. The Purchased Assets shall mean substantially all assets of or relating to the Business including: (a) checking and savings account balances; (b) accounts, loans and notes receivable; (c) production equipment, office equipment, computer hardware and software, and other fixed assets; (d) deposits and prepaid expenses; (e) investments; (f) contract benefits including the benefits of prepaid equipment, and hardware and software maintenance agreements; (g) any and all rights to proprietary software used in the operation of the Business, as well as all source code related thereto; (h) all deposits, sales orders and customer commitments in process, customer contracts, lists, files, records, artwork, and dies; (i) advertising materials, including catalogs, samples, sales literature, and displays; (j) all distributor, vendor, supplier, and marketing industry lists, rights, and privileges; (k) intellectual property, including all patents, trade secrets, licenses, confidential information, copyrights, trademarks, service marks, trade names, trade dress, logos, assumed or fictitious names, universal record locators, internet domain names, and telephone numbers; (l) business records; (m) goodwill; and (n) other miscellaneous assets.
4. The Purchased Assets shall exclude shareholder register and minute books.
5. Total Consideration*.* The total consideration payable in connection with the transaction contemplated in this letter of intent will consists of cash payments at closing, plus deferred payments tied to performance of the business and plus non-compete payments to senior executives of the Business. Those payments are described below:
   1. \_\_\_\_\_\_\_ payable at Closing; plus
   2. \_\_\_\_ paid in the form of a Promissory Note \_\_\_
6. Purchaser shall not assume any liabilities of Seller other than:
   1. Trade accounts payable and accrued current liabilities (but specifically excluding any liabilities for taxes, bonuses or any portion of debt) for which payment is not yet due according to the respective payment terms and for which payment has not been deferred outside the ordinary course of business; and
   2. Other specifically enumerated liabilities which shall be treated as partial payment of the Purchase Price payable at Closing (collectively the “Assumed Liabilities”).
7. Ten percent (10%) of the consideration (subject to increase for any specific material issues identified during the course of due diligence) payable under Section 5(a) above will be payable by delivery of immediately available funds to a designated escrow agent pursuant to a separate written instrument incorporated into the Purchase Agreement which amount shall secure payment of any Claims and shall be payable upon expiration of the indemnification obligations as described in Section \_\_\_\_\_\_\_\_\_\_\_. Such escrow will be held in an interest bearing account at a mutually agreeable bank (the “Escrow”); and

1. The Purchase Price will be allocated among the Purchased Assets under the residual method as described in Section 1060 of the Internal Revenue Code of 1986, as amended.
2. The Definitive Agreement shall provide for an increase or decrease in the Closing Purchase Price to the extent that working capital (as defined by the parties in the Definitive Agreement) is more or less than a threshold amount specified in the Definitive Agreement which reflects an amount of working capital (calculated as of Closing without regard to post-closing events) required to reasonably support the on-going operation of the Business following the Closing without additional cash contributions by the Purchaser considering the historical cash flow cycles of the Business and the projected growth, and supporting cash needs, of the Business.
3. In order to induce Purchaser to enter into the transactions contemplated by this letter of intent, each of the senior executives of the Seller will enter into non-competition agreements in a mutually agreeable form for the benefit of Purchaser. Said agreements will include a non-competition agreement, specifically for \_\_\_\_\_\_\_, as CEO, which shall survive for the greater of five (5) years following the Closing or three (3) years following termination of any period of employment (or engagement as a consultant) with Purchaser.
4. All of the Purchased Assets shall be free and clear of all debts, liens, and encumbrances at Closing, except permitted encumbrances including with respect to Assumed Liabilities, if any.
5. The Definitive Agreement will provide for representations, warranties, covenants, and commitments that are usual and customary for the type of transaction contemplated herein and indemnification by the parties for breach of any such representations, warranty, covenant or commitment as set forth in the Definitive Agreement
6. In entering into this letter of intent, Purchaser has relied upon the Sales and Financial information presented on Schedule A attached hereto.
7. This letter is merely an expression of intent, but is not meant to create a binding obligation of the parties except as provided in Sections 14, 15, 16, 17 and 18 hereof. The closing of any transaction contemplated hereby is subject to the satisfactory completion of due diligence by Purchaser, and the execution of the Definitive Agreement and related documents, in form and substance acceptable to each party and its respective counsel, and consistent with the terms of this letter. If the Definitive Agreement is not executed because the parties hereto cannot agree on the terms to be contained in the Definitive Agreement, or the Purchaser, in its discretion, is not satisfied with the results of its due diligence investigation, it is understood that none of the undersigned shall be liable to the other party in any manner.
8. In consideration of Purchaser’s undertakings set forth above, and of Purchaser continuing negotiations for the purchase of the Purchased Assets and undertaking the costs of conducting its due diligence investigation incidental to the transaction contemplated herein, Seller agrees, undertakes, and represents that Seller will cooperate with Purchaser, and its accountants, tax advisors, lawyers, benefit plan advisors, insurance advisors, and other representatives (“Due Diligence Consultants”) between the date hereof and Closing to investigate the affairs of the Seller by promptly providing responses to the due diligence requests lists furnished by the Due Diligence Consultants and permitting Purchaser and its Due Diligence Consultants to be present on Seller’s business premises during normal business hours at Purchaser’s expense, and providing to Purchaser and the Due Diligence Consultants access to all of the books, tax returns, contracts, customers, vendors, commitments, personnel, and records of Seller relating to the Seller’s business and will furnish to Purchaser all documents and information with respect to Seller’s business as Purchaser may from time to time request (but excluding any attorney-client privileged communications with respect to the transactions contemplated by this letter of intent). The access and furnishing of documents and information referred to herein shall be for the purpose of enabling Purchaser to do its due diligence investigation incident to the transaction contemplated hereby and as described in this letter of intent, and to familiarize itself with the operations of the Seller’s business in an attempt to ease the transition of ownership.
9. Between the date hereof and the Closing, Seller shall continue to operate in the ordinary course of business. Seller and the management of Seller will not deviate materially between the date hereof and the Closing from the usual conduct of the business based on past practices.
10. Each party shall be responsible for the payment of any costs incurred by them, or at their direction, in connection with the transactions contemplated herein, including, but not limited to, costs and fees of attorneys, accountants, agents, brokers, and financial advisors.
11. The parties agree not to disclose or discuss this potential transaction with any employees or third parties, other than their respective shareholders, officers, directors, advisors, lawyers, accountants and employees having a direct need-to-know in order to permit the parties to undertake their respective obligations under this letter of intent and then only subject to the confidentiality obligations set forth herein and in any confidentiality agreement between the parties relating to the transaction contemplated herein (“Non-disclosure Agreement”). This letter of intent and its contents are confidential information of the Purchaser pursuant to the terms of the notice set forth above. Neither party shall issue any press release or make any announcement concerning the transaction contemplated herein without the prior review and approval of the other party.

If the foregoing affords a basis satisfactory to you for proceeding, please indicate by signing in the places provided below on all copies of this letter of intent, and kindly return one executed copy to Purchaser. Together, we shall proceed with due diligence, as well as with the negotiation of specific terms and conditions and the preparation of the Definitive Agreement required to consummate this transaction.

Sincerely,

Name

|  |  |
| --- | --- |
| Agreed and accepted: | |
| [SELLER]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:  Its: | Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ |