



THE VELD  
GROUP  
LOS ANGELES • TOKYO

## Asset Purchase Agreement

**INTRODUCTION:** This is an offer and an agreement to buy and sell business assets, dated \_\_\_\_\_.

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

**BUSINESS:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**SELLER** \_\_\_\_\_ **SELLER'S BROKER** \_\_\_\_\_

Contact Person \_\_\_\_\_ Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_

Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_ Email \_\_\_\_\_

Email \_\_\_\_\_ AGENT \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

City/State \_\_\_\_\_ Zip \_\_\_\_\_ City/State \_\_\_\_\_ Zip \_\_\_\_\_

**BUYER** \_\_\_\_\_ **BUYER'S BROKER** \_\_\_\_\_

Contact Person \_\_\_\_\_ Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_

Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_ Email \_\_\_\_\_

Email \_\_\_\_\_ AGENT \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

City/State \_\_\_\_\_ Zip \_\_\_\_\_ City/State \_\_\_\_\_ Zip \_\_\_\_\_

**SIGNING:** Signing of this Agreement by both Buyer and Seller.

**COP:** Change of possession of business assets from Seller to Buyer. **CLOSING:** Change of ownership of business assets from Seller to Buyer.

**INVENTORY:** Current raw materials, work in progress, saleable finished goods and consumable supplies.

**ASSETS:** Assets of the Business include but are not limited to any equipment, trade fixtures, leasehold, leasehold improvements, accounts receivable, contract rights, business records (with Seller retaining a reasonable right of inspection), software and software licenses, other licenses, franchises, goodwill, covenant not to compete, trade secrets, patents, intellectual property, trade name, telephone and fax numbers, web sites, email addresses and inventory. Assets being sold shall not include bank accounts, deposits, cash, financial records (but Buyer shall have a right to make copies prior to Closing), or \_\_\_\_\_

**2. SALE OF BUSINESS ASSETS:** Seller agrees to sell the Assets to Buyer and Buyer agrees to buy the Assets from Seller for the price and on the terms and conditions set forth below.

**3. PURCHASE PRICE:** The purchase price shall be \$ \_\_\_\_\_, payable as follows:

- a. \$ \_\_\_\_\_ deposited by Buyer upon signing this Agreement as part of the down payment. Broker is authorized to  hold deposit check uncashed until escrow is opened or  deposit check into escrow or broker trust account upon acceptance of offer.

Business: \_\_\_\_\_ Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Buyer Buyer Seller Seller

- i. Buyer irrevocably authorizes escrow agent to pay Seller \_\_\_\_\_ % of this down payment in the event that a sale is not ultimately consummated for any reason whatsoever.
- ii. Seller irrevocably authorizes escrow agent to pay Broker 50% of the deposit in case such a deposit is forfeited by Buyer, provided such payment does not exceed the full amount of anticipated Broker's fee in cash or consideration at close of escrow, in accordance with the signed listing agreement, in any, previously entered into by Broker and Seller.
- b. \$ \_\_\_\_\_ additional deposit upon opening of escrow, also included in the down payment.
- c. \$ \_\_\_\_\_ additional down payment due from Buyer to be deposited in escrow \_\_\_\_\_ days before Closing. (Estimated escrow fees and costs will also be deposited.)
- d. \$ \_\_\_\_\_ additional down payment included in third party financing as described in paragraph 6.d.
- e. \$ \_\_\_\_\_ total down payment
- f. \$ \_\_\_\_\_ (approximately) by the assumption of a note balance payable \$ \_\_\_\_\_ per month including \_\_\_\_% per annum interest. If the actual balance differs from the above figure,  the note to the Seller or  the down payment shall be adjusted up or down accordingly.
- g. \$ \_\_\_\_\_ balance in the form of a non-negotiable note in customary form with right of offset, payable to Seller in equal monthly installments, including \_\_\_\_% per annum interest computed from COP, so as to fully amortize over \_\_\_\_\_ months (i.e., \$ \_\_\_\_\_ per month), payments to begin one month from COP, secured by a security agreement on the assets of the Business with the right to prepay without penalty. Note shall be assumable with Seller's consent, which shall not unreasonably be withheld. If Buyer is a corporation or other entity, the owners shall personally guarantee the obligations to the Seller under this Agreement.

**4. INVENTORY AND ACCOUNTS RECEIVABLE:**

The purchase price shall include Inventory of \$ \_\_\_\_\_ at cost and collectable accounts receivable of \$ \_\_\_\_\_. If the actual amount varies from the total of these figures, the purchase price and  any note to the Seller or  the down payment will be adjusted accordingly, or  The Inventory at cost shall be paid for at Closing in addition to the total purchase price above. Notwithstanding the above, the Inventory shall not exceed \$ \_\_\_\_\_ (and the Buyer can reject any part of the Inventory over that amount) or be less than \$ \_\_\_\_\_. The inventory count shall be made on COP  by Buyer and Seller, or  by an independent inventory service, with the fees to be divided equally between Buyer and Seller. Work in progress and finished goods shall be valued at the actual cost of material and direct labor incurred by Seller.

**5. PURCHASE PRICE ALLOCATION:** Before Closing, Buyer and Seller shall endeavor to allocate the purchase price among the Assets purchased and submit the allocation to escrow.

**6. CONDITIONS:** This Agreement is subject to the following conditions:

- a. Buyer's inspection of and reasonable satisfaction with the Assets and financial and other records, contracts and leases of the Business and Seller's Disclosure Statement (see ¶8) which shall promptly be made available for Buyer's inspection.
- 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 ¶8). Adequate information shall be provided promptly to Seller. The parties' satisfaction with items 6.a and 6.b, respectively, shall be conclusively presumed unless contrary written notice is given to the Broker or escrow holder within \_\_\_\_\_ days from Signing or upon COP if sooner.
- c.  The written consent of the landlord to assignment of the existing premises lease, or  The making of a new lease between the landlord and the Buyer which is acceptable to the Buyer.
- d. Buyer receiving a commitment letter for third party financing in the amount of \$ \_\_\_\_\_ within \_\_\_\_\_ days after Signing.

Business: \_\_\_\_\_ Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Buyer Buyer Seller Seller

e. Buyer receiving funding in the amount indicated in 6.d within \_\_\_\_\_ days after Signing. Buyer shall use its best efforts to obtain said financing and Seller shall fully and promptly comply with lender requests for information and to inspect the Business. If Buyer is unable to satisfy the conditions in 6.d or 6.e within the specified time limits, either party may terminate this Agreement by giving written notice to the other party's Broker.

f. Other (liquor license, franchise agreement, etc.) \_\_\_\_\_

**7. ESCROW:** The purchase price and closing adjustments shall be paid through an escrow to be established with \_\_\_\_\_, the escrow holder. Separate escrow instructions shall be signed to define the duties of the parties and the escrow holder. All parties shall cooperate with the escrow holder in completing any documents and performing any acts necessary to complete the transfer of the Business Assets. The Broker is a party to the escrow as to the payment of any broker's fees and an irrevocable assignee of the sale proceeds to the extent of such fees.

**8. 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.

**9. REPRESENTATIONS & WARRANTIES:** Except as noted in paragraph 9.h, Seller and its owners acknowledge and represent as follows:

a. Seller is operating the Business in compliance with all applicable laws, environmental regulations and contracts. This compliance will not be violated by this sale and the Business will pass all applicable inspections upon COP.

b. There are no claims or investigations pending which would affect the Business or Assets being sold.

c. All leases and contracts relevant to the ownership and operation of the Business are complete and in effect, and there are no undisclosed amendments.

d. All the financial information and statements furnished or to be furnished to Buyer are complete, accurate, prepared in a manner consistent with prior statements and fairly present the financial condition of the Business as of the dates stated on them.

e. All accounts receivable of the Business arose from the normal course of business, none have been previously assigned and they are fully collectable.

f. All Assets currently used in the Business are owned by Seller free from liens and encumbrances, and they are in good and operable condition, except as otherwise provided in this Agreement.

g. Seller does not guarantee that all employees will remain employed after transfer of ownership of the Business, but Seller has no knowledge indicating that any employee who is not an owner would leave in the event of a sale.

h. Exceptions: \_\_\_\_\_

Seller warrants that these representations are true, shall be true as of Closing and shall survive Closing. Prompt notice will be given to Buyer of any event which materially alters the accuracy of the above Seller Representations & Warranties or Seller's Disclosure Statement. Seller shall indemnify and hold Buyer and Broker harmless from any damage resulting from their falsity.

**10. CONTINUITY:** Pending Closing, the Seller shall continue to operate the Business in the usual way, protect and preserve its Assets and goodwill, allow the Buyer to make reasonable inspections and maintain good relations with suppliers, customers and employees.

Business: \_\_\_\_\_ Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Buyer Buyer Seller Seller

**11. TAXES and EXPENSES:**

- a. Utilities, personal property taxes, other taxes, insurance, rent, vacation pay and other expenses of the Business not otherwise provided for in this Agreement shall be prorated to COP. Buyer shall reimburse Seller at Closing for facility lease deposits and other miscellaneous deposits transferred to Buyer, and shall receive a credit from Seller at Closing for any customer deposits and assumed warranty obligations.
- 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 COP.
- 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.
- f. The Buyer shall pay at Closing any sales taxes assessed on the sale of the Business Assets.
- g. Seller shall hold Buyer harmless from any liability to the California Employment Development Department, the California Franchise Tax Board or the California State Board of Equalization arising from the operation of the Business until COP. Prior to the receipt by the escrow holder of releases of transferee liability from these agencies, the Buyer shall be protected from the possible imposition of transferee liability by a reserve set by the taxing agencies and retained in escrow until such releases are obtained.

**12. MISCELLANEOUS LEASES, ETC.:** The Seller shall transfer to Buyer the following contracts used in the operation of the Business, and the Buyer shall assume obligation for them:

- Alarm system lease or maintenance agreement  Other equipment lease(s) or purchase contract(s)
- Telephone system lease or purchase contract  Equipment or software maintenance agreement(s)
- Vehicle lease(s) or purchase contract(s)  Music service contract
- Vending machine contract(s)  Advertising contract(s), including Yellow Pages
- Other: \_\_\_\_\_

**13. CLOSING DATE:** The estimated date for Closing is \_\_\_\_\_, 20\_\_\_\_. Buyer and Seller shall make their best efforts to complete Closing on or before that date. COP shall occur at Closing.

**14. BROKER:** Buyer acknowledges that Broker has furnished to Buyer financial and other information obtained from Seller and other sources, the accuracy and completeness of which have not been verified by Broker, and that Buyer is relying solely on his own inspection 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 Broker. Seller acknowledges that he is relying solely on his 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 Broker. 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 Broker from any such claims. Buyer and Seller acknowledge that Broker may receive a referral fee from an institutional lender.

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

**16. COVENANT NOT TO COMPETE:** Seller and \_\_\_\_\_, individually, shall not directly or indirectly carry on a similar business  within a radius of \_\_\_\_\_ miles of the present location of the Business, or  within the counties of \_\_\_\_\_, attempt to hire any existing employees of the Business, solicit any customers of the Business or assist anyone else except the Buyer to do so within these limits; or have any interest, directly or indirectly, in such business, except as

Business: \_\_\_\_\_ Buyer: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Buyer Buyer Seller Seller

