

Asset Purchase Agreement

Between

[_____]

and

[_____]

DRAFT FOR DISCUSSIONS PURPOSES ONLY

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Exhibit 1:	List of Assets
Exhibit 2:	List of Contracts

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This Asset Purchase Agreement is entered into on [_____] , 20[___] between:

The undersigned:

(1) [_____], having its registered office in [_____], The Netherlands and its business office in [_____], the Netherlands at the [_____], (hereinafter referred to as the "Seller"), duly represented by [_____];

and

(2) [_____] having its registered office in [_____], the Netherlands and its business office in [_____], the Netherlands at [_____] hereinafter referred to as the "**Purchaser**", duly represented by [_____];

the Seller and the Purchaser hereinafter individually referred to as "**Party**" and collectively referred to as the "**Parties**";

WHEREAS:

(A) The Seller wishes to transfer all activities related to Seller's [_____] business (hereinafter referred to as the "Business") to the Purchaser on the terms and conditions set forth in this Asset Purchase Agreement (hereinafter referred to as the/this "**Agreement**");

(B) The Business is specifically and only deals with [_____] between the [_____] and [_____] respectively;

(C) The Business is performed by [_____];

(D) Purchaser performs activities related to [_____];

(E) The Purchaser wishes to acquire all activities related to the Business from the Seller on the terms and conditions set forth in this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 Purchase and Sale

1.1 Subject to the terms and conditions set forth in this Agreement the Seller hereby agrees to transfer to the Purchaser the assets listed in Exhibit 1 (the "Assets", cf. Clause 2), aforementioned Assets comprising the entire activities of the Business.

1.2 The Business as referred to under Clause 1.1 shall be for the account and at the risk of Purchaser as from [_____date____, 20__].

2 Assets

2.1 The Purchaser shall acquire the assets listed in Exhibit 1, sub-exhibits 1.1 - 1.4 (hereinafter referred to as the "**Assets**") at [book value] and free from any charges or encumbrances:

1) Fixed assets, as further outlined in sub-exhibit 1.1 (the "Fixed assets");

2) Operating equipment, as further outlined in sub-exhibit 1.2 (the "Operating Equipment");

3) [_____].

2.2 The Purchaser shall acquire all documentation pertinent to the Business, including correspondence with public authorities, receipts, manuals and electronically stored information.

2.3 All costs in relation to the Business, including rates, insurance premiums, until Completion shall be borne by the Seller. After Completion all costs shall be borne by Purchaser.

3 Liabilities

3.1 The Purchaser shall only assume the liabilities in relation to the Contracts (hereinafter referred to as the "Liabilities"), cf. however Clause 6.

4 Employees

4.1 *The Purchaser acquires all rights and obligations towards the employees of the Business listed in Exhibit 3 (hereinafter referred to as the "Employees").*

5 Consideration

- 5.1 The consideration of the Business (the "Consideration") has been determined as the value of the Assets after deduction of the liabilities:

Fixed assets and Operating equipment EUR [_____] .—
Assets in total EUR [_____] ,000.—

- 5.2 The Consideration payable by the Purchaser to the Seller in exchange for the Assets shall amount to an Upfront payment of EUR [_____] ([_____] euro).

- 5.3 The Consideration ex clause 5.2 i shall be paid by the Purchaser in three instalments, broken down as follows:

- a) EUR [_____] at the date of Signing of this Agreement (**Signing Date**);
- b) EUR [_____] [_____] months after Signing Date;
- c) EUR [_____] [_____] months after Signing Date.

- 5.3 The sum of the Consideration specified in subclause 5.3 shall be paid to Seller in full by wire transfer on Completion in the bank account of Seller account number [_____].

- 5.4 Next to the Consideration pursuant to clause 5.3 Purchaser shall be to Seller the following amounts:

- i) a management fee of EUR [_____] per annum during [_____] years after Signing date in conformity with a management agreement attached as Exhibit II. The monthly fee is due on a weekly basis.

6 Contracts

- 6.1 All rights and obligations arising from the contracts in relation to the Business ("**Contracts**"), attached hereto as Exhibit II, shall be assigned by the Seller to the Purchaser and acquired and assumed by the Purchaser by means of the execution of this agreement and by obtaining the consent of the other party to the novation of the Contract. Within one (1) month from Completion, the Seller and the Purchaser shall give joint written notice of the assignment to the other parties to the Contracts who shall be requested to consent to the assignment or novation.

6.2 As part of the consideration for the sale and purchase of the Assets along with the Business the Purchaser shall from Completion:

- I. accept assignments from the Seller and join with the Seller in procuring a novation of the Contracts;
- II. carry out, perform and discharge all the obligations and liabilities created by or arising under the Contracts; and
- III. indemnify the Seller against all actions, proceedings, costs, damages, claims and demands in respect of any failure on the part of the Purchaser to carry out, perform and discharge those obligations and liabilities under the Contracts transferred or to be transferred or any other liability or obligation assumed by the Purchaser in relation to the Contracts under this agreement as from Completion until the date of transfer of these Contracts.

6.3 Insofar as the benefit or burden of any of the Contracts cannot effectively be assigned to the Purchaser within two (2) months of Completion for whatever reason:

- I. the Seller shall at the Purchaser's request use all reasonable endeavours with the co-operation of the Purchaser to procure such novation or assignment;
- II. until the Contract is novated or assigned the Seller shall as the Purchaser's sub-contractor, exercise all rights and fulfil all the obligations of the Seller under the Contract to be discharged after Completion and transfer all materialised benefits (*vruchten*) of the relevant contract to the Purchaser and shall indemnify the Purchaser against all actions, proceedings, costs, damages, claims and demands in respect of any failure on the part of the Seller to perform those obligations; and
- III. until the Contract is novated or assigned the Seller shall (so far as it lawfully may) give all reasonable assistance to the Purchaser (at the Purchaser's request and expense) to enable the Purchaser to enforce its rights under the Contract.

7 [CHECK TAX LAWYER: Tax reservation]

7.1 *The Parties have entered into this Agreement on the basis of the mutual judgment that the calculated value of the Business, cf. Clause 5.1, equals a fair market value. The transfer of the Business pursuant to this Agreement is made on the explicit condition that the tax authorities do not dispute that the calculated value of the Business equals the fair market value.*

7.2 *In case the tax authorities in connection with the tax assessment dispute that the calculated value of the Business equals the fair market value, the Parties shall decide whether to*

(a) *cancel the transfer; accordingly the Business shall be returned to the Seller and the Consideration shall be returned to the Purchaser; or*

(b) *re-negotiate the relevant parts of this Agreement in order to accommodate to the assessment of the tax authorities; or*

(c) *apply the valuation of the Business as determined by the tax authorities to this Agreement and to adjust the Consideration, cf. Clause 2.1, accordingly.]*

8 Completion

8.1 The transfer of the Business and payment of the Consideration (hereinafter referred to as "Completion") shall be arranged in accordance with the Purchaser's request.

8.2 The Seller shall at Completion deliver to the Purchaser all relevant documents and perform all necessary actions in order to secure that the Assets be at the complete and unlimited disposal of the Purchaser.

8.3 At Completion, the Purchaser shall transfer the Consideration mentioned in Clause 5.1 to the Seller.

9 Representations and Warranties of the Seller

Effective as of the date hereof and repeated at Completion, the Seller represents and warrants the following to the Purchaser:

9.1 *Authority*

9.1.1 The Seller has the power and lawful authority required to enter into, execute and deliver this Agreement, and to perform its obligations hereunder.

9.2 *Title*

9.2.1 The Seller has complete and unlimited title to the Assets and the Assets are transferred free from any charge or encumbrances, security rights or other similar right or obligation of any kind.

9.2.2 The Seller's title to the Assets is not violated by any third party and no restrictions on the transfer of the Assets are in effect.

9.3 *Entire Business*

9.3.1 The Assets and Liabilities comprise the entire activities of the Business.

9.4 *Third party claims*

9.4.1 No present or latent claims of any third parties can be made against the Business or the Assets.

10 Independent accountant

10.1 If the Seller and the Purchaser do not agree any matter referred to in clause 5.4 within the period(s) stated the matter in dispute shall be referred at the request of either the Seller or the Purchaser for decision to an independent chartered accountant (the **Independent Accountant**) to be appointed by agreement between the Seller and the Purchaser or, in default of agreement within 14 days of a request by either the Seller or the Purchaser, by the President for the time being of the Dutch institute of registered accountants on the application of either the Seller or the Purchaser.

10.2 If the Independent Accountant dies, delays or becomes unwilling or incapable of acting or if for any other reason the President for the time being of the Dutch institute of registered accountants thinks fit he may discharge the Independent Accountant and appoint another in his place.

10.3 The Independent Accountant shall act as an expert and not as an arbitrator and his decision shall be final and binding on the parties. The Independent Accountant shall afford the Seller and the Purchaser the opportunity of making written representations to him.

10.4 The fees and expenses of the Independent Accountant shall be borne by the Seller and the Purchaser in equal shares unless the Independent Accountant otherwise determines.

11 Costs and Expenses

11.1 Each Party shall defray its own costs and expenses in connection with the negotiations, preparation and execution of this Agreement and the consummation of the transactions contemplated hereby. Particularly, each Party shall bear the costs and expenses of its own legal, financial and other advisers and representatives.

11.2 The Buyer shall bear any and all stamp and transfer duties and transfer taxes, if any, with regard to the Assets and Liabilities.

12 Miscellaneous

12.1 Severability

12.1.1 If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect, and shall be deemed not to be included in this Agreement, but without invalidating any of the remaining provisions of this Agreement. The Parties shall then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid and enforceable substitute provision, the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

12.2 Assignment

12.2.1 No Party may assign without the other Party's prior written consent any right or obligation under this Agreement.

12.3 Counterparts

12.3.1 This Agreement is executed in 2 counterparts, each of which shall be an original, and of which each Party has taken one.

12.4 *Language*

12.4.1 This Agreement is executed in an English version and a [language] translation thereof. The translation is produced for notary purposes only. Should a conflict between the English and the [language] translation arise, the Parties agree that the English version shall prevail.

13 Governing Law and Arbitration

13.1 This Agreement shall be governed by and construed and interpreted in accordance with Dutch law, excluding, however, Dutch provisions on choice of law to the extent that such provisions would lead to the application of any other law than Dutch law.

13.2 Any disputes, controversies or disagreements arising out of or in connection with this Agreement, including any question regarding the understanding of or the extent or scope of this Agreement, which cannot be settled amicably between the Parties, shall be finally settled by the courts of [_____].

14 Registration of transfer

14.1 The Parties agree to a possible extent to sign a short version of this Agreement for notary purposes and registration of the transfer of assets and liabilities in the Court Register only. This short version shall be in English language with a translation in [language] language. The Parties agree that their contractual relations are settled in this Agreement which - inter partes - shall take precedence of any other document in respect of the transfer.

IN WITNESS WHEREOF, the Parties have caused their corporate names to be hereunto subscribed by its duly authorised officers, all as of the day and year first above written.

On behalf of the Seller:

On behalf of the Purchaser:
