

**Form:** Acquisition Letter of Intent

**Description:** This is a Letter of Intent for an acquisition, structured either as a stock or asset deal. It also includes a no-shop/exclusivity provision. It tends to be pro-purchaser oriented.

[Name(s) of Shareholders]  
[Board of Directors]

\_\_\_\_\_, \_\_\_\_\_

[Letterhead of the Purchaser]

[DATE]

**Personal and Confidential**

[Name(s) of Shareholders]  
[Board of Directors]  
[Name and Address of Shareholders/Company]

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Re: \_\_\_\_\_

Ladies and Gentlemen:

This letter confirms our understanding of the mutual present intentions of [name of acquiring corporation] (the "Purchaser") and \_\_\_\_\_ ([collectively], the "Seller") with respect to the principal terms and conditions under which the Purchaser will acquire [all of the outstanding capital stock of the Company] [the Company's \_\_\_\_\_ business] [the Company's \_\_\_\_\_ Division] [the stock of the Subsidiary of the Company] [all of the assets of the Company] [and the Purchaser will assume certain liabilities of the Company]. Such transaction is hereinafter referred to as the "Acquisition."

The parties hereto acknowledge that this letter does not contain all matters upon which an agreement must be reached in order for the Acquisition to be consummated. Further, among other conditions specified herein or otherwise agreed to by the parties, the obligations of the parties hereto to consummate the Acquisition are subject to the negotiation and execution of the Purchase Agreement referred to in paragraph 3 below. Accordingly, this letter is intended solely as a basis for further discussion and is not intended to be and does not constitute a legally binding agreement; provided, however, that the provisions set forth in paragraphs 6, 7, 9, 10, 11 and 12 below and this paragraph shall be binding upon the parties hereto and, only with respect to paragraphs 9 and 12, shall survive the termination hereof.

1. Purchase of Stock. At the closing (the "Closing"), subject to the satisfaction of all conditions precedent contained in the Purchase Agreement, the Purchaser will purchase from the Seller, and the Seller will sell to the Purchaser, all of the outstanding capital stock, options, warrants and convertible securities of the Company, free and clear of any liens, charges, restrictions or encumbrances thereon (collectively, the "Shares"). The Purchaser may assign some or all of its rights hereunder prior to the Closing to one or more of its subsidiaries. After further review, at the Purchaser's election, the Acquisition may be modified so that the Purchaser acquires the Shares through a merger between the Purchaser or one of its subsidiaries and the Company (the "Merger").]

[Purchase of Assets]. At the closing (the "Closing"), subject to the satisfaction of all conditions precedent contained in the Purchase Agreement, the Purchaser will purchase from the Seller, and the Seller will sell to the Purchaser, free and clear of any liens, charges, restrictions or encumbrances thereon, all of [the following assets] [the assets, properties and rights of the Company constituting the Company's [\_\_\_\_\_] business (the "Business")] [\_\_\_\_\_] division (the "Division")] or used therein, including the following:] (collectively, the "Assets").]

[insert list of specified Assets]

[The Assets shall not include the assets, properties and rights of the Company listed on Schedule I hereto.]

[The Purchaser shall [not] assume [any] [the following] liabilities of the Company[:][.]]

[Insert list of specified liabilities]

2. Purchase Price. The purchase price for the [Shares] [Assets] will be [insert detailed description, including the amount of cash per Share or for all Shares or all the Assets; the form of any noncash consideration (such as promissory notes, stock of the Purchaser, etc.); the purchase price adjustment mechanism; treatment of outstanding stock options; any earnout mechanism; and any holdback mechanism].

3. Definitive Agreement. The Purchaser and the Seller hereby agree to use reasonable diligence to commence good faith negotiations in order to execute and deliver a definitive [asset purchase] [stock purchase or merger agreement] relating to the Acquisition (the "Purchase Agreement") acceptable to parties hereto on or prior to [DATE]. All terms and conditions concerning the Acquisition shall be stated in the Purchase Agreement (or agreements to be entered into pursuant to the Purchase Agreement), including without limitation, representations, warranties, covenants and indemnities that are usual and customary in a transaction of this nature as such may be mutually agreed upon between the parties. Subject to the satisfaction of all conditions precedent contained in the Purchase Agreement, the Closing will take place no later than [DATE] or as soon thereafter as possible, subject to the approvals of regulatory authorities. The Purchaser's obligation to execute, deliver and perform the Purchase Agreement is conditioned upon approval by the Purchaser's Board of Directors. [All shareholders of the Company will execute and deliver the Purchase Agreement, will agree to vote their shares in the Company in favor of the Acquisition and will use their best efforts to cause the Acquisition to be completed.]

4. Representations and Warranties. The Agreement will contain representations and warranties customary to transactions of this type, including without limitation, representations and warranties by [the Seller and] the Company as to (a) the accuracy and completeness of the [Company's] [Division's] financial statements for the past three years (including the year ended [DATE]); (b) disclosure of all the [Company's] [Division's] contracts, commitments and liabilities, direct or contingent; (c) the physical condition, suitability, ownership and absence of liens, claims and other adverse interests with respect to the

[Company's assets] [Assets]; [(d) Seller's ownership of the Shares;] (e) the absence of liabilities with respect to the [Company] [Division], other than as set forth in a balance sheet dated [DATE]; (f) the absence of a material adverse change in the condition (financial or otherwise), business, properties, assets or prospects of the [Company] [Division]; (g) absence of pending or threatened material litigation, claims, investigations or other matters affecting the Acquisition; (h) the [Company's] [Division's] compliance with laws and regulations applicable to its business and obtaining all licenses and permits required for its business; and (i) the due incorporation, organization, valid existence, good standing and capitalization of the Company.

5. Conditions to Consummation of the Acquisition. The respective obligations of the parties with respect to the Acquisition shall be subject to satisfaction of conditions customary to transactions of this type, including without limitation, (a) receipt and approval by the Purchaser of the Company's [DATE] year end audited financial; (a) execution of the Purchase Agreement by all parties; (b) the obtaining of all requisite regulatory, administrative, governmental or third party authorizations and consents; (c) approval of the Acquisition by the Board of Directors of the Purchaser [and, if the Acquisition is structured as a Merger, approval thereof by the Board of Directors of the Company and by the Seller]; (d) absence of a material adverse change in the condition (financial or otherwise), business, properties, assets or prospects of the Company; (e) absence of pending or threatened litigation, investigations or other matters affecting the [Company] [Division] or the Acquisition; (f) satisfactory completion by the Purchaser of a due diligence investigation of the Company; (g) confirmation that the representations and warranties of the Seller and the Company are true and accurate in all respects; [(h) the Purchaser obtaining financing [specify type of financing]; (i) receipt and approval by the Purchaser of audited financial statements of the [Company] [Division] for the year ended [DATE]; and (j) the [Seller] [Company] having entered into noncompetition agreement[s] acceptable to the Purchaser.

6. Access to [Company] [Division]. The [Seller] will give the Purchaser and its representatives full access to any personnel and all properties, documents, contracts, books, records and operations of the [Company] [Division] relating to its business. [The Seller will cause the Company to cooperate in this regard]. The [Seller] [Company] [Division] will furnish the Purchaser with copies of documents and with such other information as the Purchaser may request.

7. No Other Offers. The Company and the Seller each acknowledges that the Purchaser will incur significant expense in connection with its due diligence review and preparation and negotiation of the Purchase Agreement. As a result, upon execution of this letter the Company and the Seller shall terminate any existing discussions or negotiations with, and shall cease to provide information to or otherwise cooperate with, any party other than the Purchaser and its representatives with respect to an Acquisition Transaction (as defined below). In addition, from and after the date hereof, none of the Company nor any of its shareholders, subsidiaries or affiliates, or any of their respective officers, directors, employees, members, managers, representatives or agents will directly or indirectly encourage, solicit, initiate, have or continue any discussions or negotiations with or participate in any discussions or negotiations with or provide any information to or otherwise cooperate in any other way with, or enter into any agreement, letter of intent or agreement in principle with, or facilitate or encourage any

effort or attempt by any corporation, partnership, company, person or other entity or group (other than the Purchaser and its shareholders, subsidiaries or affiliates, or any of their respective officers, directors, employees, members, managers, representatives or agents) concerning any merger, joint venture, recapitalization, reorganization, sale of substantial assets, sale of any shares of capital stock, investment or similar transaction involving the Company or any subsidiary or division of the Company (each, an "Acquisition Transaction"). The Company shall notify the Purchaser promptly of any inquiries, proposals or offers made by third parties to the Company or any of its shareholders, subsidiaries or affiliates, or any of their respective officers, directors, employees, members, managers, representatives or agents with respect to an Acquisition Transaction and furnish the Purchaser the terms thereof (including, without limitation, the type of consideration offered and the identity of the third party). The Company and the Seller shall deal exclusively with the Purchaser with respect to any possible Acquisition Transaction and the Purchaser shall have the right to match the terms of any proposed transactions in lieu of such third parties.

8. Conduct of Business. The Company shall use its reasonable best efforts to preserve intact the business organization and employees and other business relationships of the Company; shall continue to operate in the ordinary course of business and maintain its books, records and accounts in accordance with generally accepted accounting principles, consistent with past practice; shall use its reasonable best efforts to maintain the Company's current financial condition, including working capital levels; shall not incur any indebtedness or enter into any agreements to make business or product line acquisitions; and shall not declare or make any dividend or stock distributions.

9. Expenses. Each of the parties shall pay all of its expenses incident to this letter, the Purchase Agreement and consummation of the transactions contemplated hereby and thereby. The Seller and the Purchaser each represent and warrant that there are no brokerage or finder's fees which are or will be payable in connection with the Acquisition.

10. Confidentiality. Each of the parties hereto agrees that it will not use, or permit the use of, any of the information relating to the [Company] [Division] or the Purchaser respectively furnished to each other in connection with this letter, the Purchase Agreement or the Acquisition ("Confidential Information"), except publicly available or freely usable material as otherwise obtained from another source, in a manner or for a purpose detrimental to the [Company] [Division] or the Purchaser or otherwise than in connection with this letter, the Agreement and the transactions contemplated hereby and thereby. None of the parties hereto will, and the Seller will cause the Company and its directors, officers, employees, agents and representatives not to, disclose, divulge, provide or make accessible any of the Confidential Information to any person or entity, other than their responsible officers, employees, advisors or attorneys or otherwise as required by law or regulation. The provisions of this paragraph 10 and the following paragraph 11 are in addition to, and shall not supersede, the Confidentiality Agreement, dated as of [DATE], between the Purchaser and the Seller.

11. Disclosure. Without the prior written consent of the other party hereto, neither party hereto will, and each party hereto will cause its directors, officers, employees, agents, other representatives and affiliates not to, disclose to any person the fact that discussions

[Name(s) of Shareholders]  
[Board of Directors]

\_\_\_\_\_, \_\_\_\_\_  
or negotiations are taking place concerning the transactions contemplated hereby, the status thereof, or the existence of this letter and the terms thereof, unless in the opinion of such party disclosure is required to be made by applicable law, regulation or court order, and such disclosure is made after prior consultation with the other party. Neither party will issue any public announcement concerning the transaction without the approval of the other party, except as may be required by law (it being noted that the parties have mutually approved a public announcement to be issued simultaneously with the execution of this letter).

12. Termination. Subject to the terms of this letter, upon the earlier of (a) the mutual written agreement of the parties hereto or (b) the failure by the parties hereto to execute and deliver the Purchase Agreement on or prior to [DATE], this letter shall terminate and the parties shall be released from all liabilities and obligations with respect to the subject matter hereof, except as provided in the second paragraph of page 1 of this letter.

13. Counterparts. This letter may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

14. Governing Law. This letter shall be governed by the laws of the State of [STATE], without regard to conflicts of laws principles.

\* \* \* \*

If the foregoing correctly sets forth our mutual understanding, please so indicate by signing two copies of this letter in the spaces provided below and returning one copy to us no later than 5:00 p.m. on [DATE].

Very truly yours,

[Name of the Purchaser]

By \_\_\_\_\_  
[Typed name and title]

Accepted and agreed as of the date first written above.

[Name of the Company]  
[Name(s) of the Seller(s)]

[By \_\_\_\_\_ ]  
[Typed name and title]

[ \_\_\_\_\_ ]  
[Name of Shareholder]

[ \_\_\_\_\_ ]  
[Name of Shareholder]