

\_\_\_\_\_  
ASSET PURCHASE AGREEMENT  
\_\_\_\_\_

among

[BUYER ENTITY],

[SELLER]

and

[SELLER ULTIMATE PARENT]

dated

\_\_\_\_\_, 201\_

ARTICLE 1	DEFINITIONS .....	1
Section 1.1	Definitions .....	1
Section 1.2	Additional Defined Terms.....	6
ARTICLE 2	THE TRANSACTION.....	7
Section 2.1	Purchase and Sale of Purchased Assets.....	7
Section 2.2	Excluded Assets .....	8
Section 2.3	Assumed Liabilities.....	9
Section 2.4	Excluded Liabilities.....	9
Section 2.5	Purchase Price .....	11
Section 2.6	Pre-Closing Inventory Adjustment.....	11
Section 2.7	Post-Closing Inventory Adjustment .....	11
Section 2.8	Allocation of Purchase Price and Assumed Liabilities .....	13
Section 2.9	Closing .....	13
Section 2.10	Closing Deliveries .....	13
Section 2.11	Consents .....	15
Section 2.12	Withholding.....	16
ARTICLE 3	REPRESENTATIONS AND WARRANTIES OF SELLER AND PARENT .....	16
Section 3.1	Organization and Good Standing .....	16
Section 3.2	Authority and Enforceability.....	17
Section 3.3	No Conflict.....	17
Section 3.4	Financial Statements .....	17
Section 3.5	Books and Records.....	18
Section 3.6	Inventories.....	18
Section 3.7	No Undisclosed Liabilities .....	18
Section 3.8	Absence of Certain Changes and Events.....	19
Section 3.9	Operation of the Business .....	20
Section 3.10	Assets .....	20
Section 3.11	Personal Property .....	21
Section 3.12	Real Property.....	21
Section 3.13	Intellectual Property .....	23
Section 3.14	Contracts .....	25
Section 3.15	Tax Matters .....	27
Section 3.16	Employee Benefit Matters.....	29
Section 3.17	Employment and Labor Matters.....	31
Section 3.18	Environmental, Health and Safety Matters .....	33

Section 3.19	Compliance with Laws, Judgments and Governmental Approvals.....	34
Section 3.20	Legal Proceedings .....	34
Section 3.21	Customers and Suppliers .....	35
Section 3.22	Product Warranty .....	35
Section 3.23	Product Liability.....	35
Section 3.24	Insurance .....	35
Section 3.25	Related Party Transactions .....	36
Section 3.26	No Guarantees .....	36
Section 3.27	Brokers or Finders .....	36
Section 3.28	Solvency .....	36
Section 3.29	Disclosure.....	37
ARTICLE 4	REPRESENTATIONS AND WARRANTIES OF BUYER .....	37
Section 4.1	Organization and Good Standing .....	37
Section 4.2	Authority and Enforceability.....	37
Section 4.3	No Conflict.....	37
Section 4.4	Legal Proceedings .....	38
Section 4.5	Financing.....	38
Section 4.6	Brokers or Finders .....	38
ARTICLE 5	PRE-CLOSING COVENANTS.....	38
Section 5.1	Access and Investigation .....	38
Section 5.2	Operation of the Business .....	38
Section 5.3	Consents and Filings; Reasonable Best Efforts.....	39
Section 5.4	Notification.....	40
Section 5.5	No Negotiation .....	40
Section 5.6	Satisfaction of Obligations to Creditors .....	40
Section 5.7	Financial Statements .....	40
Section 5.8	Title Insurance and Survey Requirements and Charges.....	40
Section 5.9	Risk of Loss.....	41
ARTICLE 6	CONDITIONS PRECEDENT TO OBLIGATION TO CLOSE.....	41
Section 6.1	Conditions to the Obligation of Buyer .....	41
Section 6.2	Conditions to the Obligation of Seller.....	42
ARTICLE 7	TERMINATION .....	42
Section 7.1	Termination Events .....	42
Section 7.2	Effect of Termination .....	43
ARTICLE 8	ADDITIONAL COVENANTS.....	43

Section 8.1	Tax Matters .....	43
Section 8.2	Excluded Liabilities.....	44
Section 8.3	Restrictions on Dissolution .....	44
Section 8.4	Confidentiality.....	44
Section 8.5	Public Announcements.....	45
Section 8.6	Assistance in Proceedings .....	45
Section 8.7	Privileges.....	45
Section 8.8	Noncompetition.....	46
Section 8.9	Nonsolicitation .....	46
Section 8.10	Use of Name.....	47
Section 8.11	Reports and Returns .....	47
Section 8.12	Access to Records .....	47
Section 8.13	Refunds and Remittances .....	47
Section 8.14	Customer Inquiries .....	47
Section 8.15	Further Assurances.....	48
Section 8.16	Employees and Employee Benefits.....	48
Section 8.17	Proration of Certain Charges.....	49
ARTICLE 9	INDEMNIFICATION .....	50
Section 9.1	Indemnification by Seller and Parent .....	50
Section 9.2	Indemnification by Buyer.....	50
Section 9.3	Claim Procedure.....	51
Section 9.4	Third Party Claims .....	52
Section 9.5	Survival .....	53
Section 9.6	Limitations on Liability.....	54
Section 9.7	Right of Offset.....	54
Section 9.8	Exercise of Remedies by Buyer Indemnified Parties other than Buyer .....	54
Section 9.9	Environmental Indemnity.....	54
ARTICLE 10	GENERAL PROVISIONS.....	55
Section 10.1	Notices.....	55
Section 10.2	Amendment .....	56
Section 10.3	Waiver and Remedies.....	56
Section 10.4	Entire Agreement .....	56
Section 10.5	Assignment and Successors and No Third Party Rights .....	56
Section 10.6	Severability.....	57
Section 10.7	Exhibits and Schedules.....	57

Section 10.8	Interpretation .....	57
Section 10.9	Governing Law.....	57
Section 10.10	Specific Performance .....	57
Section 10.11	Jurisdiction and Service of Process .....	57
Section 10.12	Waiver of Jury Trial .....	57
Section 10.13	Expenses.....	58
Section 10.14	No Joint Venture .....	58
Section 10.15	Counterparts .....	58
Section 10.16	Construction .....	58

SAMPLE

Exhibit 2.1(d)	-	Assigned Contracts
Exhibit 2.1(g)	-	Governmental Approvals
Exhibit 2.2(f)	-	Excluded Contracts
Exhibit 2.2(h)	-	Excluded Intercompany Agreements
Exhibit 2.2(l)	-	Other Excluded Assets
Exhibit 2.6(a)	-	Closing Inventory Procedures
Exhibit 2.10(a)(i)	-	Bill of Sale
Exhibit 2.10(a)(ii)	-	Assignment and Assumption Agreement
Exhibit 2.10(a)(iii)	-	IP Assignments
Exhibit 2.10(a)(v)	-	Deed[s]
Exhibit 2.10(a)(x)	-	Seller Bring-Down Certificate
Exhibit 2.10(a)(xi)	-	FIRPTA Certificate
Exhibit 2.10(a)(xii)	-	Seller Secretary's Certificate
Exhibit 2.10(a)(xiii)	-	Parent Secretary's Certificate
Exhibit 2.10(a)(xiv)	-	Transition Services Agreement
Exhibit 2.10(a)(xv)	-	Lease Agreement
Exhibit 2.10(a)(xvi)	-	[Chemical] Toll Manufacturing Agreement
Exhibit 2.10(a)(xvii)	-	[Specialty Chemicals] Toll Manufacturing Agreement
Exhibit 2.10(a)(xviii)	-	R&D Agreement
Exhibit 2.10(a)(xix)	-	Site Services Agreement
Exhibit 2.10(b)(v)	-	Buyer Bring-Down Certificate
Exhibit 6.1(f)	-	Creditors
Exhibit 6.1(h)	-	Seller's Counsel Opinions
Exhibit 8.16(a)	-	Employees

SAMPLE

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “Agreement”) is made as of \_\_\_\_\_, 201\_, among [Buyer Entity], a [\_\_\_\_\_] (“Buyer”), [Seller], a [\_\_\_\_\_] (“Seller”), and [Seller Ultimate Parent], a [non-US company] (“Parent” and, collectively with Buyer and Seller, the “Parties”).

### RECITALS

WHEREAS, Seller is engaged in the discovery, development, manufacture, distribution, marketing and sale of [chemicals] (the “[Chemical] Business”); and

WHEREAS, Seller desires to sell, assign, transfer, convey and deliver to Buyer, and Buyer desires to purchase and acquire from Seller, all of the assets used or held for use in connection with, necessary for or material to the [Chemical] Business of Seller and its Affiliates, and Buyer has agreed to assume certain liabilities in accordance with the provisions of this Agreement.

### AGREEMENT

NOW, THEREFORE, intending to be legally bound and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.1     Definitions. For the purposes of this Agreement and the Ancillary Agreements:

“Affiliate” means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Ancillary Agreements” means, collectively, the Bill of Sale, the Assignment and Assumption Agreement, the Transition Services Agreement, the Deed[s], the IP Assignments, the Lease Agreement, the [Chemical] Toll Manufacturing Agreement, the [Specialty Chemicals] Toll Manufacturing Agreement, the R&D Agreement and the Site Services Agreement.

“Business” means the [Chemical] Business of Seller, its Affiliates and any predecessor Persons, including [Predecessor].

“Business Day” means any day other than Saturday, Sunday or any day on which banking institutions in New York, New York are closed either under applicable Law or action of any Governmental Authority.

“Business Employee” means any employee who is employed by Seller or any of its Affiliates whose services are related to the Business.

“Closing Inventory” means the Inventory included in the Purchased Assets.

“Code” means the Internal Revenue Code of 1986.

“Confidential Information” means any information, in whatever form or medium, concerning the business or affairs of the Business.

“Consent” means any approval, consent, ratification, waiver or other authorization.

“Contract” means any contract, agreement, lease, license, commitment, understanding, franchise, warranty, guaranty, mortgage, note, bond, option, warrant, right or other instrument or consensual obligation, whether written or oral.

“Deed[s]” means the recordable full or general warranty deed[s] to be executed by Seller at the Closing, substantially in the form of Exhibit 2.10(a)(v).

“Encumbrance” means any charge, claim, mortgage, servitude, easement, right of way, community or other marital property interest, covenant, equitable interest, license, lease or other possessory interest, lien, option, pledge, hypothecation, security interest, tax assessment, preference, priority, right of first refusal, condition, limitation or restriction of any kind or nature whatsoever (whether absolute or contingent).

“Environmental Law” means any Law relating to the environment, natural resources, pollutants, contaminants, wastes, chemicals or public health and safety, including any Law pertaining to (a) treatment, storage, disposal, generation and transportation of toxic or hazardous substances or solid or hazardous waste, (b) air, water and noise pollution, (c) groundwater or soil contamination, (d) the release or threatened release into the environment of toxic or hazardous substances or solid or hazardous waste, including emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants or chemicals, (e) manufacture, processing, use, distribution, treatment, storage, disposal, transportation or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or oil or petroleum products or solid or hazardous waste, (f) underground and other storage tanks or vessels, abandoned, disposed or discarded barrels, containers and other closed receptacles, (g) public health and safety or (h) the protection of wild life, marine sanctuaries and wetlands, including all endangered and threatened species.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any other Person that, together with Seller, would be treated as a single employer under Section 414 of the Code.

“GAAP” means generally accepted accounting principles for financial reporting in the U.S., as in effect as of the date of this Agreement.

“Governmental Approval” means any Consent, Permit, franchise, clearance or concession issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

“Governmental Authority” means any (a) nation, region, state, county, city, town, village, district or other jurisdiction, (b) federal, state, local, municipal, foreign or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department or other entity and any court or other tribunal), (d) multinational organization or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

“Hazardous Material” means any waste or other substance that is listed, defined, or regulated under any Environmental Law or otherwise determined to be, hazardous, including petroleum and all



derivatives thereof or synthetic substitutes therefor, asbestos or asbestos-containing materials in any form or condition and polychlorinated biphenyls.

“Indebtedness” means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments or debt securities and warrants or other rights to acquire any such instruments or securities and (c) all Indebtedness of others referred to in clauses (a) and (b) hereof guaranteed, directly or indirectly, in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), (iv) to grant an Encumbrance on property owned or acquired by such Person, whether or not the obligation secured thereby has been assumed, or (v) otherwise to assure a creditor against loss.

“Intellectual Property” means all of the following anywhere in the world and all legal rights, title or interest in, under or in respect of the following arising under Law, whether or not filed, perfected, registered or recorded and whether now or later existing, filed, issued or acquired, including all renewals: (a) all patents and applications for patents and all related reissues, reexaminations, divisions, renewals, extensions, provisionals, continuations and continuations in part; (b) all copyrights, copyright registrations and copyright applications, copyrightable works and all other corresponding rights; (c) all mask works, mask work registrations and mask work applications and all other corresponding rights; (d) all trade dress and trade names, logos, Internet addresses and domain names, trademarks and service marks and related registrations and applications, including any intent to use applications, supplemental registrations and any renewals or extensions, all other indicia of commercial source or origin and all goodwill associated with any of the foregoing, including the Specified Marks; (e) all inventions (whether patentable or unpatentable and whether or not reduced to practice), know how, ideas, methods, technology, data, trade secrets, confidential business information, manufacturing and production processes and techniques, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans, advertising and promotional materials, customer, distributor, reseller and supplier lists and information, correspondence, records, and other documentation, and other proprietary information of every kind; (f) all computer software (including source and object code), firmware, development tools, algorithms, files, records, technical drawings and related documentation, data and manuals; (g) all databases and data collections; (h) all other proprietary rights; and (i) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

“Internally Used Shrinkwrap Software” means software licensed to Seller or its Affiliates under generally available retail shrinkwrap or clickwrap licenses and used in Seller’s business, but not incorporated into software, products or services licensed or sold, or anticipated to be licensed or sold, by Seller or its Affiliates to customers or otherwise resold or distributed by Seller or its Affiliates.

“Inventory” means inventory related to the Business, wherever located, including all finished goods, work in process, catalysts, raw materials, spare parts, supply and packaging materials and all other materials and supplies to be used in the production of finished goods.

“IRS” means the U.S. Internal Revenue Service and, to the extent relevant, the Department of Treasury.

“Judgment” means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Authority or arbitrator.

“Knowledge”: (a) an individual will be considered to have “Knowledge” of a fact or matter if the individual is actually aware of the fact or matter or a prudent individual could be expected to discover or otherwise become aware of the fact or matter in the course of conducting a reasonably comprehensive investigation concerning the existence of the fact or matter; and (b) Seller will be considered to have “Knowledge” of a fact or matter if any Business Employee has Knowledge of the fact or matter.

“Law” means any federal, state, local, municipal, foreign, international, multinational, or other constitution, law, statute, treaty, rule, regulation, ordinance, code, binding case law or principle of common law.

“Leased Real Property” means real property leased by Seller or any of its Affiliates, as tenant, that is related to the Business.

“Liability” includes liabilities, debts or other obligations of any nature, whether known or unknown, absolute, accrued, contingent, liquidated, unliquidated or otherwise, due or to become due or otherwise, and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP.

“Loss” means any loss, Proceeding, Judgment, damage, fine, penalty, expense (including reasonable attorneys’ or other professional fees and expenses and court costs), injury, diminution of value, Liability, Tax, Encumbrance or other cost, expense or adverse effect whatsoever, whether or not involving the claim of another Person.

“Material Adverse Effect” means any event, change, circumstance, effect or other matter that has, or could reasonably be expected to have, either individually or in the aggregate with all other events, changes, circumstances, effects or other matters, with or without notice, lapse of time or both, a material adverse effect on (a) the Business, Purchased Assets, Assumed Liabilities, condition (financial or otherwise), operating results, operations, employee relationships, customer or supplier relationships or prospects of the Business, (b) the ability of Seller or Parent to perform its obligations under this Agreement or any Ancillary Agreement, (c) the ability of Seller or Parent to consummate the Transactions or (d) the ability of Buyer to operate or conduct the Business in the manner in which it is currently operated or conducted or contemplated to be operated or conducted by Buyer.

“Occupational Safety and Health Law” means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

“Ordinary Course of Business” means the ordinary course of business of Seller and its Affiliates with respect to the Business consistent with past custom and practice (including with respect to quantity and frequency).

“Permit” means any permit, authorization, approval, registration, license, certificate, exemption, waiver, franchise or variance issued or granted by or obtained from any Governmental Authority.

“Permitted Encumbrances” means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced and as to which none of Seller and its Affiliates is otherwise subject to civil or criminal liability due to its existence: (a) statutory liens of carriers, warehousemen, mechanics, materialmen and other similar Persons incurred in the Ordinary Course of Business for sums not yet due and payable and that do not impair the conduct of the Business or the present or proposed use of the affected property or asset, (b) statutory liens for current real or personal property Taxes not yet due and payable and for which adequate reserves have been recorded in

line items on the Balance Sheet in accordance with GAAP, (c) the Title Company's standard printed exceptions; (d) zoning ordinances and building codes applicable to the Real Property; (e) Encumbrances that are otherwise approved by Buyer in writing and (f) other Encumbrances arising in the Ordinary Course of Business that are immaterial in character, amount and extent and which do not materially detract from the value of, or interfere with the present or proposed use of, any of the properties or assets they affect.

“Person” means an individual or an entity, including a corporation, limited liability company, partnership, trust, unincorporated organization, association or other business or investment entity, or any Governmental Authority.

“Post-Closing Tax Period” means any Tax period beginning after the Closing Date and that portion of a Straddle Period beginning after the Closing Date.

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date and that portion of any Straddle Period ending on the Closing Date.

“Proceeding” means any action, arbitration, audit, examination, investigation, hearing, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Property Taxes” means all real property Taxes, personal property Taxes and similar ad valorem Taxes.

“Purchase Price Bank Account” means a bank account in the U.S. to be designated by Seller in a written notice to Buyer at least five Business Days before the Closing.

“Real Property” means the real property in which Seller or any of its Affiliates has fee title interest that is related to or used in connection with the Business, together with all buildings and other structures, facilities, wells or improvements currently or hereafter located thereon, all fixtures, systems, equipment and items of personal property of Seller or any of its Affiliates that are related to the Business attached or appurtenant thereto, including terminals used as storage facilities by Seller or any of its Affiliates that are used in, or otherwise allocated to, the Business, and all easements, licenses, rights and appurtenances relating to the foregoing.

“Seller Plan” means any “employee benefit plan” (as defined in Section 3(3) of ERISA) for the benefit of any current or former director, officer, employee or independent contractor of Seller or any ERISA Affiliate, or with respect to which Seller or any ERISA Affiliate has or may have any Liability, including any “employee welfare benefit plan” (as defined in Section 3(1) of ERISA), any Pension Plan, any Title IV Plan, any Multiemployer Plan and any other written or oral plan, Contract or arrangement involving direct or indirect compensation or benefits, including insurance coverage, severance or other termination pay or benefits, change in control, retention, performance, holiday pay, vacation pay, fringe benefits, disability benefits, pension, retirement plans, profit sharing, deferred compensation, bonuses, stock options, stock purchase, restricted stock or stock units, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation, maintained or contributed to by Seller or any ERISA Affiliate (or that has been maintained or contributed to in the last six years by Seller or any ERISA Affiliate) for the benefit of any current or former director, officer, employee or independent contractor of Seller or any ERISA Affiliate, or with respect to which Seller or any ERISA Affiliate has or may have any Liability.

“Specified Marks” means the following trademarks used in the Business: “[Mark 1],” “[Mark 2],” “[Mark 3]” and “[Mark 4]” and all rights and registrations held by Seller and its Affiliates with respect thereto.

“Straddle Period” means any Tax period beginning before or on and ending after the Closing Date.

“Tax” means (a) any federal, state, local, foreign or other tax, charge, fee, duty (including customs duty), levy or assessment, including any income, gross receipts, net proceeds, alternative or add-on minimum, corporation, ad valorem, turnover, real property, personal property (tangible or intangible), sales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, fuel, excess profits, profits, occupational, premium, interest equalization, windfall profits, severance, license, registration, payroll, environmental (including taxes under Section 59A of the Code), capital stock, capital duty, disability, estimated, gains, wealth, welfare, employee’s income withholding, other withholding, unemployment or social security or other tax of whatever kind (including any fee, assessment or other charges in the nature of or in lieu of any tax) that is imposed by any Governmental Authority, (b) any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any items described in this paragraph or any related contest or dispute and (c) any items described in this paragraph that are attributable to another Person but that Seller or any of its Affiliates is, or could reasonably be expected to be, liable to pay by Law, by Contract or otherwise, whether or not disputed.

“Tax Return” means any report, return, filing, declaration, rendition, claim for refund, or information return or statement related to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transactions” means the transactions contemplated by this Agreement, the Bill of Sale, Assignment and Assumption Agreement, IP Assignments and the Deed[s].

“Treasury Regulations” means the U.S. Treasury regulations promulgated under the Code.

“U.S.” means the United States of America.

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, and any similar foreign, state or local Law.

Section 1.2 Additional Defined Terms. For purposes of this Agreement and the Ancillary Agreements, the following terms have the meanings specified in the indicated Section of this Agreement:

<u>Defined Term</u>	<u>Section</u>
“Adjustment Calculation” .....	2.7(a)
“Adjustment Notice” .....	2.7(a)
“Agreement” .....	Preamble
“Allocation” .....	2.8
“Assigned Contracts” .....	2.1(d)
“Assignment and Assumption Agreement” .....	2.10(a)
“Associate” .....	3.25(b)
“Assumed Liabilities” .....	2.3
“Balance Sheet” .....	3.4(a)
“Bill of Sale” .....	2.10(a)
“Buyer” .....	Preamble
“Buyer Indemnified Parties” .....	9.1
“Claim Notice” .....	9.3(a)

<u>Defined Term</u>	<u>Section</u>
“Closing” .....	2.9
“Closing Date” .....	2.9
“COBRA” .....	3.16(c)
“Confidentiality Agreement” .....	8.4(a)
“Controlling Party” .....	9.4(c)
“Disbursement Statement” .....	2.10(a)
“Disclosure Schedule” .....	Article 3
“Dispute Notice” .....	2.7(b)
“DOL” .....	3.16(b)
“Estimated Closing Inventory Statement” .....	2.6(a)
“Excluded Assets” .....	2.2
“Excluded Liabilities” .....	2.4
“Final Closing Inventory Amount” .....	2.7(f)
“Financial Statements” .....	3.4(a)
“Hired Employee” .....	8.16(a)
“Improvements” .....	3.12(f)
“Indemnified Party” .....	9.3(a)
“Indemnifying Party” .....	9.3(a)
“Independent Accounting Firm” .....	2.7(d)
“Initial Purchase Price” .....	2.5
“Interim Balance Sheet” .....	3.4(a)
“IP Assignments” .....	2.10(a)
“Lease Agreement” .....	2.10(a)
“Multiemployer Plan” .....	3.16(c)
“Noncontrolling Party” .....	9.4(c)
“Objection Notice” .....	9.3(b)
“Owned Intellectual Property” .....	3.13(a)
“Parent” .....	Preamble
“Parties” .....	Preamble
“Pension Plan” .....	3.16(b)
“Personal Property” .....	3.11(a)
“[Chemical] Business” .....	Recitals
“[Chemical] Toll Manufacturing Agreement” .....	2.10(a)
“Pre-Closing Inventory Amount” .....	2.6(b)
“Purchase Price” .....	2.5
“Purchased Assets” .....	2.1
“Purchased Intellectual Property” .....	2.1(c)
“Qualified Plan” .....	3.16(b)
“R&D Agreement” .....	2.10(a)
“Real Property Permits” .....	3.12(h)
“Restricted Period” .....	8.8(a)
“Restricted Persons” .....	8.4(b)
“USCIS” .....	8.16(f)
“Seller” .....	Preamble
“Seller Marks” .....	8.10(b)
“Site Services Agreement” .....	2.10(a)
“Special Claim” .....	9.4(b)
“[Specialty Chemicals] Toll Manufacturing Agreement” .....	2.10(a)
“Subsequent Monthly Financial Statements” .....	5.7
“Third Party Claim” .....	9.4(a)

<u>Defined Term</u>	<u>Section</u>
“Third Party Intellectual Property” .....	3.13(c)
“Title Insurance Policies” .....	2.10(a)
“Title IV Plan” .....	3.16(c)
“Title Company” .....	2.10(a)
“Transfer Taxes” .....	8.1(a)
“Transition Services Agreement” .....	2.10(a)

## ARTICLE 2 THE TRANSACTION

Section 2.1 Purchase and Sale of Purchased Assets. Subject to the terms and conditions of this Agreement and except as set forth in Section 2.2, at the Closing, Seller will, and each of Seller and Parent will cause their Affiliates to, sell, convey, assign, transfer and deliver to Buyer, and Buyer will purchase and acquire from Seller (or such Affiliates, as applicable), free and clear of all Encumbrances other than Permitted Encumbrances, all right, title and interest of Seller and its Affiliates in and to all of the properties and assets of every kind and description, whether real, personal or mixed, tangible or intangible, and wherever located, used or held for use in connection with, necessary for or relating to the Business (collectively, the “Purchased Assets”), including the following:

- (a) Inventory. All Inventory.
- (b) Rights to Products Sold. All rights, including Intellectual Property rights, in and to products sold (including products hereafter sold, returned or repossessed and all rights of rescission, replevin, reclamation and rights to stoppage in transit).
- (c) Intellectual Property. All Intellectual Property owned, created (including products under research and development), acquired, licensed or used by Seller and its Affiliates at any time prior to and through the Closing Date (collectively, the “Purchased Intellectual Property”), and all other intangible rights, including all goodwill associated with the Business or the Purchased Assets.
- (d) Contracts. All rights under all Contracts (including all outstanding offers or solicitations made by or to Seller or any of its Affiliates to enter into any such Contract), including the Contracts set forth on Exhibit 2.1(d), except to the extent related to Excluded Assets or Excluded Liabilities (collectively, the “Assigned Contracts”).
- (e) Personal Property. All Personal Property.
- (f) Real Property. All Real Property.
- (g) Governmental Approvals. All Governmental Approvals and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer, including the Governmental Approvals set forth on Exhibit 2.1(g).
- (h) Records. All books, records, files, studies, manuals, reports and other materials (in any form or medium), including all advertising materials, catalogues, price lists, mailing lists, distribution lists, (past, current or potential) client and customer lists, referral sources, supplier and vendor lists, purchase orders, sales and purchase invoices, correspondence, production data, sales and promotional materials and records, purchasing materials and records, research and development files, records, data and laboratory books, Intellectual Property disclosures, manufacturing and quality control records and procedures, service and warranty records, equipment logs, operating guides and manuals, drawings, product specifications, engineering specifications, blueprints, financial and accounting records, litigation

files, personnel and employee benefits records to the extent transferable under applicable Law, and copies of all other personnel records described in Section 2.2(c).

(i) Marketing Materials. All sales, promotional, advertising and other literature, catalogues, price lists and other sales-related materials (in any medium).

(j) Insurance. All rights and interests under all certificates for insurance, binders for insurance policies and insurance under which Seller or any of its Affiliates, the Business or any of the Purchased Assets is or has been insured to the extent such rights or interests arise from or relate to any of the Assumed Liabilities or any casualty or Liability affecting the Business or any of the Purchased Assets.

(k) Third-Party Rights. All claims, rights, credits, causes of actions, defenses and rights of set-off against third parties relating to or arising from the Business or any of the Purchased Assets or Assumed Liabilities, whether accruing before or after the Closing, and including all attorney work-product protections, attorney-client privileges and other legal protections and privileges to which Seller or any of its Affiliates may be entitled in connection with or relating to the Business or any of the Purchased Assets or Assumed Liabilities.

(l) Credits and Prepaid Expenses. All rights relating to deposits and prepaid expenses, claims for refunds, credits, deferred charges, advance payments, security deposits and rights of offset that are not excluded under Section 2.2(g).

(m) Vehicles and Rolling Stock. All vehicles and rolling stock, including railcars.

(n) Other. All right, title and interest of Seller or its Affiliates at the Closing in, to and under all other assets, rights and claims of every kind and nature used or intended to be used in connection with, necessary for or relating to the Business.

Notwithstanding the foregoing, the transfer of the Purchased Assets pursuant to this Agreement does not include the assumption of any Liability related to the Purchased Assets unless Buyer expressly assumes that Liability pursuant to Section 2.3.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary in Section 2.1 or elsewhere in this Agreement, the following assets of Seller and its Affiliates (collectively, the “Excluded Assets”) are excluded from the Purchased Assets and are to be retained by Seller and its Affiliates as of the Closing:

(a) Cash and Equivalents. All cash or cash equivalents.

(b) Bank Accounts. Any bank or brokerage accounts.

(c) Corporate Records. Original copies of all minute books, records, stock ledgers, Tax records and other materials that Seller or any of its Affiliates is required by Law to retain.

(d) Capital Stock. The shares of the capital stock of Seller and its Affiliates.

(e) Insurance. All certificates for insurance, binders for insurance policies and insurance, and claims and rights thereunder and proceeds thereof, other than as described in Section 2.1(j).

(f) Excluded Contracts. All rights under all Contracts of Seller and its Affiliates set forth on Exhibit 2.2(f).

(g) Tax Refunds. All claims for refund of Taxes and other governmental charges of whatever nature for Pre-Closing Tax Periods arising out of Seller's and its Affiliates' operation of the Business or ownership of the Purchased Assets prior to the Closing.

(h) Intercompany Agreements. All intercompany agreements set forth on Exhibit 2.2(h).

i) Name and Mark. The name and mark [Seller's Name].

(j) Accounts. Notes and accounts receivable, including all trade accounts receivable and other rights to payment from customers, and the full benefit of all security for such accounts or rights to payment.

(k) Rights Under This Agreement. All rights of Seller and Parent under this Agreement, the Ancillary Agreements and any other documents, instruments or certificates executed in connection with the Transactions.

(l) Other Assets. The assets, properties and rights specifically set forth on Exhibit 2.2(l).

Section 2.3 Assumed Liabilities. Subject to the terms and conditions of this Agreement, at the Closing, Buyer will assume and pay, perform and discharge when due only the following Liabilities of Seller and its Affiliates (collectively, the "Assumed Liabilities"): all Liabilities of Seller and its Affiliates arising after the Closing under the Assigned Contracts (except, in each case, for any Liability arising out of or relating to (a) any breach of, or failure to comply with, prior to the Closing, any representation, warranty, covenant or obligation in any such Contract or (b) any event that occurred or circumstance that existed prior to the Closing).

Section 2.4 Excluded Liabilities. Notwithstanding any other provision of this Agreement or any other writing to the contrary, and regardless of any information disclosed to Buyer or any of its Affiliates or representatives, Buyer does not assume and has no responsibility for any Liabilities relating to the Purchased Assets or the Business other than the Assumed Liabilities specifically identified in Section 2.3 (such unassumed Liabilities, the "Excluded Liabilities"). Without limiting the preceding sentence, the following is a non-exclusive list of Excluded Liabilities that Buyer does not assume and that Seller and its Affiliates will remain bound by and liable for, and will pay, perform and discharge when due:

(a) Excluded Asset Liabilities. All Liabilities arising out of or relating to any Excluded Asset.

(b) Other Contracts. All Liabilities under any Contract that is not an Assigned Contract, including any Liability arising out of or relating to Seller's or any of its Affiliates' credit facilities or any security interest related thereto.

(c) Pre-Closing Contract Liabilities. All Liabilities under any Assigned Contract that arise after the Closing but that arise out of or relate to (i) any breach of, or failure to comply with, prior to the Closing, any covenant or obligation in any such Contract or (ii) any event that occurred or circumstance that existed prior to the Closing.

(d) Warranty Liabilities. All Liabilities arising out of or relating to product liability, indemnity, warranty, infringement, misappropriation or similar claims by any Person in connection with any tangible or intangible products or services used, sold or licensed by the Business, Seller or any of Seller's Affiliates.



(e) Indebtedness. All Liabilities arising out of or relating to Indebtedness incurred by Seller or its Affiliates.

(f) Taxes. All Liabilities for Taxes for Pre-Closing Tax Periods arising as a result of the operation of the Business or ownership of the Purchased Assets prior to the Closing, including the Transfer Taxes and any other Taxes that may arise as a result of the sale of the Purchased Assets pursuant to this Agreement and any deferred Taxes of any nature.

(g) Environmental Liabilities. All Liabilities arising from or under any Environmental Law or Occupational Safety and Health Law or involving any Hazardous Material arising out of or relating to the operation of the Business or the leasing, ownership, use or operation of real property, including the Real Property, prior to the Closing Date.

(h) Employees. All Liabilities arising under claims by or relating to employees or temporary employees or former employees of Seller or its Affiliates, including compensation, benefits (including workers' compensation and unemployment benefits), Seller Plans, termination or continuation of employment, lack or delay of any notice relating to employment, or accrued but unused vacation or paid time off.

(i) Independent Contractors or Consultants. All Liabilities arising under claims by or relating to independent contractors or consultants or former independent contractors or consultants of Seller or any of its Affiliates.

(j) Plan Liabilities. All Liabilities arising under or in connection with any Seller Plan, or any termination, continuation, amendment or other acts or omissions in connection with any Seller Plan.

(k) Employee Indemnification. All Liabilities to indemnify, reimburse or advance amounts to any officer, director, employee or agent of Seller or its Affiliates.

(l) Fraudulent Transfer Liabilities. All Liabilities arising from any failure to comply with any applicable bulk sales Law or fraudulent transfer Law in connection with this Agreement or the Transactions (whether compliance would have been required by Seller or any of its Affiliates by applicable Law).

(m) WARN Act Liabilities. All Liabilities, if any, arising under the WARN Act in connection with this Agreement or the Transactions.

(n) Violations of Law. All Liabilities arising out of or relating to Seller's, its Affiliate's or any predecessor's compliance or non-compliance with any Law or Judgment.

(o) Third Party Transaction Liabilities. All Liabilities relating to any negotiations, agreements or other transactions, if any, by Seller or any of its Affiliates with any third party that relate to the acquisition of Seller or any of its Affiliates or any of its respective assets or business or any termination of related negotiations or arrangements.

(p) Fees. All professional, financial advisory, broker, finder or other fees of any kind incurred by Seller or any of its Affiliates.

(q) Liabilities Under This Agreement. All Liabilities of Seller or its Affiliates arising out of or incurred in connection with this Agreement, the Ancillary Agreements, the Transactions, or any other certificate, document or instrument executed in connection with the Transactions, including Seller's or its Affiliate's disclosures to or negotiations with creditors or equityholders or written consents from any Persons, or other legal obligations of Seller or its Affiliates.

(r) Excluded Business Liabilities. All other Liabilities arising out of or relating to the operations of the business of Seller (including the Business) or its Affiliates or otherwise prior to the completion of the Closing, including trade accounts payable, or based upon the acts or omissions of Seller or any of its Affiliates occurring after the Closing.

(s) Proceedings. All Liabilities arising out of any Proceeding that (i) on the Closing Date is in progress, pending or threatened against or affecting (A) Seller or any of its Affiliates, (B) the assets (including the Purchased Assets) or business of Seller or any of its Affiliates (including the Business), or (C) this Agreement, in each case at law or in equity, or (ii) arises prior to, on or following the Closing Date against or affecting Seller or any of its Affiliates, or their respective assets (including the Purchased Assets) or businesses (including the Business), at law or in equity, to the extent relating to the period on or prior to the Closing Date.

Section 2.5 Purchase Price. Subject to the terms and conditions of this Agreement, the purchase price to be paid at Closing for the Purchased Assets and the covenants of Seller and Parent contained herein shall be \$[Amount], subject to adjustment in accordance with Section 2.6(b) (as so adjusted, the “Initial Purchase Price”) and withholding in accordance with Section 2.12. The Initial Purchase Price will be subject to further adjustment following the Closing in accordance with Sections 2.7 (as so adjusted, the “Purchase Price”).

Section 2.6 Pre-Closing Inventory Adjustment.

(a) No later than three Business Days prior to the Closing Date, Seller will deliver to Buyer a reasonably detailed written calculation of the amount of the Closing Inventory prepared on an estimated basis as of the close of business on the Closing Date (the “Estimated Closing Inventory Statement”). Seller shall prepare the Estimated Closing Inventory Statement in good faith using the accounting principles, practices, methodologies and policies set forth on Exhibit 2.6(a) and in a manner consistent with the example calculations set forth therein. Seller will deliver with the Estimated Closing Inventory Statement a written certification in form and substance reasonably satisfactory to Buyer duly executed by Parent’s chief financial officer that the Estimated Closing Inventory Statement (i) was calculated in accordance with the requirements set forth herein and (ii) fairly presents the amount of the Closing Inventory.

(b) The Initial Purchase Price shall be increased dollar-for-dollar by the amount of the Closing Inventory set forth on the Estimated Closing Inventory Statement prepared in accordance with Section 2.6(a); provided that the amount of such increase shall not exceed \$[Amount] (the amount of such increase, the “Pre-Closing Inventory Amount”).

Section 2.7 Post-Closing Inventory Adjustment.

(a) Within 90 days after the Closing Date, Buyer will prepare and deliver to Seller a reasonably detailed written calculation (the “Adjustment Notice”) of the amount of the Closing Inventory prepared on an actual basis as of the close of business on the Closing Date together with Buyer’s calculation of the amount of any payment required pursuant to Section 2.7(f) (the “Adjustment Calculation”). Buyer shall prepare the Adjustment Notice in good faith using the accounting principles, practices, methodologies and policies set forth on Exhibit 2.6(a) and in a manner consistent with the example calculations set forth therein.

(b) Within 30 days after delivery of the Adjustment Notice, Seller will deliver to Buyer a written response in which Seller will either:

(i) agree in writing with the Adjustment Calculation, in which case such calculation will be final and binding on the Parties for purposes of Section 2.7(f); or

(ii) dispute the Adjustment Calculation by delivering to Buyer a written notice (a “Dispute Notice”) setting forth in reasonable detail the basis for each such disputed item and certifying that all such disputed items are being disputed in good faith.

For purposes of this Section 2.7(b), Seller may only deliver a Dispute Notice on the basis that Buyer’s calculation of the Adjustment Calculation was not in accordance with the accounting principles, practices, methodologies and policies set forth on Exhibit 2.6(a) or consistent with the example calculations set forth therein, or that the Adjustment Calculation contains mathematical errors on its face.

(c) If Seller fails to take either of the foregoing actions within 30 days after delivery of the Adjustment Notice, then Seller and Parent will be deemed to have irrevocably accepted the Adjustment Calculation, in which case, the Adjustment Calculation will be final and binding on the Parties for purposes of Section 2.7(f).

(d) If Seller timely delivers a Dispute Notice to Buyer, then Buyer and Seller will attempt in good faith, for a period of 15 days, to agree on the Adjustment Calculation for purposes of Section 2.7(f). Any resolution by Buyer and Seller during such 15-day period as to any disputed items will be final and binding on the Parties for purposes of Section 2.7(f). If Buyer and Seller do not resolve all disputed items within such 15-day period, then Buyer and Seller will submit the remaining items in dispute to \_\_\_\_\_ for resolution, or, if that firm is unwilling or unable to serve, Buyer and Seller will engage another mutually agreeable independent accounting firm of recognized national standing, which firm is not the regular auditing firm of any Party (the “Independent Accounting Firm”). Buyer and Seller will instruct the Independent Accounting Firm to render its determination with respect to the items in dispute in a written report that specifies the conclusions of the Independent Accounting Firm as to each item in dispute and the resulting Adjustment Calculation. Buyer and Seller will each use their respective commercially reasonable efforts to cause the Independent Accounting Firm to render its determination within 30 days after referral of the items to such firm or as soon thereafter as reasonably practicable. The Independent Accounting Firm’s determination of the Adjustment Calculation as set forth in its report will be final and binding on the Parties for purposes of Section 2.7(f). The fees and expenses of the Independent Accounting Firm will be shared by Buyer and Seller in inverse proportion to the relative amounts of the disputed amount determined to be for the account of Buyer and Seller, respectively.

(e) For purposes of complying with this Section 2.7, the Parties will furnish to each other and to the Independent Accounting Firm such work papers and other documents and information relating to the disputed items as the Independent Accounting Firm may request and are available to that Party, its accountants or its Affiliates and will be afforded the opportunity to present to the Independent Accounting Firm any material related to the disputed items and to discuss the items with the Independent Accounting Firm. Buyer may require that the Independent Accounting Firm enter into a customary form of confidentiality agreement with respect to the work papers and other documents and information relating to the Business provided to the Independent Accounting Firm pursuant to this Section 2.7.

(f) If the amount of the Closing Inventory as finally determined pursuant to this Section 2.7 (the “Final Closing Inventory Amount”) is less than the Pre-Closing Inventory Amount, then Seller will pay to Buyer the amount of such difference in cash plus interest thereon (calculated based on the actual number of days elapsed in a year consisting of 365 days) from the Closing Date through and including the date of such payment at a rate of 8% per annum. If the Final Closing Inventory Amount is greater than the Pre-Closing Inventory Amount, then no adjustment or payment of any kind will be required to be made by Buyer or any of its Affiliates to Seller or any of its Affiliates.