



**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended 31 March 2009**

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from \_\_\_\_\_ to \_\_\_\_\_**

Commission file number 1-4534

**AIR PRODUCTS AND CHEMICALS, INC.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of Incorporation or Organization)

23-1274455  
(I.R.S. Employer Identification No.)

7201 Hamilton Boulevard, Allentown, Pennsylvania  
(Address of Principal Executive Offices)

18195-1501  
(Zip Code)

610-481-4911  
(Registrant's Telephone Number, Including Area Code)

Not Applicable  
(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer       Accelerated filer       Non-accelerated filer       Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at 24 April 2009
Common Stock, \$1 par value	209,828,783

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**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries**  
**CONSOLIDATED BALANCE SHEETS**  
**(Unaudited)**

(Millions of dollars, except for share data)	31 March 2009	30 September 2008
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash items	\$ 79.7	\$ 103.5
Trade receivables, less allowances for doubtful accounts	1,272.2	1,575.2
Inventories	506.6	503.7
Contracts in progress, less progress billings	123.7	152.0
Prepaid expenses	172.2	107.7
Other receivables and current assets	396.6	349.4
Current assets of discontinued operations	45.4	56.6
<b>TOTAL CURRENT ASSETS</b>	<b>2,596.4</b>	<b>2,848.1</b>
<b>INVESTMENT IN NET ASSETS OF AND ADVANCES TO EQUITY AFFILIATES</b>	<b>756.5</b>	<b>822.6</b>
<b>PLANT AND EQUIPMENT, at cost</b>	<b>14,645.4</b>	<b>14,988.6</b>
Less accumulated depreciation	8,235.3	8,373.8
<b>PLANT AND EQUIPMENT, net</b>	<b>6,410.1</b>	<b>6,614.8</b>
<b>GOODWILL</b>	<b>811.2</b>	<b>928.1</b>
<b>INTANGIBLE ASSETS, net</b>	<b>215.0</b>	<b>289.6</b>
<b>NONCURRENT CAPITAL LEASE RECEIVABLES</b>	<b>527.1</b>	<b>505.3</b>
<b>OTHER NONCURRENT ASSETS</b>	<b>550.3</b>	<b>504.1</b>
<b>NONCURRENT ASSETS OF DISCONTINUED OPERATIONS</b>	<b>12.3</b>	<b>58.7</b>
<b>TOTAL ASSETS</b>	<b>\$11,878.9</b>	<b>\$12,571.3</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Payables and accrued liabilities	\$ 1,307.1	\$ 1,665.6
Accrued income taxes	34.2	87.0
Short-term borrowings	592.0	419.3
Current portion of long-term debt	53.8	32.1
Current liabilities of discontinued operations	9.2	8.0
<b>TOTAL CURRENT LIABILITIES</b>	<b>1,996.3</b>	<b>2,212.0</b>
<b>LONG-TERM DEBT</b>	<b>3,456.6</b>	<b>3,515.4</b>
<b>DEFERRED INCOME &amp; OTHER NONCURRENT LIABILITIES</b>	<b>952.8</b>	<b>1,049.2</b>
<b>DEFERRED INCOME TAXES</b>	<b>707.6</b>	<b>626.6</b>
<b>NONCURRENT LIABILITIES OF DISCONTINUED OPERATIONS</b>	<b>.8</b>	<b>1.2</b>
<b>TOTAL LIABILITIES</b>	<b>7,114.1</b>	<b>7,404.4</b>
<b>MINORITY INTEREST IN SUBSIDIARY COMPANIES</b>	<b>126.7</b>	<b>136.2</b>
<b>COMMITMENTS AND CONTINGENCIES — See Note 12</b>		
<b>SHAREHOLDERS' EQUITY</b>		
Common stock (par value \$1 per share; 2009 and 2008 — 249,455,584 shares)	249.4	249.4
Capital in excess of par value	812.2	811.7
Retained earnings	7,068.7	6,990.2
Accumulated other comprehensive income (loss)	(1,051.0)	(549.3)
Treasury stock, at cost (2009 — 39,626,801 shares; 2008 — 40,120,957 shares)	(2,441.2)	(2,471.3)
<b>TOTAL SHAREHOLDERS' EQUITY</b>	<b>4,638.1</b>	<b>5,030.7</b>
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>	<b>\$11,878.9</b>	<b>\$12,571.3</b>

The accompanying notes are an integral part of these statements.

**AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries**  
**CONSOLIDATED INCOME STATEMENTS**  
**(Unaudited)**

(Millions of dollars, except for share data)	Three Months Ended 31 March		Six Months Ended 31 March	
	2009	2008	2009	2008
SALES	\$1,955.4	\$2,542.7	\$4,150.7	\$4,950.1
Cost of sales	1,439.9	1,871.6	3,069.6	3,625.2
Selling and administrative	230.6	272.1	477.6	530.6
Research and development	29.6	34.3	62.8	64.6
Global cost reduction plan	—	—	174.2	—
Pension settlement	—	26.3	—	27.7
Other income, net	5.1	10.2	8.0	27.0
OPERATING INCOME	260.4	348.6	374.5	729.0
Equity affiliates' income	27.0	42.4	51.5	67.7
Interest expense	30.0	38.9	66.5	79.7
INCOME FROM CONTINUING OPERATIONS BEFORE TAXES AND MINORITY INTEREST	257.4	352.1	359.5	717.0
Income tax provision	66.5	87.8	73.6	184.3
Minority interest in earnings of subsidiary companies	1.6	4.5	6.6	10.6
INCOME FROM CONTINUING OPERATIONS	189.3	259.8	279.3	522.1
INCOME (LOSS) FROM DISCONTINUED OPERATIONS, net of tax	16.3	54.5	(5.1)	55.9
NET INCOME	\$ 205.6	\$ 314.3	\$ 274.2	\$ 578.0
BASIC EARNINGS PER COMMON SHARE				
Income from continuing operations	\$ .90	\$ 1.22	\$ 1.33	\$ 2.45
Income (loss) from discontinued operations	.08	.26	(.02)	.26
Net Income	\$ .98	\$ 1.48	\$ 1.31	\$ 2.71
DILUTED EARNINGS PER COMMON SHARE				
Income from continuing operations	\$ .89	\$ 1.18	\$ 1.32	\$ 2.37
Income (loss) from discontinued operations	.08	.25	(.03)	.25
Net Income	\$ .97	\$ 1.43	\$ 1.29	\$ 2.62
WEIGHTED AVERAGE OF COMMON SHARES OUTSTANDING (in millions)	209.6	212.3	209.5	213.6
WEIGHTED AVERAGE OF COMMON SHARES OUTSTANDING ASSUMING DILUTION (in millions)	212.3	219.2	212.2	220.8
DIVIDENDS DECLARED PER COMMON SHARE — Cash	\$ .45	\$ .44	\$ .89	\$ .82

The accompanying notes are an integral part of these statements.

**AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries**  
**CONSOLIDATED COMPREHENSIVE INCOME STATEMENTS**  
**(Unaudited)**

(Millions of dollars)	Three Months Ended 31 March	
	2009	2008
<b>NET INCOME</b>	<b>\$ 205.6</b>	<b>\$314.3</b>
OTHER COMPREHENSIVE INCOME (LOSS), net of tax:		
Net unrealized holding gain (loss) on investments, net of income tax (benefit) of \$.1 and \$(1.4)	.3	(2.5)
Net unrecognized (loss) on derivatives qualifying as hedges, net of income tax (benefit) of \$(2.2) and \$(4.5)	(3.2)	(6.4)
Foreign currency translation adjustments, net of income tax (benefit) of \$20.7 and \$(65.1)	(217.1)	91.8
Reclassification adjustment for foreign currency translation adjustment realized in net income (a)	—	(53.7)
Change in pension funded status, net of income tax of \$1.4 and \$4.9	4.3	6.6
<b>TOTAL OTHER COMPREHENSIVE INCOME (LOSS)</b>	<b>(215.7)</b>	<b>35.8</b>
<b>COMPREHENSIVE INCOME (LOSS)</b>	<b>\$ (10.1)</b>	<b>\$350.1</b>

(Millions of dollars)	Six Months Ended 31 March	
	2009	2008
<b>NET INCOME</b>	<b>\$ 274.2</b>	<b>\$578.0</b>
OTHER COMPREHENSIVE INCOME (LOSS), net of tax:		
Net unrealized holding (loss) on investments, net of income tax (benefit) of \$(.5) and \$(2.2)	(.8)	(4.2)
Net unrecognized (loss) on derivatives qualifying as hedges, net of income tax (benefit) of \$(2.8) and \$(6.4)	(5.7)	(11.2)
Foreign currency translation adjustments, net of income tax (benefit) of \$4.7 and \$(70.6)	(538.1)	147.4
Reclassification adjustment for foreign currency translation adjustment realized in net income (a)	—	(53.7)
Change in pension funded status, net of income tax of \$2.7 and \$8.4	7.1	17.5
<b>TOTAL OTHER COMPREHENSIVE INCOME (LOSS)</b>	<b>(537.5)</b>	<b>95.8</b>
<b>COMPREHENSIVE INCOME (LOSS)</b>	<b>\$(263.3)</b>	<b>\$673.8</b>

- (a) In the second quarter of 2008, the Company completed the sale of its Polymer Emulsions business as discussed in Note 4. Accordingly, the related foreign currency translation results of this business were reclassified from other comprehensive income into earnings.

Other amounts reclassified from other comprehensive income into earnings in 2009 and 2008 were not material.

The accompanying notes are an integral part of these statements.

**AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**

(Millions of dollars)	Six Months Ended 31 March	
	2009	2008
<b>OPERATING ACTIVITIES</b>		
Net income	\$ 274.2	\$ 578.0
Adjustments to reconcile income to cash provided by operating activities:		
Depreciation and amortization	397.7	428.1
Impairment of assets of continuing operations	32.1	—
Impairment of assets of discontinued operations	48.7	—
Gain on sale of discontinued operations	—	(88.9)
Deferred income taxes	41.8	34.6
Undistributed earnings of unconsolidated affiliates	(35.0)	(42.6)
Loss on sale of assets and investments	6.6	.9
Share-based compensation	30.1	33.0
Noncurrent capital lease receivables	(52.9)	(118.5)
Pension and other postretirement costs	52.2	82.8
Other adjustments	(85.3)	(89.1)
Working capital changes that provided (used) cash, excluding effects of acquisitions and divestitures:		
Trade receivables	166.3	(153.3)
Inventories	(41.7)	(36.6)
Contracts in progress	11.0	75.9
Other receivables	(17.7)	10.2
Payables and accrued liabilities	(257.6)	(100.2)
Other working capital	(116.8)	16.8
<b>CASH PROVIDED BY OPERATING ACTIVITIES (a)</b>	<b>453.7</b>	<b>631.1</b>
<b>INVESTING ACTIVITIES</b>		
Additions to plant and equipment	(615.8)	(522.2)
Acquisitions, less cash acquired	(1.6)	(.6)
Investment in and advances to unconsolidated affiliates	(.1)	—
Proceeds from sale of assets and investments	25.0	14.2
Proceeds from sale of discontinued operations	.9	327.5
Change in restricted cash	40.7	(132.3)
Other investing activities	—	(18.6)
<b>CASH USED FOR INVESTING ACTIVITIES</b>	<b>(550.9)</b>	<b>(332.0)</b>
<b>FINANCING ACTIVITIES</b>		
Long-term debt proceeds	114.3	461.1
Payments on long-term debt	(44.2)	(93.9)
Net increase in commercial paper and short-term borrowings	183.2	84.9
Dividends paid to shareholders	(184.3)	(163.4)
Purchase of treasury stock	—	(560.2)
Proceeds from stock option exercises	6.8	41.8
Excess tax benefit from share-based compensation/other	2.2	25.5
<b>CASH PROVIDED BY (USED FOR) FINANCING ACTIVITIES</b>	<b>78.0</b>	<b>(204.2)</b>
Effect of Exchange Rate Changes on Cash	(4.6)	3.4
Increase (Decrease) in Cash and Cash Items	(23.8)	98.3
Cash and Cash Items — Beginning of Year	103.5	40.5
Cash and Cash Items — End of Period	\$ 79.7	\$ 138.8
<b>(a) Pension plan contributions</b>	<b>\$ 153.5</b>	<b>\$ 118.3</b>

The accompanying notes are an integral part of these statements.

**AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

(Millions of dollars, except for share data)

**1. MAJOR ACCOUNTING POLICIES**

Refer to the Company's 2008 annual report on Form 10-K for a description of major accounting policies. There have been no material changes to these accounting policies during the first six months of 2009 other than those detailed in Note 2.

**Basis of Presentation**

The consolidated financial statements of Air Products and Chemicals, Inc. and its subsidiaries (the "Company" or "registrant") included herein have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations. In the opinion of the Company, the accompanying statements reflect adjustments necessary to present fairly the financial position, results of operations, and cash flows for those periods indicated, and contain adequate disclosure to make the information presented not misleading. Adjustments included herein are of a normal, recurring nature unless otherwise disclosed in the Notes. However, the interim results for the periods indicated herein do not reflect certain adjustments, such as the valuation of inventories on the LIFO cost basis, which can only be finally determined on an annual basis. The consolidated financial statements and related Notes included herein should be read in conjunction with the financial statements and Notes thereto included in the Company's latest annual report on Form 10-K in order to fully understand the basis of presentation. Results of operations for interim periods are not necessarily indicative of the results of operations for a full year.

**2. NEW ACCOUNTING STANDARDS**

**Disclosures about Derivatives and Hedging**

Effective 1 January 2009, the Company adopted Statement of Financial Accounting Standard (SFAS) No. 161, "Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133." SFAS No. 161 requires enhanced disclosures about how and why an entity uses derivative instruments; how derivative instruments and related hedged items are accounted for; and how they affect an entity's financial position, financial performance, and cash flows. This Statement only requires additional disclosure and did not have an impact on the Company's consolidated financial statements upon adoption.

Refer to Note 5 for the disclosures required under SFAS No. 161.

**Fair Value Option**

In February 2007, the Financial Accounting Standard Board (FASB) issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities — Including an amendment of FASB Statement No. 115." This Statement permits companies to elect to measure certain financial instruments at fair value on an instrument-by-instrument basis, with changes in fair value recognized in earnings each reporting period. In addition, SFAS No. 159 establishes financial statement presentation and disclosure requirements for assets and liabilities reported at fair value under the election. The Company adopted SFAS No. 159 as of 1 October 2008 and elected not to fair value any items under this Statement.

**Postretirement Benefits**

The Company adopted the measurement date change of SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans," for its U.K. and Belgium pension plans as of 1 October 2008. SFAS No. 158 required the Company to change the measurement date for these plans from 30 June to 30 September (end of fiscal year). As a result of this change, pension expense and actuarial gains/losses for the three-month period ended 30 September 2008 were recognized as adjustments to the beginning balances of retained earnings and Accumulated Other Comprehensive Income (AOCI), respectively. The after-tax charge to retained earnings was \$8.1. AOCI was credited \$35.8 for net actuarial gains on an after-tax basis. These adjustments only affected the balance sheet.



**Fair Value Measurements**

Effective 1 October 2008, the Company adopted SFAS No. 157, "Fair Value Measurements," for financial assets and liabilities and any other assets and liabilities that are recognized and disclosed at fair value on a recurring basis. This Statement defines fair value, establishes a method for measuring fair value, and requires additional disclosures about fair value measurements. FASB Staff Position No. 157-2 delayed the adoption of SFAS No. 157 for other nonfinancial assets and liabilities until 1 October 2009 for the Company. The adoption of SFAS No. 157 did not impact the Company's financial statements for assets and liabilities measured at fair value on a recurring basis.

Refer to Note 6 for the new disclosures required under SFAS No. 157.

**3. GLOBAL COST REDUCTION PLAN**

During the first quarter ended 31 December 2008, the Company announced a global cost reduction plan designed to lower its cost structure and better align its businesses to reflect rapidly declining economic conditions around the world. The results from continuing operations included a charge of \$174.2 (\$116.1 after-tax, or \$.55 per share) for this plan. This charge included \$120.0 for severance and pension-related costs. The Company will eliminate approximately 1,400 positions, or about seven percent of its global workforce. The reductions are targeted at reducing overhead and infrastructure costs, reducing and refocusing elements of the Company's technology and business development spending, and lowering its plant operating costs. The remainder of the charge, \$54.2, is for business exits and asset management actions. Assets held for sale were written down to net realizable value and an environmental liability of \$16.0 was recognized. This environmental liability results from a decision to sell a production facility. The planned actions are expected to be substantially completed by the end of the first quarter of fiscal year 2010.

The charge for the global cost reduction plan was excluded from segment operating profit. The table below displays how this charge related to the businesses at the segment level:

	Severance and Other Benefits	Asset Impairment/ Other Costs	Total
Merchant Gases	\$ 84.5	\$ 6.7	\$ 91.2
Tonnage Gases	11.1	—	11.1
Electronics and Performance Materials	21.7	47.2	68.9
Equipment and Energy	2.7	.3	3.0
<b>Total 2009 Charge</b>	<b>\$120.0</b>	<b>\$ 54.2</b>	<b>\$174.2</b>

The following table summarizes changes to the carrying amount of the accrual for the global cost reduction plan for the six months ended 31 March 2009:

	Severance and Other Benefits	Asset Impairments/ Other Costs	Total
2009 Charge	\$120.0	\$ 54.2	\$174.2
Environmental charge (see Note 12)	—	(16.0)	(16.0)
Noncash expenses	(14.6)	(32.1)	(46.7)
Cash expenditures	(22.1)	(.4)	(22.5)
Currency translation adjustment	(1.9)	—	(1.9)
<b>Accrual Balance at 31 March 2009</b>	<b>\$ 81.4</b>	<b>\$ 5.7</b>	<b>\$ 87.1</b>

**4. DISCONTINUED OPERATIONS**

The U.S. Healthcare business, Polymer Emulsions business, and the High Purity Process Chemicals (HPPC) business have been accounted for as discontinued operations. The results of operations of these businesses have been removed from the results of continuing operations for all periods presented.

For additional historical information on these discontinued operations, refer to the Company's 2008 annual report on Form 10-K.

[Table of Contents](#)**U.S. Healthcare**

In July 2008, the Board of Directors authorized management to pursue the sale of the U.S. Healthcare business. In 2008, the Company recorded a total charge of \$329.2 (\$246.2 after-tax, or \$1.12 per share) related to the impairment/write-down of the net carrying value of the U.S. Healthcare business. In April 2009, the Company signed a contract to divest approximately half of its remaining U.S. Healthcare business and expects to conclude the sale of the remaining portions of this business in 2009.

In the first quarter of 2009, based on additional facts, the Company recorded an impairment charge of \$48.7 (\$30.9 after-tax, or \$.15 per share) reflecting a revision in the estimated net realizable value of the U.S. Healthcare business. Also, a tax benefit of \$8.8, or \$.04 per share, was recorded to revise the estimated tax benefit related to previously recognized impairment charges.

As a result of events occurring during the second quarter of 2009, which increased the Company's ability to realize tax benefits associated with the impairment charges recorded in 2008, the Company recognized a one-time tax benefit of \$16.7, or \$.08 per share.

Additional charges may be recorded in future periods dependent upon the timing and method of ultimate disposition.

The operating results of the U.S. Healthcare business have been classified as discontinued operations and are summarized below:

	Three Months Ended 31 March		Six Months Ended 31 March	
	2009	2008	2009	2008
Sales	\$43.9	\$ 62.6	\$92.1	\$128.8
Income (loss) before taxes	\$ (1.0)	\$(10.6)	\$ .1	\$(19.1)
Income tax provision (benefit)	(.4)	(4.0)	—	(7.2)
Income (loss) from operations of discontinued operations	\$ (.6)	\$ (6.6)	\$ .1	\$(11.9)
Impairment/write-down to estimated net realizable value, net of tax	16.9	—	(5.2)	—
Income (loss) from discontinued operations, net of tax	\$16.3	\$ (6.6)	\$ (5.1)	\$(11.9)

Details of balance sheet items for the U.S. Healthcare business are summarized below:

	31 March 2009	30 September 2008
Trade receivables, less allowances	\$38.3	\$47.7
Inventories	5.7	7.2
Prepaid expenses	1.4	1.4
Other receivables	—	.2
<b>Total Current Assets</b>	<b>\$45.4</b>	<b>\$56.5</b>
Plant and equipment, net	\$12.1	\$58.7
Other noncurrent assets	.2	—
<b>Total Noncurrent Assets</b>	<b>\$12.3</b>	<b>\$58.7</b>
Payables and accrued liabilities	\$ 8.4	\$ 6.8
Current portion long-term debt	.8	1.0
<b>Total Current Liabilities</b>	<b>\$ 9.2</b>	<b>\$ 7.8</b>
Long-term debt	\$ .8	\$ 1.2
<b>Total Noncurrent Liabilities</b>	<b>\$ .8</b>	<b>\$ 1.2</b>

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### **Polymer Emulsions Business**

On 31 January 2008, the Company sold its Polymers Emulsions business to Wacker Chemie AG, its long-time joint venture partner. As part of the agreement, the Company received Wacker Chemie AG's interest in the Elkton, Md. and Piedmont, S.C. production facilities and their related businesses plus cash proceeds of \$258.2. The Company recognized a gain on the sale of \$89.5 (\$57.7 after-tax).

In the second quarter of 2008, the Polymer Emulsions business generated sales of \$78.8 and income from operations, net of tax, of \$3.3. For the six months ended 31 March 2008, sales were \$230.0 and income from operations, net of tax, was \$10.1.

### **HPPC Business**

In the first quarter of 2008, the HPPC business generated sales of \$22.9 and income from operations, net of tax, of \$.2. The Company closed on the sale of its HPPC business on 31 December 2007.

## **5. FINANCIAL INSTRUMENTS**

### **Currency Price Risk Management**

The Company's earnings, cash flows, and financial position are exposed to foreign currency risk from foreign currency denominated transactions and net investments in foreign operations. It is the policy of the Company to minimize its cash flow exposure to adverse changes in currency and exchange rates. This is accomplished by identifying and evaluating the risk that the Company's cash flows will decline in value due to changes in exchange rates, and by determining the appropriate strategies necessary to manage such exposures. The Company's objective is to maintain economically balanced currency risk management strategies that provide adequate downside protection.

### **Forward Exchange Contracts**

The Company enters into forward exchange contracts to reduce the cash flow exposure to foreign currency fluctuations associated with highly anticipated cash flows and certain firm commitments such as the purchase of plant and equipment. Forward exchange contracts are also used to hedge the value of investments in certain foreign subsidiaries and affiliates by creating a liability in a currency in which the Company has a net equity position.

The Company recognizes these derivatives on the balance sheet at fair value. On the date the derivative instrument is entered into, the Company generally designates the derivative as either (1) a hedge of a forecasted transaction or of the variability of cash flows to be received or paid related to a recognized asset or liability (cash flow hedge), (2) a hedge of a net investment in a foreign operation (net investment hedge), or (3) a hedge of the fair value of a recognized asset or liability or of an unrecognized firm commitment (fair value hedge).

In addition to the foreign exchange contracts that are designated as hedges under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" (SFAS No. 133), the Company also utilizes forward exchange contracts that are not designated as hedges. These contracts are used to hedge foreign currency-denominated monetary assets and liabilities, primarily intercompany loans and working capital. The primary objective of these forward contracts is to protect the value of foreign currency-denominated monetary assets and liabilities from the effects of volatility in foreign exchange rates that might occur prior to their receipt or settlement.

### **Option Contracts**

The Company enters into option contracts to reduce the cash flow exposure to foreign currency fluctuations associated with highly anticipated export sales transactions. The Company recognizes these derivatives on the balance sheet at fair value. On the date the derivative instrument is entered into, the Company designates these derivatives as cash flow hedges.

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The table below summarizes the Company's outstanding currency price risk management instruments as of 31 March 2009 and 30 September 2008:

	31 March 2009		30 September 2008	
	US\$ Notional	Years Average Maturity	US\$ Notional	Years Average Maturity
<b>Forward exchange contracts:</b>				
Cash flow hedges	\$ 654.4	.5	\$ 824.5	.6
Net investment hedges	745.8	3.5	749.5	4.0
Fair value hedges	5.0	.1	10.3	.3
Hedges not designated under SFAS No. 133	1,369.4	.4	1,282.8	.3
Total forward exchange contracts	\$2,774.6	1.3	\$2,867.1	1.4
<b>Options:</b>				
Cash flow hedges	\$ 16.8	.4	\$ 26.0	.3
Total options	\$ 16.8	.4	\$ 26.0	.3

In addition to the above, the Company uses foreign currency denominated debt and net liability positions primarily in European U.S. dollar functional entities to hedge the foreign currency exposures of the Company's net investment in certain foreign affiliates. The foreign currency denominated debt includes the €1,450.0 Eurobonds due in 2010 through 2017, and the net liability positions include €250.6 and £152.9 at 31 March 2009 and €218.4 and £110.8 at 30 September 2008. These non-U.S. dollar borrowings and net liability positions are designated as hedges of net investments.

### **Debt Portfolio Management**

It is the policy of the Company to identify on a continuing basis the need for debt capital and evaluate the financial risks inherent in funding the Company with debt capital. Reflecting the result of this ongoing review, the debt portfolio and hedging program of the Company are managed with the objectives and intent to (1) reduce funding risk with respect to borrowings made by the Company to preserve the Company's access to debt capital and provide debt capital as required for funding and liquidity purposes, and (2) manage the aggregate interest rate risk and the debt portfolio in accordance with certain debt management parameters.

### **Interest Rate Swap Contracts**

The Company enters into interest rate swap contracts to change the fixed/variable interest rate mix of its debt portfolio in order to maintain the percentage of fixed-and variable-rate debt within the parameters set by management. In accordance with these parameters, the agreements are used to optimize interest rate risks and costs inherent in the Company's debt portfolio. In addition, the Company may use interest rate swap agreements to hedge the interest rate on anticipated fixed-rate debt issuance. The notional amount of the interest rate swap agreements is equal to or less than the designated debt instrument being hedged. When variable-rate debt is hedged, the variable-rate indices of the swap instruments and the debt to which they are designated are the same. It is the Company's policy not to enter into any interest rate swap contracts which lever a move in interest rates on a greater than one-to-one basis.

### **Cross Currency Interest Rate Swap Contracts**

The Company also enters into cross currency interest rate swap contracts. These contracts may entail both the exchange of fixed- and floating-rate interest payments periodically over the life of the agreement and the exchange of one currency for another currency at inception and at a specified future date. These contracts effectively convert the currency denomination of a debt instrument into another currency in which the Company has a net equity position while changing the interest rate characteristics of the instrument. The contracts are used to hedge intercompany and third-party borrowing transactions and certain net investments in foreign operations.

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The following table summarizes the interest rate swaps and cross currency interest rate swaps outstanding as of 31 March 2009 and 30 September 2008:

	31 March 2009			30 September 2008		
	US\$ Notional	Pay %	Average Receive %	US\$ Notional	Pay %	Average Receive %
Interest rate swaps (fair value hedges)	\$313.7	6 month LIBOR	4.49%	\$321.9	6 month LIBOR	4.49%
Cross currency interest rate swaps (net investment hedge)	\$ 32.2	5.54%	5.48%	\$ 40.3	5.55%	3.89%

### Commodity Price Risk Management

The Company has entered into a limited number of commodity swap contracts in order to reduce the cash flow exposure to changes in the price of natural gas relative to certain oil-based feedstocks. The Company has also entered into contracts hedging the cash flow exposure of changes in the market price of certain metals which are raw materials used in the fabrication of certain industrial gas equipment with the overall intent of locking in, or minimizing its exposure to these base metals. As of 31 March 2009, there are no outstanding contracts hedging the changes in the market price of metals.

The table below summarizes the Company's outstanding commodity contracts as of 31 March 2009 and 30 September 2008:

	31 March 2009		30 September 2008	
	US\$ Notional	Years Average Maturity	US\$ Notional	Years Average Maturity
Energy	\$49.1	.8	\$72.6	.8
Metals	—	—	4.2	.2
Total commodity contracts	\$49.1	.8	\$76.8	.8

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The table below summarizes the fair value and balance sheet location of the Company's outstanding derivatives at 31 March 2009 and 30 September 2008:

	Balance Sheet Location	31 March 2009	30 September 2008	Balance Sheet Location	31 March 2009	30 September 2008
		Fair Value	Fair Value		Fair Value	Fair Value
<b>Derivatives designated as hedging instruments under SFAS No. 133:</b>						
Foreign exchange contracts	Other Receivables	\$ 34.5	\$23.4	Accrued Liabilities	\$ 37.7	\$ 24.4
Interest rate swap contracts	Other Receivables	6.5	—	Accrued Liabilities	—	—
Commodity swap contracts	Other Receivables	15.4	5.9	Accrued Liabilities	12.6	2.5
Currency option contracts	Other Receivables	2.1	1.7	Accrued Liabilities	—	—
Cross currency interest rate swap contracts	Other Receivables	—	1.2	Accrued Liabilities	—	—
Foreign exchange contracts	Other Noncurrent Assets	54.0	19.6	Other Noncurrent Liabilities	30.6	29.8
Interest rate swap contracts	Other Noncurrent Assets	8.4	4.4	Other Noncurrent Liabilities	—	3.5
Commodity swap contracts	Other Noncurrent Assets	—	1.8	Other Noncurrent Liabilities	—	.4
Cross currency interest rate swap contracts	Other Noncurrent Assets	.7	—	Other Noncurrent Liabilities	—	—
Total derivatives designated as hedging instruments under SFAS No. 133		\$121.6	\$58.0		\$ 80.9	\$ 60.6
<b>Derivatives not designated as hedging instruments under SFAS No. 133:</b>						
Foreign exchange contracts	Other Receivables	\$ 19.6	\$10.2	Accrued Liabilities	\$ 46.6	\$ 55.0
Total derivatives not designated as hedging instruments under SFAS No. 133		\$ 19.6	\$10.2		\$ 46.6	\$ 55.0
<b>Total Derivatives</b>		<b>\$141.2</b>	<b>\$68.2</b>		<b>\$127.5</b>	<b>\$115.6</b>

Refer to Note 6 for SFAS No. 157, "Fair Value Measurements," which defines fair value, establishes a method for measuring fair value, provides additional disclosures regarding fair value measurements, and discusses the Company's counterparty risk.

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The following details summarize the accounting treatment of the Company's cash flow, fair value, net investment, and non-designated hedges:

- Changes in the fair value of a derivative that is designated as and meets all the required criteria for a cash flow hedge are recorded in accumulated OCI and then recognized in earnings when the hedged items affect earnings.
- Changes in the fair value of a derivative that is designated as and meets all the required criteria for a fair value hedge, along with the gain or loss on the hedged asset or liability that is attributable to the hedged risk, are recorded in current period earnings.
- Changes in the fair value of a derivative, foreign currency debt, or other foreign currency liabilities that are designated as and meet all the required criteria for a hedge of a net investment are recorded as translation adjustments in accumulated OCI.
- Changes in the fair value of a derivative that is not designated as a hedge are recorded immediately in earnings.

The tables below summarize the information related to our cash flow, net investment, and non-designated hedges during the three and six month periods ended 31 March 2009 and 31 March 2008. The outstanding fair value hedges for these time periods are not material.

	Three Months Ended 31 March 2009						Total
	Forward Exchange Contracts	Commodity Swap Contracts	Currency Option Contracts	Cross Currency Interest Rate Swaps	Foreign Currency Debt	Net Liability Positions	
<b>Cash Flow Hedges:</b>							
Net (gain) loss recognized in OCI (effective portion)	\$ 4.4	\$(2.6)	\$(.6)	\$—	\$ —	\$ —	\$ 1.2
Net gain (loss) reclassified from OCI to sales (effective portion)	—	1.2	.8	—	—	—	2.0
Net gain (loss) reclassified from OCI to cost of sales (effective portion)	.2	(.1)	—	—	—	—	.1
Net gain (loss) from OCI to other (income) expense (ineffective portion)	(.1)	—	—	—	—	—	(.1)
<b>Net Investment Hedges:</b>							
Net (gain) loss recognized in OCI	\$ (7.6)	\$ —	\$—	\$(.2)	\$(57.8)	\$(28.0)	\$(93.6)
Net gain (loss) reclassified from OCI to other (income) expense	—	—	—	—	—	—	—
<b>Non-designated Hedges:</b>							
Net (gain) loss recognized in other (income) expense (a)	\$32.1	\$ —	\$—	\$—	\$ —	\$ —	\$ 32.1

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	Three Months Ended 31 March 2008						
	Forward Exchange Contracts	Commodity Swap Contracts	Currency Option Contracts	Cross Currency Interest Rate Swaps	Foreign Currency Debt	Net Liability Positions	Total
<b>Cash Flow Hedges:</b>							
Net (gain) loss recognized in OCI (effective portion)	\$ 1.9	\$1.9	\$ —	\$—	\$ —	\$ —	\$ 3.8
Net gain (loss) reclassified from OCI to sales (effective portion)	(.7)	(.2)	—	—	—	—	(.9)
Net gain (loss) reclassified from OCI to cost of sales (effective portion)	3.9	(.4)	—	—	—	—	3.5
Net gain (loss) from OCI to other (income) expense (ineffective portion)	—	—	—	—	—	—	—
<b>Net Investment Hedges:</b>							
Net (gain) loss recognized in OCI	\$ 24.3	\$ —	\$ —	\$(.6)	\$58.5	\$108.4	\$190.6
Net gain (loss) reclassified from OCI to other (income) expense	—	—	—	—	—	—	—
<b>Non-designated Hedges:</b>							
Net (gain) loss recognized in other (income) expense (a)	\$(15.5)	\$ —	\$ —	\$—	\$ —	\$ —	\$(15.5)
	Six Months Ended 31 March 2009						
	Forward Exchange Contracts	Commodity Swap Contracts	Currency Option Contracts	Cross Currency Interest Rate Swaps	Foreign Currency Debt	Net Liability Positions	Total
<b>Cash Flow Hedges:</b>							
Net (gain) loss recognized in OCI (effective portion)	\$ 7.1	\$1.1	\$(1.3)	\$ —	\$ —	\$ —	\$ 6.9
Net gain (loss) reclassified from OCI to sales (effective portion)	(3.6)	1.5	1.0	—	—	—	(1.1)
Net gain (loss) reclassified from OCI to cost of sales (effective portion)	.1	(.1)	—	—	—	—	—
Net gain (loss) from OCI to other (income) expense (ineffective portion)	(.1)	—	—	—	—	—	(.1)
<b>Net Investment Hedges:</b>							
Net (gain) loss recognized in OCI	\$(21.1)	\$ —	\$ —	\$(4.8)	\$(72.7)	\$(70.7)	\$(169.3)
Net gain (loss) reclassified from OCI to other (income) expense	—	—	—	—	—	—	—
<b>Non-designated Hedges:</b>							
Net (gain) loss recognized in other (income) expense (a)	\$ 9.4	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 9.4



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	Six Months Ended 31 March 2008						
	Forward Exchange Contracts	Commodity Swap Contracts	Currency Option Contracts	Cross Currency Interest Rate Swaps	Foreign Currency Debt	Net Liability Positions	Total
<b>Cash Flow Hedges:</b>							
Net (gain) loss recognized in OCI (effective portion)	\$ 6.8	\$ 2.8	\$ —	\$ —	\$ —	\$ —	\$ 9.6
Net gain (loss) reclassified from OCI to sales (effective portion)	(1.8)	(0.1)	—	—	—	—	(1.9)
Net gain (loss) reclassified from OCI to cost of sales (effective portion)	4.5	(1.0)	—	—	—	—	3.5
Net gain (loss) from OCI to other (income) expense (ineffective portion)	—	—	—	—	—	—	—
<b>Net Investment Hedges:</b>							
Net (gain) loss recognized in OCI	\$23.9	\$ —	\$ —	\$(1.3)	\$146.5	\$66.6	\$235.7
Net gain (loss) reclassified from OCI to other (income) expense	—	—	—	—	—	—	—
<b>Non-designated Hedges:</b>							
Net (gain) loss recognized in other (income) expense (a)	\$ (8.2)	\$ —	\$ —	\$ —	\$ —	\$ —	\$ (8.2)

(a) The impact of the non-designated hedges noted above was largely offset by gains and losses, respectively, resulting from the impact of changes in exchange rates on recognized assets and liabilities denominated in non-functional currencies.

**Credit Risk-Related Contingent Features**

Certain derivative instruments are executed under agreements that require the Company to maintain a credit rating of at least A- from Standard & Poor's and A3 from Moody's. If the Company's credit rating falls below these levels, the counterparty to the derivative instruments has the right to request full collateralization on the derivatives' net liability position. The net liability position of derivatives with credit risk-related contingent features is \$2.6 and \$21.5 as of 31 March 2009 and 30 September 2008, respectively. Because of the Company's current credit rating of A from Standard & Poor's and A2 from Moody's, no collateral has been posted on these liability positions.

**Counterparty Credit Risk Management**

The Company executes all derivative transactions with counterparties that are highly rated financial institutions, and all of which are investment grade at this time. Some of the Company's underlying derivative agreements give the Company the right to require the institution to post collateral if its credit rating falls below A- from Standard & Poor's or A3 from Moody's. These are the same agreements referenced in Credit Risk-Related Contingent Features above. The collateral that the counterparties would be required to post is \$66.1 as of 31 March 2009 and \$14.1 as of 30 September 2008. No financial institution is required to post collateral at this time, as all have credit ratings at or above the threshold.

**6. FAIR VALUE MEASUREMENTS**

As discussed in Note 2 on New Accounting Standards, the Company adopted SFAS No. 157 as of 1 October 2008, with the exception of the application of the Statement to nonrecurring nonfinancial assets and nonfinancial liabilities, for which adoption has been delayed until 1 October 2009.

SFAS No. 157 defines fair value as an exit price (i.e., the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date). SFAS No. 157 establishes a three-level fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value.

- Level 1 — Quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2 — Inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the asset or liability.
- Level 3 — Inputs that are unobservable for the asset or liability based on the Company's own assumptions (about the assumptions market participants would use in pricing the asset or liability).

The following table summarizes assets and liabilities measured at fair value on a recurring basis in the consolidated balance sheet:

31 March 2009	Total	Level 1	Level 2	Level 3
<b>Assets at Fair Value</b>				
Derivatives (a)				
Interest rate swap agreements	\$ 14.9	\$ —	\$ 14.9	\$ —
Cross currency interest rate swap contracts	.7	—	.7	—
Currency option contracts	2.1	—	2.1	—
Forward exchange contracts	108.1	—	108.1	—
Commodity swap contracts	15.4	—	15.4	—
Other investments (b)	14.3	14.3	—	—
<b>Total Assets at Fair Value</b>	<b>\$155.5</b>	<b>\$14.3</b>	<b>\$141.2</b>	<b>\$ —</b>

**Liabilities at Fair Value**

Derivatives (a)				
Forward exchange contracts	\$114.9	\$ —	\$114.9	\$ —
Commodity swap contracts	12.6	—	12.6	—
<b>Total Liabilities at Fair Value</b>	<b>\$127.5</b>	<b>\$ —</b>	<b>\$127.5</b>	<b>\$ —</b>

(a) The fair value of the Company's interest rate swap agreements and foreign exchange contracts are based on estimates using standard pricing models that take into account the present value of future cash flows as of the balance sheet date. The computation of the fair values of these instruments is generally performed by the Company. These standard pricing models utilize inputs which are derived from or corroborated by observable market data such as interest rate yield curves and currency spot and forward rates. In addition, on an ongoing basis, the Company randomly tests a subset of its valuations against valuations received from the counterparty to the transaction to validate the accuracy of its standard pricing models. The fair value of commodity swaps is based on current market price as provided by the financial institutions with which the commodity swaps have been executed. Counterparties to these derivative contracts are highly rated financial institutions none of which experienced significant downgrades since 30 September 2008 that could reduce the receivable amount collectible.

(b) The fair value of other investments in publicly traded companies is based on quoted market prices from the New York and Tokyo stock exchanges.

Refer to Note 1 in the Company's 2008 annual report on Form 10-K and Note 5 in this quarterly filing for additional information on the Company's accounting and reporting of the fair value of financial instruments.

**7. INVENTORIES**

The components of inventories are as follows:

	31 March 2009	30 September 2008
<b>Inventories at FIFO Cost</b>		
Finished goods	\$389.1	\$365.1
Work in process	22.7	22.4
Raw materials and supplies	173.5	183.5
	585.3	571.0
Less: excess of FIFO cost over LIFO cost	(78.7)	(67.3)
	<b>\$506.6</b>	<b>\$503.7</b>

FIFO cost approximates replacement cost. The Company's inventories have a high turnover, and as a result, there is little difference between the original cost of an item and its current replacement cost.

**8. GOODWILL**

Changes to the carrying amount of consolidated goodwill by segment for the six months ended 31 March 2009 are as follows:

	30 September 2008	Acquisition and Adjustments	Currency Translation and Other	31 March 2009
Merchant Gases	\$626.5	\$1.4	\$ (96.7)	\$531.2
Tonnage Gases	18.0	—	(4.5)	13.5
Electronics and Performance Materials	283.6	(.9)	(16.2)	266.5
	\$928.1	\$ .5	\$(117.4)	\$811.2

Goodwill is subject to impairment testing at least annually. In addition, goodwill is tested more frequently if a change in circumstances or the occurrence of events indicates that potential impairment exists.

**9. SHARE-BASED COMPENSATION**

The Company has various share-based compensation programs, which include stock options, deferred stock units, and restricted shares. During the six months ended 31 March 2009, the Company granted 2.0 million stock options at a weighted-average exercise price of \$66.90 and an estimated fair value of \$20.86 per option. The fair value of these options was estimated using a lattice-based option valuation model that used the following assumptions: expected volatility of 31.2%; expected dividend yield of 2.1%; expected life in years of 6.7-8.0; and a risk-free interest rate of 3.5%-3.9%. In addition, the Company granted 379,961 deferred stock units at a weighted-average grant-date fair value of \$52.12 and 40,092 restricted shares at a weighted-average grant-date fair value of \$64.01. Refer to Note 15 in the Company's 2008 annual report on Form 10-K for information on the valuation and accounting for these programs.

Share-based compensation cost charged against income in the three and six months ended 31 March 2009 was \$12.7 (\$7.8 after-tax) and \$30.1 (\$18.5 after-tax), respectively. Of the share-based compensation cost recognized, 77% was a component of selling and administrative expense, 14% a component of cost of sales, and 9% a component of research and development. Share-based compensation cost charged against income in the three and six months ended 31 March 2008 was \$16.0 (\$9.9 after-tax) and \$33.0 (\$20.3 after-tax), respectively. The amount of share-based compensation cost capitalized in 2009 and 2008 was not material.

**10. EARNINGS PER SHARE**

The following table sets forth the computation of basic and diluted earnings per share (EPS):

	Three Months Ended 31 March		Six Months Ended 31 March	
	2009	2008	2009	2008
<b>NUMERATOR</b>				
Used in basic and diluted EPS				
Income from continuing operations	\$189.3	\$259.8	\$279.3	\$522.1
Income (loss) from discontinued operations	16.3	54.5	(5.1)	55.9
Net Income	\$205.6	\$314.3	\$274.2	\$578.0
<b>DENOMINATOR (in millions)</b>				
Weighted average number of common shares used in basic EPS				
	209.6	212.3	209.5	213.6
Effect of dilutive securities				
Employee stock options	1.7	5.8	1.7	6.1
Other award plans	1.0	1.1	1.0	1.1
	2.7	6.9	2.7	7.2
Weighted average number of common shares and dilutive potential common shares used in diluted EPS				
	212.3	219.2	212.2	220.8
<b>BASIC EPS</b>				
Income from continuing operations	\$ .90	\$ 1.22	\$ 1.33	\$ 2.45
Income (loss) from discontinued operations	.08	.26	(.02)	.26
Net Income	\$ .98	\$ 1.48	\$ 1.31	\$ 2.71
<b>DILUTED EPS</b>				
Income from continuing operations	\$ .89	\$ 1.18	\$ 1.32	\$ 2.37
Income (loss) from discontinued operations	.08	.25	(.03)	.25
Net Income	\$ .97	\$ 1.43	\$ 1.29	\$ 2.62

Options on 8.6 and 8.7 million shares were antidilutive and therefore excluded from the computation of diluted earnings per share for the three and six months ended 31 March 2009, respectively. Options on 1.2 million shares were antidilutive and therefore excluded from the computation for the three and six months ended 31 March 2008.

**11. RETIREMENT BENEFITS**

The components of net pension cost for the defined benefit pension plans and other postretirement benefit cost were as follows:

	2009	Three Months Ended 31 March		2008
		2008	2009	
	Pension Benefits		Other Benefits	
Service cost	\$ 14.7	\$ 19.6	\$ .8	\$1.5
Interest cost	45.2	45.5	1.7	1.4
Expected return on plan assets	(49.6)	(52.0)	—	—
Prior service cost (credit) amortization	1.0	.8	(.3)	(.3)
Actuarial loss amortization	3.6	9.8	(.1)	.4
Settlement and curtailment charges	—	26.3	—	—
Special termination benefits	.2	.5	—	—
Other	.7	.1	—	—
<b>Net periodic benefit cost</b>	<b>\$ 15.8</b>	<b>\$ 50.6</b>	<b>\$2.1</b>	<b>\$3.0</b>

	2009	Six Months Ended 31 March		2008
		2008	2009	
	Pension Benefits		Other Benefits	
Service cost	\$ 29.8	\$ 39.2	\$2.3	\$3.0
Interest cost	91.0	91.2	3.1	2.9
Expected return on plan assets	(98.6)	(104.1)	—	—
Prior service cost (credit) amortization	2.0	1.6	(.7)	(.7)
Actuarial loss amortization	7.4	19.7	.3	.8
Settlement and curtailment charges	—	27.7	—	—
Special termination benefits	14.8	.5	—	—
Other	.8	1.0	—	—
<b>Net periodic benefit cost</b>	<b>\$ 47.2</b>	<b>\$ 76.8</b>	<b>\$5.0</b>	<b>\$6.0</b>

Special termination benefits for the six months ended 31 March 2009 included \$14.4 for the global cost reduction plan.

For the six months ended 31 March 2009, pension contributions of \$153.5 were made. Total contributions for 2009 are expected to be approximately \$175. For the six months ended 31 March 2008, pension contributions of \$118.3 were made. During 2008, total contributions were \$234.0.

A number of corporate officers and others who were eligible for supplemental pension plan benefits retired in fiscal years 2007 and 2008. The Company's supplemental pension plan provides for a lump sum benefit payment option at the time of retirement, or for corporate officers six months after the participant's retirement date. The Company recognizes pension settlements when payments exceed the sum of service and interest cost components of net periodic pension cost of the plan for the fiscal year. A settlement loss is recognized when the pension obligation is settled. Based on the timing of when cash payments were made, the Company recognized \$26.3 and \$27.7 in the three and six months ended 31 March 2008, respectively. The Company expects to recognize settlement charges in the second half of 2009.

## 12. COMMITMENTS AND CONTINGENCIES

### Litigation

The Company is involved in various legal proceedings, including competition, environmental, health, safety, product liability, and insurance matters. In the third quarter of 2008, a unit of the Brazilian Ministry of Justice issued a report (previously issued in January 2007, and then withdrawn) on its investigation of the Company's Brazilian subsidiary, Air Products Brazil Ltda., and several other Brazilian industrial gas companies. The report recommended that the Brazilian Administrative Council for Economic Defense impose sanctions on Air Products Brazil Ltda. and the other industrial gas companies for alleged anticompetitive activities. The Company intends to defend this action and cannot, at this time, reasonably predict the ultimate outcome of the proceedings or sanctions, if any, that will be imposed. While the Company does not expect that any sums it may have to pay in connection with this or any other legal proceeding would have a materially adverse effect on its consolidated financial position or net cash flows, a future charge for regulatory fines or damage awards could have a significant impact on the Company's net income in the period in which it is recorded.

### Customer Bankruptcy

On 6 January 2009, a customer of the Company began operating under Chapter 11 bankruptcy protection. This company receives product principally from the Tonnage Gases segment. At 31 March 2009, the Company had outstanding net receivables with the customer of \$37.3. Sales and operating income associated with this customer are not material to the Tonnage Gases segment's results. At the present time, the Company does not expect any material charges related to long-term assets associated with this customer bankruptcy.

### Environmental

Accruals for environmental loss contingencies are recorded when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. The consolidated balance sheet at 31 March 2009 and 30 September 2008 included an accrual of \$96.1 and \$82.9, respectively, primarily as part of other noncurrent liabilities. The environmental liabilities will be paid over a period of up to 30 years. The Company estimates the exposure for environmental loss contingencies to range from \$96 to a reasonably possible upper exposure of \$110 as of 31 March 2009.

During the first quarter of 2009, the Company recognized a \$16.0 environmental liability associated with a production facility. The Company is required by state law to investigate and remediate a site upon its sale. In the first quarter of 2009, management committed to a plan to sell this facility. The Company estimates that it will take at least several years to complete the remediation efforts at this site.

Refer to Note 19 to the Consolidated Financial Statements in the Company's 2008 annual report on Form 10-K for information on the Company's environmental accruals related to the Pace, Florida and Piedmont, S.C. facilities. At 31 March 2009, the accrual balances associated with the Pace, Florida and Piedmont, S.C. facilities totaled \$38.7 and \$22.7, respectively.



**Geographic Information**

	Three Months Ended 31 March		Six Months Ended 31 March	
	2009	2008	2009	2008
<b>Revenues from External Customers</b>				
North America	\$ 978.8	\$1,231.6	\$2,089.3	\$2,378.2
Europe	662.2	856.6	1,379.6	1,664.1
Asia	270.1	403.5	595.7	807.4
Latin America	44.3	51.0	86.1	100.4
Total	\$1,955.4	\$2,542.7	\$4,150.7	\$4,950.1

Geographic information is based on country of origin. The Europe segment operates principally in Belgium, France, Germany, the Netherlands, Poland, the U.K. and Spain. The Asia segment operates principally in China, Japan, Korea, and Taiwan.

**14. SUPPLEMENTAL INFORMATION****Share Repurchase Program**

On 20 September 2007, the Board of Directors authorized the repurchase of up to \$1,000 of the Company's outstanding common stock. During the six months ended 31 March 2009, the Company did not purchase any shares under this authorization. At 31 March 2009, \$649.2 in share repurchase authorization remains.

**Industrial Revenue Bonds**

During the first quarter of 2009, the Company issued two Industrial Revenue Bonds totaling \$80.0, the proceeds of which must be held in escrow until related project spending occurs. As of 31 March 2009 and 30 September 2008, \$139.1 and \$181.2 were held in escrow from Industrial Revenue Bond issuances and classified as other noncurrent assets, respectively.



## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### (Millions of dollars, except for share data)

The disclosures in this quarterly report are complementary to those made in the Company's 2008 annual report on Form 10-K. An analysis of results for the second quarter and first six months of 2009, including an update to the Company's 2009 Outlook, is provided in the Management's Discussion and Analysis to follow.

All comparisons in the discussion are to the corresponding prior year unless otherwise stated. All amounts presented are in accordance with U.S. generally accepted accounting principles, except as noted. All amounts are presented in millions of dollars, except for share data, unless otherwise indicated.

### SECOND QUARTER 2009 VS. SECOND QUARTER 2008

#### SECOND QUARTER 2009 IN SUMMARY

- Declining business conditions around the world have created a challenging business environment across the Company's end markets. As a result, volumes declined significantly this quarter as many customers ran at reduced operating rates.
- Sales of \$1,955.4 declined 23% from weaker volumes, unfavorable currency impacts, and lower natural gas and raw material contractual cost pass-through. Underlying business declined due to lower volumes primarily in the Electronics and Performance Materials segment and also in the Tonnage Gases segment. Volumes were lower in the Merchant Gases segment, but this decline was mostly offset by higher pricing.
- Operating income of \$260.4 decreased \$88.2. Operating income declined principally from lower volumes and unfavorable currency impacts. Prior year results included a pension settlement charge of \$26.3 for the retirement of certain corporate officers and others who were eligible for supplemental pension plan benefits.
- Income from continuing operations of \$189.3 declined \$70.5 and diluted earnings per share from continuing operations of \$.89 declined \$.29. A summary table of changes in diluted earnings per share is presented below.
- Income from discontinued operations was \$16.3 or \$.08 per share. The Company recognized a one-time tax benefit of \$16.7 (\$.08 per share) to increase the tax benefit related to previously recognized impairment charges associated with the U.S. Healthcare business.
- The Company increased the quarterly dividend from \$.44 to \$.45 per share. This represents the 27<sup>th</sup> consecutive year that the Company has increased its dividend payment.
- For a discussion of the challenges, risks, and opportunities on which management is focused, refer to the update to the Company's 2009 Outlook provided on page 36.

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**Changes in Diluted Earnings per Share**

	Three Months Ended 31 March		Increase (Decrease)
	2009	2008	
<b>Diluted Earnings per Share</b>			
Net Income	\$ .97	\$ 1.43	\$(.46)
Discontinued Operations	.08	.25	(.17)
Continuing Operations	\$ .89	\$ 1.18	\$(.29)
<b>Operating Income (after-tax)</b>			
Underlying business			
Volume			(.52)
Price/raw materials			.13
Costs			.12
Currency			(.11)
2008 Pension settlement			.08
<b>Operating Income</b>			<b>(.30)</b>
<b>Other (after-tax)</b>			
Equity affiliates' income			(.05)
Interest expense			.03
Average shares outstanding			.03
<b>Other</b>			<b>.01</b>
<b>Total Change in Diluted Earnings per Share from Continuing Operations</b>			<b>\$(.29)</b>

**RESULTS OF OPERATIONS**
**Discussion of Consolidated Results**

	Three Months Ended 31 March		% Change
	2009	2008	
Sales	\$1,955.4	\$2,542.7	(23)%
Operating income	260.4	348.6	(25)%
Equity affiliates' income	27.0	42.4	(36)%

**Sales**

	% Change from Prior Year
Underlying business	
Volume	(13)%
Price	2%
Currency	(7)%
Natural gas/raw material cost pass-through	(5)%
<b>Total Consolidated Change</b>	<b>(23)%</b>

Sales of \$1,955.4 decreased 23%, or \$587.3. Underlying business declined 11% from lower volumes due to weak demand across most end markets, primarily in the Electronics and Performance Materials segment and also in the Tonnage Gases segment. Volumes were lower in Merchant Gases but this decline was mostly offset by higher pricing. Currency unfavorably impacted sales by 7%, due primarily to the strengthening of the U.S. dollar against key European and Asian currencies. Natural gas and raw material contractual cost pass-through to customers reduced sales by 5%.

## Operating Income

Operating income of \$260.4 decreased 25%, or \$88.2.

- Underlying business declined \$81, primarily from lower volumes in the Electronics and Performance Materials, Tonnage Gases, and Merchant Gases segments. Weakening consumer confidence, as a result of the deterioration in the global economy, significantly impacted customers' operating rates across many of the Company's end markets. The volume declines were partially offset by higher prices in Merchant Gases and favorable cost performance.
- Unfavorable currency impacts reduced operating income by \$33, reflecting the strengthening of the U.S. dollar against key European and Asian currencies.
- Prior year results included a pension settlement charge of \$26.3 for the retirements of certain corporate officers and others who were eligible for supplemental pension plan benefits.

## Equity Affiliates' Income

Income from equity affiliates of \$27.0 decreased 36%, or \$15.4, primarily due to unfavorable currency impacts and a prior year fine reversal. Results in 2008 included a gain of \$6.5 related to the reimbursement of an antitrust fine levied against an Italian affiliate in 2006. A higher court overruled the Italian antitrust authority who levied the fine.

## Selling and Administrative Expense (S&A)

S&A expense of \$230.6 decreased 15%, or \$41.5. S&A, as a percent of sales, increased to 11.8% from 10.7%. Favorable currency impacts, primarily the strengthening of the U.S. dollar against the Euro and Pound Sterling, decreased S&A by 9%. S&A further declined 6% from lower underlying costs, partially offset by inflation.

## Research and Development (R&D)

R&D expense of \$29.6 decreased 14%, or \$4.7. R&D increased as a percent of sales to 1.5% from 1.3%.

## Pension Settlement

A number of corporate officers and others who were eligible for supplemental pension plan benefits retired in fiscal years 2007 and 2008. The Company's supplemental pension plan provides for a lump sum benefit payment option at the time of retirement, or for corporate officers six months after the participant's retirement date. The Company recognizes pension settlements when payments exceed the sum of service and interest cost components of net periodic pension cost of the plan for the fiscal year. A settlement loss is recognized when the pension obligation is settled. Based on the timing of when cash payments were made, the Company recognized \$26.3 for settlement losses in the three months ended 31 March 2008. The Company expects to recognize settlement charges in the second half of 2009.

## Other Income, Net

Items recorded to other income arise from transactions and events not directly related to the principal income earning activities of the Company.

Other income of \$5.1 decreased \$5.1. No individual items were significant in comparison to the prior year.

## Interest Expense

	Three Months Ended 31 March	
	2009	2008
Interest incurred	\$34.9	\$45.5
Less: interest capitalized	4.9	6.6
Interest expense	\$30.0	\$38.9

Interest incurred decreased \$10.6, primarily due to lower average interest rates on variable-rate debt. The change in capitalized interest is driven by a decrease in project spending which qualified for capitalization.

[Table of Contents](#)**Effective Tax Rate**

The effective tax rate equals the income tax provision divided by income from continuing operations before taxes less minority interest. The effective tax rate was 26.0% and 25.3% in the second quarter of 2009 and 2008, respectively.

**Discontinued Operations**

The U.S. Healthcare business, Polymer Emulsions business, and the High Purity Process Chemicals (HPPC) business have been accounted for as discontinued operations. The results of operations of these businesses have been removed from the results of continuing operations for all periods presented. Refer to Note 4 to the Consolidated Financial Statements for additional information.

**U.S. Healthcare**

The U.S. Healthcare business generated sales of \$43.9 and loss from operations, net of tax, of \$.6 in the second quarter of 2009. As a result of events occurring during the quarter, which increased the Company's ability to realize tax benefits associated with the impairment charges recorded in 2008, the Company recognized a one-time tax benefit of \$16.7, or \$.08 per share. Sales in the second quarter of 2008 were \$62.6 and loss from operations, net of tax, was \$6.6.

**Polymer Emulsions**

On 31 January 2008, the Company sold its Polymers Emulsions business to Wacker Chemie AG, its long-time joint venture partner. As part of the agreement, the Company received Wacker Chemie AG's interest in the Elkton, Md. and Piedmont, S.C. production facilities and their related businesses plus cash proceeds of \$258.2. The Company recognized a gain on the sale of \$89.5 (\$57.7 after-tax). In the second quarter of 2008, the Polymer Emulsions business generated sales of \$78.8 and income from operations, net of tax, of \$3.3.

**Net Income**

Net income was \$205.6 compared to \$314.3. Diluted earnings per share was \$.97 compared to \$1.43. A summary table of changes in earnings per share is presented on page 25.

**Segment Analysis****Merchant Gases**

	Three Months Ended 31 March		% Change
	2009	2008	
Sales	\$870.4	\$1,008.7	(14)%
Operating income	156.2	189.2	(17)%
Equity affiliates' income	25.1	36.7	(32)%

**Merchant Gases Sales**

	% Change from Prior Year
Underlying business	
Volume	(8)%
Price	6%
Currency	(12)%
<b>Total Merchant Gases Change</b>	<b>(14)%</b>

Sales of \$870.4 decreased 14%, or \$138.3. Sales decreased 12% from unfavorable currency impacts, driven primarily by the strengthening of the U.S. dollar against key European and Asian currencies. Underlying business declined by 2%, with volumes down 8% and pricing up 6%. Volumes declined as a result of the downturn in global manufacturing. Price increases have been effective in all regions, partially offsetting the weakness in volume.

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In North America, sales decreased 10% driven by a slow manufacturing climate. Volumes declined 15% and were especially impacted by lower argon and liquid hydrogen. Higher prices of 5% partially offset the decline in volumes. In Europe, sales decreased 18%, mainly due to unfavorable currency impacts of 17%. Volumes were lower by 7%, due to weak manufacturing demand across most end markets and regions. Improved pricing added 6%. In Asia, sales declined by 17%. Volumes declined 12% as a result of significantly lower demand from Electronics customers and from the overall manufacturing slowdown in Asia. Unfavorable currency reduced sales by 10%, while improved pricing added 5%.

### **Merchant Gases Operating Income**

Operating income of \$156.2 decreased 17%, or \$33.0. Volume declines of \$58 and unfavorable currency impacts of \$24 reduced operating income. These declines were partially offset by higher pricing net of variable costs of \$27 and improved fixed cost performance of \$22.

### **Merchant Gases Equity Affiliates' Income**

Merchant Gases equity affiliates' income of \$25.1 decreased 32%, or \$11.6, driven by unfavorable currency impacts and a prior year fine reversal. Overall volumes were flat as higher volumes in Mexico offset lower volumes in other countries.

### **Tonnage Gases**

	Three Months Ended 31 March		% Change
	2009	2008	
Sales	\$624.6	\$867.2	(28)%
Operating income	98.0	111.1	(12)%

### **Tonnage Gases Sales**

	% Change from Prior Year
Underlying business	
Volume	(7)%
Currency	(6)%
Natural gas/raw material cost pass-through	(15)%
<b>Total Tonnage Gases Change</b>	<b>(28)%</b>

Sales of \$624.6 decreased 28%, or \$242.6. Natural gas and raw material contractual cost pass-through to customers reduced sales by 15%. Underlying business declined by 7%. Volume declines were due to reduced demand from steel and chemical customers. Unfavorable currency effects reduced sales by 6%.

### **Tonnage Gases Operating Income**

Operating income of \$98.0 decreased 12%, or \$13.1. Unfavorable currency reduced operating income by \$9. Underlying business declined by \$4, primarily from reduced operating rates from steel and chemical customers.

**Electronics and Performance Materials**

	Three Months Ended 31 March		% Change
	2009	2008	
Sales	\$332.2	\$562.1	(41)%
Operating income (loss)	(11.1)	67.6	(116)%

**Electronics and Performance Materials Sales**

	% Change from Prior Year
Underlying business	
Volume	(38)%
Price	—
Currency	(3)%
<b>Total Electronics and Performance Materials Change</b>	<b>(41)%</b>

Sales of \$332.2 decreased 41%, or \$229.9. Volumes reduced sales by 38% and unfavorable currency reduced sales by 3%. Electronics volumes decreased 41%, reflecting the dramatic global downturn in semiconductor and flat panel capacity utilization that continued to worsen this quarter. Performance Materials volumes declined by 31% reflecting weakened demand across end markets. Asia continued to be the weakest region, followed by Europe and North America.

**Electronics and Performance Materials Operating Loss**

Operating loss was \$11.1, primarily due to lower volumes. While costs in this business were significantly reduced, the rapid contraction in Electronics specialty materials demand was responsible for the overall segment losses in the quarter.

**Equipment and Energy**

	Three Months Ended 31 March		% Change
	2009	2008	
Sales	\$128.2	\$104.7	22%
Operating income	16.3	10.0	63%

**Equipment and Energy Sales and Operating Income**

Sales of \$128.2 increased 22%, or \$23.5, due to increased large air separation unit (ASU) activity. Operating income of \$16.3 increased \$6.3, primarily due to favorable cost performance.

The sales backlog for the Equipment business at 31 March 2009 was \$281, compared to \$399 at 30 September 2008.

**Other**

Other operating income (loss) includes expense and income that cannot be directly associated with the business segments, including foreign exchange gains and losses and interest income. Also included are LIFO inventory adjustments, as the business segments use FIFO and the LIFO pool is kept at corporate.

Other operating income was \$1.0 compared to a loss of \$3.0. No individual items were significant in comparison to the prior year.

**FIRST SIX MONTHS 2009 VS. FIRST SIX MONTHS 2008**

**FIRST SIX MONTHS 2009 IN SUMMARY**

- Declining business conditions around the world have unfavorably impacted the Company's businesses. In response to these market conditions, the Company implemented a global cost reduction plan to lower its cost structure and better align its businesses. The results from continuing operations included a charge of \$174.2 (\$116.1 after-tax, or \$.55 per share) for this plan.
- Sales of \$4,150.7 declined 16% from lower volumes, unfavorable currency impacts, and lower natural gas and raw material contractual cost pass-through. Volumes declined primarily in the Electronics and Performance Materials segment and also in the Tonnage Gases segment, reflecting the weak market conditions. Volumes were also lower in Merchant Gases; however, the decrease was offset by higher pricing.
- Operating income of \$374.5 declined \$354.5 principally from lower volumes, unfavorable currency impacts, and the global cost reduction charge. Improved pricing in the Merchant Gases segment partially offset this decline. Prior year results included a pension settlement charge of \$27.7 for the retirement of certain corporate officers and others who were eligible for supplemental pension plan benefits.
- Income from continuing operations was \$279.3 as compared to \$522.1. Diluted earnings per share from continuing operations of \$1.32 declined \$1.05. A summary table of changes in diluted earnings per share is presented below.
- Loss from discontinued operations was \$5.1. The Company recorded an impairment charge of \$48.7 (\$30.9 after-tax, or \$.15 per share), reflecting a revision in the estimated net realizable value of the U.S. Healthcare business. The Company recognized tax benefits of \$25.5 (\$.12 per share) related to previously recognized impairment charges associated with the U.S. Healthcare business.
- The Company increased the quarterly dividend from \$.44 to \$.45 per share. This represents the 27<sup>th</sup> consecutive year that the Company has increased its dividend payment.
- For a discussion of the challenges, risks, and opportunities on which management is focused, refer to the update to the Company's 2009 Outlook provided on page 36.

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Changes in Diluted Earnings per Share

	Six Months Ended 31 March		Increase (Decrease)
	2009	2008	
<b>Diluted Earnings per Share</b>			
Net Income	\$1.29	\$2.62	\$(1.33)
Discontinued Operations	(.03)	.25	(.28)
<b>Continuing Operations</b>	<b>\$1.32</b>	<b>\$2.37</b>	<b>\$(1.05)</b>
<b>Operating Income (after-tax)</b>			
Underlying business			
Volume			(.77)
Price/raw materials			.18
Costs			.15
Currency			(.24)
Global cost reduction plan			(.55)
2008 Pension settlement			.08
<b>Operating Income</b>			<b>(1.15)</b>
<b>Other (after-tax)</b>			
Equity affiliates' income			(.05)
Interest expense			.04
Income tax rate			.03
Minority interest			.01
Average shares outstanding			.07
<b>Other</b>			<b>.10</b>
<b>Total Change in Diluted Earnings per Share from Continuing Operations</b>			<b>\$(1.05)</b>

**RESULTS OF OPERATIONS**

Discussion of Consolidated Results

	Six Months Ended 31 March		% Change
	2009	2008	
Sales	\$4,150.7	\$4,950.1	(16)%
Operating income	374.5	729.0	(49)%
Equity affiliates' income	51.5	67.7	(24)%

**Sales**

	% Change from Prior Year
Underlying business	
Volume	(10)%
Price	3%
Currency	(6)%
Natural gas/raw material cost pass-through	(3)%
<b>Total Consolidated Change</b>	<b>(16)%</b>



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Sales of \$4,150.7 decreased 16%, or \$799.4. Underlying business declined 7%, due to lower volumes primarily in the Electronics and Performance Materials segment and also in the Tonnage Gases segment. Volumes were lower in the Merchant Gases segment, but this decline was mostly offset by improved pricing. Currency unfavorably impacted sales by 6%, due primarily to the strengthening of the U.S. dollar against key European and Asian currencies. Natural gas and raw material contractual cost pass-through to customers reduced sales by 3%.

### **Operating Income**

Operating income of \$374.5 decreased 49%, or \$354.5.

- Underlying business declined \$134, primarily from lower volumes in the Electronics and Performance Materials, Tonnage Gases, and Merchant Gases segments. Weakening consumer confidence, as a result of the deterioration in the global economy, significantly impacted customers' operating rates across many of the Company's end markets. The volume declines were partially offset by higher prices in the Merchant Gases segment and favorable cost performance.
- Unfavorable currency impacts lowered operating income by \$72, reflecting the strengthening of the U.S. dollar against key European and Asian currencies.
- The global cost reduction plan charge in the first quarter of 2009 reduced operating income by \$174.2.
- Prior year results included a pension settlement charge of \$27.7 for the retirements of certain corporate officers and others who were eligible for supplemental pension plan benefits.

### **Equity Affiliates' Income**

Income from equity affiliates of \$51.5 decreased \$16.2, or 24%, primarily due to unfavorable currency impacts and a prior year fine reversal.

### **Selling and Administrative Expense (S&A)**

S&A expense of \$477.6 decreased 10%, or \$53.0. S&A as a percent of sales, increased to 11.5% from 10.7%. Favorable currency effects, primarily the strengthening of the U.S. dollar against the Euro and Pound Sterling, decreased S&A by 7%. S&A further declined 3% primarily from lower underlying costs, partially offset by inflation.

### **Research and Development (R&D)**

R&D expense of \$62.8 decreased 3%, or \$1.8. R&D increased as a percent of sales to 1.5% from 1.3%.

### **Global Cost Reduction Plan**

During the first quarter ended 31 December 2008, the Company announced a global cost reduction plan designed to lower its cost structure and better align its businesses to reflect rapidly declining economic conditions around the world. The results from continuing operations included a charge of \$174.2 (\$116.1 after-tax, or \$.55 per share) for this plan. This charge included \$120.0 for severance and pension-related costs. The Company will eliminate approximately 1,400 positions, or about seven percent of its global workforce. The reductions are targeted at reducing overhead and infrastructure costs, reducing and refocusing elements of the Company's technology and business development spending, and lowering its plant operating costs. The remainder of the charge, \$54.2, is for business exits and asset management actions. Assets held for sale were written down to net realizable value and an environmental liability of \$16.0 was recognized. This environmental liability results from a decision to sell a production facility. The planned actions are expected to be substantially completed by the end of the first quarter of fiscal year 2010. Refer to Note 3 to the Consolidated Financial Statements for additional information.

The charge for the global cost reduction plan has been excluded from segment operating profit. The charge was related to the businesses at the segment level as follows: \$91.2 in Merchant Gases, \$11.1 in Tonnage Gases, \$68.9 in Electronics and Performance Materials, and \$3.0 in Equipment and Energy.

Cost savings of \$50 are expected in 2009 and \$125 in 2010. Beyond 2010, the Company expects the restructuring plan to provide annualized savings of approximately \$130, of which the majority is related to personnel costs. The Company does not expect a material change to these original estimated cost savings.

**Pension Settlement**

The Company recorded settlement losses of \$27.7 related to the cash settlement of pension plan liabilities in the first six months of 2008. See Note 11 to the Consolidated Financial Statements for additional information.

**Other Income, Net**

Items recorded to other income arise from transactions and events not directly related to the principal income earning activities of the Company.

Other income of \$8.0 decreased \$19.0. The decrease is primarily due to unfavorable foreign exchange. No other individual items were significant in comparison to the prior year.

**Interest Expense**

	Six Months Ended 31 March	
	2009	2008
Interest incurred	\$76.6	\$92.5
Less: interest capitalized	10.1	12.8
Interest expense	\$66.5	\$79.7

Interest incurred decreased \$15.9, primarily due to lower average interest rates on variable-rate debt. The change in capitalized interest is driven by a decrease in project spending which qualified for capitalization.

**Effective Tax Rate**

The effective tax rate equals the income tax provision divided by income from continuing operations before taxes less minority interest.

The effective tax rate was 20.9% and 26.1% in 2009 and 2008, respectively. The global cost reduction plan charge recorded in the first quarter reduced the effective tax rate by 4.1%. Also, the effective tax rate is lower in 2009 from higher relative tax credits based on lower income before taxes.

**Discontinued Operations**

The U.S. Healthcare business, Polymer Emulsions business, and the High Purity Process Chemicals (HPPC) business have been accounted for as discontinued operations. The results of operations of these businesses have been removed from the results of continuing operations for all periods presented. Refer to Note 4 to the Consolidated Financial Statements for additional information.

**U.S. Healthcare**

The U.S. Healthcare business generated sales of \$92.1 and income from operations, net of tax, of \$.1 in 2009. In 2008, sales were \$128.8 and loss from operations, net of tax, was \$11.9.

In the first quarter of 2009, based on additional facts, the Company recorded an impairment charge of \$48.7 (\$30.9 after-tax, or \$.15 per share) reflecting a revision in the estimated net realizable value of the U.S. Healthcare business. Also, a tax benefit of \$8.8, or \$.04 per share, was recorded to revise the estimated tax benefit related to previously recognized impairment charges. As a result of events occurring during the second quarter of 2009, which increased the Company's ability to realize tax benefits associated with the impairment charges recorded in 2008, the Company recognized a one-time tax benefit of \$16.7, or \$.08 per share.

**Polymer Emulsions**

On 31 January 2008, the Company completed the sale of its interest in its vinyl acetate ethylene polymers joint ventures to Wacker Chemie AG (Wacker), its long-time joint venture partner. As part of the agreement, the Company received Wacker's interest in the Elkton, Md. and Piedmont, S.C. production facilities and their related businesses plus cash proceeds of \$258.2. The Company recognized a gain on the sale of the Polymer Emulsions business of \$89.5 (\$57.7 after-tax). The Polymer Emulsions business generated sales of \$230.0 and income from operations, net of tax, of \$10.1 in 2008.

[Table of Contents](#)**Net Income**

Net income was \$274.2 compared to \$578.0. Diluted earnings per share was \$1.29 compared to \$2.62. A summary table of changes in earnings per share is presented on page 31.

**Segment Analysis****Merchant Gases**

	Six Months Ended 31 March		% Change
	2009	2008	
Sales	\$1,795.6	\$2,010.4	(11)%
Operating income	326.7	389.0	(16)%
Equity affiliates' income	47.1	61.9	(24)%

**Merchant Gases Sales**

	% Change from Prior Year
Underlying business	
Volume	(7)%
Price	6%
Currency	(10)%
<b>Total Merchant Gases Change</b>	<b>(11)%</b>

Sales of \$1,795.6 decreased 11%, or \$214.8. Sales decreased 10% from unfavorable currency effects, driven primarily by the strengthening of the U.S. dollar against key European and Asian currencies. Volumes were lower across most product lines and regions, consistent with weak manufacturing worldwide. Price increases have been effective in all regions, substantially offsetting the decline in volume.

In North America, sales decreased 4% due to lower volumes of 10% as a result of the global manufacturing downturn. Pricing gains of 6% partially offset the decline. In Europe, sales decreased 16%. Currency unfavorably impacted sales by 15% and volumes were lower by 7% due to weak demand across most end markets and regions in Europe. Improved pricing of 6% partially offset the decline. In Asia, sales decreased 12%. Volumes declined by 9% from the overall manufacturing slowdown in Asia, particularly from sales to electronics and steel customers. Improved pricing of 5% partially offset the decline in volume. Currency unfavorably impacted sales by 8%.

**Merchant Gases Operating Income**

Operating income of \$326.7 decreased 16%, or \$62.3. The decline is due to reduced volumes of \$84 and unfavorable currency impacts of \$42. These declines were partially offset by improved pricing, net of variable costs, of \$52 and reduced fixed costs due to productivity improvements of \$12.

**Merchant Gases Equity Affiliates' Income**

Merchant Gases equity affiliates' income of \$47.1 decreased \$14.8, driven by lower volumes, unfavorable currency impacts, and a prior year fine reversal.

[Table of Contents](#)**Tonnage Gases**

	Six Months Ended 31 March		% Change
	2009	2008	
Sales	\$1,368.6	\$1,658.3	(17)%
Operating income	206.8	222.2	(7)%

**Tonnage Gases Sales**

	% Change from Prior Year
Underlying business	
Volume	(5)%
Currency	(5)%
Natural gas/raw material cost pass-through	(7)%
<b>Total Tonnage Gases Change</b>	<b>(17)%</b>

Sales of \$1,368.6 decreased 17%, or \$289.7. Natural gas and raw material contractual cost pass-through to customers reduced sales by 7%. Unfavorable currency reduced sales by 5%, and volumes were down 5%. Volume declines were due to reduced demand from steel and chemical customers.

**Tonnage Gases Operating Income**

Operating income of \$206.8 decreased 7%, or \$15.4, primarily from the unfavorable impact of currency of \$15.

**Electronics and Performance Materials**

	Six Months Ended 31 March		% Change
	2009	2008	
Sales	\$738.8	\$1,076.4	(31)%
Operating income	13.5	133.6	(90)%

**Electronics and Performance Materials Sales**

	% Change from Prior Year
Underlying business	
Volume	(29)%
Price	—
Currency	(2)%
<b>Total Electronics and Performance Materials Change</b>	<b>(31)%</b>

Sales of \$738.8 decreased 31%, or \$337.6, primarily from lower volumes. In Electronics, underlying sales were down 35%, reflecting a significant global downturn in semiconductor and flat panel capacity utilization, and lower specialty materials pricing. In Performance Materials, underlying sales were down 19% due to weaker demand across all end markets, particularly in Asia, partially offset by improved pricing. Volumes were impacted by weakness in coatings, autos, and housing end markets. Unfavorable currency added to the decline.

**Electronics and Performance Materials Operating Income**

Operating income of \$13.5 decreased 90%, or \$120.1, as result of lower volumes across the segment of \$122 and lower pricing of \$19, partially offset by reduced costs of \$23.

## Equipment and Energy

	Six Months Ended 31 March		
	2009	2008	% Change
Sales	\$247.7	\$205.0	21%
Operating income	23.3	19.3	21%

### Equipment and Energy Sales and Operating Income

Sales of \$247.7 increased 21%, or \$42.7 due to higher large ASU activity. Operating income of \$23.3 increased \$4.0, due primarily to favorable cost performance, partially offset by lower liquefied natural gas (LNG) heat exchanger activity.

The sales backlog for the Equipment business at 31 March 2009 was \$281, compared to \$399 at 30 September 2008.

### Other

Other operating income (loss) includes expense and income that cannot be directly associated with the business segments, including foreign exchange gains and losses and interest income. Also included are LIFO inventory adjustments, as the business segments use FIFO and the LIFO pool is kept at corporate.

The operating loss of \$21.6 increased \$14.2, primarily due to unfavorable foreign exchange. No other individual items were significant in comparison to the prior year.

### 2009 OUTLOOK

The global economy deteriorated significantly during the first half of 2009. The outlook for the second half of the year is for a slower recovery than previously anticipated. The Company remains committed to improving margin and returns. Given the challenging outlook and the expectation of a slower recovery, the Company is considering additional cost reductions. The discussion below outlines the areas of challenge, risk, and opportunity on which management is focused.

Global manufacturing contraction is expected to persist through to the end of the fiscal year. Overall, manufacturing is expected to decline globally by 9% to 10%, greater than the 4% to 5% levels previously anticipated. Regionally, the U.S. is expected to decline 10%, Europe 11%, and Asia, excluding Japan, 3%.

Specifically by business, the Company expects slightly higher sequential volumes in the Electronics and Performance Materials and Merchant Gases segments. The steel and chemicals portions of the Tonnage Gases segment are expected to remain weak. The Company expects additional benefits from its cost reduction actions in the second half of the year.

Specifically by market, the Company expects refinery hydrogen demand to remain stable. In Electronics, we expect the market recovery will be slower than previously anticipated. Chemical markets will continue to decline in 2009 until key end markets such as autos, housing, and consumer goods start to improve. Also, improvement is not expected in global steel operating rates until late in calendar year 2009.

With the cost reduction actions the Company is taking, some seasonal improvement in demand, and new project start-ups, earnings in the second half of the year should improve.

### Capital Expenditures

Capital expenditures for new plant and equipment are expected to be approximately equal to fiscal year 2008 spending.

### SHARE-BASED COMPENSATION

Refer to Note 9 to the Consolidated Financial Statements for information on the Company's share-based compensation programs. For additional information on the valuation and accounting for the various programs, refer to Note 15 to the Consolidated Financial Statements in the Company's 2008 annual report on Form 10-K.

## **PENSION BENEFITS**

Refer to Note 11 to the Consolidated Financial Statements for details on pension cost and cash contributions. For additional information on the Company's pension benefits and associated accounting policies, refer to the Pension Benefits section of Management's Discussion and Analysis and Note 18 to the Consolidated Financial Statements in the Company's 2008 annual report on Form 10-K.

## **LIQUIDITY AND CAPITAL RESOURCES**

### **Cash Flow**

The narrative below refers to the Consolidated Statements of Cash Flows included on page 6.

### **Operating Activities**

For the first six months, net cash provided by operating activities decreased \$177.4, or 28%. This decrease was due to lower earnings of \$303.8 and an increase in the use of cash for working capital of \$69.3. Adjustments to income, primarily non-cash asset impairment charges in 2009 for the global cost reduction plan and the discontinued U.S. Healthcare business, and gains on the sale of discontinued operations in 2008, increased cash from operating activities by \$195.7.

The net increase in cash used for working capital (negative cash flow variance) of \$69.3 primarily included:

- A \$319.6 positive cash flow variance due to lower trade receivables as a result of reduced sales.
- A \$157.4 negative cash flow variance due to a higher use of cash for payables and accrued liabilities. The negative variance was due principally to higher pension contributions and a decrease in accounts payables, customer advances, and other operating liabilities as a result of lower operating activity. The negative variances were partially offset by an increase in accrued liabilities resulting from the global cost reduction plan.
- A \$166.6 negative cash flow variance from other working capital accounts due principally to a reduction in accrued income taxes and a reduction in noncurrent liabilities in 2009.
- A \$64.9 negative cash flow variance from contracts in progress as spending continued to decline from lower equipment activity, however, the decline has slowed resulting in a year-on-year negative variance.

### **Investing Activities**

Cash used for investing activities increased \$218.9, due principally to lower proceeds from the sale of discontinued businesses and increased spending on plant and equipment, partially offset by changes to restricted cash. The proceeds from the issuance of certain Industrial Revenue Bonds must be held in escrow until related project spending occurs and are classified as noncurrent assets in the balance sheet. During the first six months of 2009, the Company issued \$80.0 of Industrial Revenue Bonds versus \$145.0 in the prior year. The combined impact of lower bond proceeds and higher project spending resulted in a net increase to cash of \$173.0 compared to the prior year. The prior year included proceeds from the sale of the HPPC and Polymer Emulsions businesses for \$327.5.

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Capital expenditures are detailed in the table below.

	Six Months Ended 31 March	
	2009	2008
Additions to plant and equipment	\$615.8	\$522.2
Acquisitions, less cash acquired	1.6	.6
Investment in and advances to unconsolidated affiliates	.1	—
<b>Total Capital Expenditures on a GAAP basis</b>	<b>\$617.5</b>	<b>\$522.8</b>
Capital lease expenditures under EITF No. 01-08 (a)	68.2	116.5
<b>Capital Expenditures on a Non-GAAP basis</b>	<b>\$685.7</b>	<b>\$639.3</b>

- (a) The Company utilizes a non-GAAP measure in the computation of capital expenditures and includes spending associated with facilities accounted for as capital leases. Certain facilities that are built to service a specific customer are accounted for as capital leases in accordance with EITF No. 01-08, “Determining Whether an Arrangement Contains a Lease,” and such spending is reflected as a use of cash within cash provided by operating activities. The presentation of this non-GAAP measure is intended to enhance the usefulness of information by providing a measure which the Company’s management uses internally to evaluate and manage the Company’s capital expenditures.

### Financing Activities

Cash provided by financing activities increased \$282.2. During the first six months of 2009, the Company did not purchase any of its outstanding shares, as compared to the prior year which included share repurchases of \$560.2. This was partially offset primarily by lower net debt proceeds (short and long-term debt issuance net of repayments) of \$198.8 and lower proceeds from stock option exercises of \$35.0. Long-term debt proceeds of \$114.3 in fiscal 2009 included \$80.0 from Industrial Revenue Bonds issued in the first quarter.

Total debt at 31 March 2009 and 30 September 2008, expressed as a percentage of the sum of total debt, shareholders’ equity, and minority interest, was 46.3% and 43.4%, respectively. Total debt increased from \$3,966.8 at 30 September 2008 to \$4,102.4 at 31 March 2009.

The Company’s total multicurrency revolving facility, maturing in May 2011, amounted to \$1,450.0 at 31 March 2009. No borrowings were outstanding under these commitments. Additional commitments totaling \$353.0 are maintained by the Company’s foreign subsidiaries, of which \$284.1 was utilized at 31 March 2009.

The estimated fair value of the Company’s long-term debt, including current portion, as of 31 March 2009 was \$3,687.5 compared to a book value of \$3,510.4.

On 20 September 2007, the Board of Directors authorized the repurchase of up to \$1,000 of the Company’s outstanding common stock. During the six months ended 31 March 2009, the Company did not purchase any shares under this authorization. At 31 March 2009, \$649.2 in share repurchase authorization remains.

### CONTRACTUAL OBLIGATIONS

The Company is obligated to make future payments under various contracts such as debt agreements, lease agreements, unconditional purchase obligations, and other long-term obligations.

There have been no material changes to contractual obligations as reflected in the Management’s Discussion and Analysis in the Company’s 2008 annual report on Form 10-K.

## **COMMITMENTS AND CONTINGENCIES**

Refer to Note 19 to the Consolidated Financial Statements in the Company's 2008 annual report on Form 10-K and Note 12 in this quarterly filing.

## **OFF-BALANCE SHEET ARRANGEMENTS**

There have been no material changes to off-balance sheet arrangements as reflected in the Management's Discussion and Analysis in the Company's 2008 annual report on Form 10-K. The Company's off-balance sheet arrangements are not reasonably likely to have a material impact on financial condition, changes in financial condition, results of operations, or liquidity.

## **RELATED PARTY TRANSACTIONS**

The Company's principal related parties are equity affiliates operating primarily in the industrial gas business. The Company did not engage in any material transactions involving related parties that included terms or other aspects that differ from those which would be negotiated at arm's length with clearly independent parties.

## **MARKET RISKS AND SENSITIVITY ANALYSIS**

Information on the Company's utilization of financial instruments and an analysis of the sensitivity of these instruments to selected changes in market rates and prices is included in the Company's 2008 annual report on Form 10-K.

There were no material changes to market risk sensitivities for interest rate risk on fixed debt, foreign currency exchange rate risk, or commodity price risk since 30 September 2008.

The net financial instrument position increased from a liability of \$3,629 at 30 September 2008 to a liability of \$3,675 at 31 March 2009.

## **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

Management's Discussion and Analysis of the Company's financial condition and results of operations is based on the consolidated financial statements and accompanying notes that have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The significant accounting policies of the Company are described in Note 1 to the Consolidated Financial Statements and the critical accounting policies and estimates are described in the Management's Discussion and Analysis included in the 2008 annual report on Form 10-K. Information concerning the Company's implementation and impact of new accounting standards issued by the Financial Accounting Standards Board (FASB) is included in Note 2 to the Consolidated Financial Statements. There have been no changes in accounting policy in the current period that had a material impact on the Company's financial condition, change in financial condition, liquidity or results of operations.

## **NEW ACCOUNTING STANDARDS**

See Note 2 to the Consolidated Financial Statements for information concerning the Company's implementation and impact of new accounting standards.

## **FORWARD-LOOKING STATEMENTS**

This document contains "forward-looking statements" within the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on management's reasonable



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expectations and assumptions as of the date of this document regarding important risk factors. Actual performance and financial results may differ materially from projections and estimates expressed in the forward-looking statements because of many factors not anticipated by management, including, without limitation, continuing deterioration in economic and business conditions; weakening demand for the Company's products; future financial and operating performance of major customers and industries served by the Company; inability to collect receivables from or recovery of payments made by customers in bankruptcy proceedings; unanticipated contract terminations or customer cancellations or postponement of projects and sales; asset impairments due to economic conditions or specific product or customer events; costs associated with future restructuring actions which are not currently planned or anticipated; the impact of competitive products and pricing; interruption in ordinary sources of supply of raw materials; the ability to recover unanticipated increased energy and raw material costs from customers; costs and outcomes of litigation or regulatory activities; consequences of acts of war or terrorism impacting the United States' and other markets; the effects of a pandemic or epidemic or a natural disaster; charges related to current portfolio management and cost reduction actions; the success of implementing cost reduction programs and achieving anticipated acquisition synergies; the timing, impact, and other uncertainties of future acquisitions or divestitures; the ability to attract, hire, and retain qualified personnel in all regions of the world where the Company operates; significant fluctuations in interest rates and foreign currencies from that currently anticipated; the continued availability of capital funding sources in all of the Company's foreign operations; the impact of new or changed environmental, healthcare, tax or other legislation and regulations in jurisdictions in which the Company and its affiliates operate; the impact of new or changed financial accounting standards; the timing and rate at which tax credits can be utilized; and other risk factors described in Part II below and in the Company's Form 10-K for its year ended 30 September 2008. The Company disclaims any obligation or undertaking to disseminate any updates or revisions to any forward-looking statements contained in this document to reflect any change in the Company's assumptions, beliefs or expectations or any change in events, conditions, or circumstances upon which any such forward-looking statements are based.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Refer to the Market Risks and Sensitivity Analysis on page 39 of Item 2 in Management's Discussion and Analysis of Financial Condition and Results of Operations.

### **Item 4. Controls and Procedures**

We maintain a comprehensive set of disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) designed to ensure that information required to be disclosed in our filings under the Exchange Act is recorded, processed, summarized and reported accurately and within the time periods specified in the SEC's rules and forms. As of 31 March 2009 (the Evaluation Date), an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of the Evaluation Date, the design and operation of these disclosure controls and procedures were effective to provide reasonable assurance of the achievement of the objectives described above.

During the quarter that ended on the Evaluation Date, there was no change in internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION****Item 4. Submission of Matters to a Vote of Security Holders**

- a. The Annual Meeting of Shareholders of the Registrant was held on 22 January 2009.
- b. The following directors were elected at the meeting: Mario L. Baeza, Edward E. Hagenlocker, John E. McGlade and Charles H. Noski. Directors whose term of office continued after the meeting include: William L. Davis III, W. Douglas Ford, Evert Henkes, Margaret G. McGlynn, Michael J. Donahue, Ursula O. Fairbairn and Lawrence S. Smith.
- c. The following matters were voted on at the Annual Meeting:
  1. Election of Directors

NAME OF DIRECTOR	NUMBER OF VOTES CAST	
	FOR	AGAINST OR WITHHELD
Mario L. Baeza	177,689,074	3,519,568
Edward E. Hagenlocker	176,702,725	4,505,917
John E. McGlade	177,006,232	4,202,410
Charles H. Noski	177,688,483	3,520,159

2. Ratification of the appointment of KPMG LLP of Philadelphia, Pennsylvania, as independent auditor for the registrant for the fiscal year ending 30 September 2009

	NUMBER OF VOTES CAST		
	FOR	AGAINST OR WITHHELD	ABSTENTIONS
	178,722,643	2,158,823	327,176

**Item 6. Exhibits.**

Exhibits required by Item 601 of Regulation S-K

- 10.1 Share Purchase Agreement by and among Air Products and Chemicals, Inc., Tomah Holdings, Inc., and the Stockholders of Tomah Holdings, Inc., dated 21 March 2006.<sup>1/</sup>
- 10.2 Supplementary Pension Plan of Air Products and Chemicals, Inc. as Amended and Restated Effective January 1, 2008.
- 10.3 Amendment No. 1 to the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008.
- 10.4 Amendment No. 2 to the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008.
- 10.5 Amendment No. 3 to the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008.
- 10.6 Amendment No. 1 to the Air Products and Chemicals, Inc. Retirement Savings Plan, as Amended and Restated Effective 1 October 2006.
- 10.7 Annual Incentive Plan as Amended and Restated Effective 1 October 2008.

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12. Computation of Ratios of Earnings to Fixed Charges.
- 31.1. Certification by the Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2. Certification by the Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32. Certification by the Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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1/ Exhibit 10.1 was previously filed as Exhibit 10.2 to the Company's Form 10-Q Report for the quarter ended 31 March 2006 with certain information redacted. At the time of the original filing, a request for confidential treatment of the redacted information was filed with the Securities and Exchange Commission. The Company has withdrawn its request for confidential treatment and is refiling the exhibit without redaction.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Air Products and Chemicals, Inc.  
(Registrant)

Date: 24 April 2009

By: /s/ Paul E. Huck  
Paul E. Huck  
Senior Vice President and  
Chief Financial Officer

**EXHIBIT INDEX**

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STOCK PURCHASE AGREEMENT  
BY AND AMONG  
AIR PRODUCTS AND CHEMICALS, INC.  
(a Delaware corporation),  
TOMAH HOLDINGS, INC.  
(a Delaware corporation),  
AND  
THE STOCKHOLDERS OF TOMAH HOLDINGS, INC.  
Dated March 20, 2006

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## STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT is made as of 20 March, 2006, by and among Air Products and Chemicals, Inc., a Delaware corporation (“Buyer”), Tomah Holdings, Inc., a Delaware corporation (“Company”), and the common stockholders and option holders of the Company set forth on the signature page of this Agreement (individually, a “Stockholder” and collectively, the “Stockholders”). Certain other terms are used herein as defined below in **Section 1** or elsewhere in this Agreement.

### Background

As of the Closing, the Stockholders shall own all of the outstanding equity securities of the Company, which owns all of the outstanding equity securities of each other Company Group Member. This Agreement sets forth the terms and conditions under which Buyer will purchase from the Stockholders all of the equity securities of the Company outstanding as of the Closing Date.

### Witnesseth

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

#### 1. Definitions.

For convenience, certain terms used in more than one part of this Agreement are listed in alphabetical order and defined below (such terms as well as any other terms defined elsewhere in this Agreement shall be equally applicable to both the singular and plural forms of the terms defined).

“Accounts Receivable” means, as of any date, any trade accounts receivable and trade notes receivable of the Business of the Company Group Members, as indicated by the context in which used.

“Action” is defined in **Section 10.6**.

“Adjustment Amount” is defined in **Section 2.4**.

“Affiliates” means, with respect to a particular Person, (i) if an individual, each other member of such individual’s Family, any Person that is directly or indirectly controlled by any one or more members of such individual’s Family, any Person in which members of such individual’s Family hold (individually or in the aggregate) a Material Interest, and any Person with respect to which one or more members of such individual’s Family serves as a director, officer, partner, executor or trustee (or in a similar capacity); or (ii) if other than an individual, Persons or entities controlling, controlled by or under common control with that Person.. For purposes of this definition, (a) “control” (including “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, and shall be construed as such term is used in the rules promulgated under the Securities Act; (b) the “Family” of an individual includes (i) the individual, (ii) the individual’s spouse, (iii) any other natural person who is related to the individual or the individual’s spouse within the second degree and (iv) any other natural person who resides with such individual; and (c) “Material Interest” means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

“Agreement” means this Agreement and the Exhibits and Disclosure Schedules hereto.

“Applicable Representations” is defined in **Section 10.4(i)**.

“Assets” means all of the assets, properties, goodwill and rights of every kind and description, real, personal, tangible and intangible, wherever situated and whether or not reflected in the most recent Financial Statements, which are owned or possessed by any Company Group Member.

“Balance Sheet” is defined in **Section 4.5**.

“Balance Sheet Date” is defined in **Section 4.5**.

“Benefit Plan” means any “employee benefit plan” as defined in **Section 3(3)** of ERISA, and any other pension, profit sharing, bonus, deferred compensation, incentive compensation, stock option, welfare benefit, severance, vacation, holiday, sick day, salary continuation, death benefit, medical, dental or other employee fringe benefit, compensation or benefit plan, program agreement or arrangement or payroll practice provided, contributed to or entered for the benefit of employees.

“Bonus Plan Payments” is defined in **Section 2.3(a)**.

“Building Purchase Agreement” means the agreement between King Holdings, LLC and Company or one of the Existing Subsidiaries pursuant to which Company or one of the Existing Subsidiaries will purchase the land and building located at 337 Vincent Street in the City of Milton, State of Wisconsin, to be executed in connection with the Closing, substantially in the form attached hereto as **Exhibit A**.

“Business” means the entire business, operations and facilities of the Company Group Members, and all related support services conducted by the Company Group Members.



“Business Day” means any day, other than a Saturday or Sunday or a day on which the banking institutions of the State of New York are authorized or obligated by law or executive order to close.

“Buyer” is defined above in the preamble.

“Buyer’s Accountants” is defined in **Section 2.5(a)**.

“Cash Purchase Price” is defined in **Section 2.3(a)**.

“Charter Documents” means an entity’s certificate or articles of incorporation, certificate defining the rights and preferences of securities, articles of organization, by-laws, general or limited partnership agreement, certificate of limited partnership, operating agreement, joint venture agreement or similar document governing the entity.

“Claim” is defined in **Section 10.3**.

“Claim Notice” is defined in **Section 10.4(a)**.

“Claim Response” is defined in **Section 10.4(a)**.

“Closing” is defined in **Section 3.1**.

“Closing Certificates” means the certificates to be delivered by the Seller Parties at the Closing under **Section 3.2**.

“Closing Date” is defined in **Section 3.1**.

“Closing Date Balance Sheet” is defined in **Section 2.5(a)**.

“Closing Date Net Working Capital” is defined in **Section 2.5(a)**.

“Closing Payment” is defined in **Section 2.3(b)(i)**.

“Closing Shares” is defined in **Section 4.4(c)**.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company Group Member” means the Company and each of the Existing Subsidiaries.

“Company Software” is defined in **Section 4.18(g)(ii)**.

“Component” means any software, Software Product, Company Software, Licensed Software, Hardware, Database or Embedded Control.

“Company Benefit Plans” is defined in **Section 4.20(a)**.

“Company Employee Bonus Plans” means the Company’s Business Incentive Program (BIP), Marketing Incentive Plan (MIP) and Senior Management Incentive Plan (SMIP).

“Confidential Information” means any confidential technical or business information of any Company Group Member relating to the Business, including Trade Secrets, personnel information, know-how and other technical information, advertising and marketing plans or systems, distribution and sales methods or systems, sales and profit figures, customer and client lists, customer, client and supplier information and any relationships with dealers, distributors, wholesalers, customers, clients, suppliers and any other Persons who have, or have had, business dealings with the Business.

“Consulting Agreements” means those agreements between Buyer and each of Stephen B. King, Sr. and Tobin Ryan, to be executed in connection with the Closing, substantially in the form attached hereto as **Exhibits B-1** and **B-2**, pursuant to which such persons will provide consulting services to Buyer.

“Contract” means any written or oral contract, agreement, lease, instrument, or other document or commitment, arrangement, undertaking, practice or authorization that is binding on any Person or its property under any applicable Law.

“Copyrights” means all copyrights in both published and unpublished works and registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof.

“Court Order” means any judgment, decree, injunction, order or ruling of any federal, state, local or foreign court, regulatory body or other Governmental Entity that is binding on any Person or its property under applicable Law.

“Customary Qualifications,” when used with respect to the enforceability of a Contract (including, where appropriate, a Transaction Document), means that the enforceability of the Contract in question is limited by (i) bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors’ rights generally or (ii) the application of general equitable principles (regardless of whether such enforce ability is considered in a proceeding in equity or at law).

“Damages” is defined in **Section 10.1**.

“Database” means all data and other information recorded, stored, transmitted and retrieved in electronic form by a System, whether located on any System or archived in storage media of a type employed or used in conjunction with any System.

“Deductible Amount” is defined in **Section 10.4(f)**.

“Default” means (a) a breach, default or violation, (b) the occurrence of an event that with or without the passage of time or the giving of notice, or both, would constitute a breach, default or violation or cause an Encumbrance to arise, or (c) with respect to any Contract, the occurrence of an event that with or without the passage of time or the giving

of notice, or both, would give rise to a right of termination, renegotiation or acceleration or a right to receive damages or a payment of penalties.

“Derivative” means the Interest Rate Swap between Tomah Products, Inc. and Tomah Reserve, Inc and M&I Marshall and Ilsley Bank dated March 8, 2004, with the original principal of \$8,750,000, bank reference 87T.

“Disclosure Schedule” means any of the Schedules hereto containing information relating to the Company Group Members pursuant to **Section 4** and other sections and provisions hereof that have been provided to Buyer on the date hereof.

“Dispute Notice” is defined in **Section 2.5(b)**.

“Dispute Resolution Procedure” is defined in **Section 2.5(b)**.

“Embedded Control” means any microprocessor, microcontroller, smart instrumentation or other sensor, driver, monitor, robotic or other device containing a semiconductor, memory circuit, BIOS, PROM or other microchip.

“Employees” is defined in **Section 4.19**.

“Effective Time” means 11:59 p.m. local time on the Closing Date.

“Encumbrances” means any lien, mortgage, security interest, pledge, restriction on transferability, option, right of first refusal, encroachment, easement, defect of title or other claim, charge or encumbrance of any nature whatsoever on any property or property interest, including any restriction on the use, voting, transfer, receipt of income or exercise of any attributes of ownership.

“Environment” shall mean soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental Law” means any Law that requires or relates to (a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment; (b) preventing or reducing to legally permitted levels the Release of pollutants or hazardous substances or materials into the Environment; (c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated; (d) protecting resources, species or ecological amenities; (e) transportation of Hazardous Substances; (f) cleaning up pollutants that have been Released, preventing the threat of Release or paying the costs of such clean up or prevention; or (g) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries

done to public assets, in each case for injuries or damages arising out of a Release of or exposure to a Hazardous Substance or pollutant.

“Environmental Liabilities” means any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law, including those consisting of or relating to (a) any environmental matter or condition (including on-site or off-site contamination); (b) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law; (c) financial responsibility under any Environmental Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions (“Cleanup”) required by any Environmental Law (whether or not such Cleanup has been required or requested by any Governmental Entity or any other Person) and for any natural resource damages; or (d) any other compliance, corrective or remedial measure required under any Environmental Law. As used herein, the terms “removal,” “remedial” and “response action” include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”).

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

“ERISA Affiliate” means any person or entity that is a member of a controlled group, affiliated service group or is under common control with any Company Group Member within the meaning of Code **Sections 414(b), (c), (m) or (o)**.

“Escrow Agent” means JP Morgan Chase Bank.

“Escrow Agreement” means the Escrow Agreement among Buyer, the Stockholders’ Representative and the Escrow Agent in the form attached hereto as **Exhibit C**.

“Escrow Funds” is defined in **Section 2.4(b)(ii)**.

“Estimated Closing Date Balance Sheet” is defined in **Section 2.4**.

“Estimated Net Working Capital” is defined in **Section 2.4**.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Executive Loan” means that certain loan by the Company to Stephen B. King, Sr., represented by a certain Promissory Note dated July 1, 2005, in the original principal amount of \$1,800,000.

“Exempt Employees” means those Employees employed in positions classified as “exempt” under the Fair Labor Standards Act of 1938, as amended.

“Existing Subsidiaries” means Tomah Products, Inc. (a Wisconsin corporation), Tomah Reserve, Inc. (a Delaware corporation), and Tomah Products Properties LLC (a Wisconsin limited liability company).

“Facility” means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage, container, motor vehicle, rolling stock, or aircraft, or (b) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

“Financial Statements” is defined in **Section 4.5**.

“GAAP” means U.S. generally accepted accounting principles.

“Good Standing” means good standing under the laws of the applicable jurisdiction, except that with respect to the State of Wisconsin which does not recognize the concept of good standing, good standing means that the entity in question is in active status under the laws of the State of Wisconsin.

“Governmental Entity” means any federal, state, local, foreign or other governmental or quasi-governmental agency, authority, court, arbitrator or body or any other type of regulatory body.

“Governmental Permits” means all governmental permits, licenses, registrations, certificates of occupancy, approvals and other authorizations of any Governmental Entity.

“Hardware” means any mainframe, midrange computer, personal computer, notebook or laptop computer, server, switch, printer, modem, driver, peripheral or any component of any of the foregoing.

“Hazardous Activity” means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Substances in, on, under, about or from any of the Real Property or any part thereof into the Environment

“Hazardous Substances” means any substance, material or waste which is currently regulated or currently proposed to be regulated by any Governmental Entity, including any material, substance or waste which is defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “contaminant,” “toxic waste” or “toxic substance” under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Imposition” means, individually or collectively, any institutional control, restriction or use limitation placed on real estate.

“Indemnification Cap” is defined in **Section 10.4(e)**.

“Indemnification Share” means, with respect to each Stockholder, the percentage set forth opposite such Stockholder’s name on **Exhibit D**.

“Indemnified Buyer Party” is defined in **Section 10.1**.

“Indemnified Liabilities” means all Liabilities of the Company or any Company Group Member or any of their respective Affiliates to the extent relating to or arising out of or in connection with events, circumstances or conditions existing or arising prior to the Closing, other than those Liabilities: (i) to the extent adequately reflected and reserved against in the Closing Date Balance Sheet, (ii) specifically listed on **Schedule 4.12**, (iii) that relate to Taxes, which are dealt with exclusively in **Sections 4.13, 7.5 and 10.1.2** or (iv) that are Environmental Liabilities or relate to or arise with respect to violation or noncompliance with an Environmental Law.

“Indemnified Party” is defined in **Section 10.4(a)**.

“Indemnified Seller Party” is defined in **Section 10.2**.

“Indemnitor” is defined in **Section 10.4(a)**.

“Intellectual Property” means any Copyrights, Patents, Trademarks, technology rights and licenses, Trade Secrets, inventions, discoveries, know-how, formulae, specifications and ideas, rights in research and development, and commercially practiced processes and inventions, whether patentable or not in any jurisdiction, and any other intellectual property used by any Company Group Member in the Business.

“Inventory” means all inventories of the Company Group Members, including raw materials, supplies, packaging supplies, work in process and finished goods.

“Law” means any statute, law, ordinance, regulation, order or rule of any Governmental Entity, including those covering environmental, energy, safety, health, transportation, bribery, record keeping, zoning, antidiscrimination, antitrust, wage and hour, and price and wage control matters.

“Legal Proceeding” means any lawsuit, action, suit, arbitration, administrative or other proceeding, criminal prosecution or other investigation or inquiry of any Governmental Entity.

“Licensed Software” is defined in **Section 4.18(g)(i)**.

“Liability” means any direct or indirect liability, indebtedness, obligation, expense, claim, loss, damage, deficiency, guaranty or endorsement of or by any Person,

absolute or contingent, known or unknown, accrued or unaccrued, due or to become due, liquidated or unliquidated.

“LIBOR” means the interest rate offered by major banks in the interbank market in London, England for 1 (one) month, published by the British Bankers’ Association at 11:00 a.m. (London time) 2 (two) Business Days prior to the interest payment date.

“Liquidated Claim Notice” is defined in **Section 10.4(a)**.

“Management Bonuses” means the cash bonuses payable the Company to the TMT and David J. Wersland in an aggregate amount not to exceed \$514,000 in consideration of his past efforts on behalf of the Company. For avoidance of doubt, the Wersland Bonus is not included in Management Bonuses.

“Material Adverse Effect” means any event, change or effect that is or may reasonably be expected to be materially adverse to the Business or the Company Group Members taken as a whole, or the operations, assets, personnel, condition (financial or otherwise), or results of operations of the Company Group Members, taken as a whole.

“Minor Contract” means any Contract that is terminable by a Company Group Member on not more than 30 days’ notice without any Liability and any Contract under which the obligation of the Company Group Members (fulfilled and to be fulfilled) involves an amount of less than \$25,000.

“Net Working Capital” means the aggregate value of the Company Group Members’ trade receivables and Inventory, net of allowances and reserves, less trade payables, all as determined in accordance with GAAP and in a manner consistent with the Company’s June 30, 2005 balance sheet.

“Net Working Capital Valuation” is defined in **Section 2.6(a)**.

“No Further Action Determination” means written concurrence of a Governmental Entity with jurisdiction over an Environmental Liability that no further action is necessary to address the Environmental Liability. A No Further Action Determination may be conditioned on Impositions.

“Non-Competition Agreements” means the Non-Competition Agreements executed by each of Stephen B. King, Sr., Tobin M. Ryan, James A. Krogh, Gregory A. Linder, Robert E. Logan and David J. Wersland, respectively, in favor of Buyer and the Company Group Members, in substantially the form attached hereto as **Exhibit E**.

“Non-Exempt Employees” means those Employees employed in positions classified as “non-exempt” under the Fair Labor Standards Act of 1938, as amended.

“Non-Real Estate Leases” is defined in **Section 4.9**.

“Off-the-Shelf Software” is defined in **Section 4.18(a)(i)**.

“Option Obligations” means all obligations of the Company with respect to Outstanding Options.

“Option Payment” means the amount necessary to discharge and terminate all Option Obligations pursuant to the terms of the Outstanding Options.

“Option” is defined in **Section 2.2**.

“Option Waiver” is defined in **Section 2.2**.

“Order” means any order, writ, judgment, injunction, decree, ruling, assessment, stipulation, determination or award entered by or with any court, arbitrator or other Governmental Entity.

“Ordinary course” or “ordinary course of business” means, with respect to any Person, an action taken by such Person if such action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.

“Outstanding Options” is defined in **Section 4.4(b)**.

“Parties” means Buyer and the Seller Parties.

“Patents” means all patents, any extensions, reexaminations and reissues of such patents, patents of addition, patent applications, divisions, continuations, continuations-in-part, and any subsequent filings in any country or jurisdiction claiming priority therefrom.

“Performance Bonus” means the cash bonus in the amount of \$ 8,236,000 payable to Stephen B. King, Sr. in consideration of his past efforts to build and develop the Company.

“Permitted Encumbrances” shall mean (a) Encumbrances set forth on **Schedule 4.6**; (b) such Encumbrances as do not materially detract from the value or materially impair the use of the property subject thereto; (c) liens for Taxes not yet due or penalties for nonpayment or which are being actively contested in good faith by appropriate proceedings and which have been sufficiently accrued or reserved against in the Balance Sheet; or (d) industrial use restrictions that are a matter of public record or that are imposed by Law which do not interfere in any material respect with the use, occupancy or operation of the property of the Business as it is currently used, occupied or operated by the appropriate Company Group Member.

“Person” means any natural person, business trust, corporation, partnership, limited liability company, joint stock company, proprietorship, association, trust, joint venture, unincorporated association or any other legal entity of whatever nature.

“Phantom Stock Payment” means the amount necessary to discharge and terminate all obligations pursuant to the Phantom Stock Plan.



“Phantom Stock Plan” means the Tomah Holdings, Inc. 1999 Phantom Stock Plan, effective August 2, 1999, as amended as of December 8, 2003.

“Possible Breach” is defined in **Section 10.4(f)**.

“Preferred Redemption Payment” is defined in **Section 2.2**.

“Preferred Stock” is defined in **Section 4.4(a)**.

“Pro Rata Share” means the percentage specified with respect to a particular Stockholder on **Schedule 2.3**.

“Prime Rate” means the prime lending rate as announced from time to time by the Chase Manhattan Bank, New York Branch, as its prime rate.

“Purchase Price” is defined in **Section 2.3(a)**.

“Real Property” is defined in **Section 4.7**.

“Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment.

“Remedial Action” means all actions, including any capital expenditures, required or voluntarily undertaken (a) to clean up, remove, treat or in any other way address any Hazardous Substances or other substance; (b) to prevent the Release or threat of Release or to minimize the further Release of any Hazardous Substances or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the Environment; (c) to perform pre-remedial studies and investigations or post-remedial monitoring and care; or (d) to bring all Real Property and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Permits

“Required Consents” is defined in **Section 4.3**.

“Resolution Period” is defined in **Section 10.4(c)**.

“Response Period” is defined in **Section 10.4(a)**.

“Ryan Options” means the Company’s outstanding options in favor of Tobin M. Ryan pursuant to that certain Stock Option Agreement, dated as of October 24, 2002, as amended as of December 8, 2003.

“SEC” means the U.S. Securities and Exchange Commission.

“Second Working Capital Valuation” is defined in **Section 2.5(b)**.

“Securities Act” means the Securities Act of 1933, as amended.

“Seller Parties” means the Stockholders and the Company.

“Software Products” means any computer software products, other than Off-the-Shelf-Software, and all computer operating, security or programming software, that is owned by or licensed to any Company Group Member or used, in whole or in part, directly or indirectly, or has been developed or designed for or is in the process of being developed or designed for use, in whole or in part, directly or indirectly, in the conduct of the Business of any nature whatsoever, including all systems software, all applications software, whether for general business usage (e.g., accounting, finance, word processing, graphics, spreadsheet analysis, etc.) or specific, unique-to-the-Business usage (e.g., telephone call processing, etc.), and any and all documentation and object and source codes related thereto.

“Specifically Applicable Representations” is defined in **Section 10.4(f)**.

“Stockholders” is defined above in the preamble.

“Stockholders Accountants” is defined in **Section 2.5(b)**.

“Stockholders’ Representative” is defined in **Section 10.8(a)**.

“Subsidiary” means any and all corporations, partnerships, associations, trusts, joint ventures, limited liability companies and other entities with respect to which any Person, directly or indirectly, (i) owns a majority of the outstanding capital stock or (ii) owns securities or other interests having the power to elect a majority of the board of directors or similar body governing the affairs of such entity.

“System” means any combination of two or more Components.

“Target Net Working Capital” is defined in **Section 2.4**.

“Taxes” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code § 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, in-lieu-of payments, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

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

“Termination Date” is defined in **Section 3.1**.

“the Company’s knowledge” or “knowledge of the Company” means the actual knowledge, after due inquiry of any fact or matter, or representation or warranty contained in this Agreement, of a group consisting of any director or officer of any

Company Group Member, including Eric R. Kutsenda, Stephen B. King, Sr., Tobin M. Ryan, James A. Krogh, Gregory A. Linder, Robert E. Logan and David J. Wersland (the "Knowledge Group"). "Due inquiry" by a director shall be such inquiry that a director would make in the performance of his duties as a director, provided that the foregoing shall not serve to diminish the due inquiry obligation of any director who is also an officer of any Company Group Member.

"Third Accounting Firm" is defined in **Section 2.6(b)**.

"TMT" means Tobin M. Ryan, James A. Krogh, Gregory A. Linder and Robert E. Logan.

"Total Debt Amount" means, without duplication, (a) all obligations for money borrowed; (b) all obligations evidenced by notes, debentures, bonds or other similar instruments for the payment of which the Company is responsible or liable; (c) all obligations issued or assumed for deferred purchase price payments associated with acquisitions, divestments or material transactions; (d) all obligations under leases required to be capitalized in accordance with GAAP, as consistently applied, except for leases incurred in the ordinary course of business; (e) all obligations for the reimbursement on any letter of credit, banker's acceptance, guarantees or similar credit transaction, in each case, that has been claimed against; but excluding in all cases in clauses (a) through (e) accounts payable and incurred in the ordinary course of business. As of December 31, 2005, the Total Debt Amount was \$48,971,869.

"Trade Secrets" means all know-how, trade secrets, customer lists, software, technical information, data, process technology, plans, drawings (including engineering and auto-cad drawings), innovations, designs, ideas, proprietary information and blue prints, owned, used or licensed either directly or indirectly (as licensor or licensee) by any Company Group Member, except for any such item that is generally available to the public.

"Trademarks" means registered trademarks, registered service marks, trademark and service mark applications and unregistered trademarks and service marks, brand names, certification marks, trade dress, goodwill associated with the foregoing and registrations in any jurisdictions, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application used by any Company Group Member in the operation of the Business.

"Transaction Documents" means this Agreement, the Non-Competition Agreements, the Consulting Agreements, the Building Purchase Agreement and the Escrow Agreement and all other documents executed in connection herewith.

"Transaction Expenses" means any and all expenses paid or payable by any Stockholder or any Company Group Member, or for which any Company Group Member is or may become liable, with respect to the Transactions, including all accounting expenses, legal or Tax expenses, finders' fees, facilitation fees, fees for advisory or other

services of any nature or Taxes incurred directly as a result of the completion of the Transactions.

“Transactions” means the purchase and sale of the Closing Shares at the Closing and the other transactions contemplated by the Transaction Documents.

“Unliquidated Claim” is defined in **Section 10.4(a)**.

“Unreasonable Action” shall mean any action by Buyer (including a communication with a Governmental Entity) unless such action is (a) required by Law; (b) reasonably necessary in order to avoid a Legal Proceeding by a Governmental Entity under any Law; (c) reasonably necessary in order to prevent or mitigate a threat to human health or the environment; (d) consistent in nature, scope and magnitude with Buyer’s past practices and is taken in the ordinary course of Buyer’s normal operations (including the performance of capital improvements, operations and maintenance, and reasonable construction and renovation activities); or (e) undertaken in connection with environmental investigation and other due diligence activity (including any Phase I or Phase II Environmental Assessment) by a bona fide prospective purchaser, assignee or sublessee of any Real Property who is not affiliated with Buyer, and which activity is taken in connection with the prospective sale or other transfer of interest in such Real Property by Buyer.

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

“Welfare Plan” is defined in **Section 4.20(g)**.

“Wersland Bonus” means the cash bonus in the amount of \$400,000 payable by the Company to David J. Wersland in consideration of his past efforts on behalf of the Company.

“Working Capital Notice” is defined in **Section 2.6(a)**.

## 2. Purchase and Sale of Closing Shares and Other Payments.

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Buyer shall buy from each Stockholder, and each Stockholder shall sell to Buyer, free and clear of all Encumbrances, the Closing Shares owned by such Stockholder as of the Closing Date.

### 2.2 Redemption of Preferred Stock; Cancellation of Options. .

(a) Concurrently with the Closing, the Company shall redeem all outstanding shares of its Preferred Stock for a redemption price per share equal to (i) the Series B Preferred Stock Per Share Stated Value (as defined in that certain Amended and Restated Stockholders’ Agreement, dated as of December 8, 2003, as amended) plus (ii) all accrued but unpaid dividends to the date of redemption (the “Preferred Redemption Payment”), such that the capitalization of the Company as of the Closing Date shall be as set forth in **Section 4.4(b)** hereof.

(b) Concurrently with the Closing, the Company shall obtain from those Persons having any option, call, warrant, commitment or other right of any character (including conversion or preemptive rights) (each an "Option") relating to the acquisition of any issued or unissued capital stock or other securities of any Company Group Member a waiver of such Option or a binding and unconditional statement of non-exercise of such Option (the "Option Waivers"), in writing and irrevocable.

### 2.3 Purchase Price.

(a) The total purchase price for the Closing Shares payable to the Stockholders (the "Purchase Price") shall be paid to or for the benefit of the Stockholders as the Stockholders shall direct in writing. To the extent that the Stockholders direct that certain amounts shall be paid on behalf of the Company, such amounts shall be treated as capital contributions by the Stockholders to the Company and then a payment by the Company. The Purchase Price shall consist of (i) \$116,617,000 (the "Cash Purchase Price"), less (1) such amount as is required to redeem the Preferred Stock and repay the Total Debt Amount, including any interest, any prepayment penalty or premium and any other obligation owing under the terms of any indebtedness for money borrowed by the Company and not repaid at or prior to the Closing), (2) the amount necessary to discharge and terminate all Option Obligations pursuant to the terms of the Outstanding Options (the "Option Payment"), (3) the amount necessary to discharge and terminate all obligations pursuant to the Phantom Stock Plan (the "Phantom Stock Payment"), (4) the amount necessary to discharge and terminate all obligations pursuant to the terms of the Company Employee Bonus Plans (the "Bonus Plan Payments"), (5) the Management Bonuses, (6) the Wersland Bonus, (7) the Performance Bonus and (8) the Transaction Expenses (the difference being referred to herein as the "Closing Date Shares Purchase Price"), plus or minus, as the case may be, any Adjustment Amount determined in accordance with **Section 2.4** hereof.

(b) Buyer shall pay the Cash Purchase Price at the Closing as follows:

(i) an amount equal to the Closing Date Shares Purchase Price, less \$7,500,000 (the "Closing Payment") to the Stockholders in the respective amounts set forth on **Schedule 2.3**;

(ii) delivery of \$7,500,000 in cash to the Escrow Agent in accordance with the Escrow Agreement (such cash, together with any investment proceeds thereon, is referred to herein as the "Escrow Funds"); and

(iii) the remainder of the Cash Purchase Price to allow the Seller Parties to redeem the Preferred Stock and to discharge the Total Debt Amount, the Option Payment, the Phantom Payment, the Bonus Plan Payments, the Management Bonuses, the Wersland Bonus, the Performance Bonus and the Transaction Expenses.

(c) The payment of the cash obligations in **Section 2.3(b)(i)** and **2.3(b)(ii)** shall be made by wire transfer of immediately available funds.

#### 2.4 Closing Date Purchase Price Adjustment.

(a) On or prior to the Closing Date, the Company shall deliver to Buyer an estimated Closing Date Balance Sheet (the “Estimated Closing Date Balance Sheet”). If the Net Working Capital as reflected on the Estimated Closing Date Balance Sheet (the “Estimated Net Working Capital”) is (i) less than \$8,864,474 (the “Target Net Working Capital”), then the Purchase Price shall be reduced by the amount of such difference or (ii) more than the Target Net Working Capital, then the Purchase Price shall be increased by the amount of such difference (in either case, such difference is referred to herein as the “Adjustment Amount”). No adjustment to the Purchase Price under this **Section 2.4(a)** shall be made at Closing in the event the Estimated Net Working Capital equals the Target Net Working Capital.

(b) On or prior to the Closing Date, the Company shall deliver to the Buyer an estimate of the aggregate amount of the Income Tax liabilities of the Company Group Members for all Tax periods beginning on July 1, 2005, and ending on or before the Closing Date, in all cases assuming that there is no deduction for the amount of the Option Payment, Phantom Stock Payment, Bonus Plan Payments, Management Bonuses, Wersland Bonus, and Performance Bonus (together, the “Compensation Payments”) and, further, that any increase in Income Taxes as a result thereof shall reduce such Income Tax liabilities as appropriate (such assumptions, the “Hypothetical Income Tax Assumptions”) (such estimate, the “Estimated Aggregate Income Tax Liability”). The Purchase Price shall be increased or decreased on a dollar-for-dollar basis as follows:

(i) The Purchase Price shall be increased to the extent \$1,306,674 (that is, the aggregate amount of estimated tax payments, credits, and deposits of the Company Group Members for Income Taxes for all Tax periods beginning on July 1, 2005, and ending on or before the Closing Date, all as set forth on **Schedule 2.4**) (the “Aggregate Income Tax Paid”) exceeds the Estimated Aggregate Income Tax Liability.

(ii) The Purchase Price shall be decreased to the extent the Estimated Aggregate Income Tax Liability exceeds the Aggregate Income Tax Paid.

(c) On or prior to the Closing Date, the Company shall deliver to the Buyer an estimate of the aggregate amount of the Tax liabilities other than Income Tax liabilities of the Company Group Members for all Tax periods beginning on or after July 1, 2005, and ending on or before the Closing Date and an estimate of the aggregate amount of Pre-Closing Tax liabilities other than Income Tax liabilities of the Company Group Members for that portion of all Straddle Periods (as defined in **Section 7.5(a)(iii)**) through and including the Closing Date as determined under **Section 7.5(a)(iii)** (the “Estimated Pre-Closing Non-Income Tax Liabilities”). The Purchase Price shall be decreased on a dollar-for-dollar basis by the amount of the Estimated Pre-Closing Non-Income Tax Liabilities.

#### 2.5 Post-Closing Purchase Price Adjustment.

(a) The Purchase Price shall be decreased on a dollar-for-dollar basis to the extent that the Net Working Capital (the “Closing Date Net Working Capital”) as set forth on a balance sheet (the “Closing Date Balance Sheet”) prepared as of the

Closing Date (the “Net Working Capital Valuation”), as determined by Buyer’s independent accountants (“Buyer’s Accountants”), shall be less than the lesser of (A) the Target Net Working Capital and (B) the Estimated Net Working Capital; or the Purchase Price shall be increased on a dollar-for-dollar basis to the extent that the Closing Date Net Working Capital, as determined by Buyer’s Accountants, shall be more than the greater of (A) the Target Net Working Capital and (B) the Estimated Net Working Capital. Buyer shall cause Buyer’s Accountants to perform the Net Working Capital Valuation within 30 days after the Closing Date. Within 10 days after the completion of the Net Working Capital Valuation, Buyer shall give the Stockholders’ Representatives notice (the “Working Capital Notice”) of the results of the Net Working Capital Valuation and whether such results provide for any increase or decrease in the Purchase Price. In the event that the Working Capital Notice reflects an increase or decrease in the Purchase Price, then, within 20 days of receipt of the Working Capital Notice, or, in the alternative, within 20 days of the final resolution of any dispute of the Net Working Capital Valuation, the Stockholders shall pay to Buyer an amount equal to the amount by which the Closing Date Net Working Capital is less than the lesser of (A) the Target Net Working Capital and (B) the Estimated Net Working Capital or Buyer shall pay to the Stockholders an amount equal to the amount by which the Closing Date Net Working Capital is more than the greater of (A) the Target Net Working Capital and (B) the Estimated Net Working Capital.

(b) Subject to this **Section 2.5(b)**, the Net Working Capital Valuation performed by Buyer’s Accountants shall be final, binding and conclusive on the parties hereto. The Stockholders’ Representatives may dispute the Net Working Capital Valuation in the following manner. Within 10 days after the Stockholders’ Representatives receives the Working Capital Notice from Buyer, the Stockholders’ Representatives shall give Buyer notice of any disagreement with the Net Working Capital Valuation (the “Dispute Notice”), and such notice shall specify in detail the nature of the disagreement. During the 20 days after the day on which any Dispute Notice is given, the Stockholders’ Representatives and Buyer shall attempt to resolve such dispute in good faith. If they fail to reach a written agreement regarding the dispute, the Stockholders’ Representatives shall refer the matter to a firm of certified independent accountants (the “Stockholders’ Accountants”) that is different from the firm that initially prepared the Net Working Capital Valuation, and request the Stockholders’ Accountants to also determine the Closing Date Net Working Capital (the “Second Working Capital Valuation”). Buyer shall be entitled to have its independent accountants or other representatives observe the Second Working Capital Valuation. The Stockholders’ Representatives shall give Buyer prompt notice of the results of the Second Working Capital Valuation. If Buyer and the Stockholders’ Representatives are unable to agree upon the Closing Date Net Working Capital, the amounts remaining in dispute shall be submitted to a third independent accounting firm of national reputation mutually agreeable to Buyer and Stockholders’ Representatives for resolution (the “Third Accounting Firm”), which firm shall, within 30 days after such submission, determine and report to Buyer and Stockholders’ Representatives upon such remaining disputed amounts, and such report shall be final, binding and conclusive on the Parties hereto. The fees and disbursements of the Third Accounting Firm shall be allocated among Buyer and the Stockholders so that Stockholders’ share of such fees and disbursements shall be in

the same proportion that the aggregate amount of such remaining disputed amounts so submitted to the Third Accounting Firm that is unsuccessfully disputed by Stockholders' Representatives (as finally determined by the Third Accounting Firm) bears to the total amount of such remaining disputed amounts so submitted to the Third Accounting Firm. Stockholders shall pay the fees portion of the fees and expenses of the Third Accounting Firm for which they are responsible, as well as the fees and expenses of Stockholders' Accountants, in connection with this **Section 2.5(b)**. The resolution procedure set forth in this **Section 2.5(b)**, including the standard for paying costs, is referred to as the "Dispute Resolution Procedure."

(c) Any rights accruing to any Party under this **Section 2.5** shall be in addition to and independent of the rights to indemnification under **Section 10** and any payments made to any Party under this **Section 2.5** shall not be subject to the requirements of **Section 10**.

#### 2.6 Additional Post-Closing Purchase Price Adjustments.

(a) On or prior to 90 calendar days after the delivery of the Tax schedules, documents, and information to Stockholders as set forth in **Section 7.5(c)**, the Stockholders shall deliver to Buyer the aggregate amount of Income Tax liabilities of the Company Group Members for all Tax periods beginning on July 1, 2005, and ending on or before the Closing Date, in all cases calculated using the Hypothetical Income Tax Assumptions (the "Final Aggregate Income Tax Liability") and the amount of the "Income Tax Benefits" (as defined in **Section 2.6(b)** below). The Purchase Price shall be increased or decreased on a dollar-for-dollar basis as follows;

(i) The Purchase Price shall be increased to the extent the Estimated Aggregate Income Tax Liability exceeds the Final Aggregate Income Tax Liability; or

(ii) The Purchase Price shall be decreased to the extent the Final Aggregate Income Tax Liability exceeds the Estimated Aggregate Income Tax Liability.

Stockholders' calculation of the Final Aggregate Income Tax Liability shall be final, binding, and conclusive on the Parties hereto unless the Buyer disputes such calculation in accordance with **Section 2.6(d)**.

(b) The Purchase Price shall also be decreased on a dollar-for-dollar basis to the extent that Income Tax benefits ("Income Tax Benefits") do not equal or exceed \$3,617,000 as a result of the deduction for the amount of the Compensation Payments. Income Tax Benefits for this purpose shall be equal to (i) the amount of Current Income Tax Benefits plus (ii) the amount of Future Income Tax Benefits. Current Income Tax Benefits shall be equal to the difference between (x) the aggregate amount of Income Tax liabilities of the Company Group Members for all Tax periods ending on or before the Closing Date as set forth on **Schedule 2.6(b)**, in all cases calculated using the Hypothetical Income Tax Assumptions AND (y) the aggregate amount of actual Income



Tax liabilities of the Company Group Members for all Tax periods ending on or before the Closing Date as set forth on **Schedule 2.6(b)** (that is, the amount of the Compensation Payments are deductible as contemplated herein and any net operating or other loss is carried back to the full extent as permitted by Tax Law). Future Income Tax Benefits shall be equal to the net operating or other loss or other Income Tax attribute (if any) after carry back as described above as a result of deducting such Compensation Payments multiplied by the sum of (x) the highest marginal federal (i.e., 35%) plus (y) the highest marginal applicable state and local Income Tax rate in effect in each Company Group Member's fiscal Tax year beginning July 1, 2005 (for state or local Income Tax purposes, any net operating or other loss carry forward shall be computed using the apportionment factors for each applicable Company Group Member's fiscal Tax year the Compensation Payments were deducted and the Income Tax rates shall be reduced by multiplying such applicable state and local Income Tax rates by 65%). Stockholders' calculation of the Income Tax Benefits shall be final, binding, and conclusive on the Parties hereto unless the Buyer disputes such calculation in accordance with **Section 2.6(d)**.

(c) On or prior to 90 calendar days after the delivery of the Tax schedules, documents, and information to Stockholders as set forth in **Section 7.5(c)**, the Stockholders shall deliver to Buyer the aggregate amount of Tax liabilities other than Income Tax liabilities of the Company Group Members for all Tax periods beginning on July 1, 2005, and ending on or before the Closing Date and the aggregate amount of Pre-Closing Tax liabilities other than Income Tax liabilities of the Company Group Members for that portion of all Straddle Periods through and including the Closing Date as determined under **Section 7.5(a)(iii)** (the "Final Pre-Closing Non-Income Tax Liabilities"). The Purchase Price shall be increased or decreased on a dollar-for-dollar basis as follows:

(i) The Purchase Price shall be increased to the extent the Estimated Pre-Closing Non-Income Tax Liabilities exceeds the Final Pre-Closing Non-Income Tax Liabilities; or

(ii) The Purchase Price shall be decreased to the extent the Final Pre-Closing Non-Income Tax Liabilities exceeds the Estimated Pre-Closing Non-Income Tax Liabilities.

Stockholders' calculation of the Final Pre-Closing Non-Income Tax Liabilities shall be final, binding, and conclusive on the Parties hereto unless the Buyer disputes such calculation in accordance with **Section 2.6(d)**.

(d) Within 15 days after Buyer receives the calculation of Final Aggregate Income Tax Liability, the Income Tax Benefits, the Final Pre-Closing Non-Income Tax Liabilities, Recomputed Aggregate Income Tax Liability, and/or Recomputed Income Tax Benefits, Buyer shall give Stockholders notice of any disagreement with the Final Aggregate Income Tax Liability, the Income Tax Benefits, Final Pre-Closing Non-Income Tax Liabilities, Recomputed Aggregate Income Tax Liability, and/or Recomputed Income Tax Benefits, and such notice shall specify in detail

the nature of the disagreement. Any such dispute shall then be resolved in a manner using procedures similar to those set forth in **Section 2.5(b)**.

(e) Any increase or decrease in Purchase Price pursuant to this **Section 2.6** shall be paid by or refunded to the Stockholders within 20 days of the later of the delivery of such calculation to Buyer or final resolution of any dispute over such calculation.

**2.7 Additional Post-Closing Purchase Price Adjustments for Income Tax Audits.** If the Internal Revenue Service or other state or local Income Tax authority audits any Income Tax Return of any Company Group Member for any Income Tax period ending on or before the Closing Date, then within 20 days after receipt of the adjustments as finally determined or agreed to (i.e., after such audit and any subsequent Tax Proceedings (as defined in **Section 7.5(b)**) are completed and final), the Stockholders shall recompute the Final Aggregate Income Tax Liability (“Recomputed Aggregate Income Tax Liability”) and the Income Tax Benefits (“Recomputed Income Tax Benefits”) taking into account any adjustments as finally determined or agreed to provided that Buyer materially complies with its obligations set forth in **Section 7.5**. If the Recomputed Aggregate Income Tax Liability is different from the Final Aggregate Income Tax Liability, then:

(i) The Buyer shall pay the Stockholders the difference between the Final Aggregate Income Tax Liability less the Recomputed Income Tax Liability; or

(ii) The Stockholders shall pay the Buyer the difference between the Recomputed Aggregate Income Tax Liability less the Final Aggregate Income Tax Liability, provided that Buyer materially complies with its obligations set forth in **Section 7.5**.

Stockholders shall pay Buyer to the extent Recomputed Income Tax Benefits do not equal or exceed the difference between (x) \$3,617,000 less (y) any purchase price adjustment pursuant to **Section 2.6(b)** plus any prior amounts paid pursuant to this paragraph, provided that Buyer materially complies with its obligations set forth in **Section 7.5**. This **Section 2.7** continues to apply until all of the applicable statute of limitations for assessing Income Taxes against any Company Group Member for all Income Tax periods ending on or before the Closing Date have expired. If after one payment is made under this **Section 2.7**, there are one or more subsequent Income Tax audits, payments due hereunder shall be adjusted by all prior payments made under this **Section 2.7**. Stockholders’ calculation(s) of the Recomputed Aggregate Income Tax Liability and the Recomputed Income Tax Benefits shall be final, binding, and conclusive on the Parties hereto unless the Buyer disputes such calculation in accordance with **Section 2.6(d)**. Any payment due hereunder shall be paid within 20 days after final determination.

### 3. Closing.

3.1 Location, Date. The closing for the Transactions (the "Closing") shall be held at the offices of Foley & Lardner LLP in Milwaukee, Wisconsin at 10:00 a.m. (local time) as promptly as practicable (and in any event within three Business Days) after the date on which there has been a satisfaction or waiver of the conditions to the consummation of the Transactions set forth in **Sections 8** and **9**, but in any event not later than May 1, 2006, (the "Termination Date"), or at such other time, place or date as the Parties may agree. The date on which the Closing occurs is referred to herein as the "Closing Date." All of the actions to be taken and documents to be executed and delivered at the Closing (under this Agreement and including the Transaction Agreements) shall be deemed to be taken, executed and delivered simultaneously, and no such action, execution or delivery shall be effective until all are complete, except as specifically provided herein. The Closing shall be deemed to be effective as of the Effective Time.

3.2 Deliveries. At the Closing, subject to the terms and conditions contained herein, the Parties shall take the respective actions specified below:

(a) Buyer shall pay the Closing Payment to the Stockholders and the Escrow Funds to the Escrow Agent in accordance with **Section 2.3**;

(b) the Stockholders shall deliver to Buyer the original stock certificates representing the Closing Shares, duly endorsed for transfer to Buyer or with separate stock transfer powers attached thereto and signed in blank;

(c) the Parties shall deliver, or cause to be delivered, to each other executed counterparts of the Non-Competition Agreements, the Consulting Agreements, the Building Purchase Agreement, the Escrow Agreement and each of the other Transaction Documents;

(d) the Company shall deliver to Buyer a payoff letter or payoff letters, in form and substance reasonably satisfactory to Buyer, executed by each financial institution to which any Company Group Member is obligated with respect to any portion of the Total Debt Amount, together with original UCC termination statements and other lien releases terminating all Encumbrances securing such amounts, and on behalf of the Company Group Members, Buyer shall pay all such amounts on the Closing Date;

(e) the Company shall deliver to Buyer an Option Waiver, duly executed and delivered by each holder of any Outstanding Options who received the required payment therefor on or prior to the Closing Date, the Company shall deliver to Buyer an officer's certificate certifying that the Option Payment has been made to such holders, and such certificate shall be deemed a representation of the Seller Parties for the purposes of **Section 10**, and on behalf of the Stockholders the Buyer shall pay an amount equal to the Option Payment to the Company;

(f) the Bonus Plan Payments shall have been paid by the Company, the Executive Loan shall have been repaid to the Company and all employment agreements for any employee of any Company Group Member shall have been

terminated and the Company shall deliver to Buyer an officer's certificate to such effect, and such certificate shall be deemed a representation of the Seller Parties for the purposes of **Section 10**, and on behalf of the Stockholders the Buyer shall pay an amount equal to the Bonus Plan Payments to the Company;

(g) the Seller Parties shall deliver to Buyer an officer's certificate certifying that (i) the Phantom Stock Payment and the Performance Bonus have been paid in full, (ii) the Management Bonuses and Wersland Bonuses have been paid in full, (iii) the Derivative has been unwound and (iv) the Preferred Stock has been fully redeemed and the capitalization of the Company is as set forth on **Schedule 4.4(b)**, and such certificate shall be deemed a representation of the Seller Parties for the purposes of **Section 10**, and on behalf of the Stockholders the Buyer shall pay an amount equal to the Phantom Stock Payment, the Performance Bonus, the Management Bonuses, the Wersland Bonus and the Preferred Redemption Payment to the Company;

(h) the Seller Parties shall deliver to Buyer an officer's certificate representing the total amount of all Transaction Expenses, and the Persons to whom such amounts are owed, and on behalf of the Seller Parties or any Company Group Member, as the case may be, Buyer shall pay such amounts to such Persons, and such certificate shall be deemed a representation of the Seller Parties for the purposes of **Section 10**;

(i) each Stockholder and the Company shall deliver to Buyer a certificate to the effect set forth in **Sections 9.1 and 9.2**, and such certificate shall be deemed a representation of the Seller Parties for the purposes of **Section 10**;

(j) Buyer shall deliver to the Stockholders a certificate of an executive officer of Buyer to the effect set forth in **Sections 8.1 and 8.2**, and such certificate shall be deemed a representation of Buyer for the purposes of **Section 10**;

(k) the Seller Parties shall deliver to Buyer an opinion of Foley & Lardner LLP, counsel to the Seller Parties, in substantially the form of **Exhibit F**;

(l) the Seller Parties shall deliver to Buyer the Required Consents (or, in lieu thereof, waivers) and all approvals and actions of, filings with and notices to any Governmental Entity as necessary to permit the Seller Parties to perform their obligations under this Agreement, to enable Buyer to operate the Business as it was operated on the date hereof and to consummate the Transactions, and each such Required Consent, approval, filing or notice (A) shall be in form and substance reasonably satisfactory to Buyer, (B) shall not be subject to the satisfaction of any condition that has not been satisfied or waived, and (C) shall be in full force and effect;

(m) the Seller Parties shall deliver resignations from each of the members of the Board of Directors (and each committee thereof) and the officers (in their capacity as officers) of each Company Group Member;

(n) the Seller Parties shall deliver the original minute books, stock books, stock ledgers and the corporate seal of each Company Group Member; and

(o) the Parties shall deliver to each other the respective agreements and other documents and instruments, as well as good standing certificates, certified resolutions, cross receipts and such other items as may be reasonably requested.

3.3 Default at Closing. Notwithstanding anything herein to the contrary, if any Stockholder shall fail or refuse to deliver any of the Closing Shares in breach of its obligations hereunder, Buyer may refuse to complete the transactions contemplated hereby and thereby terminate all of its obligations hereunder. Each Stockholder acknowledges that the Closing Shares are unique and otherwise not available and agrees that in addition to any other remedies, Buyer may invoke any remedies available under applicable Law to enforce delivery of such shares hereunder.

#### 4. Representations and Warranties of Seller Parties.

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated herein, the Seller Parties hereby represent and warrant to Buyer, as of the date hereof and also at and as of the Closing Date as though then made (except to the extent such representations and warranties speak as of a particular date, in which case such representations and warranties shall be made only as of such particular date) as follows:

4.1 Corporate Status. Each Company Group Member (except for Tomah Products Properties LLC) is a corporation duly organized, validly existing and in Good Standing under the Laws of the jurisdiction in which it was incorporated and is qualified to do business as a foreign corporation in each jurisdiction where it is required to be qualified except where the failure of any Company to be so qualified would not be material to such Company Group Member. Tomah Products Properties LLC is a limited liability company duly organized, validly existing and in Good Standing under the Laws of the State of Wisconsin and is not qualified to do business in any jurisdiction other than the State of Wisconsin. The Charter Documents of each Company Group Member have been delivered to Buyer, and such Charter Documents are effective as of the date hereof under applicable Laws and are current, correct and complete.

4.2 Authorization. Each Company Group Member has the requisite power and authority to own such Company Group Member's Assets and to carry on such Company Group Member's portion of the Business. Each Seller Party has the requisite power and authority to execute and deliver the Transaction Documents to which it is or will be a party, and perform the Transactions performed or to be performed by such Seller Party. Such execution, delivery and performance by each Seller Party has been duly authorized by all necessary corporate or other action, including, where necessary, approval by the stockholders or members of each such Seller Party. Each Transaction Document executed and delivered by any Seller Party has been duly executed and delivered by such Seller Party and constitutes a valid and binding obligation of such Seller Party, enforceable against such Seller Party in accordance with its terms.

4.3 Consent and Approvals. Except as specified in **Schedule 4.3** (collectively the "Required Consents") and with respect to the HSR Act, neither the execution and

delivery by any Seller Party of the Transaction Documents to which it is a party, nor the performance of the Transactions performed or to be performed by any Seller Party, require any filing, consent, notice, registration, renegotiation or approval, constitute a Default or cause any payment obligation to arise under (a) any Law or Court Order to which any Stockholder or any Company Group Member is subject, (b) the Charter Documents of any Stockholder or any Company Group Member or (c) any Contract or Governmental Permit to which any Stockholder or any Company Group Member is a party or by which the material properties or other material Assets of any Stockholder or Company Group Member may be bound.

#### 4.4 Capitalization and Stock Ownership.

(a) As of the date of this Agreement, the total authorized capital stock of the Company consists of: (i) 1,854,000 shares of common stock, consisting of (A) 618,000 shares of Series A Common Stock, \$.001 par value per share, of which 492,358 shares are issued and outstanding on the date hereof, and (B) 1,236,000 share of Series B Common Stock, \$.001 par value per share, of which 984,716 shares are issued and outstanding on the date hereof, and (ii) 1000 shares of Series B Preferred Stock, \$.001 par value per share, of which 1000 shares are issued and outstanding on the date hereof (all such outstanding shares of Preferred Stock are referred to herein as the "Preferred Stock"). Except as set forth on **Schedule 4.4** hereto, there are no existing options, warrants, calls, commitments or other rights of any character (including conversion or preemptive rights) relating to the acquisition of any issued or unissued capital stock or other securities of the Company.

(b) **Schedule 4.4** sets forth the name of each holder of any option, warrant or other right to purchase any capital stock or other securities of the Company (the "Outstanding Options"), including the Ryan Options, as well as the number of shares subject to purchase pursuant to any Outstanding Options, the date of grant and the exercise price therefor. Upon payment of the amounts set forth on the Closing Statement with respect to Outstanding Options, all Outstanding Options will have been terminated in accordance with the terms of the governing Contract, and the Company shall have no further obligation of any nature in connection therewith. **Schedule 4.4** sets forth all awards or grants made under the Phantom Stock Plan. Upon payment of the amounts set forth on the Closing Statement with respect to the Phantom Stock Plan, all obligations under the Phantom Stock Plan will have been terminated in accordance with the terms of the Phantom Stock Plan and any other governing document, and the Company shall have no further obligation of any nature in connection therewith.

(c) As of the Closing, the total authorized capital stock of the Company will consist of: (i) 1,854,000 shares of common stock, consisting of (A) 618,000 shares of Series A Common Stock, \$.001 par value per share, of which 492,358 shares will be issued and outstanding, and (B) 1,236,000 share of Series B Common Stock, \$.001 par value per share, of which 984,716 shares will be issued and outstanding (all such outstanding shares of Common Stock are referred to herein as the "Closing Shares"), and (ii) 1000 shares of Series B Preferred Stock, none of which will be issued and outstanding on the Closing Date. Except as set forth on **Schedule 4.4** hereto, as of

the Closing Date, there will be no existing options, warrants, calls, commitments or other rights of any character (including conversion or preemptive rights) relating to the acquisition of any issued or unissued capital stock or other securities of the Company.

(d) All of the Closing Shares are duly and validly authorized and issued and are fully paid and non-assessable. The Stockholders are the record and beneficial owners of all of the Closing Shares in the respective amounts specified on **Schedule 4.4**. The Company has complied with all applicable Laws in connection with the issuance of the Closing Shares, and none of the Closing Shares was issued in violation of any Contract binding upon the Company. There is no Contract among or between the Company and the Stockholders, or any of them, relating to the Closing Shares, including any restriction affecting transfer or voting rights or any other incidents of record or beneficial ownership. Upon completion of the Transactions at the Closing, Buyer will receive valid title to all of the Closing Shares, free and clear of all Encumbrances. At the time of such receipt, all of the Closing Shares shall be freely transferrable except as limited by any applicable securities Law.

4.5 Financial Statements. Attached as **Schedule 4.5** are correct and complete copies of audited consolidated financial statements for the Business at June 30, 2003, 2004, and 2005 and the related statements of income and cash flows for the years then ended. The Company has also delivered to Buyer an unaudited consolidated balance sheet as of February 28, 2006, and the related statements of income and cash flows for the eight months then ended. All such financial statements are referred to herein collectively as the "Financial Statements." The Financial Statements have been prepared in accordance with GAAP (except that the unaudited financial statements do not have the necessary footnotes and adjustments typically made at fiscal year-end and which are consistent with past practice have not been made) and are consistent in all material respects with the books and records of the Company Group Members. The balance sheets included in the Financial Statements present accurately the financial position of the Company Group Members as of the dates thereof. The profit and loss statements included in the Financial Statements present accurately the results of the operations of the Business for the periods indicated thereon, and reflect all costs that historically have been incurred by the Business. The balance sheet of the Company Group Members as of February 28, 2006 that is included in the Financial Statements is referred to herein as the "Balance Sheet," and the date thereof is referred to as the "Balance Sheet Date."

4.6 Title to Assets and Related Matters. Each Company Group Member has good title to, valid leasehold interests in or valid licenses to use, all of its Assets, free from any Encumbrances except those specified in **Schedule 4.6** and Permitted Encumbrances. The use of such Assets is not subject to any Encumbrances (other than those specified in the preceding sentence). All tangible personal property (other than Inventory) owned by any Company Group Member is suitable for the purposes for which such Assets are used, is structurally sound and in good working condition, reasonable wear and tear and defects which, individually or in the aggregate, do not interfere with the use thereof excepted, and is free from any latent or patent defects. The Assets constitute all of the Assets required for, or material to, the continued operation of the Business by Buyer as operated by the Company Group Members during the past 12

months. The Assets, taken as a whole, constitute all the assets relating to or used or held for use in connection with the Business during the past 12 months (except for such Assets that have been acquired, sold or disposed of in the ordinary course of the Company's business consistent with past practice. There are no Assets used in the operation of the Business that are owned by any Person other than a Company Group Member that are not licensed or leased to a Company Group Member under valid, current license arrangements or leases.

4.7 Real Property. **Schedule 4.7** lists all real estate used in the operation of the Business as well as any other real estate owned or leased by any Company Group Member, and the improvements (including buildings and other structures) located on such real estate (collectively, the "Real Property"), and lists any leases under which any such Real Property is possessed (the "Real Estate Leases"). Each Company Group Member has good and marketable title, subject to Permitted Encumbrances, to all of its Real Property. All Real Property owned by any Company Group Member is suitable for the purpose for which it is used, is structurally sound and in good working condition, reasonable wear and tear and defects which, individually or in the aggregate, do not interfere with the use thereof excepted, and such use does not encroach on the property or rights of anyone else. Except as set forth on **Schedule 4.7**, no Company Group Member or any Affiliate thereof has any ownership interest in any real property used in the Business. **Schedule 4.7** also accurately describes any other real estate previously owned, leased or otherwise operated by any Company Group Member or any predecessor thereof and the time periods of any such ownership, lease or operation. All of the Real Property (a) is usable in the ordinary course of business and is in good operating condition and repair, reasonable wear and tear and defects which, individually or in the aggregate, do not interfere with the use thereof excepted and (b) conforms, in all material respects, with any applicable Laws relating to its construction, use and operation. The Real Property complies with applicable zoning Laws. Each Company Group Member, or, to the Company's knowledge, the landlord of any Real Property leased by any Company Group Member, has obtained all licenses and rights-of-way from Governmental Entities or private parties that are necessary to ensure vehicular and pedestrian ingress and egress to and from the Real Property. Each Real Estate Lease is in full force and effect and, except as set forth on **Schedule 4.7**, has not been assigned, modified, supplemented or amended and, to the Company's knowledge, neither landlord nor tenant under any such lease is in Default under any such lease, and no circumstance or set of facts exist which, with the giving of notice or passage of time, or both, would permit landlord or tenant to terminate any such lease.

4.8 Certain Personal Property. **Schedule 4.8** is a list of all fixed Assets of each Company Group Member having a carrying value of at least \$10,000. Except as specified in **Schedule 4.8**, since the Balance Sheet Date, no Company Group Member has acquired any items of tangible personal property that have a carrying value in excess of \$10,000. All of such personal property included in **Schedule 4.8** is, and any such personal property acquired after the date hereof in accordance with **Section 6.1** will be, usable in the ordinary course of business, and conforms and will conform with any applicable Laws relating to its construction, use and operation. Except for those items subject to the Non-Real Estate Leases, no Person other than the Company Group



Members owns any vehicles, equipment or other tangible assets located on the Real Property that have been used in the Business or that are necessary for the operation of the Business.

4.9 Non-Real Estate Leases. **Schedule 4.9** lists all assets and property used in the Business (other than Real Property and Intellectual Property) that are possessed by the Company Group Members under an existing lease, including all trucks, automobiles, forklifts, machinery, equipment, furniture and computers, except for any lease under which the aggregate annual payments are less than \$15,000 (each, an “Immaterial Lease”). **Schedule 4.9** also lists the leases under which such assets and property listed in **Schedule 4.9** are possessed. All of such leases (excluding Immaterial Leases) are referred to herein as the “Non-Real Estate Leases.”

4.10 Accounts Receivable. The Accounts Receivable (net of any reserve shown on the Balance Sheet) of the Company Group Members are bona fide Accounts Receivable created in the ordinary course of business. To the Company’s knowledge, all of the Accounts Receivable are collectible within 90 days from the respective dates of sale. Except as set forth on **Schedule 4.10**, there are no setoffs, counterclaims or disputes asserted or conditions precedent to payment therefor with respect to any such Accounts Receivable, and no setoff, counterclaim, dispute, discount or allowance from any such Accounts Receivable has been made or agreed to. The Company Group Members know of no facts or circumstances (other than general economic conditions) that are likely to result in any material increase in the uncollectability of such Accounts Receivable.

4.11 Inventory. Except as described in **Schedule 4.11**, all Inventory (net of any reserve shown on the Balance Sheet) consists of a quality and quantity usable and salable in the ordinary course of business, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Balance Sheet. Such Inventory is recorded in the Financial Statements in accordance with GAAP at the lower of average cost or market value. **Schedule 4.11** also specifies that portion of the Inventory that consists of reworked items. The quantities of each class of Inventory (whether raw materials, work-in-process, or finished goods) are not excessive, but are reasonable in the present circumstances and consistent with historical amounts of the Company Group Members.

4.12 Liabilities. The Company Group Members have no Liabilities, other than (a) Liabilities specified in **Schedule 4.12**, (b) Liabilities adequately reflected and reserved against in the Balance Sheet (except as heretofore paid or discharged), (c) current Liabilities incurred in the ordinary course since the Balance Sheet Date, or (d) executory Liabilities under any Contracts that are specifically disclosed in **Schedule 4.16** (or not required to be disclosed because of the term or amount involved) that were not required under GAAP to have been specifically disclosed or reserved for on the Balance Sheet.

4.13 Taxes. Except as set forth in **Schedule 4.13**: (i) each of the Company Group Members has filed all Tax Returns that it was required to file. All such Tax Returns were correct and complete in all material respects. All Taxes due and owing by

any of the Company Group Members (as shown on any Tax Return) have been paid. None of the Company Group Members currently is the beneficiary of any extension of time within which to file any Tax Return. With regards to tax periods beginning on or after July 1, 2000 but before the date hereof, no claim has been made by a Governmental Entity in a jurisdiction where any of the Company Group Members does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.; (ii) each Company Group Member has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party. There is no dispute or claim concerning any Tax Liability of any of the Company Group Members either (A) claimed or raised by any Governmental Entity in writing or (B) to the knowledge of the Company based upon personal contact with any agent of such Governmental Entity. **Schedule 4.13** lists all Tax Returns filed with respect to any of the Company Group Members for taxable periods ended on or after June 30, 2000, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Seller Parties have delivered to Buyer correct and complete copies of all Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by any of the Company Group Members since June 30, 2000; (iv) except as shown on **Schedule 4.13**, none of the Company Group Members has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. None of the Company Group Members has been a United States real property holding corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii). None of the Company Group Members has taken any position on its federal income Tax Returns nor has any Company Group Member conducted its Tax affairs in a manner that could give rise to an accuracy-related penalty on underpayments within the meaning of Code §6662. None of the Company Group Members has had a reportable transaction understatement that could give rise to an accuracy-related penalty on underpayments within the meaning of Code §6662A. None of the Company Group Members is a party with any other Company Group Member to any Income Tax allocation or sharing agreement. None of the Company Group Members (A) has been a member of an affiliated group (as defined by Code §1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (B) has any Liability for the Taxes of any Person (other than any of the Company Group Members) under Reg. §1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise; (vi) the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the June 30, 2005 balance sheet (rather than in any notes thereto) was fairly stated in accordance with GAAP and the unpaid Taxes of the Company Group Members do not exceed that reserve as adjusted for the passage of time through the date hereof in accordance with the past custom and practice of the Company Group Members in filing their Tax Returns; (vii) none of the Company Group Members will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (A) change in method of accounting for a taxable period ending on or prior to the Closing Date under Code §481(c) (or any corresponding or similar provision of state, local or foreign income Tax

law); (B) “closing agreement” as described in Code §7121 (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (C) installment sale or open transaction disposition made on or prior to the Closing Date; or (D) a material prepaid amount received on or prior to the Closing Date.

4.14 Subsidiaries. Except for the Existing Subsidiaries, no Company Group Member owns, directly or indirectly, any interest or investment (whether equity or debt) in any corporation, partnership, limited liability company, trust, joint venture or other legal entity. There are no existing options, warrants, calls, commitments or other rights of any character (including conversion or preemptive rights) relating to the acquisition of any issued or unissued capital stock or other securities of any Existing Subsidiary, nor does any Company Group Member have any Contract to acquire any equity securities or other securities of or interest in any Person or any direct or indirect equity or ownership interest in any other business except as set forth on **Schedule 4.14**. Except as set forth on **Schedule 4.14**, all of the outstanding capital stock of each Existing Subsidiary has been duly and validly authorized and issued and is fully paid and non-assessable. The Company is the record owner of all of the outstanding capital stock of each Existing Subsidiary in the respective amounts specified on **Schedule 4.14**. Each such Existing Subsidiary has complied with all applicable Laws in connection with the issuance of shares of its capital stock, and no such shares were issued in violation of any Contract binding upon any Company Group Member. Except as set forth on **Schedule 4.14**, the outstanding capital stock of each Existing Subsidiary is owned by the Company free and clear of all Encumbrances. There is no Contract relating to the capital stock of any Existing Subsidiary, including any restriction affecting transfer or voting rights or other incidents of record or beneficial ownership pertaining to any of such capital stock.

#### 4.15 Legal Proceedings and Compliance with Law.

(a) Except as set forth in **Schedule 4.15(a)**, (i) there is no Legal Proceeding that is pending or, to the Company’s knowledge, threatened against any Company Group Member; (ii) there has been no Default under any Laws, including Environmental Laws, applicable to the Business and no Company Group Member has received any notice from any Governmental Entity regarding any alleged Defaults applicable to any Company Group Member under any Laws; and (iii) there has been no Default with respect to any Court Order applicable to any Company Group Member.

(b) Except as set forth on **Schedule 4.15(b)**:

(i) Each Company Group Member is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law; and no Stockholders or Company Group Member has any basis to expect, nor has any of them or any other Person for whose conduct they are or may be held to be responsible received, any actual or threatened Order, notice or other communication from (i) any Governmental Entity or private citizen acting in the public interest, or (ii) the current or prior owner or operator of any Real Property or Assets, of any actual or potential violation of or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental

Liabilities with respect to any of the Real Property or any other properties or Assets in which any Company Group Member has had an interest, or with respect to any property or Real Property at or to which Hazardous Substances were generated, manufactured, refined, transferred, imported, used or processed by any Company Group Member or any other Person for whose conduct they are or may be held responsible, or from which Hazardous Substances have been transported, treated, stored, handled, transferred, disposed, recycled, or received; and

(ii) The Company has delivered or made available to Buyer complete copies of all final written reports, studies or assessments in the possession or control of the Company Group Members, any Affiliate or any agents thereof that relate to any environmental condition on the Real Property.

**Schedule 4.15(b)** identifies any other final reports, studies or assessments that relate to any environmental condition on the Real Property of which any Seller Party has knowledge.

#### 4.16 Contracts.

(a) **Schedule 4.16** lists all Contracts of the following types to which any Company Group Member is a party or by which it is bound, except for Minor Contracts:

(i) Contracts with any present or former stockholder, director, officer, employee, partner or consultant of such Company Group Member or any Affiliate thereof;

(ii) Contracts for the future purchase of, or payment for, supplies or products, or for the lease of any real or personal property from or the performance of services by a third party, in excess of \$50,000 in any individual case, or any Contracts for the sale of products that involve an amount in excess of \$50,000 with respect to any one supplier or other party;

(iii) Contracts to sell or supply products or to perform services that involve an amount in excess of \$50,000 in any individual case;

(iv) Contracts to lease to or to operate for any other party any real or personal property that involve an amount in excess of \$50,000 in any individual case;

(v) Any license, franchise, distributorship, sales agency or other arrangements, including those that relate in whole or in part to any technical information, software technical assistance or other know-how used in the past 24 months;

(vi) Any notes, debentures, bonds, conditional sale agreements, equipment trust agreements, letter of credit agreements, reimbursement agreements, loan agreements or other Contracts for the borrowing or lending of money (including loans to or from officers, directors, partners, stockholders or Affiliates of the Company Group Members or any members of their immediate families), agreements or arrangements for a

line of credit or for a guarantee of, or other undertaking in connection with, the indebtedness of any other Person;

(vii) Contracts for any capital expenditure or leasehold improvements with a Contract value in excess of \$50,000;

(viii) Any Contracts under which any Encumbrances other than Permitted Encumbrances exist; and

(ix) Any Contract (other than Minor Contracts and those described in any of (i) through (viii) above) not made in the ordinary course of business.

(b) Each Company Group Member has delivered to Buyer complete and correct copies of all written Contracts, together with all amendments thereto, and accurate descriptions of all material terms of all oral Contracts, set forth or required to be set forth on **Schedule 4.16**.

(c) The Contracts listed in **Schedule 4.16** and the Minor Contracts excluded from **Schedule 4.16** based on the term or amount thereof are referred to herein as the "Company Group Member Contracts." No Company Group Member is in Default under any Company Group Member Contract (including any Real Estate Leases and Non-Real Estate Leases), which Default or Defaults could result in a Liability on the part of such Company Group Member in excess of \$10,000 in any individual case or \$25,000 in the aggregate. No Company Group Member has received any communication from, and has not given any communication to, any other party indicating that such Company Group Member or such other party, as the case may be, is in Default under any Company Group Member Contract. To the Company's knowledge, (i) none of the other parties to any Company Group Member Contract is in material Default thereunder, and (ii) each Company Group Member Contract is enforceable against any other parties thereto in accordance with terms thereof.

4.17 Insurance. **Schedule 4.17** lists all policies or binders of insurance held by or on behalf of each Company Group Member, specifying with respect to each policy the insurer, the amount of the coverage, the type of insurance, the risks insured, the expiration date, the policy number and any pending claims thereunder. There is no material Default with respect to any such policy or binder, nor has there been any failure to give any notice or present any claim under any such policy or binder in a timely fashion or in the manner or detail required by the policy or binder. There is no notice of non-renewal or cancellation with respect to, or disallowance of any claim under, any such policy or binder that has been received by Company Group Member. **Schedule 4.17** includes information with respect to the insurance coverage that each Company Group Member has had in place throughout the past ten years.

#### 4.18 Intellectual Property.

(a) Contracts.

(i) **Schedule 4.18(a)-1** contains a complete and accurate list and summary description, including any royalties paid or received by each Company Group Member, of all Contracts relating to the Intellectual Property to which any Company Group Member is a party or by which any Company Group Member is bound, except for any license implied by the sale of a product and perpetual, paid-up royalty free and transferable license rights for “off-the-shelf” third party application software that any Company Group Member licenses for use in the Business, in any individual case, under a license with a maximum payment obligation on the part of Company Group Member of less than \$10,000 (“Off-the-Shelf Software”). There are no outstanding and no threatened disputes or disagreements with respect to any such Contract. Except specifically set forth on **Schedule 4.18(a)-2**, no current or former employee of any Company Group Member and no other Person owns or has any proprietary, financial or other interest, direct or indirect, in whole or in part, and including any right to royalties or other compensation, in any of the Intellectual Property, or in any application therefor.

(ii) All employees and consultants of each Company Group Member who are involved in the design or development of the Intellectual Property have executed a non-disclosure and assignment of inventions agreement (a “Confidentiality Agreement”).

(iii) Except as specified on **Schedule 4.18(a)-2**, none of the employees or consultants of any Company Group Member is subject to any contractual or legal restrictions that might interfere with the use of his or her best efforts to promote the interests of the Business. To the Company’s knowledge, no employee of any Company Group Member has entered into any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his or her work to anyone other than the Company Group Members.

(iv) To the Company’s knowledge, no employee or consultant of any Company Group Member (a) has used any other Persons’ Trade Secrets or other information that is confidential in the course of his or her work or, (b) is, or is currently expected to be, in material Default under any term of any employment contract, agreement or arrangement relating to the Intellectual Property, or any Confidentiality Agreement or any other Contract or any restrictive covenant relating to the Intellectual Property, or the development or exploitation thereof.

(b) Know-How Necessary for the Business.

(i) Except as described on **Schedule 4.18(b)**, the Company Group Members are the owner or have a right to use each item of the Intellectual Property.

(ii) Except as set forth in **Schedule 4.18(b)**, all current or former employees of the Company Group Members who are or were involved in the design or development of the Intellectual Property have executed written Contracts with the Company Group Members that assign to the Company Group Members all rights to

any inventions, improvements, discoveries, or information made during or derived from their relationship to the Company Group Members.

(c) Patents.

(i) **Schedule 4.18(c)** contains a complete and accurate list and summary description of all Patents in which the Company Group Members have an ownership interest. The Company Group Members own all right, title and interest in and to each of the Patents except for those Patents identified as being co-owned, and as to those co-owned Patents the rights and obligations of the co-owners with respect to such Patents are set forth in **Schedule 4.18(c)**. To the Company's knowledge, there are no recorded or unrecorded Encumbrances with respect to any Patent.

(ii) All of the issued Patents are currently in compliance with formal legal requirements (including payment of filing, examination, and maintenance fees and proofs of working or use), and are not subject to any maintenance fees or taxes or actions falling due within 90 days after the Closing Date which have not already been paid or responded to by Company Group Members.

(iii) No Patent has been or is now involved in any interference, reissue, reexamination, or opposition proceeding. To the Company's knowledge, there is no potentially interfering patent or patent application of any third party and no third party is infringing any Patent.

(iv) No challenge to any Patent is pending and, to the Company's knowledge, no such challenge has been threatened. To the Company's knowledge, none of the products manufactured and sold, nor any process or know-how used by any Company Group Member, infringes or is alleged to infringe any patent or other proprietary right of any other Person.

(v) To the knowledge of the Company, no third party is infringing or is alleged to be infringing any of the Patents.

(vi) The Company Group Members have used reasonable best efforts to assure that all products made, used or sold under the Patents have been marked with the proper patent notice.

(d) Trademarks.

(i) **Schedule 4.18(d)** contains a complete and accurate list and summary description of all Trademarks in which any Company Group Member has an ownership interest. The Company Group Members are the owners of all right, title and interest in and to each of the Trademarks. To the Company's knowledge, neither such Trademark, nor the ownership thereof, is subject to any claim of any third party.

(ii) All Trademarks that have been registered with the USPTO and any foreign Trademark Office are currently in compliance with all formal legal requirements (including the timely post-registration applications), and are not subject to

any maintenance fees or taxes or actions falling due within 90 days after the Closing Date which have not already been paid or responded to by Company Group Member.

(iii) No Trademark has been or is now involved in any opposition, invalidation or cancellation and, to the knowledge of the Company, no such action has been threatened with respect to any of the Trademarks. To the Company's knowledge, there is no potentially interfering or infringing trademark or trademark application of any third party.

(iv) No challenge to any Trademark is pending or, to the Company's knowledge, threatened in any way. To the knowledge of the Company, none of the Trademarks used by any Company Group Member infringes, or is alleged to infringe, any trade name, trademark, or service mark of any third party.

(v) To the knowledge of the Company, no third party is infringing or misusing or is alleged to be infringing or misusing any of the Trademarks.

(vi) The Company Group Members have used reasonable best efforts to assure that all products and materials containing a registered or unregistered Trademark bear the proper notice where and as permitted or required by law.

(e) Copyrights.

(i) **Schedule 4.18(e)** contains a complete and accurate list and summary description of all registered Copyrights in which any Company Group Member has an ownership interest. The Company Group Members are the owner of all right, title and interest in and to each of the registered Copyrights, free and clear of any Encumbrances.

(ii) All of the Copyrights that have been registered and are currently in compliance with formal legal requirements, to the Company's knowledge, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within 90 days after the date of Closing.

(iii) To the Company's knowledge, no Copyright is infringed or has been challenged or threatened in any way. To the Company's knowledge, none of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright or any third party or is a derivative work based on the work of a third party.

(iv) The Company has made reasonable efforts to mark all works encompassed by the registered Copyrights with the proper copyright notice.

(f) Trade Secrets.

(i) With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate, and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual.



(ii) Each Company Group Member has taken all reasonable precautions to protect the secrecy, confidentiality and value of its Trade Secrets.

(iii) Each Company Group Member owns and has the right to use its Trade Secrets. To the Company's knowledge, the Trade Secrets are not part of the public knowledge or literature and have not been used, divulged, or appropriated either for the benefit of any Person (other than Company Group Member) or to the detriment of the Business. To the Company's knowledge, no Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

(g) Software.

(i) **Schedule 4.18(g)(i)** contains a complete and accurate list of all material Software Products and Databases (except Off-the-Shelf Software) that are used by any Company Group Member for which such Company Group Member is the licensee or lessee or the right to use which any Company Group Member has otherwise obtained ("Licensed Software"). **Schedule 4.18(g)(i)** also sets forth a list of all license fees, rents, royalties or other charges that any Company Group Member is required or obligated to pay with respect to Licensed Software. Prior to the date of this Agreement, the Seller Parties have delivered to Buyer true and complete copies of all Contracts under which the Company Group Members have the right to use any such Licensed Software. The Company Group Members are in compliance with all provisions of any Contract pursuant to which any Company Group Member has the right to use the Licensed Software.

(ii) **Schedule 4.18(g)(ii)** contains a list or description of all Software Products and Databases developed or owned by any Company Group Member and which are used in the Business. Such software and Licensed Software (collectively, the "Company Software"), constitutes all material Software Products developed or owned by any Company Group Member and which are used in the Business. The consummation of the Transactions contemplated by this Agreement will not cause a material Default under any Contract relating to the Company Software or impair in a material way the ability of any Company Group Member or the Buyer to use the Company Software in the same manner as such Company Software is currently used or intended to be used by any Company Group Member. To the knowledge of the Company, no Company Group Member is infringing, misappropriating or diluting any intellectual property rights of any other Person with respect to the Company Software, and, to the knowledge of the Company, no other Person is infringing or misappropriating any Intellectual Property rights of any Company Group Member with respect to the Company Software.

4.19 Employee Relations. **Schedule 4.19** sets forth a true and complete list of the names, job title, base salaries and date of employment of all employees of each Company Group Member involved in the operation of the Business (the "Employees"). Except as set forth on **Schedule 4.19**, each Company Group Member: (i) is in compliance in all material respects with all applicable Laws respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Employees, including the Worker Adjustment and Retraining Notification Act

of 1988, as amended; (ii) has withheld and reported all amounts required by Law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees; (iii) is not liable for any material arrears of wages or any material Taxes or any material penalty for failure to comply with any of the foregoing; and (iv) is not liable for any material payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees. There are no material pending or, to the knowledge of the Company, threatened or reasonably anticipated claims or actions against any Company Group Member under any worker's compensation policy or long-term disability policy. Except as set forth in **Schedule 4.19**, there are no actions, suits, claims, labor disputes or grievances pending, or, to the knowledge of the Company, threatened or reasonably anticipated relating to any labor, safety or discrimination matters involving any Employee, including charges of unfair labor practices or discrimination complaints. No Company Group Member has engaged in any unfair labor practices within the meaning of the National Labor Relations Act. Except as set forth in **Schedule 4.19**, no Company Group Member is presently, nor has it been in the past ten (10) years, a party to, or bound by, any collective bargaining agreement or union contract with respect to any Employees and no collective bargaining agreement is being negotiated by any Company Group Member. No consent of any union (or similar group or organization) is required in connection with the consummation of the transactions contemplated hereby. There are no pending, or, to the knowledge of the Company, threatened (a) union representation petitions respecting the Employees, (b) efforts being made to organize any of the Employees, or (c) strikes, slow downs, work stoppages, or lockouts or threats affecting the Employees.

#### 4.20 ERISA.

(a) **Schedule 4.20** contains a complete list of all Benefit Plans that are sponsored or maintained by any Company Group Member or ERISA Affiliate or under which any Company Group Member is obligated (each, a "Company Benefit Plan"). The Company Group Members have delivered to Buyer (i) accurate and complete copies of all Company Benefit Plan documents and all other material documents relating thereto, including (if applicable) all summary plan descriptions, summaries of material modification, trust agreements, summary annual reports and insurance policies or contracts, (ii) accurate and complete detailed summaries of all unwritten Company Benefit Plans and any funding arrangements therefor, (iii) accurate and complete copies of the most recent financial statements and actuarial reports with respect to all Company Benefit Plans for which financial statements or actuarial reports are required or have been prepared, and (iv) accurate and complete copies of all annual reports for all Company Benefit Plans (for which annual reports are required) prepared within the last three years and all other filings required by ERISA or the Code. Each Company Benefit Plan providing benefits that are funded through a policy of insurance is indicated by the word "insured" placed by the listing of the Benefit Plan in **Schedule 4.20**.

(b) All Company Benefit Plans conform (and at all times have conformed), and are being administered and operated (and have at all time been administered and operated) in compliance with, the requirements of ERISA, the Code and

all other applicable Laws, including without limitation the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996. All material returns, reports and disclosure statements required to be made under ERISA and the Code with respect to all Company Benefit Plans have been timely filed or delivered. There have not been any “prohibited transactions,” as such term is defined in **Section 4975** of the Code or **Section 406** of ERISA involving any of the Company Benefit Plans and any Company Group Member officer, director or employee, or to the knowledge of the Company, involving any other party, that could subject any Company Group Member to any material penalty or tax imposed under the Code or ERISA.

(c) Except as is set forth in **Schedule 4.20**, any Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code has been determined by the Internal Revenue Service to be so qualified (or is a prototype plan subject to an opinion letter that may be relied on) or an application for such determination is pending. Any such determination that has been obtained remains in effect and has not been revoked, and with respect to any application that is pending, the Company Group Members have no reason to suspect that such application for determination will be denied. Nothing has occurred since the date of any such determination that is reasonably likely to affect adversely such qualification or exemption, or result in the imposition of excise taxes or income taxes on unrelated business income under the Code or ERISA with respect to any such Company Benefit Plan.

(d) No Company Group Member now sponsors or has ever sponsored any defined benefit plan subject to Title IV of ERISA or has ever contributed to any multiemployer plan (as defined in Section 3(37) of ERISA), nor does any Company Group Member have a current or contingent obligation to contribute to any multiemployer plan (as defined in Section 3(37) of ERISA). No Company Group Member has any liability with respect to any employee benefit plan (as defined in Section 3(3) of ERISA) other than in accordance with the terms of the Company Benefit Plans.

(e) There are no pending or, to the knowledge of the Company, any threatened claims by or on behalf of any Company Benefit Plans, or by or on behalf of any individual participants or beneficiaries of any such Benefit Plans, alleging any breach of fiduciary duty on the part of any Company Group Member or any of its officers, directors or employees under ERISA or any other applicable Law, relating to the Company Benefit Plans, nor is there, to the knowledge of the Company, any basis for such claim. The Company Benefit Plans are not the subject of any pending (or to the knowledge of the Company, any threatened) investigation or audit by the Internal Revenue Service or the Department of Labor.

(f) Each Company Group Member and ERISA Affiliate has timely made all required contributions under the Company Benefit Plans.

(g) With respect to any Company Benefit Plan that is an employee welfare benefit plan (within the meaning of Section 3(1) of ERISA) (a “Welfare Plan”)

and except as specified in **Schedule 4.20**, (i) each Welfare Plan for which contributions are claimed by any Company Group Member as deductions under any provision of the Code complies with all applicable requirements pertaining to such deduction, (ii) with respect to any welfare benefit fund (within the meaning of Section 419 of the Code) related to a Welfare Plan, there is no disqualified benefit (within the meaning of Section 4976(b) of the Code) that would result in the imposition of a tax under Section 4976(a) of the Code, (iii) any Benefit Plan that is a group health plan (within the meaning of Section 4980B(g) (2) of the Code) complies, and in each and every case has complied, with all of the applicable requirements of Section 4980B of the Code, ERISA, Title XXII of the Public Health Service Act and the Social Security Act, and (iv) all Welfare Plans may be amended or terminated by the Buyer at any time on or after the Closing Date. Except as specified in **Schedule 4.20**, no Company Benefit Plan provides any health, life or other welfare coverage to employees of Company Group Member beyond termination of their employment with any Company Group Member by reason of retirement or otherwise, other than coverage as may be required under Section 4980B of the Code or Part 6 of ERISA, or under the continuation of coverage or conversion provisions of the Laws of any state or locality.

(h) Except as otherwise set forth on **Schedule 4.20**, neither the execution and delivery of this Agreement nor the consummation of the Transactions will (i) result in any payment to be made by an Affiliate of any Company Group Member (including severance, unemployment compensation, golden parachute (as defined in Code Section 280G or otherwise)) becoming due to any employee or former employee, officer or director, or (ii) increase or vest any benefits payable under any Benefit Plan.

(i) Except as otherwise set forth on **Schedule 4.20**, any amount that could be received (whether in cash or property or the vesting of property) as a result of any of the Transactions by any employee, officer or director of Company Group Member who is a “disqualified individual” (as such term is defined in proposed Treasury Regulation Section 1.280G-1) under any employment, severance or termination agreement, other compensation arrangement or Benefit Plan currently in effect would not be characterized as an “excess parachute payment” (as such term is defined in Section 280(b)(1) of the Code).

4.21 Corporate Records. The books of account, minute books, stock record books and other records of each Company Group Member, all of which have been made available to Buyer, contain complete, correct and current copies of its Charter Documents and of all minutes of formal meetings, resolutions and other proceedings of its stockholders, Board of Directors and committees of such Board of Directors, and have been maintained in the ordinary course of business, and in accordance with sound business practices, and no formal meeting of any such stockholders, Board of Directors, or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those original books and records will be in the possession of the Company Group Members.

4.22 Absence of Certain Changes. Except as set forth on **Schedule 4.22** or as contemplated by this Agreement, the Business has been conducted in the ordinary course

since January 1, 2005, and there has not been with respect to any Company Group Member any of the items specified below since January 1, 2005:

- (a) any change that has had or is reasonably likely to have a Material Adverse Effect;
- (b) any distribution or payment declared or made in respect of its capital stock by way of dividends, purchase or redemption of shares or otherwise;
- (c) any increase in the compensation payable or to become payable to any director, officer, employee or agent, except for increases for non-officer employees made in the ordinary course of business, nor any other change in any employment or consulting arrangement;
- (d) any sale, assignment or transfer of Assets, or any additions to or transactions involving any Assets, other than those made in the ordinary course of business;
- (e) other than in the ordinary course of business, any waiver or release of any claim or right or cancellation of any debt held;
- (f) any damage, destruction or loss, whether or not covered by insurance, (A) materially and adversely affecting the Assets or the operations, assets, properties or prospects of the Business or (B) of any item or items carried on its books of account individually or in the aggregate at more than \$100,000, or any repeated, recurring or prolonged shortage, cessation or interruption of supplies or utility or other services required to conduct the Business;
- (g) receipt of notice or actual or threatened labor trouble, strike or other occurrence, event or condition of any similar character which has had or could reasonably be expected to adversely affect the Assets, the Business or the transactions contemplated by this Agreement or any other Transaction Document;
- (h) capital expenditures or capital additions in excess of an aggregate of \$500,000, or the lease of capital equipment or property under which the annual lease charges exceed \$500,000 in the aggregate;
- (i) any payments to any Affiliate of a Company Group Member, other than wages and reimbursements in accordance with past practices and except as specified in **Schedule 4.22**.

4.23 Previous Sales; Warranties. No Company Group Member has breached any express or implied warranties in connection with the sale or distribution of goods or the performance of services, except for breaches that, individually and in the aggregate, are not material and are consistent with past practice of the Business.

4.24 Customers and Suppliers. Each Company Group Member has used reasonable business efforts to maintain, and currently maintains, adequate working

relationships with each of the customers and suppliers of the Business. **Schedule 4.24** specifies for each of the two fiscal years ending June 30, 2004 and 2005, and for the 6-month period ending December 31, 2006, the names of the respective customers that were, in the aggregate, the 20 largest customers in terms of dollar value of products or services, or both, sold by the Business. Except as specified on **Schedule 4.24**, none of such customers has given any Company Group Member written (or, to the knowledge of the Company, oral) notice terminating, canceling or threatening to terminate or cancel any Contract or relationship with such Company Group Member. **Schedule 4.24** also specifies for each year of the three years ending December 31, 2003, 2004 and 2005, the names of the respective suppliers that were, in the aggregate, the 20 largest suppliers in terms of dollar value of products or services, or both, used by each Company Group Member. None of such suppliers has given any Company Group Member written (or, to the knowledge of the Company, oral) notice terminating, canceling or threatening to terminate or cancel any Contract or relationship with such Company Group Member.

4.25 Operation of the Business. Except as described on **Schedule 4.25**, (a) the Business has been conducted only through the Company Group Members and not through any other divisions or any direct or indirect Subsidiary or Affiliate of any Company Group Member, and (b) no part of such Business has been operated by any Person other than the Company Group Members. To the knowledge of the Company, no Stockholder who is also an officer of the Company or a member of the Knowledge Group engages, directly or indirectly, in any business activities that are competitive with the Business.

4.26 Finder's Fees. No Seller Party or Company Group Member is, nor will be, responsible or subject to a claim for any commission or finder's or similar fee in connection with the Transactions.

4.27 Accuracy of Information. No representation or warranty by any Seller Party in this Agreement or in the Disclosure Schedule or in any Transaction Document and no information contained therein or otherwise delivered by or on behalf of any Seller Party to Buyer in connection with the Transactions, including any Closing Certificate, the Financial Statements, Disclosure Schedule and Exhibits hereto, (i) contains any untrue statement of a material fact as specifically stated or (ii) to the Knowledge of the Company, omits to state any material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made.

5. Representations and Warranties of Buyer. Buyer hereby represents and warrants to the Seller Parties as of the date hereof and also at and as of the Closing Date as though then made (except to the extent such representations and warranties speak as of a particular date, in which case such representations and warranties shall be made only as of such particular date) as follows:

5.1 Organizational Status. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation and is qualified to do business in any jurisdiction where it is required to be so qualified.

5.2 Authorization. Buyer has the requisite power and authority to execute and deliver the Transaction Documents to which it is a party and to perform the Transactions performed or to be performed by it. Such execution, delivery and performance by Buyer has been duly authorized by all necessary corporate action. Each Transaction Document executed and delivered by Buyer has been duly executed and delivered by Buyer and constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to Customary Qualifications.

5.3 Consents and Approvals. Except for compliance with the HSR Act, neither the execution and delivery by Buyer of the Transaction Documents to which it is a party, nor the performance of the Transactions performed or to be performed by Buyer, require any filing, consent or approval, constitute a Default or cause any payment obligation to arise under (a) any Law or Court Order to which Buyer is subject, (b) the Charter Documents or bylaws of Buyer or (c) any Contract, Governmental Permit or other document to which Buyer is a party or by which the material properties or other material assets of Buyer may be bound.

5.4 Investment Intent. The Closing Shares are being acquired by Buyer for investment only and not with the view to resale or other distribution. Buyer acknowledges that such securities have not been registered under the Securities Act or any applicable state securities (or “blue sky”) Laws and, therefore, cannot be resold unless so registered or exempted from such registration. Buyer has sufficient knowledge and experience in financial and business matters that it is capable of evaluating the economic risks of investment in the Closing Shares. Buyer is an “accredited investor” as that term is defined in Rule 501 of Regulation D promulgated by the SEC.

5.5 No Financing. Neither the Closing nor Buyer’s obligations hereunder are subject to any contingency respecting financing and Buyer has readily available funds or availability on its existing credit facilities to consummate the Transactions and satisfy its obligations hereunder.

5.6 Finder’s Fees. No Person retained by Buyer is or will be entitled to any commission or finder’s or similar fee in connection with the Transactions.

#### 6. Covenants of Seller Parties.

6.1 Conduct of the Business. Except as may be approved in writing by an authorized officer of Buyer, including any President or Vice President, or as expressly contemplated by this Agreement, between the date hereof and the Closing:

(a) the Company shall, and shall cause each other Company Group Member to, operate the Business only in the ordinary course and, to the extent consistent with such operation, use its commercially reasonable efforts to (i) preserve the current organization of the Business intact, (ii) keep available the services of the Employees, (iii) continue normal purchasing, rental, leasing, financing, marketing, advertising, promotional and maintenance expenditures and (iv) preserve any significant beneficial

business relationships with all Persons having business dealings with any Company Group Member with respect to the Business;

(b) the Company shall, and shall cause each other Company Group Member to, use its commercially reasonable efforts consistent with past practice to maintain (i) its Assets in good operating condition and repair, subject to normal wear and tear and (ii) all insurance covering its Business and its Employees and Assets in full force and effect until the Closing Date comparable in amount, scope, and coverage to that in effect on the date of this Agreement;

(c) the Company shall, and shall cause each other Company Group Member to, use its commercially reasonable efforts consistent with past practice to (i) comply in all material respects with all applicable Laws, (ii) perform all of its obligations under this Agreement or any other Transaction Document to which any Company Group Member is or will be a party without Default, (iii) not Default on any of its other Liabilities, except where payment of any such Liability is being contested in good faith by appropriate proceedings and where appropriate reserves have been established therefor, and (iv) maintain all of its books and records in the ordinary course;

(d) the Company shall, and shall cause each other Company Group Member to, use its commercially reasonable efforts consistent with past practice to comply in all material respects with all its obligations under any Contract to which it is a party;

(e) the Company shall not, and shall not permit any of the other Company Group Members to, sell, rent, lease or otherwise dispose of any part of the Business or its Assets with an aggregate value of greater than \$25,000, except for any such sale, rental, lease or other disposition in the ordinary course;

(f) the Company shall not, and shall not permit any of the other Company Group Members to, create or suffer to exist any new Encumbrance or defect of title on any of its Assets with a value in excess of \$10,000;

(g) the Company shall not, and shall not permit any other Company Group Member to, issue any note, bond or other debt security, or create, assume or incur any indebtedness for borrowed money or capitalized lease obligations except for borrowings under the Company's existing credit facilities in the ordinary course of business or as contemplated in order for the Company to comply with its obligations under **Section 3.2** and, with respect to the Company Employee Bonus Plans, **7.8(b)(ii)**;

(h) the Company shall not, and shall not permit any of the other Company Group Members to, modify, terminate (before the expiration thereof) or renew any Contract or dispose of any right of value accruing to it with respect to the Business, except in the ordinary course;

(i) the Company shall not, and shall not permit any of the other Company Group Member to, take any other action which could reasonably be expected to have a Material Adverse Effect;



(j) the Company shall not, and shall not permit any of the other Company Group Members to, merge with or into or consolidate with any Person other than Buyer;

(k) the Company shall not, and shall not permit any of the other Company Group Members to, issue and sell, or agree to issue and sell, any of its or their equity securities, or securities convertible into or exercisable for equity securities except as provided in Section 2.2;

(l) no Stockholder shall sell or offer for sale any shares of the Company's capital stock that such Stockholder currently own, or create any Encumbrance thereon;

(m) the Company shall not, and shall not permit any of the other Company Group Members to, redeem any capital stock or make any distributions or other payments to or transactions with any stockholders of the Company or any of the other Company Group Members, except as provided in **Sections 2.2 and 2.3** hereof;

(n) the Company shall not, and shall not permit any Company Group Members to: (i) make any material modification or adjustment to the compensation of any Employee; (ii) grant any severance or termination pay to any Employee except pursuant to written agreements outstanding, or policies existing on the date hereof and as previously disclosed in writing or made available to Buyer, or adopt any new severance plan, or amend or modify or alter in any manner any severance plan, agreement or arrangement existing on the date hereof; (iii) adopt or amend any Benefit Plan, or take any action which would result in increased liabilities under any Benefit Plan, or enter into any employment agreement or collective bargaining agreement (other than offer letters and letter agreements entered into in the ordinary course of business consistent with past practice with Employees who are terminable "at will"); (iv) pay any special bonus or special remuneration to any Employee; or (v) increase the salaries or wage rates or fringe benefits (including rights to severance or indemnification) of its Employees except, in each case, as may be required by Law; and

(o) the Company shall not, and shall not permit any of the other Company Group Members to, agree or commit to do any of the foregoing.

6.2 Access to Information. The Company shall, and shall cause each other Company Group Member to, give to Buyer and its counsel, accountants and other representatives access during the Company's normal business hours upon reasonable prior notice to the premises of its Business and its personnel, furnish to Buyer and such representatives all such additional documents, financial and Tax information and information with respect to the Business as Buyer may from time to time reasonably request and use its commercially reasonable efforts to cause its accountants to permit Buyer to examine the records and working papers pertaining to their audits and other reviews of its financial statements with respect to the Business or any of its Assets. The Company further shall permit Buyer and its representatives to have the opportunity, within ten (10) days after the date of this Agreement, to conduct such customer due

diligence as Buyer shall deem necessary and appropriate, including visits to or other communications with customers and suppliers of the Business, such visits to be made only upon prior notice to the Company and only with the participation of Company management. The Company and the Stockholders acknowledge that no investigation by Buyer or its representatives shall affect or limit the scope of the Company's representations and warranties herein or limit the liability of the Stockholders hereunder for any breach of such representations and warranties.

6.3 No Solicitation. From and after the date hereof and up to and including the Termination Date, without the prior written consent of Buyer, no Seller Party shall, and the Company shall cause each Company Group Member not to, authorize or permit any Company Group Member, or any representative thereof, to, directly or indirectly, solicit, initiate or encourage (including by way of furnishing information) or take any other action to facilitate knowingly any inquiries or the making of any proposal that constitutes or may reasonably be expected to lead to an Acquisition Proposal from any Person, or engage in any discussion or negotiations relating thereto or accept any Acquisition Proposal. If any Company Group Member receives any such inquiries, offers or proposals it shall (a) notify Buyer orally and in writing of any such inquiries, offers or proposals (including the terms and conditions of any such proposal and the identity of the Person making it), within 24 hours of the receipt thereof and (b) keep Buyer informed of the status and details of any such inquiry, offer or proposal. As used herein, "Acquisition Proposal" means a proposal or offer (other than pursuant to this Agreement) for a tender or exchange offer, merger, consolidation or other business combination involving any proposal to acquire in any manner a substantial equity interest in, or all or substantially all of the assets of, any Company Group Member.

6.4 Related Parties. Each Stockholder shall use his or its reasonable best efforts to cause the Company Group Members and any other Affiliate to take any action or refrain from taking any action, in each case as may be necessary to carry out the Transactions.

6.5 Updates. Between the date hereof and the Closing Date, the Seller Parties shall promptly disclose to Buyer in writing (a) any information set forth in the Disclosure Schedules delivered by Seller Parties that is no longer complete, true or applicable, (b) any event or development that occurs, or information that becomes known, that, had it existed or been known on the date hereof, would have been required to be disclosed by Seller Parties under this Agreement, (c) any information of the nature of that set forth in the Disclosure Schedules delivered by the Seller Parties that arises after the date hereof and that would have been required to be included in the Disclosure Schedules delivered by the Seller Parties if such information had been obtained on the date of delivery thereof, and (d) any information that gives any Seller Party any reason to believe that any of the conditions set forth in **Section 8** or **9** will not be satisfied prior to the Termination Date; provided, however, that none of such disclosures shall be deemed to modify, amend or supplement the representations and warranties of the Seller Parties or the Schedules hereto for the purposes of this Agreement (including **Section 10**), unless Buyer shall have consented thereto in writing.

## 7. Mutual Covenants.

7.1 Fulfillment of Closing Conditions. At and prior to the Closing, each Party shall use commercially reasonable efforts to fulfill, and to cause each other to fulfill the conditions specified in **Sections 8 and 9** to the extent that the fulfillment of such conditions is within its or his control. In connection with the foregoing, each Party will (a) refrain from any actions that would cause any of its representations and warranties to be inaccurate as of the Closing, and take any reasonable actions within its control that would be necessary to prevent its representations and warranties from being inaccurate as of the Closing, (b) execute and deliver the applicable agreements and other documents referred to in **Sections 8 and 9**, (c) comply with all applicable Laws in connection with its execution, delivery and performance of this Agreement and the Transactions, (d) use commercially reasonable efforts to obtain in a timely manner all necessary waivers, consents and approvals required under any Laws, Contracts or otherwise, including any Required Consents, and (e) use commercially reasonable efforts to take, or cause to be taken, all other actions and to do, or cause to be done, all other things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the Transactions.

7.2 Consents. The Seller Parties and Buyer shall each cooperate, and use commercially reasonable efforts, in as timely a manner as is reasonably practicable, to make all filings and obtain all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Entities and other third parties necessary to consummate the Transactions. Each of the Parties shall furnish to the other Parties such necessary information and reasonable assistance as such other Parties may reasonably request in connection with the foregoing and shall provide the other parties with copies of all filings made by such Party with any Governmental Entity or any other information supplied by such Party to a Governmental Entity in connection with this Agreement.

### 7.3 HSR Filing.

(a) Without limiting the generality of **Section 7.2**, but subject to this **Section 7.3(a)**, to the extent such filings have not been completed prior to the execution of this Agreement, the Seller Parties and Buyer shall each (i) take promptly all actions necessary to make the filings required of such Party or any of its Affiliates under the HSR Act, including making the initial filings within three Business Days after the date hereof, (ii) use commercially reasonable efforts to comply with any request for additional information or documentary material received by such Party or any of its Affiliates from the Federal Trade Commission or the Antitrust Division of the Department of Justice pursuant to the HSR Act and (iii) cooperate with the other Parties in connection with any filing of the Company under the HSR Act and in connection with resolving any investigation or other inquiry concerning the Transactions commenced by either the Federal Trade Commission or the Antitrust Division of the Department of Justice or state attorneys general; provided, however, Buyer will have no obligation to make any divestiture of tangible or intangible assets or business operations or agree to any other obligations, commitments or covenants in order to secure the expiration or termination of

the HSR waiting period or otherwise gain the approval of the Federal Trade Commission or the Department of Justice, as the case may be.

(b) Each Party shall promptly inform the other Parties of any material communication received by such Party from the Federal Trade Commission, the Antitrust Division of the Department of Justice or any other Governmental Entity regarding any of the Transactions. Each Party shall advise the other Parties promptly of any understandings, undertakings or agreements that such Party proposes to make or enter into with the Federal Trade Commission, the Antitrust Division of the Department of Justice or any other Governmental Entity in connection with the Transactions.

7.4 Public Announcements. The Parties shall consult with each other before issuing any press release or making any public statement with respect to this Agreement and the Transactions and, except as may be required by applicable Law, none of the Parties nor any other party shall issue any such press release or make any such public statement without the prior written consent of the other Parties; provided, however, that the Stockholders' Representative is authorized to give such consent on behalf of the Stockholders.

7.5 Tax Matters.

(a) Tax Returns.

(i) Income Tax Returns for Tax Periods Ending On or Before the Closing Date. Within 90 calendar days of receiving the Tax schedules, documents, and information as provided in **Section 7.5(c)**, the Stockholders shall prepare or cause to be prepared all Tax Returns, including all amended Tax Returns and Tax refund claims carrying back any net operating or other loss, with respect to income and/or state franchise tax based on net income ("Income Tax Returns") of the Company Group Members for all periods ending on or prior to the Closing Date which are filed after the Closing Date in a manner consistent with the Company Group Members' past practices and consistent with the Closing Date Net Working Capital as agreed to by the parties or as finally determined pursuant to **Section 2.5(b)**. The Stockholders shall permit the Company and/or the Buyer to review and comment on each such Income Tax Return prior to filing, and shall make such revisions to such Tax Returns as are reasonably requested by the Company and/or the Buyer. Buyer shall cause each Company Group Member to timely file and pay all Taxes due on such Tax Returns directly to the applicable taxing authority on or prior to their due date (or extended due date if a valid extension is timely filed).

(ii) Non-Income Tax Returns for Tax Periods Ending On or Before the Closing Date. The Company and/or the Buyer shall prepare or cause to be prepared all Tax Returns (except for Income Tax Returns) of the Company Group Members for all periods ending on or prior to the Closing Date which are filed after the Closing Date in a manner consistent with the Company Group Members' past practices and consistent with the Closing Date Net Working Capital as agreed to by the parties or as finally determined pursuant to **Section 2.5(b)**. The Company and/or the Buyer shall

permit the Stockholders to review and comment on each such Tax Return by providing such Tax Returns to Stockholders within 30 days after filing. Stockholders shall review and comment on such Tax Returns within 30 days of receipt. Buyer shall file an amended Tax Return making such revisions to such Tax Returns as are reasonably requested by the Stockholders. Buyer shall cause each Company Group Member to timely file and pay all Taxes directly to the applicable taxing authority on or prior to their due date (or extended due date if a valid extension is timely filed).

(iii) Tax Returns for Tax Periods Beginning Before and Ending After the Closing Date. The Company and/or the Buyer shall prepare or cause to be prepared all Tax Returns of the Company Group Members for Tax periods that begin before the Closing Date and end after the Closing Date (“Straddle Period”). The Company and/or the Buyer shall permit the Stockholders to review and comment on each such Tax Return by providing such Tax Returns to Stockholders within 30 days after filing. Stockholders shall review and comment on such Tax Returns within 30 days of receipt. Buyer shall file an amended Tax Return making such revisions to such Tax Returns as are reasonably requested by the Stockholders. For purposes of this **Section 7.5(a)(iii)**, in the case of any Taxes that are imposed on a periodic basis and are payable for a taxable period that includes (but does not end on) the Closing Date, the portion of such Tax which relates to the portion of such Taxable period ending on the Closing Date (“Pre-Closing Taxes”) shall (x) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the entire Taxable period, and (y) in the case of any Tax based upon or related to income or receipts be deemed equal to the amount which would be payable if the relevant Taxable period ended on the Closing Date using the “closing of the books” method consistent with the Company Group Members’ past practices closing the books at the end of a fiscal year and in a manner consistent with the Closing Date Net Working Capital as agreed to by the parties or as finally determined pursuant to **Section 2.5(b)**. Any credits relating to a Taxable period that begins before and ends after the Closing Date shall be taken into account as though the relevant Taxable period ended on the Closing Date. All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with the Company Group Members’ past practices. Buyer shall cause each Company Group Member to timely file and pay all Taxes due on such Tax Returns directly to the applicable taxing authority on or prior to their due date (or extended due date if a valid extension is timely filed).

(iv) Elections and Changes. In preparing the Tax Returns referenced in this **Section 7.5(a)**, none of Buyer or any Buyer Affiliate, Stockholders, or any Company Group Member shall make or cause to be made any material Tax election or change any material income Tax accounting method or period without giving prior written notice to and receiving the prior written consent of the other Parties, which such consent shall not be unreasonably withheld; provided, however, such prior written consent shall not be required if and to the extent such change or election (A) is required by Law and no other reasonable method exists to comply with such Law or (B) will not materially increase the amount of Taxes that would be owing for periods covered by such

Tax Return, with such materiality determined prior to such election or change. None of Buyer or any Buyer Affiliate, Stockholders, or any Company Group Member shall make any election under Code Section 338 (or any corresponding or equivalent election under state, local, foreign, or other Tax Laws), engage in any transaction, or otherwise treat the purchase and sale of the Company Stock as a sale of assets for Income Tax purposes.

(v) Amended Tax Returns. Except for such amended Income Tax Returns and Income Tax refund claims as contemplated to be filed pursuant to **Section 7.5(a)(i)**, Buyer shall not, and shall not permit any Company Group Member to, (i) amend any Tax Return, amended Tax Return, or Tax refund claim filed by or with respect to any Company Group Member for a taxable period which Stockholders may be liable for the payment of any portion of the Taxes shown as due on such Tax Return pursuant to **Section 7.5**, without the express written consent of the Stockholders, which such consent shall not be unreasonably withheld, or (ii) initiate any voluntary audit by a Tax authority for a taxable period which Stockholders may be liable for the payment of any portion of the Taxes shown as due on such Tax Return pursuant to **Section 7.5**, without the express written consent of the Stockholders, which such consent shall not be unreasonably withheld.

(vi) Consolidated Income Tax Returns. Buyer shall cause each Company Group Member to join, and/or become a member or includable corporation of, its affiliated group commencing on the first day after the Closing Date and shall include each Company Group Member in Buyer's consolidated or combined Income Tax Returns for the period which includes such date (thereby causing each Company Group Member's fiscal year beginning July 1, 2005 to end on the Closing Date for Income Tax purposes).

(b) Audits. Buyer shall cause the Company Group Members to notify promptly Stockholders in writing upon receipt by a Company Group Member or any of its Affiliates of notice of any pending or threatened Tax audits or assessments that may affect the Tax liabilities of Company and for which Stockholders may be liable under **Section 2.7** or **10.1.2**. Stockholders shall have the sole right to represent a Company Group Member's interests in any Tax matter, including without limitation any audit, appeal, hearing, and/or administrative or other proceeding, all judicial proceedings, the determination to extent, toll, or waive the statute of limitations, or the filing of any amended return, that involves a Tax liability or potential Tax liability for which Stockholders may be liable under **Section 2.7** or **10.1.2** unless such Tax liability or potential Tax liability is subject to the Deductible Amount and is reasonably expected to be less than the Deductible Amount (after taking into consideration all other items subject to the Deductible Amount) (a "Tax Proceeding"), and to employ counsel of their choice at their expense. Buyer shall, and Buyer shall cause each Company Group Member to, cooperate fully with Stockholders and its counsel in the defense or compromise of any Tax Matter, including providing Stockholders or Stockholders' attorneys, accountants, employees, or agents the necessary power of attorney or other authorization to represent the Company Group Member. The Buyer, together with counsel and other professional experts of its choosing and expense may participate in the prosecution or defense of any such Tax Proceeding. Stockholders, with their counsel and other professional experts of their choosing and expense, may participate in the prosecution or defense of any Tax

Proceeding that is reasonably expected to be less than the Deductible Amount, provided, however, that Buyer shall be primarily responsible for such proceeding. The settlement or compromise of any Tax liability for which Stockholders may be liable under **Section 2.7** or **10.1.2** (whether or not subject to the Deductible Amount) shall be subject to approval by all of the Parties, which such approval shall not be unreasonably withheld.

(c) Cooperation on Tax Matters.

(i) Buyer, the Stockholders, and the Company Group Members shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the preparation and/or filing of Tax Returns pursuant to this **Section 7.5** and any audit, appeal, hearing, litigation, or other proceeding with respect to Taxes. Buyer shall prepare or cause to be prepared and provide or cause to be provided to the Stockholders Tax schedules, documents, and information consistent with each Company Group Members' past practices as Stockholders shall request for Stockholders' use in preparing any Income Tax Return as set forth in **Section 7.5(a)(i)**. Such Tax schedules, documents, and information shall be completed and provided to Stockholders after, but within 30 calendar days after, determination of the Closing Date Net Working Capital. Such cooperation shall also include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees, officers, and advisors available on a mutually convenient and reasonable basis to provide additional information and explanation of any material provided hereunder. Each of the Company Group Members and Buyer agree (A) to retain all books and records with respect to Tax matters pertinent to the Stockholders and ownership of the Company Group Members relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Buyer, the Stockholders, or the Company Group Members, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (B) to give the other parties reasonable written notice prior to transferring to a third party, destroying or discarding any such books and records and, if requested, the Buyer and/or each Company Group Member shall allow the Stockholders to copy such books and records that are to be transferred or take possession of such books and records that would otherwise be destroyed or discarded.

(ii) Buyer, the Stockholders, and the Company Group Members further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any person, Governmental Entity or authority as may be necessary to mitigate, reduce, or eliminate any Tax that could be imposed (including, without limitation, with respect to the transactions contemplated hereby).

(d) Certain Taxes. All transfer, documentary, stamp, registration and other such Taxes and fees (including, without limitation, any penalties and interest) incurred in connection with this Agreement (including, without limitation, any Transfer Tax), shall be paid by the Company and/or Buyer when due, and the Company and/or Buyer will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, stamp, registration and other Taxes and

fees, and, if required by applicable law, the Stockholders will, and will cause their respective affiliates, if any, to join in the execution of any such Tax Returns and other documentation.

(e) **Refunds.** Except for Income Tax Refunds (including any interest thereon) received by a Company Group Member as a result of the deduction of the amount of the Compensation Payments, all refunds or credits of Taxes (including any interest thereon) received by or credited to a Company Group Member attributable to periods ending on or prior to the Closing Date or to that portion of all Straddle Periods through and including the Closing Date as determined under **Section 7.5(a)(iii)** (collectively, "Stockholders' Refunds") shall be for the benefit of Stockholders, and Buyer shall, and Buyer shall cause each Company Group Member to, use commercially reasonable efforts to obtain any Stockholders' Refunds and shall pay over to Stockholders any Stockholders' Refunds within five business days of receipt thereof within the Tax Department of Buyer. In addition, if the Pre-Closing Taxes other than Income Taxes with respect to a Straddle Period of a Company Group Member are less than the payments previously made by or credited to a Company Group Member with respect to such Straddle Period on or before the Closing Date, then Buyer shall cause such Company Group Member to pay to Stockholders the excess of such previous payments over such Pre-Closing Taxes upon such Company Group Member receiving the benefit of such excess payments either through a refund of such excess payments and/or through a reduction in any Tax payment that otherwise would be required to be made by such Company Group Member after the Closing Date.

(f) **Tax Information.** Within 90 calendar days of receiving the Tax schedules, documents, and information as provided in **Section 7.5(c)**, the Stockholders shall prepare or cause to be prepared a schedule setting forth the following information with respect to each of the Company Group Members (or, in the case of clause (B) below, with respect to each of the Existing Subsidiaries) as of the Closing Date (or as of June 30, 2005 for States where the Company Group Members' tax year does not end on the Closing Date): (A) the basis of each Company Group Member in its assets; (B) the basis of the stockholder(s) of each Existing Subsidiary in its stock (or the amount of any Excess Loss Account as defined in Treasury Regulation §1.1502-19 (or any corresponding or similar provision of state, local or foreign income Tax Law)); (C) the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax credit, or excess charitable contribution allocable to each Company Group Member; and (D) the amount of any deferred gain or loss allocable to each Company Group Member arising out of any deferred inter-company transaction (as defined in Treasury Regulation §1.1502-13 (or any corresponding or similar provision of state, local or foreign income Tax Law)).

7.6 **Expenses.** Except as otherwise provided herein, the Parties shall each pay all of their respective legal, accounting and other expenses incurred by such Party in connection with the Transactions.



## 7.7 Employees.

### (a) Employees

(i) Buyer may identify up to five Employees (the “Excluded Employees”) or positions that the Company will terminate, at Buyer’s expense, prior to the Closing.

(ii) Effective as of the Closing, Buyer or its Affiliates shall employ (where employment continues by operation of Law) each Employee other than those Excluded Employees. Each Employee who continues in employment with the Buyer by operation of Law shall be referred to herein as a “Transferring Employee.”

(iii) Buyer will undertake not to terminate any Transferring Employees for reasons other than cause during the first six months after Closing.

(iv) Any Transferring Employee terminated within one year of Closing for reasons other than cause will be paid by Buyer a severance amount (i) in the case of Non-Exempt Employees, equal to one week of pay for each year of service with the Company with a minimum of 4 weeks pay and a maximum of 16 weeks of pay, or (ii) in the case of Exempt Employees, equal to one week of pay for each year of service with the Company up to a maximum of 26 weeks of pay.

(v) Buyer shall have the right to administer a standard drug test to each Employee. Any such Employee who fails to take or pass such drug test shall be terminated by the Company prior to the Closing at the expense of the Stockholders and shall not be employed by Buyer or its Affiliates, and such Employee shall not be a “Transferring Employee” for all purposes of this Agreement.

(vi) Upon the Closing, each Transferring Employee, shall receive a base salary or hourly wage at least equal to his or her base salary or hourly wage in effect immediately prior to the Closing and shall receive such other benefits and remuneration as generally provided by Buyer or its Affiliates to their newly hired employees in similar job classifications in the same geographic area.

### (b) Benefits

(i) Service Credit and Group Health Plan Expenses. Buyer will treat all service of the Transferring Employees earned while employed by the Company prior to the Closing as service with Buyer for purposes of waiting periods under those Benefit Plans of Buyer made available to the Transferring Employees and for any other purpose required by applicable Law. Any group health plan of Buyer in which a Transferring Employee or his or her dependents participate shall not recognize for purposes of calculating any deductible, co-pay or out of pocket maximum thereunder the covered expenses that such Transferred Employee and such Employee’s dependents incurred during 2006 in the group health plan of the same type with the Company prior to the Closing.

(ii) Buyer and its affiliates will not recognize service of the Transferring Employees earned while employed by Company prior to the Closing Date as service with Buyer and its affiliates in its retirement or severance plans.

(iii) Company shall terminate all of its existing Benefit Plans prior to the Closing, including the Company Employee Bonus Plans, and shall pay out all amounts due and owing under the Company Employee Bonus Plans prior to the Closing.

(c) **Vacation.** Buyer shall credit service of each Transferring Employee earned while employed by Company prior to the Closing as service with Buyer for purposes of determining each such Transferring Employee's vacation entitlement as of January 1, 2006 and thereafter minus any vacation already taken in calendar year 2006.

(d) **No Third Party Beneficiaries.** Nothing contained herein, expressed or implied, is intended to confer upon any Employee any benefits under any Benefit Plans, including severance benefits or the right to employment or continued employment with Buyer or any Affiliate of Buyer for any period by reason of this Agreement. In addition, the provisions of this Agreement, including in particular this **Section 7.8**, are for the sole benefit of the parties and their respective Affiliates and are not for the benefit of any third parties.

8. **Conditions Precedent to Obligations of Seller Parties.** All obligations of the Seller Parties to consummate the Transactions are subject to the satisfaction (or waiver by all Seller Parties) prior thereto of each of the following conditions:

8.1 **Representations and Warranties.** The representations and warranties made by the Buyer in **Section 5** that are not qualified by materiality or a Material Adverse Effect requirement shall be true and correct in all material respects and the representations and warranties that are qualified by materiality or a Material Adverse Effect requirement shall be true and correct, in each case on the date hereof and also at and as of the Closing Date (except to the extent such representations and warranties speak as of a particular date), with the same force and effect as if made on and as of the Closing Date.

8.2 **Agreements, Conditions and Covenants.** Buyer shall have performed or complied in all material respects with all agreements, conditions and covenants required by this Agreement to be performed or complied with by it on or before the Closing Date.

8.3 **Legal Matters.** There shall not be (i) any Law or Court Order in effect that has the effect of making the purchase and sale of the Closing Shares illegal or otherwise prohibiting the consummation of such purchase and sale or (ii) any action, suit, proceeding or investigation (A) instituted or threatened to restrain, prohibit or invalidate the purchase and sale of the Closing Shares by any Governmental Authority of competent jurisdiction, or (B) instituted to restrain, prohibit or invalidate such purchase and sale by any other third party (which has a reasonable likelihood of so restraining, prohibiting or invalidating the consummation of such purchase and sale); excluding, in each case, any such action, suit, proceeding or investigation, which is in effect or is instituted as a result of a Seller Party's actions (other than a Court Order binding on the Parties prohibiting the consummation of such purchase and sale).

8.4 Consents. Each of the Required Consents shall have been obtained and shall be in full force and effect.

8.5 Governmental Approvals. The waiting period applicable to the Transactions under the HSR Act shall have expired or been terminated.

8.6 Other Documents and Actions. Buyer shall have delivered each of the other documents, and taken each of the other actions, required by **Section 3.2** hereof.

9. Conditions Precedent to Obligations of Buyer. All obligations of Buyer to consummate the Transactions are subject to the satisfaction (or waiver by Buyer) prior thereto of each of the following conditions:

9.1 Representations and Warranties. The representations and warranties made by the Seller Parties in **Section 4** that are not qualified by materiality or a Material Adverse Effect requirement shall be true and correct in all material respects and the representations and warranties that are qualified by materiality or a Material Adverse Effect requirement shall be true and correct, in each case on the date hereof and also at and as of the Closing Date (except to the extent such representations and warranties speak as of a particular date), with the same force and effect as if made on and as of the Closing Date; provided, however, that for purposes of this **Section 9.1**, all updates to the Disclosure Schedule made after the date of this Agreement shall be disregarded (except to the extent Buyer shall have consented thereto in writing pursuant to **Section 6.5**).

9.2 Agreements, Conditions and Covenants. The Seller Parties shall have performed or complied in all material respects with all agreements, conditions and covenants required by this Agreement to be performed or complied with or by them on or before the Closing Date.

9.3 Legal Matters. There shall not be (i) any Law or Court Order in effect that has the effect of making the purchase and sale of the Closing Shares illegal or otherwise prohibiting the consummation of such purchase and sale or (ii) any action, suit, proceeding or investigation (A) instituted or threatened to restrain, prohibit or invalidate the purchase and sale of the Closing Shares by or with any Governmental Authority of competent jurisdiction, or (B) instituted to restrain, prohibit or invalidate such purchase and sale by or with any other third party (which has a reasonable likelihood of so restraining, prohibiting or invalidating the consummation of such purchase and sale); excluding, in each case, any such action, suit, proceeding or investigation, which is in effect or is instituted as a result of Buyer's actions (other than a Court Order binding on the Parties prohibiting the consummation of such purchase and sale).

9.4 No Claim Regarding Stock Ownership or Sale Proceeds. No claim shall have been made or threatened by any Person asserting that such Person (a) is the holder or the beneficial owner of, or has the right to acquire or obtain beneficial ownership of, any stock or other equity or ownership interest in, any Company Group Member, or (b) is entitled to all or any portion of the Purchase Price for the Closing Shares.

9.5 Consents. Each of the Required Consents shall have been obtained and shall be in full force and effect, and Buyer shall have received copies thereof.

9.6 Release of Liens. Before or at the Closing, the Seller Parties shall have furnished to Buyer documentation reasonably satisfactory to Buyer releasing all Encumbrances affecting the Closing Shares, to the extent applicable.

9.7 No Material Adverse Effect. From the date hereof until the Closing, there shall not have occurred any event or events resulting in a Material Adverse Effect.

9.8 Governmental Approvals. The waiting period applicable to the Transactions under the HSR Act shall have expired or been terminated, and no action by any Governmental Entity of any jurisdiction having authority over the Transactions challenging or seeking to enjoin the consummation of the Transactions shall be pending.

9.9 Other Documents and Actions. The Seller Parties shall have delivered each of the other documents, and taken each of the other actions, required by **Section 3.2** hereof.

9.10 FIRPTA Certificate. The Seller Parties shall deliver to Buyer on the Closing Date a duly completed and executed certification of non-foreign status pursuant to Section 1.1445-2 of the Treasury Regulations.

## 10. Indemnification.

### 10.1 By Stockholders.

10.1.1 General Indemnity. From and after the Closing Date, the Stockholders, shall defend, indemnify and hold harmless Buyer, the Company Group Members and their respective successors and assigns, and each of their respective officers, directors, employees, stockholders, agents, Affiliates and any Person who controls any of such Persons within the meaning of the Securities Act or the Exchange Act (each, an "Indemnified Buyer Party") from and against any Liabilities, claims, demands, judgments, losses, diminution of value, costs, damages (including property damage or damages relating to personal injury) or expenses whatsoever (including reasonable attorneys', consultants' and other professional fees), and any direct or indirect, consequential or special damages, but excluding punitive, exemplary or special damages, except for punitive, exemplary or special damages payable to a third party, incurred by such Indemnified Buyer Party in connection therewith (collectively, "Damages") that such Indemnified Buyer Party may sustain, suffer or incur and that result from, arise out of or relate to:

(a) any breach of any of the representations, warranties, covenants or agreements of the Seller Parties contained in this Agreement or in the Closing Certificates, such breach to be determined without regard to any limitation or qualification as to materiality or similar qualifications or exceptions, such breach (and calculation of any Damages) to be determined without regard to any limitation or qualification as to materiality or similar qualifications or exceptions,

(b) any Liability or Damages for:

(i) any Environmental Liabilities arising out of or relating to (and any Actions by third-parties seeking recovery for Environmental Liabilities based upon allegations concerning) (A)(1) the ownership, operation or condition at any time on or prior to the Closing Date of the Real Property or any other real properties or Facilities in which any Company Group Member has or had an ownership or operational interest, or (2) any Hazardous Substances or other contaminants that were present, on or before the Closing Date, on the Real Property or any other real properties or Facilities in which any Company Group Member has or had an ownership or operational interest; (B) any Hazardous Substances or other contaminants, wherever located, that were (or, in the case of third-party Actions, allegedly were) generated, transported, stored, treated, Released, or otherwise handled by any Company Group Member or by any other Person for whose conduct they are or may be held responsible, at any time on or prior to the Closing Date; or (C) any Hazardous Activities that were conducted by any Company Group Members at any time on or prior to the Closing Date; or,

(ii) any bodily injury (including illness, disability, and death), personal injury, property damage (including trespass, nuisance, wrongful eviction, and deprivation of the use of real property), or other damage of or to any Person, including any employee or former employee of any Company Group Member or any other Person for whose conduct they are or may be held responsible, in any way arising from (A) any Hazardous Activity conducted (or, in the case of third-party Actions, allegedly conducted) with respect to the Real Property or the operation of the Company Group Members prior to the Closing Date, or (B) any Release of or exposure to any Hazardous Substance that occurred on or before the Closing Date on or at the Real Property (or on any other property, if such Hazardous Substance emanated from any of the Real Property and was present on any of the Real Property on or prior to the Closing Date), or (C) Released by any Company Group Member or any other Person for whose conduct they are or may be held responsible, at any time on or prior to the Closing Date, and

(c) any Indemnified Liability.

10.1.2 Tax Indemnity. In addition to the foregoing, except to the extent of any purchase price adjustment relating to Taxes under Sections 2.4 or 2.6 or 2.7 and except for Income Taxes relating to the Compensation Payments (which are subject to a separate purchase price adjustment set forth in **Sections 2.4(b), 2.6, and 2.7**), Stockholders shall defend, indemnify and hold harmless Buyer and each Company Group Member from and against any (A) Pre-Closing Taxes of any Company Group Member that relate to a Straddle Period, (B) Taxes other than Income Taxes assessed against any Company Group Member with respect to taxable periods ending on or prior to the Closing Date, and (C) Income Taxes assessed against any Company Group Member with respect to taxable periods ending on or prior June 30, 2005 (Income Taxes with respect to periods beginning on July 1, 2005, and ending on or prior to the Closing Date are subject a separate purchase price adjustment as set forth in **Sections 2.4, 2.6, and 2.7** above), in each case provided that Buyer complies with its obligations set forth in Section 7.5; provided, however, that Buyer's foregoing obligation to comply with Section 7.5 shall not

limit the Stockholders' indemnity obligations under this Section 10.1.2 except to the extent that the Stockholders are prejudiced thereby.

10.2 By Buyer. From and after the Closing Date, Buyer shall defend, indemnify and hold harmless the Stockholders and their respective successors and assigns, and (if any) their respective officers, directors, employees, stockholders, agents, Affiliates and any Person who controls any of such Persons within the meaning of the Securities Act or the Exchange Act (each, an "Indemnified Seller Party") from and against any Damages that such Indemnified Seller Party may sustain, suffer or incur and that result from, arise out of or relate to any breach of any of the representations, warranties, covenants or agreements of Buyer contained in this Agreement or in a Closing Certificate.

10.3 Escrow. Upon notice to the Stockholders specifying in reasonable detail the basis thereof, Buyer may seek indemnification to which it may be entitled under this Section 10 against the Escrow Funds by filing a claim with the Escrow Agent pursuant to the terms of the Escrow Agreement, and complying with the resolution procedure identified in such Escrow Agreement. The failure to give a notice of a Claim under the Escrow Agreement will not constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

#### 10.4 Procedure for Claims.

(a) Any Person who desires to seek indemnification under any part of this **Section 10** (each, an "Indemnified Party") shall give written notice in reasonable detail (a "Claim Notice") to each Party responsible or alleged to be responsible for indemnification hereunder (an "Indemnitor") and the Escrow Agent prior to any applicable Expiration Date (as defined in **Section 10.5**). Such notice shall briefly explain the nature of the claim and the parties known to be involved, and shall specify the amount thereof. If the matter to which a claim relates shall not have been resolved as of the date of the Claim Notice, the Indemnified Party shall estimate the amount of the claim in the Claim Notice, but also specify therein that the claim has not yet been liquidated (an "Unliquidated Claim"). If an Indemnified Party gives a Claim Notice for an Unliquidated Claim, the Indemnified Party shall also give a second Claim Notice (the "Liquidated Claim Notice") within 60 days after the matter giving rise to the claim becomes finally resolved, and the Second Claim Notice shall specify the amount of the claim. Each Indemnitor to which a Claim Notice is given shall respond to any Indemnified Party that has given a Claim Notice (a "Claim Response") within 30 days (the "Response Period") after the later of (i) the date that the Claim Notice is given or (ii) if a Claim Notice is first given with respect to an Unliquidated Claim, the date on which the Liquidated Claim Notice is given. Any Claim Response shall specify whether or not the Indemnitor giving the Claim Response disputes the claim described in the Claim Notice. If any Indemnitor fails to give a Claim Response within the Response Period, such Indemnitor shall be deemed not to dispute the claim described in the related Claim Notice. If any Indemnitor elects not to dispute a claim described in a Claim Notice, whether by failing to give a timely Claim Response in accordance with the terms hereof or otherwise, then the

amount of such claim shall be conclusively deemed to be an obligation of such Indemnitor.

(b) If any Indemnitor shall be obligated to indemnify an Indemnified Party pursuant to this **Section 10**, such Indemnitor shall pay to such Indemnified Party the amount to which such Indemnified Party shall be entitled within 15 Business Days after the day on which such Indemnitor became so obligated to the Indemnified Party. If the Indemnified Party shall be an Indemnified Buyer Party, it shall first seek payment of the Damages to which it is entitled under this **Section 10** from the Escrow Funds, but only to the extent that the Escrow Funds are not subject to other claims for indemnification; thereafter, if the amount of the Escrow Funds available for payment of Damages is less than the amount of Damages to which such Indemnified Buyer Party is entitled, such Indemnified Buyer Party shall seek indemnification directly from the Stockholders. If any Indemnitor fails to pay all or part of any indemnification obligation when due, then such Indemnitor shall also be obligated to pay to the applicable Indemnified Party interest on the unpaid amount for each day during which the obligation remains unpaid at an annual rate equal to LIBOR plus 3% (three percent).

(c) If, during the Response Period, an Indemnified Party receives a Claim Response from the Indemnitor, then for a period of 45 days (the "Resolution Period") after the Indemnified Party's receipt of such Claim Response, the Indemnified Party and the Indemnitor shall endeavor to resolve any dispute arising therefrom. If such dispute is resolved by the parties during the Resolution Period, the amount that the parties have specified as the amount to be paid by the Indemnitor, if any, as settlement for such dispute shall be conclusively deemed to be an obligation of such Indemnitor. If the parties are unable agree upon a resolution to such dispute prior to the expiration of the Resolution Period (or any extension thereto to which the Indemnitor and Indemnified Party agree in writing), the issue shall be resolved in accordance with Section 13.2 hereof.

(d) If the Indemnified Party is an Indemnified Buyer Party and, pursuant to **Section 10.4(b)**, such Indemnified Buyer Party is obligated to seek any portion of the funds to which such Indemnified Buyer Party is entitled from the Escrow Funds, then, within two Business Days from the date on which such Indemnified Buyer Party became entitled to such funds, the Indemnified Party and the Indemnitor shall provide written instructions to Escrow Agent as to (i) the amount of funds, if any, to be dispersed from the Escrow Funds, and (ii) instructions as to the manner in which such funds shall be dispersed to the Indemnified Buyer Party.

(e) No Party will have any liability (for indemnification or otherwise) for any Damages for punitive, exemplary or special damages of any nature, except to the extent such punitive, exemplary or special damages are awarded to a third party against an Indemnified Party in circumstances in which such Indemnified Party is entitled to indemnification hereunder.

(f) Notwithstanding any other provision of this **Section 10**, except as provided below in this subparagraph (f), the Indemnified Buyer Party, on the one hand,

and the Indemnified Seller Parties on the other hand, shall be entitled to indemnification hereunder by Seller Parties or by Buyer, respectively, only when the aggregate of all Damages to such Indemnified Buyer Parties exceeds \$300,000 (the “Deductible Amount”) and then only to the extent of such excess amount; provided, however, that the Deductible Amount shall not apply with respect to (i) a breach of Seller Parties’ representations or warranties under **Sections 4.1, 4.2, 4.4, 4.14 or 4.26** or in the related provisions of the Closing Certificates, a breach of Buyer’s representations or warranties under **Sections 5.1, 5.2, 5.4, 5.5 or 5.6**, or a breach of any representations or warranty of a Party to this Agreement made with an intent to mislead or defraud, (ii) a breach of any covenants hereunder or (iii) a claim for indemnification under **Section 10.1.2(C)**. In addition, the calculation of the Deductible Amount shall include any Damages incurred by an Indemnified Party for which the Indemnified Party would have been entitled to claim indemnification under this **Section 10** with respect to a breach of a representation or warranty but for such Claim being excluded as a result of the qualification of such representation or warranty by materiality or similar qualifications or exceptions. The maximum amount of Damages for which the Stockholders or Buyer, respectively, shall be liable under this Agreement shall be limited to the following (the “Indemnification Cap”):

- (w) as to any claim for which a Claim Notice is given on or before the 18-month anniversary of the Closing Date – Fifteen Million Dollars (\$15,000,000);
- (x) as to any claim for which a Claim Notice is given with respect to **Section 10.1(c)** after the 18-month anniversary, but on or before the third anniversary, of the Closing Date – Seven Million Dollars (\$7,000,000);
- (y) as to any claim for which a Claim Notice is given with respect to **Section 10.1(b)** after the 18-month anniversary, but on or before the 24-month anniversary, of the Closing Date – Ten Million Dollars (\$10,000,000); and
- (z) as to any claim for which a Claim Notice is given with respect to **Section 10.1(b)** after the 24-month anniversary, but on or before the fifth anniversary, of the Closing Date – Five Million Dollars (\$5,000,000);

provided, however, the foregoing limitations of the Indemnification Cap shall not apply to (a) any breach of the Seller Parties’ representations or warranties under **Sections 4.1, 4.2, 4.4, 4.13, 4.14, or 4.26** or in the related provisions of the Closing Certificates, (b) a breach of any representations or warranty of a Party to this Agreement made with an intent to mislead or defraud, (c) a breach of any of the parties’ covenants or (d) a claim for indemnification under **Section 10.1.2**; and provided, further, any Damages for which Buyer may claim indemnification under **Section 10.1(b)** shall be prorated between Buyer and the Stockholders as follows:

Months after Closing Date	Buyer	Stockholders
0-24	0%	100%
25-60	50%	50%
After month 60	100%	0%



(g) Notwithstanding any other provision of this **Section 10**, the Stockholders shall not have an obligation to indemnify or hold harmless the Indemnified Buyer Parties or any other obligation with respect to (i) any Environmental Liability (including any Environmental Liability arising out of the discovery of any environmental matter or condition) that is first discovered as a result of any Unreasonable Action by or on behalf of Buyer; (ii) that portion of any Damages or Environmental Liability that arises from any act or omission by Buyer or any other person or entity after the Closing that exacerbates any Environmental Liability, including any environmental matter or condition, in existence on or before Closing; and (iii) any Remedial Action except to the extent such Remedial Action is required under applicable Environmental Law or by the relevant Governmental Entity.

(h) Notwithstanding any other provision of this **Section 10**, with respect to matters which are subject to the indemnification provisions of **Section 10.1(b)**,

(i) Buyer shall be entitled to control any Remedial Action (including Cleanup), any Legal Proceeding relating to an Environmental Claim and, any other Legal Proceeding;

(ii) with respect to the pending request to the Wisconsin Department of Natural Resources (the "WDNR") for closure of the environmental condition referenced on **Schedule 4.15(b)** (the "Referenced Condition"), in the event the WDNR requires additional Remedial Action of the Referenced Condition as a condition of closure, the costs associated with such Remedial Actions, including, but not limited to, the costs of monitoring well closures, shall be borne by the Stockholders without being subject to the Deductible Amount;

(iii) Buyer shall pursue the request for closure of the Referenced Condition with the WDNR and shall close all associated monitoring wells reasonably promptly upon receipt of authorization from the WDNR to do so;

(iv) all Remedial Actions shall be performed in a commercially reasonable manner and in a manner consistent with applicable Environmental Laws. All Remedial Actions shall be performed in a manner employing the most cost-effective means available that is acceptable to the relevant Governmental Entity, including the use of Impositions where such does not unreasonably impair or impede Buyer's use of the Real Property as a chemical manufacturing or chemical research and development facility. Remedial Actions shall be deemed to be complete when (A) Buyer provides written confirmation to the Stockholders' Representative that the Remedial Action has been completed, which confirmation shall not be unreasonably withheld or delayed, or (B) upon issuance of a No Further Action Determination;

(v) Buyer shall keep the Stockholders' Representative apprised of the progress and performance of all Remedial Actions, including, without limitation, providing the Stockholders' Representative with copies of any and all testing results, reports, agency notices, correspondence to or from any Governmental Entity and other material documents related to any Environmental Liability or Remedial Actions; and

(vi) The Stockholders may retain, at the Stockholders' expense, any environmental consultant(s) as they select, in their sole discretion ("Stockholders' Consultants"), to consult with Buyer, Buyer's consultants and any Governmental Entity with respect to Remedial Actions. The Stockholder's Representative and Stockholder's Consultants, if retained, shall not assume the control of or responsibility for any Remedial Actions. Notwithstanding the foregoing, it is expressly agreed that, to the extent reasonably possible under the circumstances, the Stockholder's Representative shall have the right (and shall be provided a reasonable opportunity) to review and comment upon any document(s) to be submitted to a Governmental Entity which relate in any way to any Remedial Actions. To the extent reasonably possible in the circumstances, Buyer shall give the Stockholder's Representative prompt written notice of, and the Stockholders' Representative and/or the Stockholder's Representative's representative(s) shall have the right to participate in, any phone call or meeting with any Governmental Entity at which any Remedial Action is to be substantively discussed or addressed.

(i) Whenever there is an event, condition or a circumstance (a "Possible Breach") the subject matter of which is covered by more than one of the representations and warranties contained in **Section 4** or **Section 5** (the "Applicable Representations") and one or more of such representations (the "Specifically Applicable Representations") more specifically relate to the subject matter of the Possible Breach, then if such Possible Breach would cause a breach of any Specifically Applicable Representations, the fact that a breach may have occurred with respect to any of the more general Applicable Representations shall not affect an Indemnified Party's ability to claim a breach of the Specifically Applicable Representations.

**10.5 Claims Period.** Any claim for indemnification under this **Agreement** shall be made by giving a Claim Notice under **Section 10.4** on or before the applicable "Expiration Date" specified below in this **Section 10.5**, or the claim under this **Section 10** shall be invalid. The following claims shall have the following respective "Expiration Dates": (a) eighteen (18) months after the Closing Date — any claims that are not specified in any of the succeeding clauses; (b) the third (3<sup>rd</sup>) anniversary of the Closing Date — any claims for indemnification under **Section 10.1(c)**; (c) the fifth (5<sup>th</sup>) anniversary of the Closing Date — any claims for indemnification under **Section 10.1(b)**, (d) the date on which the applicable statute of limitations expires plus thirty (30) days — any claim for Damages related to (i) a breach of any covenant or agreement, (ii) a breach of the Seller Parties' representations or warranties under **Sections 4.13** or **4.26**, a breach of Buyer's representations or warranties under **Section 5.6**, or a breach of any representations or warranties of a Party to this Agreement that were made with an intent to mislead or defraud, or (iii) any claims for indemnification under **Section 10.1.2**, and

(d) in perpetuity — a breach of the Seller Parties’ representations or warranties under **Sections 4.1, 4.2, 4.4** or a breach of Buyer’s representations or warranties under **Sections 5.1 or 5.2**. If more than one of such Expiration Dates applies to a particular claim, the latest of such Expiration Dates shall be the controlling Expiration Date for such claim. So long as an Indemnified Party gives a Claim Notice for an Unliquidated Claim on or before the applicable Expiration Date, such Indemnified Party shall be entitled to pursue its rights to indemnification regardless of the date on which such Indemnified Party gives the related Liquidated Claim Notice.

10.6 Third Party Claims. An Indemnified Party that desires to seek indemnification under any part of this **Section 10** with respect to any actions, suits or other administrative or judicial proceedings (each, an “Action”) that may be instituted by a third party shall give each Indemnitor prompt notice of a third party’s institution of such Action. After such notice, any Indemnitor may, or if so requested by such Indemnified Party, any Indemnitor shall, participate in such Action or assume the defense thereof, with counsel satisfactory to such Indemnified Party; provided, however, that such Indemnified Party shall have the right to participate at its own expense in the defense of such Action; and provided, further, that no Party shall consent to the entry of any judgment or enter into any settlement, except with the written consent of the Indemnitor or the Indemnified Party, as applicable (which consent shall not be unreasonably withheld). Any failure to give prompt notice under this **Section 10.6** shall not bar an Indemnified Party’s right to claim indemnification under this **Section 10**, except to the extent that an Indemnitor shall have been harmed by such failure.

10.7 Effect of Investigation or Knowledge. Any claim by Buyer for indemnification shall not be adversely affected by any investigation by or opportunity to investigate afforded to Buyer, nor shall such a claim be adversely affected by Buyer’s knowledge on or before the Closing Date of any breach of the type specified in the first sentence of **Section 10.1** or of any state of facts that may give rise to such a breach. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not adversely affect the right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants or obligations.

#### 10.8 General Rules on Payments by Stockholders

Notwithstanding anything contained in this Agreement to the contrary, except as specifically provided in this **Section 10.8**, the obligation of each Stockholder with respect to the payment of any amount to any Indemnified Buyer Party for any matter subject to this **Section 10** shall be several in proportion to such Stockholder’s respective Indemnification Share and not joint. Stephen B. King, Sr., SBKGP Inc., Stephen B. King Sr. Grantor Retained Annuity Trust and TMT shall be jointly and severally liable for all Stockholders with respect to (i) any obligation to pay any amount under **Section 2.5**, (ii) any obligation to pay any amount under **Sections 2.6 and 2.7** and (iii) all Escrow Funds. Further, (v) Stephen B. King, Sr., SBKGP, Inc. and Stephen B. King Sr. Grantor Retained Annuity Trust shall be jointly and severally liable for all Stockholders with respect to all indemnification obligations under **Section 10.1(c)** as to any claim for which

a Claim Notice is given on or before the 18-month anniversary of the Closing Date, (w) Stephen B. King, Sr., SBKGP, Inc. and Stephen B. King Sr. Grantor Retained Annuity Trust, jointly and severally, shall be solely liable for all Stockholders with respect to all indemnification obligations under **Section 10.1(c)** as to any claim for which a Claim Notice is given after the 18-month anniversary, but on or before the 24-month anniversary, of the Closing Date, (x) Stephen B. King, Sr., SBKGP, Inc. and Stephen B. King Sr. Grantor Retained Annuity Trust shall be jointly and severally liable for each such Stockholder's Indemnification Share with respect to all indemnification obligations under this Agreement, (y) Seidler Equity Partners, L.P. and Seidler North, L.P. shall be jointly and severally liable for each such Stockholder's Indemnification Share with respect to all indemnification obligations under this Agreement, and (z) Tower Square Capital Partners L.P., C. M. Life Insurance Company, Massachusetts Mutual Life Insurance Company, shall be jointly and severally liable for each such Stockholder's Indemnification Share and the Indemnification Share of MassMutual Corporate Investors and MassMutual Participation Investors with respect to all indemnification obligations under this Agreement. Except as expressly provided in this **Section 10.8**, nothing herein shall be deemed to restrict any Indemnified Buyer Party from exercising all rights and remedies against any Stockholder with respect to the payment of any amounts concurrently or in such order as the Indemnified Buyer Party shall elect, in its sole and absolute discretion.

#### 10.9 Stockholder's Representative.

(a) Stephen B. King, Sr. shall act as the Stockholder's representative (the "Stockholder's Representative") and as exclusive agent and attorney-in-fact to act on behalf of any Stockholder with respect to any and all matters, claims, controversies, or disputes arising out of the terms of this Agreement. The Stockholder's Representative shall have the power to take any and all actions which the Stockholder's Representative believes are necessary or appropriate or in the best interests of the Stockholders, as fully as if each such Stockholder was acting on its, his or her own behalf with respect to all matters concerning the Stockholders or any of them following the Closing Date, including for the purpose of administering the Escrow Agreement, settling on behalf of the Stockholders any indemnification claims made by any Indemnified Buyer Party under **Section 10**, representing the Stockholders in connection with the determination of the Net Working Capital Valuation under **Section 2.5**, and taking any other action that is specifically delegated to the Stockholder's Representative hereunder. An Indemnified Buyer Party shall give notice under this **Section 10.9** of any claim for indemnification against the Stockholders to the Stockholders and the Stockholder's Representative, and only the Stockholder's Representative shall be empowered, following such notice, to respond to or take any other action on behalf of the Stockholders with respect to the claim. The Stockholders shall be bound by any and all actions taken on their behalf by the Stockholder's Representative in accordance with this Agreement, and in particular, the Stockholders shall be bound by the Escrow Agreement being executed by the Stockholder's Representative to the same extent as if they were signatories thereto. The Stockholder's Representative is expressly authorized to execute, deliver and perform the Escrow Agreement.

(b) The authority granted hereunder is deemed to be coupled with an interest. Buyer shall have the right to rely on any actions taken or omitted to be taken by the Stockholder's Representative as being the act or omission of any Stockholder, without the need for any inquiry, and any such actions or omissions shall be binding upon each Stockholder, and shall not be liable in any manner whatsoever for any action taken or not taken in reliance upon the actions taken or not taken or communications or writings given or executed by the Stockholder's Representative. Except as specifically contemplated by the Escrow Agreement, Buyer shall be entitled to disregard any notices or communications given or made by the Stockholders unless given or made through the Stockholder's Representative.

(c) In the event of the death of the Stockholder's Representative or his inability to perform his functions hereunder, the Stockholders shall choose a successor Stockholder's Representative by a plurality vote of such Stockholders based upon Closing Shares held immediately prior to the Closing Date.

(d) The Stockholder's Representative shall not be liable to any Stockholder or any other Party for any action taken or omitted to be taken by him in his capacity as Stockholder's Representative except in the case of willful misconduct or gross negligence. The Stockholders shall jointly indemnify the Stockholder's Representative and hold him harmless from and against any loss, liability or expense of any nature incurred by the Stockholder's Representative arising out of or in connection with the administration of his duties as Stockholder's Representative, including reasonable legal fees and other costs and expenses of defending or preparing to defend against any claim or liability in the premises, unless such loss, liability or expense shall be caused by such Stockholder's Representative's willful misconduct or gross negligence.

## 11. Termination.

11.1 Grounds for Termination. The Parties may terminate this Agreement at any time before the Effective Time as provided below:

(a) by mutual written consent of each of the Seller Parties and Buyer;

(b) by any Party, if the Closing shall not occurred on or before the Termination Date; provided, however, that the right to terminate this Agreement under this **Section 11.1(b)** shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date;

(c) by any Party, if a court of competent jurisdiction or other Governmental Entity shall have issued a Court Order (which Court Order the Parties shall use commercially reasonable efforts to lift) that permanently restrains, enjoins or otherwise prohibits the Transactions, and such Court Order shall have become final and non-appealable;

(d) by Buyer, if any of Seller Parties shall have breached, or failed to comply with, any of its obligations under this Agreement or any representation or warranty made by Seller Parties shall have been incorrect when made, and such breach, failure or misrepresentation is not cured within 20 days after notice thereof, and in either case, any such breaches, failures or misrepresentations, individually or in the aggregate, results or would reasonably be expected to result in a Material Adverse Effect on the Business;

(e) by Seller Parties, if Buyer shall have breached, or failed to comply with any of its obligations under this Agreement or any representation or warranty made by it shall have been incorrect when made, and such breach, failure or misrepresentation is not cured within 20 days after notice thereof, and in either case, any such breaches, failures or misrepresentations, individually or in the aggregate, results or would reasonably be expected to affect materially and adversely the benefits to be received by Buyer hereunder; or

11.2 Effect of Termination. If this Agreement is terminated pursuant to **Section 11.1**, the agreements contained in **Section 7.7** shall survive the termination hereof and any Party may pursue any legal or equitable remedies that may be available if such termination is based on a breach of another Party.

## 12. General Matters.

12.1 Contents of Agreement. This Agreement, together with the other Transaction Documents, sets forth the entire understanding of the Parties with respect to the Transactions and supersedes all prior agreements or understandings among the parties regarding those matters. There have been no representations or warranties, written or oral, other than as provided in this Agreement and/or the other Transaction Documents, and Buyer is relying solely on the representations and warranties provided in this Agreement and/or the other Transaction Documents.

12.2 Amendment, Parties in Interest, Assignment, Etc. This Agreement may be amended, modified or supplemented only by a written instrument duly executed by each of the Parties. If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, legal representatives, successors and permitted assigns of the Parties. Nothing in this Agreement shall confer any rights upon any Person other than the Parties and their respective heirs, legal representatives, successors and permitted assigns, except as provided in **Section 10**. No Party shall assign this Agreement or any right, benefit or obligation hereunder. Any term or provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof by a written instrument duly executed by such Party.

12.3 Further Assurances. At and after the Closing, the Parties shall execute and deliver any and all documents and take any and all other actions that may be deemed reasonably necessary by their respective counsel to complete the Transactions.

12.4 Interpretation. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) “including” has the inclusive meaning frequently identified with the phrase “but not limited to,” and (d) references to “hereunder” or “herein” relate to this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection, Schedule and Exhibit references are to this Agreement unless otherwise specified. Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under GAAP. Any reference to a Party’s being satisfied with any particular item or to a Party’s determination of a particular item presumes that such standard will not be achieved unless such Party shall be satisfied or shall have made such determination in good faith in its sole or complete discretion.

12.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such copy shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

12.6 Disclosure Schedules. Any items listed or described on the Disclosure Schedules shall be listed or described under a caption that specifically identifies the Section(s) of this Agreement to which the item relates (which, in each case, shall constitute the only valid disclosure with respect to such Section(s)).

### 13. Remedies.

13.1 Exclusive. Other than with respect to the Non-Competition Agreements, the Consulting Agreements and the Escrow Agreement, (i) the indemnification rights provided for in this Agreement are the exclusive and the sole remedy (absent fraud or breach of this Agreement made by the Party with knowledge, and except for claims asserted under the Securities Law or other applicable securities Laws) available to a Party in enforcing any rights with respect to the subject matter of this Agreement, and (ii) an indemnity claim under **Section 10.1(b)** by Buyer against Stockholders shall be the sole and exclusive remedy of Buyer to recover from the Stockholders for any Damages or other claims or Liabilities arising from any Environmental Liabilities, Remedial Actions, Hazardous Substances, or Hazardous Activities.. Notwithstanding the foregoing, each Party hereby expressly acknowledges that the other Parties may be irreparably damaged if this Agreement is not specifically enforced. Upon a breach or threatened breach of the terms, covenants or conditions of this Agreement by a Party, the non-breaching Parties shall, in addition to all other remedies, be entitled to seek a temporary or permanent

injunction, without showing any actual damage, or a decree for specific performance, in accordance with the provisions hereof.

### 13.2 Dispute Resolution.

(a) The Parties shall attempt in good faith to resolve any dispute, controversy or claim among them arising out of or relating to this Agreement, including without limitation any dispute over the breach, termination, interpretation, or validity thereof (the “Dispute”). Any party may request through written notice that the Dispute be referred to senior executives of the parties who have authority to resolve the Dispute. For purposes hereof, the Stockholder’s Representative shall be deemed a senior executive for the Seller Parties. The executives shall attempt to resolve the Dispute by agreement within thirty (30) days of such notice.

(b) If the Parties to the Dispute are unable to resolve the Dispute as provided in **Section 12.1(a)** above, they may try in good faith to resolve the Dispute by mediation and may use any mediator upon which they mutually agree. If the parties to the Dispute are unable to mutually agree upon a mediator, the Dispute shall be referred to the Chicago office of JAMS or such other mediation service as the parties to the Dispute may agree. The cost of the mediator will be split equally between the parties to the Dispute unless they agree otherwise.

(c) If the Parties have not (i) successfully resolved their Dispute through good faith discussions; (ii) appointed a mediator; or (iii) where a mediator has been duly appointed, resolved their dispute through mediation, each within 90 days of the Dispute notice in Section 12.1(a) being issued, the Dispute shall be resolved by binding arbitration. The Parties shall select a mutually agreed upon single arbitrator and may utilize any format and set of rules for the binding arbitration upon which such parties may mutually agree. If the parties to the Dispute are unable to agree on a format and set of rules for the arbitration within 10 days, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Should such parties be unable to agree on a choice of arbitrator within thirty (30) days from the demand for arbitration, then the arbitrator will be appointed by the Chicago office of JAMS (provided that any JAMS appointed mediator under paragraph (b) is not selected as an arbitrator under this paragraph (c)).

(d) The costs of the arbitration shall be borne equally among the Parties. Each party shall bear its own expenses for attorneys’ fees, expert fees, witness fees, travel costs and other arbitration-related costs. In no event is the arbitrator authorized or empowered to award punitive or exemplary damages. In no event is the arbitrator authorized or empowered to award damages in excess of the limitations set forth in this Agreement.

(e) Judgment upon an award rendered by the arbitrator may be entered in any court with jurisdiction. The arbitrator may issue interim orders of protection as necessary or appropriate to maintain the status quo, safeguard property or prevent irreparable injury. Notwithstanding the foregoing, any Party may seek injunctive relief in



a court of competent jurisdiction, which relief shall last until the arbitrator renders its decision.

14. Notices.

All notices that are required or permitted hereunder shall be in writing and shall be sufficient if personally delivered or sent by registered or certified mail, facsimile message (with receipt confirmed) or Federal Express or other nationally recognized overnight delivery service. Any notices shall be deemed given upon the earlier of the date when received at, or the third day after the date when sent by registered or certified mail or the day after the date when sent by Federal Express or facsimile to, the address or facsimile number set forth below, unless such address or facsimile number is changed by notice to the other Parties:

If to Seller Parties:

Tomah Holdings, Inc.  
330 Vincent Street  
P. O. Box 388  
Milton, WI 53563-0388  
Attn: Stephen B. King, Sr.  
FAX: (608) 868-7098  
with a required copy to:

Foley & Lardner LLP  
Suite 3700  
777 E. Wisconsin Avenue  
Milwaukee, WI 53202  
Attn: Luke E. Sims  
FAX: (414) 297-4900

If to Buyer:

Air Products and Chemicals, Inc.  
7102 Hamilton Boulevard  
Allentown, PA 18195-1502  
Attn: Corporate Secretary  
FAX: (610) 481-5765

15. Governing Law. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of New York without regard to its provisions concerning choice of laws or choice of forum.

16. Attorney/Client Privilege. Buyer acknowledges that Foley & Lardner LLP has previously represented the Company Group Members and certain Stockholders, and is representing the Stockholders in connection with the Transactions contemplated by this

Agreement. The Parties recognize that, after the Closing, the Company and the other Company Group Members will continue to have all right, title and interest in the work product and related privileges associated with legal advice provided by Foley & Lardner LLP to the Company and other Company Group Members. Buyer recognizes, however, that Foley & Lardner LLP is providing legal advice to the Stockholders with respect to the sale of their Closing Shares, and that such advice was provided to the Stockholders in their capacity as stockholders. Accordingly, Buyer acknowledges that the Company shall not, upon Closing, obtain any right, title or interest in the work product and related privileges associated with any legal advice provided to the Stockholders in their capacities as stockholders, including, but not limited to, all written, computer-generated or other materials containing, summarizing or embodying such communications, work product, attorney/client privilege or otherwise.

[SIGNATURE PAGE TO STOCK PURCHASE AGREEMENT]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

AIR PRODUCTS AND CHEMICALS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TOMAH HOLDINGS, INC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Stephen B. King, Sr.

\_\_\_\_\_  
Tobin M. Ryan

\_\_\_\_\_  
James A. Krogh

\_\_\_\_\_  
Robert E. Logan

\_\_\_\_\_  
Gregory A. Linder

STEPHEN B. KING SR. GRANTOR RETAINED ANNUITY TRUST

By: \_\_\_\_\_  
Name: Tobin M. Ryan  
Title: Trustee

FIRST CITIZENS STATE BANK cust, f/b/o  
ROBERT E. LOGAN ROLLOVER IRA

By: \_\_\_\_\_  
Robert E. Logan, Attorney-in-Fact

SBKGP, INC.

By: \_\_\_\_\_  
Stephen B. King, Sr., President

NORTHSTAR MEZZANINE PARTNERS, III L.P.  
By: Northstar Capital, LLC, its general partner

By: \_\_\_\_\_  
Scott L. Becker, Managing Partner

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY  
By: David L. Babson & Company, Inc., as Investment Adviser

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FIRST CITIZENS STATE BANK cust f/b/o  
GREGORY A. LINDER ROLLOVER IRA

By: \_\_\_\_\_  
Gregory A. Linder, Attorney-in-Fact

SEIDLER EQUITY PARTNERS, L.P.  
By: Seidler Equity Managers, LLC, General Partner

By: \_\_\_\_\_  
Eric Kutsenda, Director

SEIDLER NORTH, L.P.

By: \_\_\_\_\_  
Robert Seidler, General Partner

C. M. LIFE INSURANCE COMPANY  
By: David L. Babson & Company, Inc., as Investment Sub-Adviser

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TOWER SQUARE CAPITAL PARTNERS L.P.

By: David L. Babson & Company, Inc., as Investment Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MASSMUTUAL CORPORATE INVESTORS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

This Agreement is executed on behalf of MassMutual Corporate Investors, organized under a Declaration of Trust, dated September 13, 1985, as amended from time to time. Under the terms of the Trust, the obligations of such Trust are not personally binding upon, nor shall resort be had to the property of, any of the Trustees, shareholders, officers, employees or agents of such Trust, but the Trust property alone shall be bound.

MASSMUTUAL PARTICIPATION INVESTORS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANTARES CAPITAL CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

This Agreement is executed on behalf of MassMutual Participation Investors, organized under a Declaration of Trust, dated April 7, 1988, as amended from time to time. Under the terms of the Trust, the obligations of such Trust are not personally binding upon, no shall resort be had to the property of, any of the Trustees, shareholder, officers, employees or agents of such Trust, but the Trust property alone shall be bound.

Attachments:

- Exhibit A** (Building Purchase Agreement)
- Exhibit B-1** (Form of King Consulting Agreement)
- Exhibit B-2** (Form of Ryan Consulting Agreement)
- Exhibit C** (Form of Escrow Agreement)
- Exhibit D** (Indemnification Share)
- Exhibit E** (Form of Non-Competition Agreement)
- Exhibit F** (Form of Foley & Lardner LLP Legal Opinion)

**Disclosure Schedule**

**SUPPLEMENTARY PENSION PLAN  
OF  
AIR PRODUCTS AND CHEMICALS, INC.  
AS AMENDED AND RESTATED  
EFFECTIVE JANUARY 1, 2008**

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**SUPPLEMENTARY PENSION PLAN  
OF  
AIR PRODUCTS AND CHEMICALS, INC.**

**Amended and Restated Effective January 1, 2008**

**WHEREAS**, Air Products and Chemicals, Inc. did, effective October 1, 1978, establish a Supplementary Retirement Plan for those of its employees eligible to participate therein, which Plan was thereafter amended from time to time, and was amended, restated and renamed the Supplementary Pension Plan of Air Products and Chemicals, Inc. as of October 1, 1988, and was thereafter amended, *inter alia*, as of 20 September 1995, 1 October 1995, 1 January 1996, 16 September 1999, 20 September 2000 and 1 May 2003 and amended and restated as of 1 January 2005;

**WHEREAS**, Air Products and Chemicals, Inc. now wishes to make certain revisions in the Plan to bring it in compliance with Internal Revenue Code Section 409A, to reflect its operation in good faith compliance with Section 409A since its restatement of 1 January 2005, and to restate said Plan in its entirety;

**NOW, THEREFORE**, the Supplementary Pension Plan of Air Products and Chemicals, Inc. is hereby amended and restated in its entirety as follows, to comply with Section 409A of the Code and regulations thereunder applicable to nonqualified deferred compensation plans, effective as of 1 January 2008; and the said Supplementary Pension Plan, as so revised and restated, shall apply only to an Employee whose Separation from Service occurs on or after 1 January 2008, except as otherwise provided or as application of Section 409A has required in practice. The rights and benefits, if any, of a former employee shall be determined in accordance with the provisions of the Plan in effect on the date his Separation from Service occurred, except as otherwise provided.

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**ARTICLE 1**

**PURPOSE OF THE PLAN**

**Section 1.1** This Plan is established to provide supplementary retirement income benefits to a certain select group of management or highly compensated persons in the employ of Air Products and Chemicals, Inc. and participating subsidiaries. It thereby supplements the benefits payable to such persons under the Air Products and Chemicals, Inc. Pension Plan for Salaried Employees.

**ARTICLE 2**

**DEFINITIONS**

**Section 2.1** As used herein, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

**“Accrued Benefit”** shall mean, in the case of an Employee, a monthly retirement benefit for the life of the Employee that such Employee would receive, commencing at his Normal Retirement Date, in an amount determined under Section 3.2 hereof based on his Credited Service, Average Compensation and benefit payable under the Salaried Pension Plan as of the date such Accrued Benefit is being determined.

**“Annual Incentive Plan”** shall mean the Air Products and Chemicals, Inc. 2001 Annual Incentive Plan adopted by the Company’s stockholders, as it may be amended from time to time.

**“Annuity Starting Date”** shall mean the first day of the first period for which a benefit under Section 3.1 will be paid; provided that, in the case of a former Key Employee described in Section 3.5(b), the Annuity Starting Date shall

be determined as if the Employee's benefit distribution was not delayed in accordance with Section 3.5.

**"Average Compensation"** shall have the meaning set forth in Section 3.3 hereof.

**"Board"** shall mean the board of directors of the Company or any Committee thereof acting on behalf of the Board pursuant to its Charter or other delegation of power from the Board or the Chairman of the Board acting pursuant to a delegation of authority from the Board.

**"Change in Control"** shall mean the first to occur of any one of the events described below:

- (1) Change in Ownership. The date any one person, or more than one person acting as a group (as determined under 1.409A-3(i)(5)(v)(B)), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company. However, if any one person, or more than one person acting as a group, is considered to own more than 50% of the total fair market value or total voting power of the stock of the Company, the acquisition of additional stock by the same person or persons is not considered to cause a change in the ownership of the Company. An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the Company acquires its stock in exchange for property will be treated as an acquisition of stock for purposes of this section.

- (2) **Change in Effective Control.** The date any one person, or more than one person acting as a group (as determined under 1.409A-3(i)(5)(v)(B)), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of the Company.
- (3) **Change in Board.** The date a majority of members of the Company's Board of Directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Company's Board of Directors before the date of the appointment or election.

**"Committee"** shall mean the Company's Benefits Committee or other Committee designated to hear appeals under the Plan in accordance with the provisions of Article 4 hereof.

**"Company"** shall mean Air Products and Chemicals, Inc. and any successor thereto by merger, purchase or otherwise.

**"Compensation"** shall have the meaning set forth in Section 3.3 hereof.

**"Disability"** shall mean any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, where such impairment causes the Employee to be unable to perform the duties of his or her position of employment or any substantially similar position of employment.

**"Effective Date"** shall mean, as to the Company, October 1, 1978, and as to any other Employer, the date as of which the Salaried Pension Plan initially becomes effective for Employees of the Employer.

**“Employee”** shall mean any person who is employed by an Employer on a regular salaried basis on or after the Effective Date of the Plan applicable to such Employer, who participates or participated in the Salaried Pension Plan as an “Employee” as defined therein, and who is classified as an Executive Officer for purposes of U.S. Securities Laws or is in salary grade 118 or above or the equivalent grade in any future grade structure of the Company for and in respect of any fiscal year of the Company or part thereof during such person’s most recent 120 months of employment or such Employee’s period of employment by an Employer, if less than 120 months.

**“Employer”** shall mean the Company and/or any Participating Employer either collectively or separately as the context requires.

**“Incentive Compensation”** shall mean a bonus award of stock and/or cash paid on a current basis by an Employer pursuant to the Annual Incentive Plan upon or following the conclusion of the Company’s fiscal year to which such award relates and/or a bonus award of stock and/or cash awarded under the Annual Incentive Plan, the payment of which was deferred under the terms of the Air Products and Chemicals, Inc. Deferred Compensation Plan.

**“Key Employee”** shall mean any Employee or former Employee (not including a beneficiary of either in the event that such Employee or former Employee is deceased) who, on the first day of a Plan Year or any prior Plan Year for which benefits are accrued under this Plan, is classified as an Executive Officer for purposes of U.S. Securities Laws or is in salary grade 217 or above or the equivalent grade in any future grade structure of the Company where such grade indicates status as an officer; provided, the term Key Employee shall not include more than the highest paid 200 employees who otherwise meet this definition.

**“Participating Employer”** shall mean each Affiliated Company, some or all of whose employees are participating in the Salaried Pension Plan as “Employees” as defined therein, and have also received awards under the Annual Incentive Plan.

**“Plan”** shall mean the “Supplementary Pension Plan of Air Products and Chemicals, Inc.” as set forth herein and as amended from time to time.

**“Plan Administrator”** shall mean the Company’s Director of Compensation and Benefits prior to February 1, 2006 and, thereafter, the Vice President — Human Resources, or such other person or entity as the Vice President — Human Resources shall appoint to fill such role.

**“Plan Year”** shall mean the annual period beginning on October 1 and ending on September 30. A Plan Year shall be designated according to the calendar year in which such Plan Year ends (e.g., the 2006 Plan Year refers to the Plan Year beginning on October 1, 2005 and ending on September 30, 2006).

**“Salaried Pension Plan”** shall mean the “Air Products and Chemicals, Inc. Pension Plan for Salaried Employees” as amended from time to time.

**“Separation from Service”** occurs when there is an expectation that the Employee has terminated employment and is expected permanently to render services at a level that is at least 60% less than the average level of services rendered over the preceding 36 months. A Separation from Service shall be deemed to occur in the case of a leave of absence exceeding six months (or 29 months if due to Disability) where there is no legal or contractual right for the Employee to return to work.

**Section 2.2** As used herein, the terms “Credited Service,” “ERISA,” and “Retire,” “Retired,” or “Retirement,” and, except as specifically provided in

this Article, all other capitalized terms, shall have the same meanings as in the Salaried Pension Plan, unless the context clearly indicates otherwise.

**Section 2.3** The masculine pronoun whenever used herein shall include the feminine. The singular shall include the plural and the plural shall include the singular whenever used herein, unless the context otherwise requires.

### **ARTICLE 3**

#### **BENEFITS**

**Section 3.1 Eligibility and Vesting.** Subject to Sections 5.1 and 6.2, an Employee shall be entitled to receive benefits under this Plan if such person shall be entitled to receive a benefit under the Salaried Pension Plan. Benefits under this Plan shall be calculated in accordance with Section 3.2 hereof and shall be subject to the limitations herein provided.

**Section 3.2 Amount of Benefits.** The amount of the benefit to be paid to an Employee or any other person entitled to receive a benefit hereunder shall be equal to the amount of the benefit such person would have received under the Salaried Pension Plan (without regard to the limitations under Sections 401(a)(17), and 415 of the Internal Revenue Code) if such benefit were calculated using Average Compensation calculated pursuant to Section 3.3 hereof, and then reduced by the amount of the actual benefit payable to such person under the Salaried Pension Plan and further reduced by any amount previously paid under this Plan. For purposes of this Section, if an Employee has a Separation from Service prior to attaining age 55 and is subsequently reemployed by the Company and such reemployment continues at the Employee's age 55, the benefit such Employee will be entitled to receive at age 55 based on his or her prior Separation from Service shall be calculated pursuant to the provisions of Section 3.4 of the Salaried Pension Plan. The normal form of benefit under Section 4.1 of the Salaried Pension Plan shall be employed as the

basis for making computations under this Section 3.2 in order to insure the attaining for such purpose of equivalency between the various forms of benefits provided by the Salaried Pension Plan and this Plan, regardless of whether an optional form of benefit has been selected under Article V of the Salaried Pension Plan and/or under Section 3.6 of this Plan.

**Section 3.3 Employee Compensation.** For purposes of computing an Employee's benefit in accordance with Section 3.2 hereof, the Employee's Average Compensation shall be the monthly average of the Compensation of the Employee for the 36 consecutive months (or total consecutive months if he or she was employed by an Employer for less than 36 months) calculated to include any months while on leave of absence, if such months would be considered in the Average Compensation in the Salaried Pension Plan, in which his Compensation was the highest during the 120 months nearest preceding his Separation from Service (or during the total period of employment if he or she was employed by an Employer less than 120 months). For this purpose, an Employee's Compensation for any period shall be equal to the sum of (a) his "Compensation" for such period as defined in Article I of the Salaried Pension Plan, provided that no limitation based on Code Section 401(a)(17) shall apply, (b) one hundred percent (100%) of the Employee's Incentive Compensation allocated to such period in accordance with Section 3.4 hereof and (c) one hundred percent (100%) of the amount of annual salary deferred by the Employee under the Air Products and Chemicals, Inc. Supplementary Savings Plan on or before September 1, 2006 and the Air Products and Chemicals, Inc. Deferred Compensation Plan thereafter, which amount, but for such deferral election, would have been received by the Employee as annual salary during such period.

**Section 3.4 Allocation of Incentive Compensation.** For the purpose of computing the Employee's Compensation in accordance with Section 3.3 hereof, all Incentive Compensation shall be allocated to the period for which the



Incentive Compensation was awarded to the Employee by the Employer, notwithstanding actual distribution of the Incentive Compensation at a later time. The total dollar value of Incentive Compensation awards shall be allocated in equal amounts to each month of the period for which the award was made.

**Section 3.5 Payment of Benefits.**

- (a) Benefits shall be payable under the Plan on the first of the month following Separation from Service; provided that, for Employees who have a Separation from Service prior to attaining age fifty-five (55) but have not yet received benefits under this Plan, the following rules apply:
- i. For such Employees who have not attained age fifty-five (55) prior to 1 January 2009, benefits shall be payable on the first of the month after the Employee attains age fifty-five (55) even if such Employee has subsequently returned to employment with the Company, except as provided for small benefits in Section 3.9.
  - ii. For such Employees who have attained age fifty-five (55) prior to 1 January 2009, benefits will be payable on 1 January 2009 even if such Employee has subsequently returned to employment with the Company, except as provided in (iii) below and for small benefits in Section 3.9.
  - iii. Notwithstanding the above, for such Employees who (x) attain age fifty-five (55) during calendar year 2008 and who are eligible for a pension bridge under Article 3A of this Plan or Section 3.2 of the Salaried Pension Plan, or (y) attain age sixty-five (65) during calendar year 2008, benefits will be payable on the date the Employee attains age 55 or 65, respectively.

Notwithstanding the above, benefits to Employees for whom the Company has purchased annuities from Transamerica Occidental Life Insurance Company to fund their benefit under the Salaried Pension Plan shall be payable under this Plan on the first of the month after the Employee attains age sixty-five (65). Payment of benefits will commence within 90 days of the Employee's satisfying the conditions therefore (the first day of which shall be the Annuity Starting Date for purposes of Section 409A), and upon the Employee's proper application therefore or the Plan Administrator's determination of the Employee's eligibility to commence benefits according to elections previously filed, except for small benefits as described in Section 3.9(a). The Plan will not be responsible for any delays or the costs or taxes associated with any delays that result from the Employee's failure to make proper application for benefits or for delays associated with the normal processing of benefit payments. For benefit payments commencing before 1 October 2006, benefits shall be paid in the Primary Form of Benefit as determined in Section 5.2 of the Salaried Pension Plan, unless the Employee shall elect to have an optional form of benefit in accordance with the provisions of Section 3.6A hereof. For benefit payments commencing on or after 1 October 2006, benefits shall be paid in a lump sum form of benefit described in Section 3.6(b) below unless the Employee shall elect to have benefits paid as an annuity in accordance with the provisions of Section 3.7 hereof in which case, the Employee may elect the form of the annuity as described in Sections 5.2(a), (b) and (c) of the Salaried Pension Plan. All payments of benefits shall be subject to Federal income and such other tax withholding as required by applicable law.

- (b) Notwithstanding the above, a distribution to an Employee who at the time of his or her Separation from Service is a Key Employee shall not be made or commence before the date which is six months after the occurrence of such Separation from Service (or, if earlier, the date of

death of such Key Employee). If the form of benefit elected by such Key Employee is a lump sum, such lump sum shall be increased to reflect the delayed payment in accordance with the Plan Administrator's procedures for such adjustments, and if the form of benefit is an annuity, the Key Employee will receive, on the delayed payment date, all payments that would have been made during the period of delay, adjusted for the delay in accordance with the Plan Administrator's procedures for such adjustments. The discount rate as described in Section 3.6(b)(i) as it would have applied on the Annuity Starting Date shall be used to adjust the delayed distributions to Key Employees.

- (c) If, following a Separation from Service, the Employee continues or resumes accrual of a benefit under the Salaried Pension Plan that would increase the total benefit payable under this Plan, such additional benefit will be paid or will commence payment in accordance with the election made under Section 3.6 of this Plan either through an increase in any annuity payment being made to the Employee or via an additional lump sum, and such increase or such additional lump sum will be paid following subsequent Separation from Service in accordance with the provisions in this Section 3.5 or, if upon a Change in Control, in accordance with the provisions of Section 3.10.

**Section 3.6 Optional Forms of Retirement Benefit.**

- (a) An Employee may elect as provided in Section 3.6A or 3.7, as applicable, to have distribution of any benefits otherwise payable in accordance with Section 3.5 hereof made in:
  - (i) Options A, B or C as set forth in such Section 5.2 of the Salaried Pension Plan, substituting the benefit determined under Section 3.2 above for the benefit determined under Article IV of the Salaried Plan, or

- (ii) a lump sum form of benefit described below in this Section 3.6.
  - (b) Subject to satisfaction of the procedures set forth below in Section 3.6A(b) or 3.7, an Employee who so elects will have distribution of his benefit under the Plan made in the form of a single lump sum cash payment calculated by converting the benefit determined under Section 3.2 into a single cash payment, using the following assumptions:
    - (i) For distributions prior to 20 September 2000, the mortality assumptions to determine life expectancy shall be the mortality table or tables used by the actuary as the basis for preparing the annual actuarial valuation for the Salaried Pension Plan for the Plan Year immediately preceding the Employee's Retirement and, for distributions made on or after 20 September 2000, the mortality assumptions used for this purpose shall be determined from a unisex version of the 1994 Group Annuity Mortality Table; provided that, with respect to any Employee who had an accrued benefit in the Plan as of 20 September 2000, the single cash payment shall be the greater of the amount calculated using the pre-September 20, 2000 mortality assumptions or the September 20, 2000 or later mortality assumptions; and
    - (ii) The discount rate used to determine the lump sum actuarial present value of the primary form of benefit shall be the yield for AAA Municipal Bonds as published periodically by Moody's Investor Service, Inc. in Moody's Bond Survey, such rate to be based on the average yield of the three (3) months immediately preceding the ninety (90) day period prior to the Annuity Starting Date for the benefit.
-

In case the above measure is no longer in use or available, the Committee will select a comparable alternative.

**Section 3.6A Election of Benefit Form Prior to 1 October 2006.**

For Annuity Starting Dates occurring prior to 1 October 2006, the following procedures shall apply for election of optional forms of benefit.

- (a) Except as otherwise provided in subsection (b) below as to the lump sum form of benefit, the same election of form of benefit procedures and terms and conditions as are in effect under the Salaried Pension Plan shall be in effect under the Plan including that, if the Employee is married on the Annuity Starting Date, the Primary Form of Benefit shall take the form of Option A as provided in Section 5.2 of the Salaried Pension Plan, notwithstanding that a different form of benefit may be selected by such Employee for the distribution of benefits under the Salaried Pension Plan and under this Plan.
- (b) An Employee may elect a lump sum form of benefit subject to the following rules.
  - (i) **Employee Statement.** To elect a lump sum, the Employee will be required to furnish a written statement that he forgoes any future ad hoc or other increases in benefits paid under the Plan.
  - (ii) **Spousal Consent.** The Employee may elect a lump sum, a single life benefit or may specify a beneficiary other than a spouse without spousal consent.
  - (iii) **Committee Approval.** The Committee, through the Plan Administrator, will have the right to disapprove and suspend any and all elections of a lump sum form of benefit if payment of the

Employee's Plan benefit in such form would adversely affect the Company.

- (iv) **Further Administrative Procedures.** The Plan Administrator shall from time to time adopt such additional procedures as he, in his discretion, shall determine to be necessary or appropriate for the proper administration of elections, approvals and payment of Plan benefits in lump sum form, including procedures as to the timing of payment thereof, taking into consideration when information as to the Employee's final Incentive Compensation for services rendered to the date of his Retirement is first available. Such procedures shall be binding on Employees and the Company for all purposes of the Plan.

**Section 3.7 Election of Benefit Form On or After 1 October 2006**

For Annuity Starting Dates occurring on or after 1 October 2006, the following procedures shall apply for election of optional forms of benefit.

- (a) Employees participating in the Plan as of 30 September 2006 who do not have their Annuity Starting Date prior to 1 October 2006 must elect the form of distribution of their Plan benefit prior to 1 October 2006. Such Employees will be given the opportunity to elect an annuity form of benefit or a lump sum form of benefit described in Section 3.6(b) in the manner determined by the Plan Administrator. Such distribution election shall be with respect to an Employee's entire Plan benefit, whether accrued prior to or after 1 October 2006. Such distribution election shall become irrevocable when accepted by the Plan Administrator.
- (b) An Employee who first becomes an Employee on or after October 1, 2006 shall make an irrevocable election as to the form of distribution of their benefit within 30 days of becoming an Employee in a manner determined

by the Plan Administrator. If no distribution election is made by the Employee within 30 days of becoming eligible, benefits under the Plan shall be payable in a lump sum form of benefit described in Section 3.6(b).

**Section 3.8 Pre-Retirement Spousal Benefits.** If an Employee dies prior to his or her Annuity Starting Date, a pre-Retirement spousal benefit shall be payable to the Employee's surviving spouse, if any, in the same form as that elected by the Employee, commencing the first of the month following the later of the Employee's death or the date the Employee would have attained (i) age 50, if the Employee was actively employed by the Company at time of death or if the Employee is entitled to early retirement benefits under Section 3.2(c), (d), (e) or (f) of the Salaried Pension Plan or Article 3A of this Plan, or (ii) age 55. The amount of the benefit shall be calculated in the same manner as provided in Section 5.7 of the Salaried Pension Plan except substituting the benefit determined under Section 3.2 above for the benefit determined under Article IV of the Salaried Pension Plan.

If a former Key Employee dies after his or her Annuity Starting Date but prior to the delayed payment date of his or her benefit described in Section 3.5(b) above, the Employee's spouse shall receive a distribution within 90 days of the Employee's death of the benefit payments that would have been payable to the Employee on and after the Annuity Starting Date had the payment not been delayed, adjusted for the delayed payment.

**Section 3.9 Small Benefit Payment Procedures.**

(a) Notwithstanding Sections 3.5, 3.6, 3.6A and 3.7 above, if an Employee's benefit has an aggregate actuarial present value of less than \$10,000 at the time of the Employee's Separation from Service, or the monthly amount payable if the benefit were distributed in a single life annuity commencing on the Normal Retirement Date would be less than \$100 per month, the payment of such benefit shall be made by payment of a single

lump sum within 90 days of the Employee's Separation from Service, in which case the lump sum amount so paid shall be the actuarial present value of the monthly benefit.

- (b) For purposes of this Section 3.9, if an Employee Separates from Service prior to his or her Early Retirement Date, the same actuarial factors, assumptions and procedures as are employed under Section 5.1 of the Salaried Pension Plan shall be employed to calculate the actuarial present value of any benefit and if an Employee Separates from Service on or after his or her Early Retirement Date, the same actuarial factors and assumptions as are employed under Section 3.6 (b) of this Plan shall be used to calculate the actuarial present value of any benefit.

**Section 3.10 Change in Control.** Notwithstanding the above provisions of this Article 3, upon a Change in Control, an Employee shall have an immediate, nonforfeitable right to his or her Accrued Benefit under the Plan and shall receive an immediate lump sum payment of such. This payment shall not affect his or her continued eligibility under the Plan; however, his or her Accrued Benefit under the Plan shall be reduced by the amount paid out.

### **ARTICLE 3A**

#### **SPECIAL SUPPLEMENTAL BENEFITS**

Notwithstanding any provision of the Plan to the contrary, certain employees of the Employer shall be entitled to receive a special supplemental benefit under the Plan in accordance with the following provisions:

- (a) Any Participant in the Salaried Pension Plan who:

- (i) Would be described in Section 3.2(c) of the Salaried Pension Plan text except that such Participant was a Highly Compensated Employee at the time of his or her Separation from Service; or



- (ii) Would be described in Section 3.2(d) of the Salaried Pension Plan text except that such Participant was a Highly Compensated Employee Separated from Service after 1 January 2001 and notified of such Separation from Service prior to 1 July 2002 shall be entitled to a benefit under this Plan as follows:
- (b) The amount of the benefit shall be the difference between the monthly retirement benefit the Participant receives under Section 3.4 of the Salaried Pension Plan and the benefit the Participant would have received under Section 3.2 of the Salaried Pension Plan had he or she Separated from Service on or after his or her Early Retirement Date.
- (c) If such a Participant is not an Employee for purposes of this Plan, such a Participant shall be treated as an Employee for purposes of this Plan except for purposes of Sections 3.1-3.4; provided that such a Participant whose Separation from Service occurred prior to 1 January 2000 shall not be treated as an Employee for purposes of Subsections 3.6(a)(ii), 3.6(b), or 3.6A(b).

**ARTICLE 4**  
**ADMINISTRATION**

**Section 4.1 Plan Administration and Interpretation.** The Plan shall be administered by the Plan Administrator. The Plan Administrator shall have full power and authority to administer the Plan and interpret the Plan in a manner which is as consistent with the interpretations of similar provisions in the Salaried Pension Plan as the context reasonably permits. The Plan Administrator's powers shall include, by way of illustration and not limitation, the discretionary authority and power to construe and interpret the Plan provisions, decide all questions of eligibility for benefits, and determine the amount, time, and manner of payments of any benefits and to authorize the payment of benefits hereunder, except to the extent such powers have been given to the Committee pursuant to Section 4.2 below or otherwise. The Plan Administrator may appoint one or

more individuals or committees to assist him in carrying out his duties and responsibilities under the Plan and may adopt rules and regulations for the administration of the Plan and alter, amend, or revoke any rules or regulations so adopted. The decisions of the Plan Administrator or his delegates shall be final and binding on the Company, the Employers, the Employees, and their beneficiaries.

**Section 4.2 Claim and Appeal Procedure.**

(a) **Claim Procedure.** In the event of a claim by an Employee or an Employee's beneficiary for or in respect of any benefit under the Plan or the method of payment thereof, such Employee or beneficiary shall present the reason for his claim in writing to the Plan Administrator. The Plan Administrator shall, within ninety (90) days after the receipt of such written claim, send written notification to the Employee or beneficiary as to its disposition, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90) day period. In no event, however, shall such extension exceed a period of ninety (90) days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the final decision.

In the event the claim is wholly or partially denied, the Plan Administrator's written notification shall state the specific reason or reasons for the denial, include specific references to pertinent Plan provisions on which the denial is based, provide an explanation of any additional material or information necessary for the Employee or beneficiary to perfect the claim and a statement of why such material or information is necessary, and set forth the procedure by which the Employee or beneficiary may appeal the denial of the claim. If the claim has not been granted and notice is not

furnished within the time period specified in the preceding paragraph, the claim shall be deemed denied for the purpose of proceeding to appeal in accordance with paragraph (b) below.

- (b) **Appeal Procedure.** In the event an Employee or beneficiary wishes to appeal the denial of his claim, he may request a review of such denial by the Committee by making written application to the Plan Administrator within sixty (60) days after receipt of the written notice of denial (or the date on which such claim is deemed denied if written notice is not received within the applicable time period specified in paragraph (a) above). Such Employee or beneficiary (or his duly authorized representative) may, upon written request to the Committee, review documents which are pertinent to such claim, and submit in writing issues and comments in support of his position. Within sixty (60) days after receipt of the written appeal (unless an extension of time is necessary due to special circumstances or is agreed to by the parties, but in no event more than one hundred and twenty (120) days after such receipt), the Committee shall notify the Employee or beneficiary of its final decision. If such an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The final decision shall be in writing and shall include: (i) specific reasons for the decision, written in a manner calculated to be understood by the claimant, and (ii) specific references to the pertinent Plan provisions on which the decision is based.
- (c) **Change in Control.** Notwithstanding the above, upon a Change in Control, for the three-year period commencing on the date of the Change in Control, the Plan Administrator shall notify the Employee of the disposition of a claim under paragraph (a) above, and the Committee shall notify the Employee of

the decision on an appeal under paragraph (b) above, within ten (10) days of receipt of the claim or appeal, respectively.

## ARTICLE 5

### FUNDING

**Section 5.1 Benefits Unfunded.** The Plan shall be unfunded. Neither an Employer, the Board, nor the Plan Administrator shall be required by the terms of the Plan to segregate any assets in connection with the Plan. Neither an Employer, the Board nor the Plan Administrator shall be deemed to be a trustee of any amounts to be paid under the Plan. Any liability to any person with respect to benefits payable under the Plan shall be only a claim against the general assets of the Employer. No such liability shall be deemed to be secured by any pledge or any other encumbrance on any specific property of the Employer.

**Section 5.2 Non-Qualified Plan.** The Plan will not be qualified under the Code and the Company and the Employers shall not be required to qualify the Plan.

**Section 5.3 ERISA.** The Plan is intended to constitute an unfunded plan maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees of the Employer which qualifies for the exclusion provided for in Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA. In the event that any regulatory body should determine that the Plan does not qualify for such exclusion, then the Company may retroactively revise the eligibility criteria under the Plan so that this Plan may qualify for the exclusion or take such other action as is deemed necessary, and the Company and the Employers shall have no liability to those individuals who had been eligible for benefits under the Plan prior to such revision or action

except to the extent of the individual's Accrued Benefit as of the effective date of such action.

## ARTICLE 6

### AMENDMENT AND TERMINATION

**Section 6.1 Amendment and Termination.** While the Company intends to maintain this Plan in conjunction with the Salaried Pension Plan for so long as necessary or desirable, the Company reserves the right at any time to amend, suspend, and/or terminate this Plan, in whole or part. Action to terminate the Plan may be taken on behalf of the Company only by the Board, by its resolutions duly adopted. Any other action referred to in this subsection and not determined by the Company's general counsel to be in contravention of law may be taken on behalf of the Company by the Board or the Chairman of the Board or his delegate by a resolution, certificate, new or revised Plan text, or other writing; provided that, only the Board may approve a Plan amendment which (A) would materially increase aggregate accrued benefits under, materially change the benefit formula provided by, or materially increase the cost of the Plan so long as persons designated by the Board as "Executive Officers" for purposes of the U.S. Securities laws participate in the Plan; or (B) would freeze benefit accruals, materially reduce benefit accruals, or otherwise materially change the benefits under the Plan; or (C) would constitute the exercise of power or function assigned to the Finance Committee of the Board, the Plan Administrator, or the Committee. The Chairman may delegate the authority described in the preceding sentence in writing. Notwithstanding the above no such amendment, termination or suspension shall reduce the benefits payable to or accrued by an Employee as of the date of such amendment, suspension or termination, except as provided in Section 5.3. If this Plan is terminated, no new benefits shall be accrued hereunder; and all benefits previously accrued shall be payable at such times as otherwise provided herein.

**Section 6.2 Contractual Obligations.** Notwithstanding Section 5.1 hereof, each Employer hereby makes a contractual commitment to pay the benefits theretofore accrued in respect of each Employee of such Employer under the Plan to the extent it is financially capable of meeting such obligations from its general assets, and at such times as such benefits are payable under the terms hereof.

**Section 6.3 No Employment Rights.** Nothing contained in the Plan shall be construed as a contract of employment between an Employer and any Employee, or as a right of any Employee to be continued in the employment of an Employer, or as a limitation on the right of an Employer to discharge any of its Employees, with or without cause. Specifically, no rights are created under the Plan with respect to continued employment. It is understood that each Employee is employed at the will of the respective Employer and the Employee and in accord with all statutory provisions.

## ARTICLE 7

### GENERAL PROVISIONS

**Section 7.1 Non-alienation of Benefits.** Except as may be required by law, no benefit payable under the Plan is subject in any manner to anticipation, alienation, sale, transfer, assignment, garnishment, pledge, encumbrance, or charge whether voluntary or involuntary, including in respect of liability of an Employee or his beneficiary for alimony or other payments for the support of a spouse, former spouse, child, or other dependent, prior to actually being received by the Employee or beneficiary under the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, garnish, pledge, encumber, or charge the same shall be void. No such benefits will in any manner be liable for or subject to the debts, liabilities, engagements, or torts of any Employee or other person entitled to receive the same and if such person is adjudicated bankrupt or attempts to

anticipate, assign, or pledge any benefits, the Plan Administrator shall have the authority to cause the same or any part thereof then payable to be held or applied to or for the benefit of such Employee, his spouse, children or other dependents, or any of them, in such manner and in such proportion as the Plan Administrator may deem proper.

**Section 7.2 Minor or Incompetent.** If the Plan Administrator determines that any Employee or beneficiary entitled to payments under the Plan is a minor or incompetent by reason of physical or mental disability, it may, in its sole discretion, cause all payments thereafter becoming due to such person to be made to any other person for his benefit, without responsibility to follow application of amounts so paid. Payments made pursuant to this provision shall completely discharge the Company, the Employers, the Plan, the Board, and the Plan Administrator from all further obligations with respect to benefits under the Plan.

**Section 7.3 Payee Unknown.** If the Plan Administrator has any doubt as to the proper beneficiary to receive payments hereunder, the Plan Administrator shall have the right to withhold such payments until the matter is finally adjudicated. However, any payment made in good faith shall fully discharge the Plan Administrator, the Company, the Employers, and the Board from all further obligations with respect to that payment.

**Section 7.4 Illegal or Invalid Provision.** In case any provision of the Plan shall be held illegal or invalid for any reason, such illegal or invalid provision shall not affect the remaining parts of the Plan, but the Plan shall be construed and enforced without regard to such illegal or invalid provision.

**Section 7.5 Governing Law and Headings.** The provisions of the Plan shall be construed, administered, and governed in accordance with the laws of the Commonwealth of Pennsylvania, including its statute of limitation

provisions, to the extent such laws are not preempted by ERISA or other applicable Federal law. Titles of Articles and Sections of the Plan are for convenience of reference only and are not to be taken into account when construing and interpreting the provisions of the Plan.

**Section 7.6 Liability Limitation.** No liability shall attach to or be incurred by the Plan Administrator or any officer or director of the Company or an Employer under or by reason of the terms, conditions, and provisions contained in the Plan, or for the acts or decisions taken or made thereunder or in connection therewith; and as a condition precedent to the receipt of benefits hereunder, such liability, if any, is expressly waived and released by the Employee and by any and all persons claiming under or through the Employee or any other person. Such waiver and release shall be conclusively evidenced by any act of participation in or the acceptance of benefits under the Plan.

**Section 7.7 Notices.** Except as otherwise specified, any notice to the Plan Administrator, the Company, or an Employer which shall be or may be given under the Plan shall be in writing and shall be sent by registered or certified mail to the Plan Administrator. Notice to an Employee shall be sent to the address shown on the Company's or the Employer's records. Any party may, from time to time, change the address to which notices shall be mailed by giving written notice of such new address.

**Section 7.8 Entire Agreement.** Except as may be provided in an individual severance agreement between the Company or other Employer and an Employee, this Plan document shall constitute the entire agreement between the Company or other Employer and the Employee with respect to the benefits promised hereunder and no other agreements or representations with respect to such benefits, oral or otherwise, express or implied, shall be binding on the Company or other Employer.



**Section 7.9 Binding Effect.** All obligations for amounts not yet paid under the Plan shall survive any merger, consolidation, or sale of substantially all of the Company's or an Employer's assets to any entity, and be the liability of the successor to the merger or consolidation or purchaser of assets, unless otherwise agreed to in writing by the parties thereto.

IN WITNESS WHEREOF, the Company, intending to be legally bound hereby, has caused the Plan to be adopted and approved by the execution of its duly authorized officers as of the 1st day of December, 2007.

**AIR PRODUCTS AND CHEMICALS, INC.**

By: \_\_\_\_\_  
Vice President - Human Resources

**AIR PRODUCTS AND CHEMICALS, INC.  
OFFICER’S CERTIFICATE**

I, Lynn C. Minella, Senior Vice President of Human Resources and Communications of Air Products and Chemicals, Inc. (the “Company”), pursuant to the authority delegated to me by John P. Jones in the attached Officer’s Certificate, do hereby amend the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008 (the “Plan”), as follows:

1. Section 3.7 is amended by adding the following as paragraph (c):

“(c) Notwithstanding the above, effective 28 April 2008 through 30 May 2008, Employees will be given an opportunity, in the manner determined by the Plan Administrator, to make a change to a previous election to receive an annuity form of benefit or a lump sum form of benefit described in Section 3.6(a). However, this opportunity does not apply to the following Employees:

- (i) An Employee who first becomes an Employee on or after 1 January 2008;
- (ii) An Employee whose benefits commence prior to 1 January 2009; and
- (iii) An Employee for whom the Company has purchased annuities from Transamerica Occidental Life Insurance Company to fund their benefit under the Salaried Pension Plan.

2. The following sentence shall be added at the end of Section 3.6(a) to designate a Single Life Annuity as the default payment option if an Employee elects an annuity but does not choose a payment option:

“If the Employee elects an annuity under section (i) above and does not elect the form of the annuity prior to the commencement of benefits, the Employee shall be deemed to have elected Option B as set forth in Section 5.2 of the Salaried Pension Plan, substituting the benefit determined under Section 3.2 above for the benefit determined under Article IV of the Salaried Pension Plan.”

Attest: \_\_\_\_\_  
Assistant Secretary

\_\_\_\_\_  
Lynn C. Minella

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**AIR PRODUCTS AND CHEMICALS, INC.  
OFFICER'S CERTIFICATE**

I, Lynn C. Minella, Senior Vice President of Human Resources and Communications of Air Products and Chemicals, Inc. (the "Company"), pursuant to the authority delegated to me by John P. Jones in the attached Officer's Certificate, do hereby amend the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008 (the "Plan"), as follows:

1. Effective 1 October 2008, Section 3.9(b) is amended to read as follows:

"(b) For purposes of this Section 3.9, if an Employee Separates from Service prior to his or her Early Retirement Date, the actuarial present value of any benefit will be calculated using the mortality table set forth in Revenue Ruling 2001-62 (2001-53 IRB 1) and the rate of interest on 30-year Treasury securities as specified by the Commissioner of the Internal Revenue Service for June of the prior Plan Year. If an Employee Separates from Service on or after his or her Early Retirement Date, the same actuarial factors and assumptions as are employed under Section 3.6(b) of the Plan shall be used to calculate the actuarial present value of any benefit for purposes of this Section 3.9.

\_\_\_\_\_  
Lynn C. Minella

Date: \_\_\_\_\_

**AIR PRODUCTS AND CHEMICALS, INC.  
OFFICER'S CERTIFICATE**

I, Lynn C. Minella, Senior Vice President of Human Resources and Communications of Air Products and Chemicals, Inc. (the "Company"), pursuant to the authority delegated to me in the attached Officer's Certificate, do hereby amend the Supplementary Pension Plan of Air Products and Chemicals, Inc., as Amended and Restated Effective January 1, 2008 (the "Plan"), as follows:

1. Effective 1 January 2008, the last sentence of Section 3.5(b) is amended to read as follows: "The discount rate as described in Section 3.6(b)(ii), or Section 3.9(b) if applicable, as it would have applied on the Annuity Starting Date shall be used to adjust the delayed distributions to Key Employees."
2. Effective 1 January 2008, at the end of Section 3.6, the following sentence is added: "If the Employee elects an annuity under section (i) above and does not elect the form of the annuity prior to the Annuity Starting Date, the Employee shall be deemed to have elected Option B as set forth in Section 5.2 of the Salaried Pension Plan, substituting the benefit determined under Section 3.2 above for the benefit determined under Article IV of the Salaried Pension Plan."

\_\_\_\_\_  
Lynn C. Minella  
Date: \_\_\_\_\_

**AIR PRODUCTS AND CHEMICALS, INC.**  
**OFFICER'S CERTIFICATE**

I, Lynn C. Minella, Senior Vice President — Human Resources and Communications of Air Products and Chemicals, Inc. (the “Company”), pursuant to the authority delegated to me by the Chairman of the Company on 16 September 2004, do hereby adopt the following amendments to the Air Products and Chemicals, Inc. Retirement Savings Plan, as amended and restated effective 1 October 2006:

1. Section 2.38 is hereby deleted and replaced in its entirety by the following:

2.38 **Participant Investment Funds** mean the funds chosen by the Investment Committee and described in Appendix A, as amended from time to time, in which Participant Contributions and Company Core Contributions are held for investment.
2. Sections 2.45 through 2.58 are hereby renumbered to Sections 2.46 through 2.59, and a new section 2.45 is hereby added as follows:

2.45 **Qualified Default Investment Alternative** means the Participant Investment Fund chosen by the Investment Committee, as designated in Appendix A, to meet the requirements of ERISA Section 404(c)(5) and the regulations thereunder.
3. The reference to “subsection 2.50” in the new Section 2.59 is hereby changed to “subsection 2.51.”
4. In section 3.08(d), the last sentence of the second to last paragraph is hereby amended to read: “If a Participant shall make application to withdraw any Before-Tax Contribution due to hardship, future contributions shall be suspended in accordance with Paragraph 3.08(e)(C).”
5. In section 4.02, before the last sentence of the first paragraph, the following sentence is hereby added:

Notwithstanding the above, if the Trustee does not receive direction from the Participant regarding amounts credited to such Participant’s Plan accounts, such amounts shall be held and invested in the Qualified Default Investment Alternative.
6. In section 4.02, the last paragraph before section 4.02(a) is hereby deleted and replaced in its entirety by the following:

Each of the Participant Investment Funds is currently invested in the particular Investment Vehicle specified in Appendix A, although the Investment Committee

may from time to time replace, add to, or discontinue such Investment Vehicles, excluding the Company Stock Fund, without amending the Plan, upon notice to Participants.

7. In section 4.06, the first sentence is hereby amended to read as follows: “At such times as required by law or as the Plan Administrator deems necessary or desirable for the purpose of administering the Plan, each Participant will be furnished with a statement showing the status of his or her Plan accounts as of such dates as are selected by the Plan Administrator.”
8. The first paragraph of section 5.01 is hereby amended to read as follows:

5.01 **General.** Subject to Sections 5.03 and 5.05, distribution to any person entitled to receive any amounts then held by the Trustee in the Participant Investment Funds described in Article IV shall be made by the Trustee in a lump sum or, at the election of such person, in up to, but not exceeding, ten substantially equal annual installments, in the manner described in (a) and (b) below. If installments are elected, the election may be rescinded at a later date, at which time the remaining balance in the Participant’s accounts shall be paid in a lump sum.
9. Section 5.01(b) is hereby deleted and replaced in its entirety by the following:

(b) **Company Stock Distributions.** Amounts credited to a Participant’s accounts which are held by the Trustee in the Company Stock Fund shall be distributed in cash. Notwithstanding the foregoing, amounts credited to a Participant’s account in the Company Stock Fund may be distributed in the form of shares of Company Stock at the election of the Participant or the Participant’s Beneficiary or alternate payee, as the case may be. Distribution of a Participant’s interest in a fractional share of Company Stock shall be made in cash. Notwithstanding the above, for persons electing installment distributions commencing on or after October 1, 2006, distributions of amounts credited to the Company Stock Fund must be made in cash.
10. Appendix A is hereby amended by adding the following paragraph at the bottom:

The Qualified Default Investment Alternative is the Tier 1 — Life Cycle Investment Option. Contributions will be invested in a particular fund within that Tier based on the Participant’s age in accordance with procedures determined by the Plan Administrator.

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Lynn C. Minella

Date: \_\_\_\_\_

**AIR PRODUCTS AND CHEMICALS, INC.**  
**Annual Incentive Plan**  
**As Amended and Restated Effective 1 October 2008**

**1. PURPOSES OF THE PLAN**

The purposes of this Plan are to attract, motivate and retain high caliber people and to provide meaningful individual and group incentives within Air Products and Chemicals, Inc. (the "Company") and Participating Subsidiaries. References in this Plan to the Company includes Participating Subsidiaries unless the context otherwise requires.

**2. ADMINISTRATION OF THE PLAN**

The Plan shall be administered by the Management Development and Compensation Committee (the "Committee") of the Company's Board of Directors (the "Board") or such other committee of the Board consisting of such members (not less than three) as are appointed from time to time by the Board and who qualify as "outside directors" within the meaning of Section 162(m) of the Code.

The Committee shall have all necessary powers to administer and interpret the Plan, such powers to include authority (within the limitations described therein) to select the employees to whom awards will be granted under the Plan and determine the amount of any award to be made to any employee. In order to assist it in selecting employees and determining the amount of any award to be given to each employee selected, the Committee may take into consideration recommendations from the appropriate officers of the Company and the Committee may delegate to appropriate Company officers its authority to select award recipients and determine the amount of awards, within parameters established by the Committee, with respect to employees who are not Executive Officers.

The Committee shall have full power and authority to adopt such rules, regulations and instruments for the administration of the Plan and for the conduct of its business as the Committee deems necessary or advisable. The Committee's interpretations of the Plan, and all action taken and determinations made by the Committee pursuant to the powers vested in it hereunder, shall be conclusive and binding on all parties concerned, including the Company, its shareholders and any employee of the Company or any Subsidiary.

**3. ELIGIBILITY FOR PARTICIPATION**

Participants in the Plan shall be selected by the Committee each year from among Executive Officers and other executives and key employees of the Company. The term "employee" shall mean any person employed by the Company on a salaried basis and the term "employment" shall mean employment by the Company or any Subsidiary. Employees who participate in other incentive or benefit plans of the Company may also participate in this Plan.

Awards under the Plan are for services rendered during a Fiscal Year, based on the performance of the Company during that Fiscal Year. No employee shall be eligible to receive an award under the Plan for a particular Fiscal Year unless the employee is in the employment of the Company on the last day of that Fiscal Year, *provided, however*, that an employee whose employment terminates during but before the end of a Fiscal Year on account of (i) Retirement, Disability or death, (ii) in connection with a divestiture of facilities, assets or businesses, elimination of positions, or a reorganization or reduction in the work force of the Company, (iii) because of leave of absence from the Company, or (iv) on or following a Change in Control, and who at the time of such termination of employment was eligible to participate in the Plan, shall be eligible to receive an award under the Plan for such Fiscal Year.

#### 4. AWARDS

(a) Prior to the end of the first quarter of each Fiscal Year, the Committee shall establish performance measures which shall be the basis for determining the amount of awards, if any, to be paid under the Plan for the year. The performance measures must be based on business criteria disclosed to and approved by the shareholders of the Company in accordance with Section 162(m) of the Code, and may include financial and/or nonfinancial goals for the Company's performance during the Fiscal Year. The performance measures may be stated in terms of a formula, schedule or any other basis upon which the maximum amount of an award to be paid can be objectively determined. The performance measures can be established for the Company as a whole or can be individually specified for certain Participants or business units. Different performance measures can be combined or stated in the disjunctive to arrive at the method for determining either the total amount to be paid or the amount to be paid to any individual Participant. The Committee may reserve discretion to adjust award amounts resulting from application of the established performance measure(s) but, in the case of Executive Officers who are "covered employees" under Section 162(m) of the Code, the Committee may not increase an award above the maximum determined under performance measure(s).

(b) Prior to the end of each Fiscal Year, the Committee shall (i) fix the classes of employees eligible to receive awards based upon job grade and salary levels, (ii) establish a minimum aggregate dollar amount of awards to be paid to employees of the Company and its U.S. Participating Subsidiaries who have not elected to defer any such awards that might be granted to them and (iii) establish such other procedures for the making of the awards as the Committee may deem desirable. The minimum amount established shall become an accrued liability of the Company on the last day of the Fiscal Year.

(c) After the close of the Fiscal Year, the Committee shall determine and certify in writing (in accordance with Section 162(m) of the Code) the extent to which the performance measures established under paragraph 4(a) above were satisfied. The amounts of awards to be granted to particular employees of the Company within the eligible classes shall be determined after the close of the Fiscal Year under procedures established by the Committee. The Committee shall, in approving the grant of awards to individual Participants for any Fiscal Year, take into consideration (i) the performance of the Company for the Fiscal Year based upon the performance measures selected by the Committee, and (ii) the contribution of the Participant



during the Fiscal Year to the success of the Company, including his or her position and level of responsibility, the achievements of his or her division, group, department or other subdivision, and the recommendations of his or her superiors. No award or awards may be granted to any Participant for the same Fiscal Year having an aggregate value in excess of \$4,000,000.

(d) Notwithstanding any other provisions of this Plan to the contrary, following or in connection with a Change in Control the Committee may, in its sole discretion, determine to pay awards for the portion of the current Fiscal Year preceding the Change in Control; *provided, however*, that no such award shall have an aggregate value which exceeds \$4,000,000. The Committee shall determine in that connection the classes of employees eligible to receive awards based upon job grade and salary levels and the amounts of awards to be made with respect to particular employees within the eligible classes for said partial Fiscal Year, and shall undertake such other procedures for the making of the awards as the Committee may deem desirable. Such awards shall be due and payable to Participants within thirty days following the Committee's determination to pay said awards under this paragraph 4(d) or at such earlier date as the Committee shall determine, but in no event earlier than the occurrence of a Change in Control.

#### **5. FORM AND PAYMENT OF AWARDS**

(a) Subject to the provisions of this paragraph 5 relating to deferred payment awards, awards for a particular Fiscal Year shall be distributed between November 15 and December 15 following the close of the Fiscal Year in cash. Once announced by or for the Committee to the Participant, awards shall not be subject to forfeiture for any reason, whether or not payable immediately or as a deferred payment award except as provided in paragraph 6(e); *provided, however*, that any award for a Fiscal Year will be paid to the Participant only if the Participant is employed by the Company or a Participating Subsidiary on the last day of the Fiscal Year, except as otherwise permitted by paragraph 3.

(b) At the discretion of the Committee, or the election of the Participant as permitted by paragraph 5(c), payment of all or a portion of an award to any Participant may be deferred until termination of the Participant's employment with the Company. Such deferral shall, in the case of a U.S. employee, be made under the Air Products and Chemicals, Inc. Deferred Compensation Plan (the "Deferred Compensation Plan").

(c) Any United States employee eligible to participate in the Plan may elect prior to the end of the second quarter of any Fiscal Year as to which an award may be granted to such employee, that all or a part of any amount to be awarded to him or her for such Fiscal Year shall be in the form of a deferred payment award. Once an employee elects a deferred payment award for the Fiscal Year, this election will be binding on both the employee and the Company with respect to any award the employee is granted for the Fiscal Year, except that, if the minimum amount established under paragraph 4(a) cannot be paid out currently if all elections are effected, a pro rata reduction shall be made in each electing Participant's deferred award and any excess shall be paid out currently.

(d) Deferred payment awards shall be credited on the books of the Company, shall accrue earnings, and shall be paid out in accordance with, and otherwise subject to, the terms of the Deferred Compensation Plan.

(e) Any deferred compensation award of a Participant that was outstanding as of 1 October 2006 and all earnings accrued thereon shall be transferred, as of such date, to a Deferred Compensation Account maintained on behalf of such Participant under the Deferred Compensation Plan.

## 6. MISCELLANEOUS PROVISIONS

(a) A Participant's rights and interests under the Plan may not be assigned or transferred except, in the case of the Participant's death, to his or her Designated Beneficiary or, in the absence of such designation, by will or the laws of descent and distribution.

(b) The Company shall have the right to deduct from awards hereunder paid any federal, state, local or foreign taxes required by law to be withheld with respect to such awards. The obligation of the Company to make delivery of awards shall be subject to currency or other restrictions imposed by any government.

(c) No employee of the Company or a Subsidiary or other person shall have any claim or right to be granted an award under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any such employee any right to be retained in the employ of the Company, it being understood that all employees who have or may receive awards under this Plan are employed at the will of the Company and in accord with all statutory provisions.

(d) The costs and expenses of administering this Plan shall be borne by the Company and not charged to any award or to any employee or Participant receiving an award. However, the Company may charge the cost of any awards made to employees of Participating Subsidiaries, including administrative costs and expenses related thereto, to the respective Participating Subsidiaries by which such persons are employed.

(e) Notwithstanding any other Plan provision to the contrary, the Committee may, in its sole discretion, require repayment of any award made to a participant under the Plan or rescind any deferred payment award made under the Plan and not yet delivered to a participant under the Deferred Compensation Plan, where the award or deferred payment award was based in whole or part on the achievement of financial results that are subsequently the subject of a restatement; the Committee determines, in its sole discretion, that the Participant engaged in misconduct that created the need for the restatement; and a smaller award or deferred payment award would have been made to the Participant based upon the restated results. All determinations regarding enforcement, waiver, or modification of the foregoing repayment and rescission provision shall be made in the Committee's sole discretion. Determinations do not need to be uniform and may be made selectively among individuals, whether or not similarly situated.

(f) The Plan shall be unfunded. Neither the Company, any Subsidiary, the Committee, nor the Board shall be required to segregate any assets that may at any time be represented by awards made pursuant to the Plan. Neither the Company, any Subsidiary, the Committee, nor the Board shall be deemed to be a trustee of any amounts to be paid under the Plan.

(g) Unless otherwise expressly stated by the Committee with respect to an award, each award granted to a Participant under the Plan is intended to be fully deductible by the Company for federal income taxes and not subject to the deduction limitation of Section 162(m) of the Code, and the Plan shall be construed or deemed amended to the extent possible to conform any award to effect such intent. The Plan is intended to meet the short-term deferral exception under Code Section 409A, except for those payments deferred in accordance with the provisions of Section 5(c), such that payments made to Participants under the Plan are not deferred compensation subject to the provisions of Code Section 409A. The Plan shall be construed or deemed amended to the extent possible to effect such intent.

(h) In addition to terms defined elsewhere herein, the following terms as used in this Plan shall have the following meanings:

“Act” shall mean the Securities Exchange Act of 1934 as amended from time to time.

“Change in Control” shall mean the first to occur of any one of the events described below:

(i) *Stock Acquisition*. Any “person” (as such term is used in Sections 13(d) and 14(d)(2) of the Act), other than the Company or a corporation, a majority of whose outstanding stock entitled to vote is owned, directly or indirectly, by the Company, or a trustee of an employee benefit plan sponsored solely by the Company and/or such a corporation, is or becomes, other than by purchase from the Company or such a corporation, the “beneficial owner” (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company’s then outstanding voting securities. Such a Change in Control shall be deemed to have occurred on the first to occur of the date securities are first purchased by a tender or exchange offeror, the date on which the Company first learns of acquisition of 30% of such securities, or the later of the effective date of an agreement for the merger, consolidation or other reorganization of the Company or the date of approval thereof by a majority of the Company’s shareholders, as the case may be.

(ii) *Change in Board*. During any period of two consecutive years, individuals who at the beginning of such period were members of the Board of Directors cease for any reason to constitute at least a majority of the Board of Directors, unless the election or nomination for election by the Company’s shareholders of each new director was approved by a vote of at least two-thirds of

the directors then still in office who were directors at the beginning of the period. Such a Change in Control shall be deemed to have occurred on the date upon which the requisite majority of directors fails to be elected by the shareholders of the Company.

(iii) *Other Events*. Any other event or series of events which, notwithstanding any other provision of this definition, is determined, by a majority of the outside members of the Board of Directors of the Company serving in office at the time such event or events occur, to constitute a change in control of the Company for purposes of this Plan. Such a Change in Control shall be deemed to have occurred on the date of such determination or on such other date as such majority of outside members of the Board shall specify.

“Code” shall mean the United States Internal Revenue Code, as amended and restated from time to time, and regulations thereunder.

“Designated Beneficiary” shall mean the person or persons last designated as such by the Participant on a form filed by him or her with the Committee in accordance with such procedures as the Committee shall approve, provided, however, that in the absence of the filing of such a form with the Company the Designated Beneficiary shall be the person or persons who are the Participant’s beneficiary or beneficiaries of the Company’s basic life insurance.

“Executive Officer” shall mean an officer designated by the Board as an “Executive Officer” for purposes of the United States Securities Laws.

“Disability” shall mean permanent and total disability of an employee participating in the Plan as determined by the Committee in accordance with uniform principles consistently applied, upon the basis of such evidence as the Committee deems necessary and desirable.

“Fiscal Year” shall mean the twelve-month period used as the annual accounting period by the Company.

“Participant” shall mean, as to any award granted under this Plan and for so long as such award is outstanding, the employee to whom such award has been granted.

“Participating Subsidiary” shall mean any Subsidiary designated by the Committee to participate in this Plan which Subsidiary requests or accepts, by action of its board of directors or other appropriate authority, such designation.

“Retirement” shall mean separating from service with the Company or a Subsidiary on or after a customary retirement age for the Participant’s location, with a fully vested interest and the right to begin receiving immediate pension benefits under the Company’s Pension Plan for Salaried Employees or under another defined benefit pension plan sponsored or otherwise maintained by a Subsidiary for its employees in the absence of the Pension Plan or such other pension plan being applicable to any Participant, under a defined contribution plan

under which the Participant accrues his or her primary retirement benefit, or otherwise as determined by the Committee in its sole discretion.

“Subsidiary” shall mean any domestic or foreign corporation, partnership, association, joint stock company, trust or unincorporated organization affiliated with the Company whether or not controlling, controlled by or under common control with the Company.

#### **7. AMENDMENTS AND TERMINATION**

The Committee may at any time terminate or from time to time amend or suspend this Plan in whole or in part; provided, however, that no such amendment shall, without the consent of the Participant to whom an award has already been granted hereunder, operate to annul such award.

Unless approved by a vote of a majority of the shares present and entitled to be voted at a meeting of shareholders, no amendment shall be effective to increase the maximum amount which may be awarded to any individual for the same Fiscal Year.

#### **8. EFFECTIVE DATE, PAST AMENDMENTS AND TERM OF THE PLAN**

This Plan, originally denominated the “Air Products and Chemicals, Inc. 1979 Incentive Compensation Plan”, became effective for the Fiscal Year commencing on October 1, 1978 for awards to be made for years to and including Fiscal Year 1983, following approval by a majority of those present at the January 19, 1978 annual meeting of shareholders of the Company and entitled to vote thereon. The Plan was thereafter amended as permitted by its terms effective October 1, 1982 by action of the Board of Directors. The Plan, as amended effective October 1, 1983, was continued in effect indefinitely until terminated, amended or suspended as permitted under paragraph 9 following approval by the holders of a majority of the outstanding shares of Common Stock of the Company at the January 26, 1984 annual meeting of shareholders of the Company. The Plan was thereafter amended as permitted by its terms effective March 1, 1986, October 1, 1986, July 15, 1987, and October 1, 1989 by action of the Committee. The Plan was renamed the 1990 Annual Incentive Plan and restated effective as of October 1, 1989. The Plan was renamed the 1997 Annual Incentive Plan, amended and restated effective as of October 1, 1996. The Plan was thereafter amended as permitted by its terms effective as of April 1, 1998, and effective as of January 1, 2000, and September 20, 2000 by action of the Committee. The Plan was renamed the Annual Incentive Plan, amended and restated as of October 1, 2001. The Plan was thereafter amended as permitted by its terms effective October 1, 2006 and September 19, 2007 and is restated, as set forth herein, as of October 1, 2008.

**AIR PRODUCTS AND CHEMICALS, INC., AND SUBSIDIARIES**  
**COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES**  
(Unaudited)

	Year Ended 30 September					Six Months Ended 31 March
	2004	2005	2006	2007	2008	2009
<b>Earnings:</b>						
Income from continuing operations (1)	\$ 574.9	\$ 659.0	\$ 734.1	\$ 1,019.6	\$ 1,090.5	\$ 279.3
<b>Add (deduct):</b>						
Provision for income taxes	209.3	235.7	271.9	289.0	381.7	78.6
Fixed charges, excluding capitalized interest	144.0	139.1	146.7	190.9	188.8	82.5
Capitalized interest amortized during the period	7.0	6.1	6.5	6.4	6.6	3.8
Undistributed earnings of less-than-fifty-percent-owned affiliates	(28.7)	(29.2)	(29.2)	(61.2)	(72.7)	(28.7)
Earnings, as adjusted	<u>\$ 906.5</u>	<u>\$ 1,010.7</u>	<u>\$ 1,130.0</u>	<u>\$ 1,444.7</u>	<u>\$ 1,594.9</u>	<u>\$ 415.5</u>
<b>Fixed Charges:</b>						
Interest on indebtedness, including capital lease obligations	\$ 123.0	\$ 113.0	\$ 119.8	\$ 163.7	\$ 164.4	\$ 68.2
Capitalized interest	7.9	14.9	18.8	14.6	27.3	12.9
Amortization of debt discount premium and expense	1.4	4.1	4.8	4.1	4.0	2.5
Portion of rents under operating leases representative of the interest factor	19.6	22.0	22.1	23.1	20.4	11.8
Fixed charges	<u>\$ 151.9</u>	<u>\$ 154.0</u>	<u>\$ 165.5</u>	<u>\$ 205.5</u>	<u>\$ 216.1</u>	<u>\$ 95.4</u>
<b>Ratio of Earnings to Fixed Charges (2):</b>	<u>6.0</u>	<u>6.6</u>	<u>6.8</u>	<u>7.0</u>	<u>7.4</u>	<u>4.4</u>

(1) During the six months ended 31 March 2009, income from continuing operations included a charge of \$174.2 for the global cost reduction plan.

(2) The ratio of earnings to fixed charges is determined by dividing earnings, which includes income from continuing operations before taxes, undistributed earnings of less-than-fifty-percent-owned affiliates, and fixed charges, by fixed charges. Fixed charges consist of interest on all indebtedness plus that portion of operating lease rentals representative of the interest factor (deemed to be 21% of operating lease rentals).

**PRINCIPAL EXECUTIVE OFFICER'S CERTIFICATION**

I, John E. McGlade, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Air Products and Chemicals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: 24 April 2009

/s/ John E. McGlade

John E. McGlade  
President and Chief Executive Officer

**PRINCIPAL FINANCIAL OFFICER'S CERTIFICATION**

I, Paul E. Huck, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Air Products and Chemicals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: 24 April 2009

/s/ Paul E. Huck

Paul E. Huck

Senior Vice President and Chief Financial Officer



CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE  
SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Air Products and Chemicals, Inc. (the "Company") on Form 10-Q for the period ending 31 March 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, John E. McGlade, Chief Executive Officer of the Company, and Paul E. Huck, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: 24 April 2009

/s/ John E. McGlade

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John E. McGlade  
Chief Executive Officer

/s/ Paul E. Huck

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Paul E. Huck  
Chief Financial Officer