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

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 2006

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 is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):
Large accelerated filer Accelerated filer Non-accelerated filer

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 2006
Common Stock, \$1 par value	224,174,971

Class	Outstanding at 24 April 2006
Common Stock, \$1 par value	224,174,971

Class	Outstanding at 24 April 2006
Common Stock, \$1 par value	224,174,971

AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries
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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 to the consolidated financial statements. 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 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. Reference the 2006 Outlook included on pages 30-31 in Management’s Discussion and Analysis of Financial Condition and Results of Operations. Risk factors that could impact results are discussed under Forward-Looking Statements on page 34.

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 2006	30 September 2005
ASSETS		
CURRENT ASSETS		
Cash and cash items	\$ 73.9	\$ 55.8
Trade receivables, less allowances for doubtful accounts	1,501.5	1,506.6
Inventories	567.8	494.8
Contracts in progress, less progress billings	107.2	82.4
Other receivables and current assets	312.6	275.1
TOTAL CURRENT ASSETS	2,563.0	2,414.7
INVESTMENT IN NET ASSETS OF AND ADVANCES TO EQUITY AFFILIATES	718.2	663.7
PLANT AND EQUIPMENT, at cost	13,460.8	12,913.3
Less accumulated depreciation	7,305.7	7,044.5
PLANT AND EQUIPMENT, net	6,155.1	5,868.8
GOODWILL	1,002.7	920.0
INTANGIBLE ASSETS, net	97.5	98.7
OTHER NONCURRENT ASSETS	496.0	442.9
TOTAL ASSETS	\$11,032.5	\$10,408.8
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Payables and accrued liabilities	\$ 1,231.6	\$ 1,378.0
Accrued income taxes	208.8	118.2
Short-term borrowings	409.0	309.6
Current portion of long-term debt	44.6	137.4
TOTAL CURRENT LIABILITIES	1,894.0	1,943.2
LONG-TERM DEBT	2,349.2	2,052.9
DEFERRED INCOME & OTHER NONCURRENT LIABILITIES	763.9	821.6
DEFERRED INCOME TAXES	826.0	834.5
TOTAL LIABILITIES	5,833.1	5,652.2
MINORITY INTEREST IN SUBSIDIARY COMPANIES	191.7	181.1
SHARE-BASED COMPENSATION	40.0	30.0
SHAREHOLDERS' EQUITY		
Common stock (par value \$1 per share; 2006 and 2005 — 249,455,584 shares)	249.4	249.4
Capital in excess of par value	599.7	573.6
Retained earnings	5,553.7	5,317.2
Accumulated other comprehensive income (loss)	(351.4)	(433.2)
Treasury stock, at cost (2006 — 25,708,143 shares; 2005 — 27,557,351 shares)	(1,083.7)	(1,161.5)
TOTAL SHAREHOLDERS' EQUITY	4,967.7	4,545.5
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	\$11,032.5	\$10,408.8

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	
	2006	2005	2006	2005
SALES	\$2,317.2	\$2,003.3	\$4,415.8	\$3,994.3
COSTS AND EXPENSES				
Cost of sales	1,743.6	1,468.9	3,314.9	2,944.4
Selling and administrative	275.5	257.2	530.1	510.0
Research and development	37.7	33.1	75.5	66.2
Gain on sale of a chemical facility	(70.4)	—	(70.4)	—
Impairment of loans receivable	65.8	—	65.8	—
Other (income) expense, net	(29.6)	(8.1)	(46.9)	(16.8)
OPERATING INCOME	294.6	252.2	546.8	490.5
Equity affiliates' income	24.3	25.2	52.1	50.7
Interest expense	25.3	29.8	51.6	57.6
INCOME BEFORE TAXES AND MINORITY INTEREST	293.6	247.6	547.3	483.6
Income tax provision	79.4	67.8	146.2	132.7
Minority interest	10.2	4.5	16.4	8.8
NET INCOME	\$ 204.0	\$ 175.3	\$ 384.7	\$ 342.1
BASIC EARNINGS PER COMMON SHARE	\$.92	\$.77	\$ 1.73	\$ 1.51
DILUTED EARNINGS PER COMMON SHARE	\$.89	\$.75	\$ 1.69	\$ 1.47
WEIGHTED AVERAGE OF COMMON SHARES OUTSTANDING (in millions)	222.8	228.1	222.4	227.3
WEIGHTED AVERAGE OF COMMON SHARES OUTSTANDING ASSUMING DILUTION (in millions)	228.5	234.3	227.9	233.2
DIVIDENDS DECLARED PER COMMON SHARE — Cash	\$.34	\$.32	\$.66	\$.61

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	
	2006	2005
NET INCOME	\$204.0	\$175.3
OTHER COMPREHENSIVE INCOME, net of tax:		
Net unrealized holding gain (loss) on investments, net of income tax (benefit) of \$(2.4) and \$.5	(4.3)	.9
Net unrecognized gain on derivatives qualifying as hedges, net of income tax of \$0 and \$.5	1.1	1.8
Foreign currency translation adjustments, net of income tax (benefit) of \$(16.6) and \$12.2	60.1	(33.4)
TOTAL OTHER COMPREHENSIVE INCOME	56.9	(30.7)
COMPREHENSIVE INCOME	\$260.9	\$144.6

(Millions of dollars)

	Six Months Ended 31 March	
	2006	2005
NET INCOME	\$384.7	\$342.1
OTHER COMPREHENSIVE INCOME, net of tax:		
Net unrealized holding gain on investments, net of income tax of \$1.2 and \$2.2	2.2	3.7
Net unrecognized gain (loss) on derivatives qualifying as hedges, net of income tax (benefit) of \$0 and \$(3.3)	1.1	(5.1)
Foreign currency translation adjustments, net of income tax (benefit) of \$.5 and \$(25.8)	78.5	110.3
TOTAL OTHER COMPREHENSIVE INCOME	81.8	108.9
COMPREHENSIVE INCOME	\$466.5	\$451.0

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)

	2006	Six Months Ended 31 March 2005
OPERATING ACTIVITIES		
Net Income	\$ 384.7	\$ 342.1
Adjustments to reconcile income to cash provided by operating activities:		
Depreciation and amortization	375.3	356.5
Deferred income taxes	(13.6)	18.5
Undistributed earnings of unconsolidated affiliates	(33.6)	(27.3)
Gain on sale of assets and investments	(12.4)	(7.1)
Gain on sale of a chemical facility	(70.4)	—
Impairment of loans receivable	65.8	—
Share-based compensation	32.6	6.9
Other	(1.3)	36.3
Subtotal	727.1	725.9
Working capital changes that provided (used) cash, excluding effects of acquisitions and divestitures:		
Trade receivables	3.9	4.6
Inventories and contracts in progress	(84.5)	(12.8)
Payables and accrued liabilities	(144.5)	(52.0)
Other	50.9	4.4
CASH PROVIDED BY OPERATING ACTIVITIES	552.9	670.1
INVESTING ACTIVITIES		
Additions to plant and equipment (a)	(810.0)	(427.7)
Investment in and advances to unconsolidated affiliates	(8.3)	(4.7)
Acquisitions, less cash acquired (b)	(127.0)	(58.6)
Proceeds from sale of assets and investments	191.9	34.1
Proceeds from insurance settlements (c)	35.8	—
Other	(2.2)	.3
CASH USED FOR INVESTING ACTIVITIES	(719.8)	(456.6)
FINANCING ACTIVITIES		
Long-term debt proceeds	280.3	457.6
Payments on long-term debt	(127.0)	(396.3)
Net increase in commercial paper and short-term borrowings	103.6	5.1
Dividends paid to shareholders	(142.2)	(131.3)
Proceeds from stock option exercises	60.8	113.7
Other	9.2	—
CASH PROVIDED BY FINANCING ACTIVITIES	184.7	48.8
Effect of Exchange Rate Changes on Cash	.3	2.3
Increase in Cash and Cash Items	18.1	264.6
Cash and Cash Items — Beginning of Year	55.8	146.3
Cash and Cash Items — End of Period	\$ 73.9	\$ 410.9

- (a) Includes \$297.2 for the repurchase of cryogenic vessel equipment. Excludes capital lease additions of \$1.1 and \$2.3 in 2006 and 2005, respectively.
- (b) Excludes \$.6 of capital lease obligations assumed in acquisitions in 2005.
- (c) Includes \$25.0 received in the first quarter of 2006 which was previously classified as operating activities. This classification has been revised to investing activities.

The accompanying notes are an integral part of these statements.

AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries
SUMMARY BY BUSINESS SEGMENTS
(Unaudited)

(Millions of dollars)

	Three Months Ended		Six Months Ended	
	2006	31 March 2005	2006	31 March 2005
Revenues from external customers				
Gases	\$1,643.8	\$1,411.8	\$3,205.7	\$2,854.5
Chemicals	493.3	498.9	937.7	959.6
Equipment	180.1	92.6	272.4	180.2
Segment and Consolidated Totals	\$2,317.2	\$2,003.3	\$4,415.8	\$3,994.3
Operating income				
Gases	\$ 228.7	\$ 206.8	\$ 457.9	\$ 426.6
Chemicals	50.4	45.0	69.6	65.0
Equipment	24.3	7.9	40.5	13.9
Segment Totals	303.4	259.7	568.0	505.5
Corporate research and development and other income (expense)	(8.8)	(7.5)	(21.2)	(15.0)
Consolidated Totals	\$ 294.6	\$ 252.2	\$ 546.8	\$ 490.5
Equity affiliates' income				
Gases	\$ 22.0	\$ 22.5	\$ 47.2	\$ 45.1
Chemicals	2.3	2.7	4.9	5.6
Equipment	—	—	—	—
Segment and Consolidated Totals	\$ 24.3	\$ 25.2	\$ 52.1	\$ 50.7

(Millions of dollars)

	31 March 2006	30 September 2005
Identifiable assets (a)		
Gases	\$ 8,358.5	\$7,764.1
Chemicals	1,331.5	1,348.4
Equipment	278.0	247.0
Segment Totals	9,968.0	9,359.5
Corporate assets	346.3	385.6
Consolidated Totals	\$10,314.3	\$9,745.1

(a) Identifiable assets are equal to total assets less investments in equity affiliates.

AIR PRODUCTS AND CHEMICALS, INC. and Subsidiaries
SUMMARY BY GEOGRAPHIC REGIONS
(Unaudited)

(Millions of dollars)

	Three Months Ended		Six Months Ended	
	2006	2005	2006	2005
Revenues from external customers				
United States	\$1,336.9	\$1,150.0	\$2,587.6	\$2,288.9
Canada	18.3	17.3	37.0	35.8
Total North America	1,355.2	1,167.3	2,624.6	2,324.7
Europe	637.4	563.5	1,173.3	1,129.1
Asia	282.8	232.7	532.1	462.3
Latin America	41.8	39.8	85.8	78.2
Total	\$2,317.2	\$2,003.3	\$4,415.8	\$3,994.3

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

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 2005 annual report on Form 10-K for a description of major accounting policies. There have been no material changes to these accounting policies during 2006 other than the adoption of Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" (SFAS No. 123R), as discussed under New Accounting Standards below.

2. NEW ACCOUNTING STANDARDS

Share-Based Compensation

Effective 1 October 2005, the company adopted SFAS No. 123R and related interpretations and began expensing the grant-date fair value of employee stock options. Prior to 1 October 2005, the company applied Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations in accounting for its stock option plans. Accordingly, no compensation expense was recognized in net income for employee stock options, as options granted had an exercise price equal to the market value of the underlying common stock on the date of grant. The estimated impact of adopting SFAS No. 123R in 2006 is expected to reduce diluted earnings per share for the year by approximately \$.13. The pro forma impact of expensing employee stock options in 2005 would have been a reduction of diluted earnings per share of \$.13 for the year based on the disclosures required by SFAS No. 123, "Accounting for Stock-Based Compensation" (SFAS 123).

The adoption of SFAS No. 123R requires a change in accounting for awards granted on or after 1 October 2005 to accelerate expense to the retirement eligible date for individuals who meet the requirements for immediate vesting of awards upon their retirement. The impact of this change in 2006 for all share-based compensation programs is estimated to reduce diluted earnings per share for the year by approximately \$.03, principally related to the stock option program, and is included in the total estimated impact of adopting SFAS No. 123R of \$.13 for the year.

The company adopted SFAS No. 123R using the modified prospective transition method and therefore has not restated prior periods. Under this transition method, compensation cost associated with employee stock options recognized in 2006 includes amortization related to the remaining unvested portion of stock option awards granted prior to 1 October 2005, and amortization related to new awards granted on or after 1 October 2005.

Because certain of the company's share-based compensation programs include a provision for a contingent cash settlement in the event of a change in control, the carrying amount of these awards based on a grant-date intrinsic value has been presented separately in the balance sheet outside of shareholders' equity. The company believes the likelihood of such an actual cash settlement is remote. Accordingly, the company has accounted for its stock options as equity instruments in accordance with Financial Accounting Standards Board (FASB) Staff Position (FSP) No. 123(R)-4 issued by the FASB on 3 February 2006. Under the FSP, a cash settlement feature that can be exercised only upon the occurrence of a contingent event that is outside the employee's control does not trigger liability classification until it becomes probable that an event will occur.

The expense associated with share-based compensation arrangements is a non-cash charge. In the Consolidated Statements of Cash Flows, share-based compensation expense is an adjustment to reconcile net income to cash provided by operating activities.

Prior to the adoption of SFAS No. 123R, the company presented tax benefits resulting from share-based compensation as operating cash flows in the Consolidated Statements of Cash Flows. SFAS No. 123R requires that cash flows resulting from tax deductions in excess of compensation cost recognized be classified as financing cash flows. For the first six months of 2006, the excess tax benefit (i.e., the excess tax benefit over that which would have been recognized had SFAS No. 123R been applied) was \$9.3.

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SFAS No. 123R modified the disclosure requirements related to share-based compensation. Accordingly, the disclosures prescribed by SFAS No. 123R are included in Note 3.

For stock options granted prior to the adoption of SFAS No. 123R, the effect on net income and earnings per share if the company had applied the fair value recognition provisions of SFAS No. 123 to its stock option plans would have been as follows:

	Three Months Ended 31 March 2005	Six Months Ended 31 March 2005
Net income, as reported	\$175.3	\$342.1
Add share-based compensation expense included in reported net income, net of related tax effects	2.0	4.2
Deduct total share-based compensation expense determined under fair value based method, net of related tax effects	(8.8)	(17.9)
Pro forma net income	\$168.5	\$328.4
Basic Earnings per Share		
As reported	\$.77	\$ 1.51
Pro forma	\$.74	\$ 1.44
Diluted Earnings per Share		
As reported	\$.75	\$ 1.47
Pro forma	\$.72	\$ 1.41

In November 2005, the FASB issued FSP No. FAS 123(R)-3, "Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards." This FSP provides an elective alternative transition method for calculating the pool of excess tax benefits available to absorb tax deficiencies recognized subsequent to the adoption of SFAS No. 123R. Companies may take up to one year from the effective date of the FSP to evaluate the available transition alternatives and make a one-time election as to which method to adopt. The company is currently in the process of evaluating the alternative methods.

Income Taxes

In December 2004, the FASB issued FSP No. FAS 109-1, "Application of FASB Statement No. 109, Accounting for Income Taxes, to the Tax Deduction on Qualified Production Activities Provided by the American Jobs Creation Act of 2004 (the Act)." FSP No. FAS 109-1 clarifies that the tax deduction for manufacturers provided for in the Act should be accounted for as a special deduction rather than as a tax rate reduction. The manufacturers' deduction is available to the company starting in fiscal year 2006. The company is evaluating the effect the manufacturers' deduction will have in the current and future fiscal years. At the present time, the company does not expect to receive a significant benefit from the manufacturers' deduction in the current year.

In December 2004, the FASB also issued FSP No. FAS 109-2, "Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004." The Act creates a temporary incentive for U.S. corporations to repatriate accumulated income earned abroad by providing an 85% dividends received deduction for certain dividends from controlled foreign corporations. Taxpayers were allowed to elect to apply this provision to qualifying earnings repatriations in either fiscal year 2005 or 2006. The company expects to utilize this provision in fiscal year 2006. While the deduction is subject to several limitations, and some uncertainty remains as to the exact level of earnings to be repatriated and the tax effect thereof, the company estimates that \$100 to \$200 in earnings will be repatriated under these provisions with a tax benefit equal to \$10 to \$20.

Asset Retirement Obligations

In March 2005, the FASB issued Financial Interpretation No. 47, "Accounting for Conditional Asset Retirement Obligations" (FIN 47). FIN 47 clarifies the term, conditional asset retirement obligation, as used in SFAS No. 143 "Accounting for Asset Retirement Obligations," which refers to a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement are conditional on a future event. Uncertainty about the timing and/or method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. FIN 47 is effective no later than the end of fiscal years ending after 15 December 2005. The company is evaluating the effect FIN 47 will have on its consolidated financial statements.

Other Recently Issued Accounting Standards

In February 2006, the FASB issued SFAS No. 155, "Accounting for Certain Hybrid Financial Instruments — an amendment of FASB Statements No. 133 and 140." In March 2006, the FASB issued SFAS No. 156, "Accounting for Servicing of Financial Assets – an amendment of FASB Statement No. 140." These Statements will not have a material effect on the company's consolidated financial statements.

3. SHARE-BASED COMPENSATION

The company has various share-based compensation programs, which include stock options, deferred stock units, and restricted stock. Under all programs, the terms of the awards are fixed at the grant date. The company issues shares from treasury stock upon the exercise of stock options, the payout of deferred stock units, and the issuance of restricted stock awards. As of 31 March 2006, 9.0 million shares were available for future grant under the company's Long-term Incentive Plan, which is shareholder approved.

Share-based compensation cost charged against income in the second quarter of 2006 was \$16.6, before taxes of \$6.5. Of the compensation cost recognized, approximately \$13.4 was a component of selling and administrative expense, \$2.1 a component of cost of sales, and \$1.1 a component of research and development. Share-based compensation cost charged against income for the first six months of 2006 was \$32.6, before taxes of \$12.7. Of the compensation cost recognized, approximately \$26.2 was a component of selling and administrative expense, \$4.1 a component of cost of sales, and \$2.3 a component of research and development. The amount of compensation cost capitalized in 2006 was not material.

Information on the valuation and accounting for the various programs is provided below.

Stock Options

Under various plans, executives, employees and outside directors receive awards of options to purchase common stock. The exercise price equals the market price of the company's stock on the date of the grant. Options under the plans generally vest incrementally over three years, and remain exercisable for ten years from the date of grant. Options issued to directors are exercisable six months after the grant date.

The fair value of options granted in 2006 was estimated using a lattice-based option valuation model that used the assumptions noted in the table below. Expected volatility and expected dividend yield are based on actual historical experience of the company's stock and dividends over the historical period equal to the option term. The expected life represents the period of time that options granted are expected to be outstanding based on an analysis of company specific historical exercise data. The range given below results from certain groups of employees exhibiting different behavior. Separate groups of employees that have similar historical exercise behavior were considered separately for valuation purposes. The risk-free rate is based on the U. S. Treasury Strips with terms equal to the expected time of exercise as of the grant date.

Expected volatility	30.6%
Expected dividend yield	2.1%
Expected life (in years)	7.0-9.0
Risk-free interest rate	4.3%-4.5%

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The weighted-average grant-date fair value of options granted during 2006 was \$18.18 per option.

A summary of stock option activity is presented below:

Options	Shares (000)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (\$000)
Outstanding at 30 September 2005	23,601	\$39.96		
Granted	1,859	55.33		
Exercised	(1,743)	35.80		
Forfeited	(42)	31.61		
Outstanding at 31 March 2006	23,675	\$41.54	5.7	\$609,249
Exercisable at 31 March 2006	18,889	\$38.96	5.0	\$534,829

The total intrinsic value of stock options exercised during 2006 was \$47.8.

Compensation cost is generally recognized over the stated vesting period consistent with the terms of the arrangement (i.e., either on a straight-line or graded-vesting basis). For awards granted on or after 1 October 2005, expense recognition is accelerated to the retirement eligible date for individuals who would meet the requirements for immediate vesting of awards upon their retirement.

As of 31 March 2006, there was \$33.8 of unrecognized compensation cost related to nonvested stock options, which is expected to be recognized over a weighted-average period of approximately 1.0 year.

Cash received from option exercises during 2006 was \$60.8. The total tax benefit generated from options exercised in 2006 was \$18.7. The excess tax benefit (i.e., the tax deduction in excess of that which would have been recognized had SFAS No. 123R been applied in previous periods) was \$9.2.

Deferred Stock Units & Restricted Stock

The grant-date fair value of deferred stock units and restricted stock is estimated on the date of grant based on the market price of the stock, and compensation cost is generally amortized to expense on a straight-line basis over the vesting period during which employees perform related services. For awards granted on or after 1 October 2005, expense recognition is accelerated to the retirement eligible date for individuals who would meet the requirements for immediate vesting of awards upon their retirement.

Deferred Stock Units

The company has granted deferred stock units to executives, selected employees and outside directors. These deferred stock units entitle the recipient to one share of common stock upon vesting, which is conditioned on continued employment during the deferral period and may also be conditioned on earn-out against certain performance targets. The deferral period generally ends after death, disability, or retirement. However, for a portion of the performance-based deferred stock units, the deferral period ends at the end of the performance period (one to three years) or up to two years thereafter. Beginning in 2004, the company has granted deferred stock units subject to a four-year deferral period to selected employees. Deferred stock units issued to directors are paid after retirement at the time elected by the director (not to exceed 10 years).

Deferred Stock Units	Shares (000)	Weighted Average Grant-Date Fair Value
Outstanding at 30 September 2005	1,585	\$42.54
Granted	377	57.87
Paid out	(10)	35.77
Forfeited	(6)	51.30
Outstanding at 31 March 2006	1,946	\$45.56

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The compensation cost charged against income in 2006 for deferred stock units was \$9.4, before taxes of \$3.7. As of 31 March 2006, there was \$45.0 of unrecognized compensation cost related to deferred stock units. The cost is expected to be recognized over a weighted-average period of 3.3 years.

Restricted Stock

In 2004 through 2006, the company issued shares of restricted stock to certain officers. Participants are entitled to cash dividends and to vote their respective shares. The shares are subject to forfeiture if employment is terminated other than due to death, disability or retirement, and the shares are nontransferable while subject to forfeiture.

Restricted Stock	Shares (000)	Weighted Average Grant Date Fair Value
Nonvested at 30 September 2005	94	\$50.69
Granted	57	55.33
Vested	—	—
Forfeited	—	—
Nonvested at 31 March 2006	151	\$52.46

The compensation cost charged against income in 2006 for restricted stock awards was \$1.7, before taxes of \$.7. As of 31 March 2006, there was \$5.6 of unrecognized compensation cost related to restricted stock awards. The cost is expected to be recognized over a weighted-average period of 5.9 years.

4. GOODWILL

Changes to the carrying amount of consolidated goodwill by segment for the six months ended 31 March 2006 were as follows:

	Gases	Chemicals	Equipment	Total
Balance as of 30 September 2005	\$810.7	\$ 99.1	\$10.2	\$ 920.0
Acquisitions and adjustments	4.5	69.1	—	73.6
Currency translation	9.8	.2	(.9)	9.1
Balance as of 31 March 2006	\$825.0	\$168.4	\$ 9.3	\$1,002.7

The increase in goodwill in the Chemicals segment was related to the acquisition of Tomah³ Products. The increase in goodwill in the Gases segment was principally related to the acquisition of a small homecare business in Europe.

5. 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	
	2006	2005	2006	2005
NUMERATOR				
Net income used in basic and diluted EPS	\$204.0	\$175.3	\$384.7	\$342.1
DENOMINATOR (in millions)				
Weighted average number of common shares used in basic EPS	222.8	228.1	222.4	227.3
Effect of dilutive securities				
Employee stock options	5.0	5.5	4.7	5.2
Other award plans	.7	.7	.8	.7
	5.7	6.2	5.5	5.9
Weighted average number of common shares and dilutive potential common shares used in diluted EPS	228.5	234.3	227.9	233.2
BASIC EPS	\$.92	\$.77	\$ 1.73	\$ 1.51
DILUTED EPS	\$.89	\$.75	\$ 1.69	\$ 1.47

6. PENSION AND OTHER POSTRETIREMENT BENEFITS

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

	2006	Three Months Ended 31 March		2005
		2005	2006	
	Pension Benefits		Other Benefits	
Service cost	\$ 19.4	\$ 17.9	\$ 1.5	\$ 1.0
Interest cost	36.7	35.6	1.2	1.2
Expected return on plan assets	(39.0)	(37.2)	—	—
Prior service cost amortization	.8	1.0	(.5)	(.8)
Actuarial loss amortization	16.2	10.8	.9	.6
Transition amount amortization	—	.1	—	—
Settlement and curtailment charges	—	—	—	(.6)
Special termination benefits	1.3	2.9	—	—
Other	.4	.5	—	—
Net periodic benefit cost	\$ 35.8	\$ 31.6	\$ 3.1	\$ 1.4

	2006	Six Months Ended 31 March		2005
		2005	2006	
	Pension Benefits		Other Benefits	
Service cost	\$ 38.8	\$ 37.6	\$ 3.1	\$ 2.2
Interest cost	73.2	70.2	2.5	2.6
Expected return on plan assets	(77.9)	(73.1)	—	—
Prior service cost amortization	1.6	1.8	(1.1)	(1.1)
Actuarial loss amortization	32.4	19.1	1.8	.7
Transition amount amortization	—	.1	—	—
Settlement and curtailment charges	—	.2	—	(.6)
Special termination benefits	2.3	3.9	—	—
Other	.7	.7	—	—
Net periodic benefit cost	\$ 71.1	\$ 60.5	\$ 6.3	\$ 3.8

During the six months ended 31 March 2006, contributions of \$112.8 were made. The company expects to contribute approximately \$155 to the pension plans in total for 2006. For the six months ended 31 March 2005, contributions of \$108.0 were made. During 2005, total contributions were \$132.8.

7. COMMITMENTS AND CONTINGENCIES

The company is involved in various legal proceedings, including competition, environmental, health, safety, product liability and insurance matters. While the company does not expect that any sums it may have to pay in connection with these matters would have a materially adverse effect on its consolidated financial position or net cash flows, a future charge for any damage award could have a significant impact on the company's net income in the period in which it is recorded.

8. CHEMICALS SEGMENT PORTFOLIO MANAGEMENT

In March 2006, the company announced it is exploring the sale of its Amines and Polymers businesses, restructuring its Polyurethane Intermediates business, sold its dinitrotoluene (DNT) production facility in Geismar, La., and invested in its Performance Materials business with the acquisition of specialty surfactants producer Tomah³ Products.

Exploring Sale of Amines and Polymers Business

Air Products is exploring the sale of its Amines and Polymers businesses as part of the company's ongoing portfolio management activities. The Amines business generated approximately \$300 in revenues in 2005. Amines production facilities are located in Pace, Fla.; St. Gabriel, La.; and Camacari, Brazil. The consolidated Air Products Polymers joint venture with Wacker Chemie AG of Germany had approximately \$550 in 2005 revenues with six manufacturing facilities including: South Brunswick, N.J.; Piedmont, S.C.; Calvert City, Ky.; Elkton, Md.; Ulsan, Korea; and Köln, Germany. Goldman Sachs is acting as the financial adviser to Air Products in connection with the potential sale of these businesses, which will be subject to Air Products' Board of Directors and regulatory approval. These businesses will be reported as discontinued operations if and when the Board of Directors, representing management with the requisite level of authority, commits to sell the businesses.

Gain on Sale of a Chemical Facility

On 31 March 2006 as part of its announced restructuring of its Polyurethane Intermediates business, the company sold its DNT production facility in Geismar, La., to BASF Corporation for \$155.0. Expense was recognized for the write-off of the remaining net book value of assets sold, resulting in the recognition of a gain of \$70.4 (\$42.9 after-tax, or \$.19 per share) on the transaction. The Air Products industrial gas facilities at this same location were not included in this transaction and will continue to produce and supply hydrogen, carbon monoxide and syngas for BASF and other customers.

Acquisition of Tomah³ Products

On 31 March 2006, the company acquired Tomah³ Products of Milton, Wis., in a cash transaction valued at \$120.5. A preliminary purchase price allocation has been made and will be finalized when information needed to affirm underlying estimates is obtained. At 31 March 2006, goodwill recognized in this transaction amounted to \$69.1 and identified intangibles amounted to \$14.6. With sales of \$73 in 2005, Tomah³ produces specialty surfactants and processing aids primarily for growth segments of the institutional and industrial cleaning, mining and oil field industries, among others. The Tomah³ acquisition reflects the company's strategy to expand its presence in profitable market segments where it can build on its surface science expertise.

Impairment of Loans Receivable

The company recognized a loss of \$65.8 (\$42.4 after-tax, or \$.19 per share) for the impairment of loans receivable from a long-term supplier of sulfuric acid, used in the production of DNT for the company's Polyurethane Intermediates business. To facilitate the supplier's ability to emerge from bankruptcy in June 2003 and continue to supply product to the company, the company and other third parties agreed to participate in the supplier's financing. Subsequent to the initial financing, the company and the supplier's other principal lender executed standstill agreements which temporarily amended the terms of the loan agreements, primarily to allow the deferral of principal and interest payments. In March 2006, the company publicly announced plans to restructure its Polyurethane Intermediates business and notified the supplier that it is highly unlikely that it will agree to further standstill agreements beyond May 2006, due to the company's reduced forecast for sulfuric acid requirements. Based on events occurring within the second quarter of 2006, it is management's judgment that the company will not be able to collect any amounts due.

9. SUPPLEMENTAL INFORMATION

Share Repurchase Program

In March 2006, the Board of Directors of Air Products approved a \$1,500 share repurchase program. The company expects to begin the share repurchase program in the third quarter and complete \$500 of the program before 31 December 2006.

Purchase of Cryogenic Vessel Equipment

On 31 March 2006, the company exercised its option to purchase certain cryogenic vessel equipment for \$297.2, thereby terminating an operating lease originally scheduled to end 30 September 2006. The company originally sold and leased back this equipment in 2001, resulting in proceeds of \$301.9 and recognition of a deferred gain of \$134.7 which was included in other noncurrent liabilities. In March 2006, the company recorded the purchase of the equipment for \$297.2 and reduced the carrying value of the equipment by the \$134.7 deferred gain derived from the original sale-leaseback transaction.

Hurricanes

In the fourth quarter of 2005, the company's New Orleans industrial gas complex sustained extensive damage from Hurricane Katrina. Other industrial gases and chemicals facilities in the Gulf Coast region also sustained damages from Hurricanes Katrina and Rita in fiscal 2005. During the three and six months ended 31 March 2006, the company collected insurance proceeds of \$11 and \$36, respectively, representing partial settlement with its insurers. Additional insurance recoveries for property damages and business interruption will be recognized as claims are settled. Other income for the three and six months ended 31 March 2006 included a net gain of \$19.9 and \$27.2, respectively, related to insurance recoveries net of expenses for property damage. In addition, the company estimates the impact of business interruption at \$(5.2) and \$(32.7) for the three and six months ended 31 March 2006.

A table summarizing the impact of the Hurricanes is provided below:

	Three Months Ended 31 December 2005	Three Months Ended 31 March 2006	Six Months Ended 31 March 2006
Insurance Recoveries Recognized	\$ 12	\$24	\$ 36
Property Damage	(5)	(4)	(9)
Other Income	7	20	27
Estimated Business Interruption	(28)	(5)	(33)
Total Impact	\$(21)	\$15	\$ (6)

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 2005 annual report on Form 10-K. An analysis of results for the second quarter and first six months of 2006, including an update to the company's 2006 Outlook, is provided in the Management's Discussion and Analysis to follow.

All comparisons are to the corresponding period in the prior year unless otherwise stated. All amounts presented are in accordance with U.S. generally accepted accounting principles.

SECOND QUARTER 2006 VS. SECOND QUARTER 2005

SECOND QUARTER 2006 IN SUMMARY

- Sales of \$2,317 were up 16% from the prior year, driven mainly by higher volumes across the Gases and Equipment segments. In the Gases segment, volumes were strong in Electronics, Energy and Process Industries (EPI), and Global Merchant Gases. Equipment sales increased primarily from higher large air separation unit and liquefied natural gas (LNG) heat exchanger activity.
- Operating income of \$295 increased 17%, principally driven by volume gains. Partially offsetting these gains were higher costs, including inflation and higher costs in support of the homecare business.
- Net income of \$204 increased 16% and diluted earnings per share of \$.89 increased 19%. A summary table of changes in earnings per share is presented below.
- The company adopted Statement of Financial Accounting Standards No. 123R (revised 2004), "Share-Based Payment" (SFAS No. 123R), on 1 October 2005 and began expensing the grant-date fair value of employee stock options. The impact recognized in the second quarter for stock options reduced diluted earnings per share by \$.03.
- The Equipment backlog remained strong at \$596 as of 31 March 2006.
- The company announced that it is exploring the sale of its Chemicals segment Amines and Polymers businesses as part of its ongoing portfolio management activities.
- The company sold its Geismar, La., DNT production facility to BASF Corporation for \$155, resulting in a net gain of \$70.
- An impairment charge of \$66 for loans to a sulfuric acid supplier was recognized.
- The company purchased Tomah³ Products for \$121 as the company continues to invest in its growth platforms.
- The company announced a \$1,500 share repurchase program and increased its dividend. The company expects the share repurchase program to begin in the third quarter and to complete \$500 of the program by 31 December 2006.
- The company purchased previously leased cryogenic vessel equipment for \$297.
- For a discussion of the challenges, risks, and opportunities on which management is focused, refer to the update to the company's 2006 Outlook provided on pages 30-31.

Changes in Earnings per Share

	Three Months Ended 31 March		Increase (Decrease)
	2006	2005	
Diluted Earnings per Share	\$.89	\$.75	\$.14
Operating Income (after-tax)			
Acquisitions			—
Divestitures			(.01)
Currency			(.02)
Gain on sale of a chemical facility			.19
Impairment of loans receivable			(.19)
Hurricanes			.04
Stock option expense			(.03)
Underlying business			
Volume			.25
Price/raw materials			.05
Costs			(.15)
Operating Income			.13
Other (after-tax)			
Interest expense			.01
Minority interest			(.02)
Average shares outstanding			.02
Other			.01
Total Change in Diluted Earnings per Share			\$.14

RESULTS OF OPERATIONS
Consolidated Results

	Three Months Ended 31 March		% Change
	2006	2005	
Sales	\$2,317.2	\$2,003.3	16%
Cost of sales	1,743.6	1,468.9	19%
Selling and administrative	275.5	257.2	7%
Research and development	37.7	33.1	14%
(Gain) on sale of a chemical facility	(70.4)	—	—
Impairment of loans receivable	65.8	—	—
Other (income) expense, net	(29.6)	(8.1)	265%
Operating Income	294.6	252.2	17%
Equity affiliates' income	24.3	25.2	(4%)
Interest expense	25.3	29.8	(15%)
Effective tax rate	28.0%	27.9%	—
Net Income	204.0	175.3	16%
Basic Earnings per Share	\$.92	\$.77	19%
Diluted Earnings per Share	\$.89	\$.75	19%

[Table of Contents](#)**Discussion of Consolidated Results****Sales**

	% Change from Prior Year
Acquisitions	—
Divestitures	—
Currency	(2%)
Natural gas/raw material cost pass through	5%
Underlying business	
Volume	12%
Price/mix	1%
Total Consolidated Change	16%

Sales of \$2,317.2 increased 16%, or \$313.9. Underlying base business growth increased sales 13%. Sales increased 12% from improved volumes, primarily in the Gases and Equipment segments, as discussed in the Segment Analysis which follows. Overall the impact of pricing was favorable, increasing sales by 1%. Pricing improved across the Chemicals segment. In Gases, higher liquid bulk pricing in North America and Europe was mostly offset by lower average selling prices for electronic specialty materials. Sales decreased 2% from unfavorable currency effects, driven primarily by the strengthening of the U.S. dollar against the Euro. Higher natural gas/raw material cost pass through to customers accounted for an additional 5% of the sales increase.

Operating Income

Operating income of \$294.6 increased 17%, or \$42.4. Favorable operating income variances resulted from higher volumes for \$82 and a favorable impact of pricing net of variable costs of \$18. The favorable impact from higher volumes, as discussed in the Segment Analysis which follows, was driven by strong volumes broadly across the Gases and Equipment segments. The net impact of insurance recoveries in excess of property damage associated with Hurricane Katrina was \$20. The impact of business interruption resulting from Hurricane Katrina was estimated to have an unfavorable impact of \$5, resulting in a net gain of \$15 for all hurricane related items. Operating income declined \$49 from higher costs, including inflation and spending in support of the homecare businesses. Operating income declined \$11 from stock option expense as the company adopted SFAS No. 123R. Currency decreased operating income for \$8 from the strengthening of the U.S. dollar against the Euro.

On 31 March 2006, the company sold its dinitrotoluene (DNT) production facility in Geismar, La., to BASF Corporation which resulted in a net gain of \$70 that is included in operating income. The company also recognized a loss in operating income of \$66 for the impairment of loans receivable from a long-term supplier of sulfuric acid used in the production of DNT for the company's Polyurethane Intermediates (PU) business.

Equity Affiliates' Income

Income from equity affiliates of \$24.3 decreased \$0.9, or 4%. Gases equity affiliates' income decreased due to higher maintenance costs.

Selling and Administrative Expense (S&A)

	% Change from Prior Year
Acquisitions	1%
Divestitures	—
Currency	(2%)
Stock option expense	3%
Other costs	5%
Total S&A Change	7%

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S&A expense of \$275.5 increased 7%, or \$18.3. S&A as a percent of sales declined to 11.9% from 12.8% in 2005. The acquisitions of U.S. homecare companies increased S&A by 1%. Currency effects, driven primarily by the strengthening of the U.S. dollar against the Euro, decreased S&A by 2%. Stock option expense increased S&A 3%, due to the adoption of SFAS No. 123R. Underlying costs increased 5%, including inflation and costs associated with the homecare business.

Research and Development (R&D)

R&D increased 14%, or \$4.6. R&D spending as a percent of sales was 1.6% in 2006 compared to 1.7% in 2005.

Gain on Sale of a Chemical Facility

On 31 March 2006, the company sold its DNT production facility in Geismar, La., to BASF Corporation for \$155.0. Expense was recognized for the write-off of the remaining net book value of assets sold, resulting in the recognition of a gain of \$70.4 (\$42.9 after-tax, or \$.19 per share) on the transaction. See Note 8 to the consolidated financial statements for additional information on the sale.

Impairment of Loans Receivable

The company recognized a loss of \$65.8 (\$42.4 after-tax, or \$.19 per share) for the impairment of loans receivable from a long-term supplier of sulfuric acid, used in the production of DNT for the company's PUI business. Based on events occurring within the second quarter of 2006, it is management's judgment that the company will not be able to collect any amounts due. See Note 8 to the financial statements for further information.

Other (Income) Expense, Net

Other income of \$29.6 increased \$21.5. Items recorded to other income arise from transactions and events not directly related to the principal income earning activities of the company. In 2006, other income included a net gain of \$19.9 for insurance recoveries net of expenses related to property damage sustained from Hurricane Katrina. No other individual items were material in the comparison to the prior year.

Interest Expense

	Three Months Ended 31 March	
	2006	2005
Interest incurred	\$29.8	\$32.6
Less: interest capitalized	4.5	2.8
Interest Expense	\$25.3	\$29.8

Interest incurred decreased \$2.8. The decrease resulted from lower average interest rates and the impact of a stronger U.S. dollar on the translation of foreign currency interest, partially offset by a higher average debt balance excluding currency effects. Capitalized interest was higher by \$1.7 due to higher levels of construction in progress for plant and equipment built by the company, principally from projects within Energy and Process Industries (EPI).

Effective Tax Rate

The effective tax rate equals the income tax provision divided by income before taxes less minority interest. The effective tax rate was 28.0% in 2006 and 27.9% in 2005. Excluding the impact of the sale of the Geismar, La., DNT production facility and the impairment of loans receivable, the effective tax rate was 27.0%. This lower rate is the result of credits and adjustments from the company's ongoing tax planning process, and changes in income mix.

Net Income

Net income was \$204.0 compared to \$175.3 in 2005. Diluted earnings per share of \$.89 compared to \$.75 in 2005. A summary table of changes in earnings per share is presented on page 18.

Segment Analysis**Gases**

	Three Months Ended 31 March		% Change
	2006	2005	
Sales	\$1,643.8	\$1,411.8	16%
Operating income	228.7	206.8	11%
Equity affiliates' income	22.0	22.5	(2%)

Gases Sales

	% Change from Prior Year
Acquisitions	—
Divestitures	—
Currency	(2%)
Natural gas/raw material cost pass through	5%
Underlying business	
Volume	12%
Price/mix	1%
Total Gases Change	16%

Sales of \$1,643.8 increased 16%, or \$232.0. Underlying base business sales growth of 13% was driven by higher volumes, particularly in Electronics, EPI and Global Merchant Gases.

- Electronic volumes increased significantly, including improvements in electronic specialty materials, tonnage and bulk chemicals, from continued growth in the semiconductor and flat panel display market.
- On-site and pipeline volumes in EPI were up 5%, driven primarily by lower volumes in the prior year due to outages and two new hydrogen plants that started operations in December 2005. EPI continued to be impacted by Hurricane Katrina as one refinery customer in Louisiana was not on-stream at the end of the second quarter.
- Liquid bulk volumes in North America improved 1% overall, as demand increased across most end markets. Strong atmospheric volume growth was somewhat mitigated by weaker hydrogen volumes due to impacts from the hurricanes.
- Liquid bulk volumes in Europe increased 7%. The business continued to grow volumes through new customer signings and spot requirements and benefited from increased purchases from a customer prior to on-stream of tonnage supply.
- Packaged gas volumes in Europe were up 3%, but flat for the quarter on a cylinder per work day basis.
- Liquid oxygen (LOX) and liquid nitrogen (LIN) volumes in Asia were up a strong 24%, driven mainly by solid demand growth across the region, particularly in the electronics industry in Korea and Taiwan and the steel industry in China.

Overall, the impact of pricing on sales was an increase of 1%, with higher liquid bulk pricing in North America and Europe mostly offset by lower average selling prices of electronic specialty materials.

- The average selling price for electronic specialty materials declined as pricing pressure continued. However, volume gains in electronic specialty materials more than offset pricing declines.
- LOX/LIN pricing in North America increased primarily from price increases and surcharges to recover higher electricity and fuel costs.
- Average LOX/LIN pricing in Europe decreased slightly due to customer mix, however impacts from pricing initiatives to recover higher energy costs delivered positive results.

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Sales decreased 2% from unfavorable currency effects, driven primarily by the strengthening of the U.S. dollar against the Euro. Higher natural gas cost pass through to customers accounted for 5% of the sales increase.

Gases Operating Income

Operating income of \$228.7 increased 11%, or \$21.9. Favorable operating income variances of \$69 resulted from higher volumes. The net impact of insurance recoveries in excess of property damage associated with Hurricane Katrina was \$20. The impact of business interruption resulting from Hurricane Katrina was estimated to have an unfavorable impact of \$5, resulting in a net gain of \$15 for all hurricane related items. Higher costs decreased operating income by \$48, including inflation and costs associated with the homecare business. Included in the homecare costs was the implementation of a new contract in the U.K. Operating income declined \$8 from stock option expense. Operating income decreased \$4 from the effects of currency as the U.S. dollar strengthened against the Euro. The impact of lower pricing net of variable costs decreased operating income by \$3, as lower average pricing for electronics specialty materials was mostly offset by improved liquid bulk pricing for LOX/LIN in North America and Europe.

Gases Equity Affiliates' Income

Gases equity affiliates' income of \$22.0 decreased \$0.5, with lower income reported by EPI due to higher maintenance costs.

Chemicals

	Three Months Ended 31 March		% Change
	2006	2005	
Sales	\$493.3	\$498.9	(1%)
Operating income	50.4	45.0	12%
Equity affiliates' income	2.3	2.7	(15%)

Chemicals Sales

	% Change from Prior Year
Acquisitions	—
Divestitures	(3%)
Currency	(1%)
Natural gas/raw material cost pass through	4%
Underlying business	
Volume	(4%)
Price/mix	3%
Total Chemicals Change	(1%)

Sales of \$493.3 decreased 1%, or \$5.6. Underlying base business decreased sales by 1%. Sales decreased 4% from volumes, primarily due to a customer shutdown and a customer termination in the Polyurethane Intermediate (PUI) business. The decrease was partially offset by a 3% increase in pricing from actions to recover raw material cost increases.

- In Performance Materials, base business volumes increased 1%, as improvements in polyurethane chemicals and surfactants were partially offset by weaker epoxy volumes. Strengthening in the North American appliance market drove an increase in polyurethane chemicals volumes. Surfactant volumes increased from a stronger Japanese auto market and a rebound in North America as prior year volumes were impacted by price increases. Epoxy volumes decreased due to a market correction in the Asia shipping container market.
- In Chemical Intermediates, base business volumes decreased 7%. Volumes in amines decreased due to customer outages. PUI volumes declined due to a contract termination and a customer shutdown that took place in the fourth quarter of 2005.

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Sales decreased 3% from the impact of divestitures as the company exited its fertilizer business. Sales decreased 1% from currency effects, driven primarily by the strengthening of the U.S. dollar against the Euro. Higher raw material costs contractually passed through to customers accounted for an additional 4% of the sales increase.

Chemicals Operating Income

Operating income of \$50.4 increased 12%, or \$5.4. Operating income increased by \$17 as the segment continued to improve its recovery of higher raw material costs through increased pricing and surcharges. Operating income declined by \$4 from lower volumes and \$4 from unfavorable currency impacts. Higher plant costs, including utilities, decreased operating income by \$4.

On 31 March 2006, the company sold its DNT production facility in Geismar, La., to BASF Corporation which resulted in a net gain of \$70 that is included in operating income. The company also recognized a loss in operating income of \$66 for the impairment of loans receivable from a long-term supplier of sulfuric acid used in the production of DNT for the company's PUI business. See Note 8 to the consolidated financial statements for additional information on these items, as well as other portfolio management activities.

Chemicals Equity Affiliates' Income

Chemicals equity affiliates' income of \$2.3 compared to \$2.7 in 2005. Chemicals equity affiliates' income consists primarily of a global polymer joint venture.

Equipment

	Three Months Ended 31 March	
	2006	2005
Sales	\$180.1	\$92.6
Operating income	24.3	7.9

Equipment Sales and Operating Income

Sales increased primarily from higher large air separation unit, liquefied natural gas (LNG) heat exchanger, and hydrocarbon separation unit activity. Currency effects decreased sales by 2%, due primarily to the strengthening of the U.S. dollar against the Pound Sterling. Operating income increased \$16.4 primarily due to higher LNG activity.

All Other

All other comprises corporate expenses and income not allocated to the segments, primarily corporate research and development expense. The operating loss of \$8.8 was higher by \$1.3. No items individually were material in the comparison to the prior year.

SIX MONTHS 2006 VS. SIX MONTHS 2005

SIX MONTHS 2006 IN SUMMARY

- Sales of \$4,415.8 were up 11% from the prior year, driven by higher volumes across the Gases and Equipment segments, higher natural gas costs contractually passed through to customers and pricing improvement in the Chemicals segment. Gases segment volumes were strong, driven by higher volumes in Electronics and Global Merchant Gases. Equipment segment sales increased mainly on higher liquefied natural gas (LNG) heat exchanger activity. In Chemicals, volumes declined in both the Performance Materials and Chemical Intermediates businesses.
- Operating income of \$547 increased 11%. Strong volume increases across the Gases and Equipment Segments were partially offset by higher costs, including inflation and spending in support of the homecare business.
- Net income of \$385 increased 12% and diluted earnings per share of \$1.69 increased 15%. A summary table of changes in earnings per share is presented below.
- The company adopted Statement of Financial Accounting Standards No. 123R (revised 2004), "Share-Based Payment" (SFAS No. 123R), on 1 October 2005 and began expensing the grant-date fair value of employee stock options. The impact recognized in the first six months for stock options reduced diluted earnings per share by \$.06.
- The company announced that it is exploring the sale of its Amines and Polymers businesses as part of its ongoing portfolio management activities.
- The company sold its Geismar, La., DNT production facility to BASF Corporation for \$155, resulting in a net gain of \$70.
- An impairment charge of \$66 for loans to a sulfuric acid supplier was recognized.
- The company purchased Tomah³ Products for \$121 as the company continues to invest in its growth platforms.
- The company announced a \$1,500 share repurchase program and increased its dividend. The company expects the share repurchase program to begin in the third quarter and to complete \$500 of the program by 31 December 2006.
- The company purchased previously leased cryogenic vessel equipment for \$297.
- For a discussion of the challenges, risks, and opportunities on which management is focused, refer to the update to the company's 2006 Outlook provided on pages 30-31.

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Changes in Earnings per Share

	Six Months Ended 31 March		Increase (Decrease)
	2006	2005	
Diluted Earnings per Share	\$1.69	\$1.47	\$.22
Operating Income (after-tax)			
Acquisitions			—
Divestitures			—
Currency			(.05)
Gain on sale of a chemical facility			.19
Impairment of loans receivable			(.19)
Hurricanes			(.02)
Stock option expense			(.06)
Underlying business			
Volume			.38
Price/raw materials			.05
Costs			(.13)
Operating Income			.17
Other (after-tax)			
Minority interest			(.02)
Interest expense			.02
Income tax rate			.01
Average shares outstanding			.04
Other			.05
Total Change in Diluted Earnings per Share			\$.22

RESULTS OF OPERATIONS
Consolidated Results

	Six Months Ended 31 March		% Change
	2006	2005	
Sales	\$4,415.8	\$3,994.3	11%
Cost of sales	3,314.9	2,944.4	13%
Selling and administrative	530.1	510.0	4%
Research and development	75.5	66.2	14%
(Gain) on sale of a chemical facility	(70.4)	—	—
Impairment of loans receivable	65.8	—	—
Other (income) expense, net	(46.9)	(16.8)	179%
Operating Income	546.8	490.5	11%
Equity affiliates' income	52.1	50.7	3%
Interest expense	51.6	57.6	(10%)
Effective tax rate	27.5%	27.9%	—
Net Income	384.7	342.1	12%
Basic Earnings per Share	\$ 1.73	\$ 1.51	15%
Diluted Earnings per Share	\$ 1.69	\$ 1.47	15%

[Table of Contents](#)**Discussion of Consolidated Results****Sales**

	% Change from Prior Year
Acquisitions	—
Divestitures	(1%)
Currency	(2%)
Natural gas/raw material cost pass through	6%
Underlying business	
Volume	7%
Price/mix	1%
Total Consolidated Change	11%

Sales of \$4,415.8 increased 11%, or \$421.5. Underlying base business growth accounted for 8% of the increase. Sales increased 7% from improved volumes in the Gases and Equipment segments, as discussed in the Segment Analysis which follows. Improved pricing in the Chemicals segment increased sales 1%. In Gases, higher liquid bulk pricing in North America and Europe was offset by lower average selling prices for electronic specialty materials. Divestitures of the company's European Methylamines and Derivatives (EM&D) business and its fertilizer business accounted for a 1% decrease. Sales decreased 2% from the strengthening of the U.S. dollar against the Euro. Higher natural gas/raw material cost pass through to customers accounted for an additional 6% of the sales increase.

Operating Income

Operating income of \$546.8 increased 11%, or \$56.3. Operating income increased \$124 primarily from improved volumes across the Gases and Equipment segments, as discussed in the Segment Analysis which follows, and \$37 from higher pricing and surcharges in Chemicals. Operating income also included a net gain of \$27 for insurance recoveries net of expenses related to property damage sustained from Hurricanes Katrina and Rita. The impact of business interruption resulting from Hurricane Katrina was estimated to have an unfavorable impact for \$33, resulting in a net decrease of \$6 for all hurricane related items. Operating income declined \$41 from higher costs, including inflation and spending in support of the homecare business. Operating income declined \$21 from stock option expense as the company adopted SFAS No. 123R. Gases pricing net of variable costs decreased operating income by \$14, primarily from lower electronic specialty material pricing. Operating income declined \$15 from currency due to the strengthening of the U.S. dollar against the Euro.

On 31 March 2006, the company sold its DNT production facility in Geismar, La., to BASF Corporation which resulted in a net gain of \$70 that is included in operating income. The company also recognized a loss in operating income of \$66 for the impairment of loans receivable from a long-term supplier of sulfuric acid used in the production of DNT for the company's PUI business. See Note 8 to the consolidated financial statements for additional information on these items, as well as other portfolio management activities.

Equity Affiliates' Income

Income from equity affiliates of \$52.1 increased \$1.4, or 3%. Gases equity affiliates' income increased \$2.1, with higher income reported by the Latin American and worldwide Electronics affiliates.

Selling and Administrative Expense (S&A)

	% Change from Prior Year
Acquisitions	1%
Divestitures	—
Currency	(2%)
Stock option expense	3%
Other costs	2%
Total S&A Change	4%

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S&A expense of \$530.1 increased 4%, or \$20.1. S&A as a percent of sales declined to 12.0% from 12.8% in 2005. The acquisitions of U.S. homecare companies increased S&A by 1%. Currency effects, driven by the strengthening of the U.S. dollar against the Euro, decreased S&A by 2%. Stock option expense increased S&A 3%, due to the adoption of SFAS No. 123R. Underlying costs increased 2%, primarily due to inflation.

Research and Development (R&D)

R&D increased 14%, or \$9.3, due to higher spending on key growth platforms. R&D spending as a percent of sales was 1.7% in 2006 and 2005.

Gain on Sale of a Chemical Facility

On 31 March 2006, the company sold its DNT production facility in Geismar, La., to BASF Corporation for \$155.0. Expense was recognized for the write-off of the remaining net book value of assets sold, resulting in the recognition of a gain of \$70.4 (\$42.9 after-tax, or \$.19 per share) on the transaction. See Note 8 to the consolidated financial statements for additional information on the sale.

Impairment of Loans Receivable

The company recognized a loss of \$65.8 (\$42.4 after-tax, or \$.19 per share) for the impairment of loans receivable from a long-term supplier of sulfuric acid, used in the production of DNT for the company's Polyurethane Intermediates business. See Note 8 to the financial statements for further information.

Other (Income) Expense, Net

Other income of \$46.9 increased \$30.1. Other income increased \$27.2 for insurance recoveries in excess of property damage sustained from Hurricanes Katrina and Rita and \$9.5 related to the sale of land in Europe. No other individual items were material in the comparison to the prior year.

Interest Expense

	Six Months Ended 31 March	
	2006	2005
Interest incurred	\$61.1	\$62.4
Less: interest capitalized	9.5	4.8
Interest Expense	\$51.6	\$57.6

Interest incurred decreased \$1.3. The decrease resulted from the impact of a stronger U.S. dollar on the translation of foreign currency interest and lower average interest rates, partially offset by a higher average debt balance excluding currency effects. Capitalized interest was higher by \$4.7 due to higher levels of construction in progress for plant and equipment built by the company, principally from projects within EPI.

Effective Tax Rate

The effective tax rate equals the income tax provision divided by income before taxes less minority interest. The effective tax rate was 27.5% in 2006 and 27.9% in 2005. Excluding the impact of the sale of the Geismar, La., DNT production facility and the impairment of loans receivable, the effective tax rate was 27.0%. The lower rate is the result of credits and adjustments from the company's ongoing tax planning process, and changes in income mix.

Net Income

Net income was \$384.7 compared to \$342.1 in 2005. Diluted earnings per share of \$1.69 compared to \$1.47 in 2005. A summary table of changes in earnings per share is presented on page 25.

[Table of Contents](#)**Segment Analysis****Gases**

	Six Months Ended 31 March		% Change
	2006	2005	
Sales	\$3,205.7	\$2,854.5	12%
Operating income	457.9	426.6	7%
Equity affiliates' income	47.2	45.1	5%

Gases Sales

	% Change from Prior Year
Acquisitions	—
Divestitures	—
Currency	(2%)
Natural gas/raw material cost pass through	6%
Hurricanes	(2%)
Underlying business	
Volume	10%
Price/mix	—
Total Gases Change	12%

Sales of \$3,205.7 increased 12%, or \$351.2. Underlying base business sales growth of 10% was driven by higher volumes in Electronics and Global Merchant Gases.

- Electronic volumes increased significantly, including improvements in electronic specialty materials, tonnage and bulk chemicals, from continued growth in the semiconductor and flat-panel display markets.
- On-site and pipeline volumes in EPI were down 1% due to the impact of Hurricanes Katrina and Rita. At the end of the second quarter, only one major pipeline hydrogen customer had not returned to pre-hurricane operations. Two new hydrogen plants started operations in December 2005.
- Liquid bulk volumes in North America decreased 1%. The decrease was due to lower liquid hydrogen volumes as a result of Hurricanes Katrina and Rita. Liquid oxygen (LOX) and liquid nitrogen (LIN) volumes improved 8% as demand increased among most end markets.
- Liquid bulk volumes in Europe increased 5%. The business continued to grow volumes through new customer signings and benefited from increased purchases from a customer prior to on-stream of tonnage supply.
- Packaged gas volumes in Europe were up 2%, but flat on a cylinder per workday basis.
- LOX/LIN volumes in Asia were up a strong 24%, driven mainly by solid demand growth across the region, particularly in the electronics industry in Korea and Taiwan and the steel industry in China.

Overall, the impact of pricing on sales was relatively flat, with higher liquid bulk pricing in North America and Europe being offset by lower average selling prices of electronic specialty materials.

- The average selling price for electronic specialty materials declined as pricing pressure continued. However, volume gains more than offset pricing declines.
- Average pricing for LOX/LIN in North America increased 13% primarily from price increases and surcharges to recover higher electricity and fuel costs.
- LOX/LIN pricing in Europe was flat as initiatives to recover higher energy costs were offset by an unfavorable change in customer mix.

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Sales decreased 2% from unfavorable currency effects, driven primarily by the strengthening of the U.S. dollar against the Euro. Higher natural gas cost pass through to customers accounted for an additional 6% of the sales increase.

Gases Operating Income

Operating income of \$457.9 increased 7%, or \$31.3. Favorable operating income variances resulted from higher volumes for \$113 and a net gain of \$27 for insurance recoveries net of expenses related to property damage sustained from Hurricanes Katrina and Rita. The impact of business interruption resulting from Hurricane Katrina was estimated to have an unfavorable impact for \$33, resulting in a net decrease of \$6 for all hurricane related items. Higher costs decreased operating income by \$39, including inflation and costs associated with the homecare business. Included in the homecare costs was the implementation of a new contract in the U.K. Operating income declined \$15 from stock option expense as the company adopted SFAS No. 123R. The impact of pricing net of variable costs decreased operating income \$14. Operating income decreased \$9 from the unfavorable effects of currency as the U.S. dollar strengthened against the Euro.

Gases Equity Affiliates' Income

Gases equity affiliates' income of \$47.2 increased \$2.1, with higher income reported by the Latin American and worldwide Electronics affiliates.

Chemicals

	Six Months Ended 31 March		% Change
	2006	2005	
Sales	\$937.7	\$959.6	(2%)
Operating income	69.6	65.0	7%
Equity affiliates' income	4.9	5.6	(13%)

Chemicals Sales

	% Change from Prior Year
Acquisitions	—
Divestitures	(4%)
Currency	(1%)
Natural gas/raw material cost pass through	5%
Underlying business	
Volume	(6%)
Price/mix	4%
Total Chemicals Change	(2%)

Sales of \$937.7 decreased 2%, or \$21.9. Underlying base business decreased sales 2%. Sales decreased 6% from volumes, principally due to a customer shutdown and a customer termination in the PUI business. The decrease was partially offset by a 4% increase in pricing.

- In Performance Materials, base business volumes decreased 2%. Worldwide emulsions volumes declined, as the company continues to focus on raising prices across this business to recover sharp increases in raw material costs. Epoxy volumes decreased due to a market correction in the Asia shipping container market.
- In Chemical Intermediates, base business volumes decreased 7%. Volumes in amines decreased due to customer outages and hurricane effects. PUI volumes declined due to a contract termination and a customer shutdown that took place in the fourth quarter of 2005.

Sales decreased 4% from the impact of the divestitures, which included the company's EM&D business and the shutdown of its fertilizer business. Sales decreased 1% from unfavorable currency effects, driven primarily by the strengthening of the U.S. dollar against the Euro. Higher raw material costs contractually passed through to customers accounted for 5% of the sales increase.

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Chemicals Operating Income

Operating income of \$69.6 increased 7%, or \$4.6. Operating income increased by \$30 as the segment improved its recovery of higher raw material costs through increased pricing and surcharges. Operating income declined \$15 from lower volumes and \$7 from unfavorable currency impacts.

On 31 March 2006, the company sold its DNT production facility in Geismar, La., to BASF Corporation which resulted in a net gain of \$70 that is included in operating income. The company also recognized a loss in operating income of \$66 for the impairment of loans receivable from a long-term supplier of sulfuric acid used in the production of DNT for the company's PUI business. See Note 8 to the consolidated financial statements for additional information on these items, as well as other portfolio management activities.

Chemicals Equity Affiliates' Income

Chemicals equity affiliates' income of \$4.9 decreased \$0.7. Chemicals equity affiliates' income consists primarily of a global polymer joint venture.

Equipment

	Six Months Ended 31 March	
	2006	2005
Sales	\$272.4	\$180.2
Operating income	40.5	13.9

Equipment Sales and Operating Income

Sales increased primarily from higher liquefied natural gas (LNG) heat exchanger, hydrocarbon separation unit, and large air separation unit activity. Currency effects decreased sales by 2%, due primarily to the strengthening of the U.S. dollar against the Pound Sterling. Operating income increased \$26.6 primarily due to higher LNG activity.

The sales backlog at 31 March 2006 was \$596 compared to \$652 at 30 September 2005.

All Other

All other comprises corporate expenses and income not allocated to the segments, primarily corporate research and development expense. The operating loss of \$21.2 was higher by \$6.2. No items individually were material in the comparison to the prior year.

SHARE-BASED COMPENSATION

Refer to Notes 2 and 3 to the consolidated financial statements for a description of the company's share-based compensation arrangements, including the impact of adopting SFAS No. 123R.

PENSION BENEFITS

Refer to Note 6 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 2005 annual report on Form 10-K.

2006 OUTLOOK

The company's priority is to improve return on capital. Action plans are in place to load existing assets, drive productivity, focus capital spending on growth areas, and continuously improve the company's portfolio of businesses. The discussion below outlines the areas of challenge, risk, and opportunity on which management is focused.

Economic Environment

Domestic manufacturing activity in the first six months of 2006 improved, up 4.5% from the prior year. The company originally anticipated domestic manufacturing growth between 2% and 3% for the year, and the current forecast is for growth of approximately 4%.

Gases

The Gases segment demonstrated both sales and operating income growth in the first six months of 2006. The company expects a strong year-on-year improvement for the full year. As was expected, Gases margins declined in the second quarter. This included additional homecare costs associated with the startup of a new service in the U.K. and flat sales and additional costs in the U.S. homecare business. The company has implemented price increases, and coupled with forecasted increases in volumes and benefits of productivity, Gases margins should return to higher levels in the second half of 2006.

EPI volumes decreased year-on-year in the first quarter as a result of Hurricanes Katrina and Rita. In the second quarter, EPI returned to year-on-year growth with all but one significant customer back on-stream. The company brought two hydrogen plants on-stream in the first quarter and anticipates another four plants coming on-stream during the remainder of 2006.

In Electronics, the company saw significant improvement in profitability in the second quarter. The company anticipates sustaining this improvement while continuing to grow during the remainder of 2006. The company continues to explore strategies to enhance the value of this business.

In our Global Merchant Gases business, we continue to load existing assets and plan to bring five additional plants on-stream in the next twelve months. These additions will increase our ability to provide liquid capacity to the growing Asia market.

Results in the homecare business for the second quarter were lower than anticipated. During the second quarter, the company began serving homecare patients in the U.K under a new contract which resulted in additional costs. The company has taken measures to reduce these additional costs and expects improvements in the second half of 2006. The company is also implementing new sales programs in the U.S. These actions are expected to improve results in the third quarter.

Chemicals

Volumes in the Chemicals segment are expected to be lower in 2006 due to the loss of two major contracts in the Polyurethane Intermediates business and the sale of the Geismar, La., DNT production facility. It was announced in the second quarter that the company is exploring the sale of its Amines and Polymers businesses as part of its ongoing portfolio management activities. The company continues to explore various strategies to enhance the value of the segment in its Performance Materials business.

Equipment

The sales backlog remained at a high level of \$596 at 31 March 2006. The company expects a continued high level of activity in this segment for the remainder of 2006.

Capital Expenditures

Capital expenditures for new plant and equipment are expected to be in the range of approximately \$1,200 to \$1,300 for 2006. As expected, the company completed the \$297 purchase of certain cryogenic vessel equipment late in the second quarter. The company acquired Tomah³ Products as part of its continuing investment in its growth platforms. Spending on homecare acquisitions is expected to be lower than in recent years as the company focuses on productivity benefits and organic growth.

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 \$117.2, or 17%, as compared to 2005. This decline was primarily due to changes in working capital. The working capital changes occurred principally in three areas: inventories, contracts in progress, and accounts payable and accrued liabilities. Cash used for inventories was \$62.5 in 2006 due to hurricane recovery and normal business activity. Cash used for contracts in progress was \$22.0 in 2006 due to increased activity in the Equipment segment. Cash used for payables and accrued liabilities in 2006 included \$112.8 of pension contributions. These impacts were partially offset by an increase in accrued income taxes in 2006, principally due to the sale of a chemical facility, higher book versus tax depreciation, and the timing of payments.

Investing Activities

Cash used for investing activities increased \$263.2, or 58%. Additions to plant and equipment totaled \$810.0 for the six months ended 31 March 2006, compared to \$427.7. Additions to plant and equipment in 2006 included \$297.2 for the repurchase of cryogenic vessel equipment. The remaining increase was attributable to higher spending largely in support of the worldwide Gases business, including the rebuilding of facilities damaged by Hurricane Katrina. Acquisitions totaled \$127.0 for the six months ended 31 March 2006, compared to \$58.6. Acquisitions in 2006 principally included Tomah³ Products and a small European homecare business. Acquisitions in 2005 principally included three U.S. homecare businesses. Proceeds from the sale of assets and investments increased \$157.8 in 2006 due principally to the sale of the Geismar, La., DNT production facility. Additionally, 2006 included \$35.8 for insurance proceeds received for hurricane property damages.

Capital expenditures are detailed in the following table:

	Six Months Ended 31 March	
	2006	2005
Additions to plant and equipment	\$512.8	\$427.7
Purchase cryogenic vessel equipment	297.2	—
Investment in and advances to unconsolidated affiliates	8.3	4.7
Acquisitions, less cash acquired	127.0	58.6
Capital leases	1.1	2.9
Total Capital Expenditures	\$946.4	\$493.9

Financing Activities

Cash provided by financing activities increased \$135.9. Lower long-term debt proceeds of \$177.3 and lower proceeds from stock option exercises of \$52.9 were more than offset by a decrease in debt repayments of \$269.3 and a higher net increase in commercial paper and short-term borrowings of \$98.5.

Total debt at 31 March 2006 and 30 September 2005, expressed as a percentage of the sum of total debt, shareholders' equity, and minority interest, was 35% in each period. Total debt increased from \$2,499.9 at 30 September 2005 to \$2,802.8 at 31 March 2006. This increase was due to long and short-term debt proceeds exceeding repayments by \$256.9 and the consolidation of the debt of a previously unconsolidated affiliate.

The company's total multicurrency revolving facility, maturing in December 2008, amounted to \$700.0 at 31 March 2006. No borrowings were outstanding under these commitments. Additional commitments totaling \$142.0 are maintained by the company's foreign subsidiaries, of which \$10.2 was utilized at 31 March 2006.

The estimated fair value of the company's long-term debt, including current portion, as of 31 March 2006 was \$2,458.0 compared to a book value of \$2,393.8.

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On 9 November 2005, the company issued Euro 300.0 (\$353.0) of 3.75% Eurobonds maturing 8 November 2013. A portion of these Eurobonds was exchanged for Euro 146.5 (\$172.4) of the company's 6.5% Eurobonds due July 2007 pursuant to an exchange offer announced by the company on 20 October 2005.

On 16 March 2006, the Board of Directors approved a \$1,500 share repurchase program. The company expects the share repurchase program to begin in the third quarter and to complete \$500 of the program by 31 December 2006.

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. Other than the Eurobond exchange and the \$297.2 repurchase of previously leased cryogenic vessel equipment discussed above, there have been no material changes to contractual obligations as reflected in the Management's Discussion and Analysis in the company's 2005 annual report on Form 10-K.

COMMITMENTS AND CONTINGENCIES

Refer to Note 19 to the consolidated financial statements in the company's 2005 annual report on Form 10-K and Note 7 in this quarterly filing.

OFF-BALANCE SHEET ARRANGEMENTS

Other than the termination of the operating lease which occurred with the repurchase of the cryogenic vessel equipment for \$297.2 mentioned above, there have been no material changes to off-balance sheet arrangements as reflected in the Management's Discussion and Analysis in the company's 2005 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 in industrial gas and chemicals businesses. 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 2005 annual report on Form 10-K.

For foreign currency exchange risk, the sensitivity analysis assumes an instantaneous 10% change in the foreign currency exchange rates with all other variables (including interest rates) held constant. A 10% strengthening of the functional currency of an entity versus all other currencies would result in a decrease of \$208 and \$169 in the net liability position of financial instruments at 31 March 2006 and 30 September 2005, respectively. A 10% weakening of the functional currency of an entity versus all other currencies would result in an increase of \$206 and \$162 in the net liability position of financial instruments at 31 March 2006 and 30 September 2005, respectively.

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The sensitivity analysis related to the fixed portion of the company's debt portfolio assumes an instantaneous 100 basis point move in interest rates with all other variables (including foreign exchange rates) held constant. A 100 basis point increase in market interest rates would result in a decrease of \$70 and \$58 in the net liability position of financial instruments at 31 March 2006 and 30 September 2005, respectively. A 100 basis point decrease in market interest rates would result in an increase of \$76 and \$63 in the net liability position of financial instruments at 31 March 2006 and 30 September 2005, respectively.

There was no material change to market risk sensitivity for commodity price risk since 30 September 2005.

The net financial instrument position of the company increased from a liability of \$2,266.3 at 30 September 2005 to a liability of \$2,470.4 at 31 March 2006 primarily due to an increase in the book value of long-term debt, as new issuances exceeded repayments.

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 2005 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 the Notes to the consolidated financial statements. There have been no other 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 the Notes 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 expectations and assumptions as of the date of this document regarding important risk factors. Actual performance and financial results may differ materially from those expressed in the forward-looking statements because of many factors, including those specifically referenced as future events or outcomes that the company anticipates, as well as, among other things, overall economic and business conditions different than those currently anticipated and demand for the company's goods and services during that time; competitive factors in the industries in which it competes; interruption in ordinary sources of supply; the ability to recover unanticipated increased energy and raw material costs from customers; uninsured litigation judgments or settlements; changes in government regulations; consequences of acts of war or terrorism impacting the United States' and other markets; charges related to currently undetermined portfolio management and cost reduction actions; the success of implementing cost reduction programs; the timing, impact, ability to complete, and other uncertainties of future acquisitions or divestitures or unanticipated contract terminations; significant fluctuations in interest rates and foreign currencies from that currently anticipated; the impact of tax and other legislation and regulations in jurisdictions in which the company and its affiliates operate; the recovery of insurance proceeds; the impact of new financial accounting standards; and the timing and rate at which tax credits can be utilized. 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

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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 pages 33-34 of Item 2 in Management's Discussion and Analysis of Financial Condition and Results of Operations.

Item 4. Controls and Procedures

Under the supervision of the Chief Executive Officer and Chief Financial Officer, the company's management conducted an evaluation of the effectiveness of the design and operation of the company's disclosure controls and procedures as of 31 March 2006. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the design and operation of its disclosure controls and procedures have been effective. As previously disclosed, the company is in the midst of an SAP implementation. As a result, certain changes have been made to the company's internal control structure, in connection with the SAP implementation, which management believes will strengthen their internal control structure. There have been no other significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of such evaluation.

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 26 January 2006.
- b. The following directors were elected at the meeting: Mario L. Baeza, Edward E. Hagenlocker, Terrence Murray, and Charles H. Noski. Directors whose term of office continued after the meeting include: William L. Davis, W. Douglas Ford, Margaret G. McGlynn, Michael J. Donahue, Ursula O. Fairbairn, and John P. Jones III.
- 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	191,069,863	6,328,726
Edward E. Hagenlocker	193,127,862	4,270,727
Terrence Murray	193,437,299	3,961,290
Charles H. Noski	194,719,705	2,678,884

2. Ratification of the appointment of KPMG LLP of Philadelphia, Pennsylvania, as independent auditor for the registrant for the fiscal year ending 30 September 2006

NUMBER OF VOTES CAST		
FOR	AGAINST OR WITHHELD	ABSTENTIONS
194,504,685	1,355,713	1,538,190

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3. Approval of amendments to the Long-Term Incentive Plan

NUMBER OF VOTES CAST			
FOR	AGAINST OR WITHHELD	ABSTENTIONS	BROKER NON-VOTES
147,662,995	33,949,216	2,004,735	13,781,643

4. Approval of Annual Incentive Plan terms to allow continued tax deductibility.

NUMBER OF VOTES CAST			
FOR	AGAINST OR WITHHELD	ABSTENTIONS	BROKER NON-VOTES
188,500,985	6,976,358	1,919,674	1,572

Item 6. Exhibits.

Exhibits required by Item 601 of Regulation S-K

- 10.1. Amended and Restated Long Term Incentive Plan of the Company, effective 26 January 2006.
- 10.2. 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. Certain information in this Exhibit has been omitted pursuant to a Request for Confidential Treatment and such information has been filed separately with the Securities and Exchange Commission.
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.

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: 28 April 2006

By: _____ /s/ Paul E. Huck

Paul E. Huck
Vice President and Chief Financial Officer

EXHIBIT INDEX

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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.

APPENDIX
AIR PRODUCTS AND CHEMICALS, INC.
LONG-TERM INCENTIVE PLAN

As Amended and Restated
Effective January 26, 2006

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1. Purposes of the Plan

The purposes of this Plan are: (i) to provide long-term incentives and rewards to nonemployee directors (“Eligible Directors”) and to those executives or other key employees who are either in a position to contribute to the long-term success and growth of Air Products and Chemicals, Inc. (the “Company”) and Participating Subsidiaries, or who have high potential for assuming greater levels of responsibility or who have demonstrated their critical importance to the operation of their organizational unit; (ii) to assist the Company and Participating Subsidiaries in attracting and retaining directors, executives and other key employees with experience and ability; and (iii) to associate more closely the interests of such directors, executives and other key employees with those of the Company’s shareholders.

2. Administration of the Plan

(a) *Employee Awards.* With regard to Plan Awards granted to employees (“Employee Awards”), the Plan shall be administered by the Management Development and Compensation Committee of the Company’s Board of Directors (the “Board”) or such other committee thereof consisting of such members (not less than three) of the Board as are appointed from time to time by the Board (the “Committee”), each of the members of which, at the time of any action under the Plan, shall be (i) a “non-employee director” as then defined under Rule 16b-3 under the Act (or meeting comparable requirements of any successor rule relating to exemption from Section 16(b) of the Act), (ii) an “outside director” as then defined under Code Section 162(m) and (iii) an “independent director” as then defined under the rules of the New York Stock Exchange (or meeting comparable requirements of any stock exchange on which the Company’s Common Stock may then be listed).

(b) *Director Awards.* With regard to Plan Awards granted to Eligible Directors (“Director Awards”), the Plan shall be administered by the Board.

(c) *Powers of the Committee and Board.* As used herein, the term “Administrator” shall mean the Committee with respect to Employee Awards and the Board with respect to Director Awards. The Administrator shall have all necessary powers to administer and interpret the Plan, including authority to adopt such rules, regulations, agreements, and instruments for the administration of the Plan as the Administrator deems necessary or advisable. The Administrator’s interpretations of the Plan and all action taken and determinations made by the Administrator pursuant to the powers vested in it hereunder shall be conclusive and binding on all parties concerned, including the Company, its shareholders and any director or employee of the Company or any Subsidiary.

(i) Powers of the Committee include exclusive authority (within the limitations described and except as otherwise provided in the Plan) to select the employees or determine classes of employees to be granted Awards under the Plan, to determine the aggregate amount, type, size, and terms of the Awards to be made to eligible employees, and to determine the time when Awards will be granted. The Committee may take into consideration recommendations from the appropriate officers of the Company and of each

Participating Subsidiary with respect to making the foregoing determinations as to Plan awards, administration, and interpretation. Notwithstanding any other provision of the Plan to the contrary, the Committee may delegate to appropriate Company officers its authority to take all final action with respect to granting and administering Plan Awards granted to Participants who are at the time of such action not members of the Board or “officers” within the meaning of Rule 16a-1(f) of the Act, including without limitation selecting executives and key employees to whom such Awards will be granted; determining the amount of any such Awards to be made to such executives and key employees; and taking all action on behalf of the Company with respect to administering, vesting of, and paying such Awards; provided, however, that (i) all such Awards shall be granted within the limitations and subject to the terms and conditions required by the Plan and established by the Committee and subject to the Committee’s interpretations of the Plan (ii) the aggregate of such Awards granted under the Plan for or with respect to a given Fiscal Year shall not, when added to the Awards approved by the Committee for granting to individuals who are “officers” within the meaning of Rule 16a-1(f) of the Act for or with respect to the same Fiscal Year, exceed the total amount of Awards approved by the Committee for or with respect to such Fiscal Year; (iii) only the Committee may grant Awards of restricted or unrestricted shares; and (iv) any action with respect to such Awards taken because of or in connection with a Change in Control of the Company or as contemplated by Section 12 shall be taken by the Committee. With respect to matters so delegated, the term “Committee” as used herein shall mean the delegate.

(ii) The Board has exclusive authority to determine the awards amount, type, size, and terms of to be provided to Eligible Directors under the Plan by resolution, including by adoption of programs specifying timing, amounts, terms, and conditions of Plan awards to be made annually or otherwise regularly without further action by it. The Corporate Governance and Nominating Committee shall recommend to the Board the type, size, timing, and terms of grants to Eligible Directors. Notwithstanding any provision of the Plan to the contrary, the Board may delegate to appropriate Company officers or to a Committee of the Board by its resolution, adoption of a Committee charter, or adoption of a written compensation program, authority to take all final action with respect to granting and administering Plan awards to Eligible Directors, including administering and taking all action on behalf of the Company with respect to vesting and payment of Awards. With respect to matters so delegated, the term “Board,” as used herein, shall mean the delegate.

3. Eligibility for Participation

Participation in the Plan shall be limited to (i) Eligible Directors and (ii) executives or other key employees (including officers and directors who are also employees) of the Company and its Participating Subsidiaries selected on the basis of such criteria as the Committee may determine. As used herein, the term “employee” shall mean any person employed full time or part time by the Company or a Participating Subsidiary on a salaried basis, and the term “employment” shall mean full-time or part-time salaried employment by the Company or a Subsidiary.

4. Shares of Stock Subject to the Plan

The shares that may be subject to Awards granted under the Plan on or after January 26, 2006, (including Incentive Stock Options) shall not exceed in the aggregate 7,000,000 shares of common stock of the Company ("Common Stock"), plus the sum of (i) the number of shares previously authorized under the Plan but not then issued or subject to an outstanding Award, and (ii) the number of shares subject to Awards granted under the Plan prior to January 26, 2006 and then outstanding which are not delivered because the Award expires, is forfeited, or terminates unexercised or because payment under the Award is made in other than in shares. No more than 20% of the cumulative shares of Common Stock subject to Awards granted on or after October 1, 2001 may be used for restricted shares, deferred stock units or other Awards providing for the acquisition of the shares for a consideration less than the Fair Market Value of the shares as of the date of grant. Any share subject to a Plan Award which is not delivered because the Award expires, is forfeited, or terminates unexercised, or because payment under the Award is made in a form other than in Common Stock, shall not be considered as having been issued or delivered for purposes of the limitations under the preceding sentences and may again be subject to an award subsequently granted under the Plan; provided that, any stock appreciation right Award delivered in Common Stock shall be counted as use of a number of shares equal to the number of stock appreciation rights exercised, rather than the net shares delivered.

5. Awards

Awards granted to employee Participants or Eligible Directors under the Plan may be of the following types: (i) stock options, (ii) restricted shares, (iii) deferred stock units, and/or (iv) other stock awards. Employee Participants may also be granted stock appreciation rights. Stock options are rights to purchase Common Stock from the Company at a price designated at the time of grant ("Stock Options"). Stock Options granted to employees may be either Nonstatutory Stock Options or Incentive Stock Options, both as described below. The Committee shall designate each Stock Option grant to an employee as being either a Nonstatutory Stock Option or an Incentive Stock Option. If the same employee receives both Nonstatutory Stock Options and Incentive Stock Options, each type shall be clearly identified and separately granted. Stock appreciation rights ("Stock Appreciation Rights") are rights to receive cash and/or Common Stock equivalent in value to the "spread" between (a) the Fair Market Value of a share of Common Stock on the date the Stock Appreciation Right is exercised and (b) the Fair Market Value of a share of Common Stock on the date the Stock Appreciation Right was granted. Restricted shares are shares of Common Stock awarded subject to restrictions and to possible forfeiture upon the occurrence of specified events ("Restricted Shares"). Deferred stock units are rights to receive at the end of a deferral period cash and/or Common Stock equivalent in value to one share of Common Stock for each unit ("Deferred Stock Units"). Other stock awards are awards in such form as the Board or Committee may determine that are denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to shares of Common Stock ("Other Stock Awards").

Nonstatutory Stock Options, Restricted Shares, Deferred Stock Units and Other Stock Awards, and, in the case of employee Participants, Incentive Stock Options and Stock

Appreciation Rights, may be granted to the same Participant as separate Awards at or for the same period of time under terms whereby the issuance of shares or payment under one Award has no effect on any other Award. Stock Appreciation Rights may be granted to an employee Participant in relation to (i.e., in “tandem” with) a previously or concurrently granted Stock Option under terms whereby the issuance of shares or payment under one Award reduces directly the number of shares, units, and/or rights remaining available under the related Award(s). Nonstatutory Stock Options may also be granted in tandem with other Plan Awards.

6. Stock Options

(a) Director Stock Options

All Stock Options granted to Eligible Directors under the Plan shall be Nonstatutory Stock Options. The purchase price per share of Common Stock covered by each such Stock Option shall be determined by the Board but shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of such Stock Option.

(b) Employee Stock Options

Stock Options granted to eligible employees under the Plan may be either Incentive Stock Options or Nonstatutory Stock Options, as determined by the Committee at the time of grant. The Committee may grant Stock Options to eligible employees either alone or in conjunction with and related to Stock Appreciation Rights and may also grant Nonstatutory Stock Options in conjunction with and related to other Plan Awards. No Incentive Stock Option shall be granted under this Plan more than 10 years after the most recent date this Plan is adopted or approved by the shareholders of the Company.

The purchase price per share of Common Stock covered by each Stock Option shall be determined by the Committee but shall not be less than 100% of the Fair Market Value of a share of Common Stock on the date of grant of such Stock Option. If an Incentive Stock Option is granted to an employee who, on the date of grant, owns stock possessing more than 10% of the total combined voting power of all outstanding classes of stock of the Company or any affiliate, the purchase price per share under such Incentive Stock Option shall be at least 110% of the Fair Market Value of a share of Common Stock on the date of grant of such Incentive Stock Option, and such Incentive Stock Option shall not be exercisable after the expiration of five years from its date of grant.

The Committee will determine, absolutely or by formula related to the Fair Market Value of a share of Common Stock, the number of shares of Common Stock to be subject to each Stock Option. In no event shall the number of shares subject to Stock Options (and any related Stock Appreciation Rights) granted to any Participant in any Fiscal Year exceed 1,000,000, subject to adjustment as provided in Section 12.

The aggregate Fair Market Value, determined on the date of grant, of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant

during any calendar year (under this Plan and all other plans of the Company and any predecessor, parent, subsidiary or affiliate) shall not exceed \$100,000 (as such figure may be adjusted under Code Section 422(d)). If the aggregate Fair Market Value, determined on the date of grant, of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year (under this Plan and all other plans of the Company and any predecessor, parent, subsidiary, or affiliate) exceeds the limitation described in the preceding sentence, that portion of the Incentive Stock Option that does not exceed the applicable dollar limit shall be an Incentive Stock Option and the remainder shall be a Nonqualified Stock Option, and in all other respects the terms of the original Award agreement shall remain in full force and effect. If the limitation of this paragraph is exceeded, the determination of which Stock Options shall be Incentive Stock Options and which Stock Options shall be Nonqualified Stock Options shall be made in accordance with the ordering rules prescribed in the Code. For the avoidance of doubt, the exercise date of Incentive Stock Options may be accelerated as provided for in Section 11, in which case the provisions regarding the \$100,000 limitation and the resulting treatment if that limit is exceeded, as described above, shall apply.

(c) Terms Applicable to all Stock Options.

Except as otherwise determined by the Administrator and reflected in the applicable Award agreement or an amendment thereto, Stock Options shall be granted on the following additional terms and conditions (and such other terms and conditions that the Administrator may establish which are consistent with the Plan and applicable law):

(i) *Term and Exercise Dates.* The Administrator shall fix the term during which each Stock Option may be exercised, but no Stock Option shall be exercisable after the tenth anniversary of its date of grant plus one day. No employee Stock Option shall be exercisable prior to one year from its date of grant, except as otherwise provided in Section 11. Except as otherwise provided in Section 11, each employee Stock Option shall become exercisable in installments: one-third of the shares subject to such Stock Option may be purchased commencing on the first, second and third one year anniversaries of the date of grant. Each Eligible Director Stock Option shall be exercisable commencing six months from the date of grant.

Notwithstanding any other provision of the Plan, the Committee may determine with respect to an Employee Award that the date on which any outstanding Stock Option or any portion thereof is exercisable shall be advanced to an earlier date or dates designated by the Committee in accordance with such terms and subject to such conditions, if any, as the Committee shall specify; provided, however, that any such earlier date shall not be prior to one year from the date of grant of such Stock Option, except as otherwise provided in Section 11.

(ii) *Exercise.* A Participant wishing to exercise his or her Stock Option in whole or in part shall give written notice of such exercise to the Company, accompanied by full payment of the purchase price. The date of receipt of such notice (including by facsimile

transmission) and payment shall be the "Exercise Date" for such Stock Option or portion thereof; provided, however, that if the Participant engages in a simultaneous Stock Option exercise and sale of shares of Common Stock, the Exercise Date shall be the date of sale of the shares purchased by exercising such Stock Option. No partial exercise of a Stock Option may be for less than 100 shares of Common Stock.

(iii) *Payment.* The purchase price of shares purchased upon exercise of any Option shall be paid in full in cash at the time of exercise of the Stock Option, except that the Administrator, in its sole discretion, and on such terms and conditions as it may specify, may approve payment by the exchange of shares of Common Stock having a Fair Market Value on the Exercise Date equal to the purchase price of such shares or by a combination of cash and Common Stock having a Fair Market Value on the Exercise Date equal to the portion of such purchase price not paid in cash; provided, however, that except as the Administrator shall otherwise determine, any such shares submitted in the exchange must have been beneficially owned by the Participant for a certain period prior to the Exercise Date, the duration of such period to be determined by the Administrator but in no event to be less than six months. Subject to any administrative rules from time to time adopted by the Administrator for administering Stock Option exercises, payment of the exercise price of the Stock Option will be permitted through the delivery (including by facsimile transmission) of an irrevocable exercise notice coupled with irrevocable instructions to a designated broker to simultaneously sell the underlying shares of Common Stock and deliver to the Company on the settlement date the portion of the proceeds representing the exercise price (and any taxes to be withheld).

(iv) *Termination of Employment or Death.*

(A) Except as otherwise provided by the Committee in the applicable Stock Option agreement or amendment thereto, in the event an employee Participant ceases to be employed due to Retirement, Disability, or death, his or her Stock Options shall continue to be or become exercisable following such cessation of employment as if the Participant had continued to be an active employee and such Stock Options may be exercised by the Participant or, in the event of death, his or her Designated Beneficiary on the same terms and conditions as would have applied to such Participant had such Participant continued to be an active employee; provided that, Stock Options whose date of grant is less than one year from the date of such cessation of employment shall be forfeited.

(B) Except as provided in clause (A) of this Section 6(c)(iv), if, prior to the expiration or cancellation of any Stock Option, an employee Participant ceases to be employed by the Company or a Subsidiary, any unexercised portion of his or her outstanding Stock Option shall automatically terminate unless the Committee, in its sole discretion, shall determine otherwise, and except that when the Participant's employment has ceased due to a leave of absence or involuntary termination due to position elimination, such Participant's Stock Option shall be

treated in accordance with guidelines for such situations established by the Committee.

(C) In the event an Eligible Director ceases to be a director due to Retirement, Disability, or death, his or her Stock Options shall continue to be or become exercisable as if the Eligible Director had continued to be a director and such stock options may be exercised by the director or, in the event of death, his or her Designated Beneficiary on the same terms and conditions as would have applied to such director had such eligible director continued to serve on the Board. Except as otherwise provided by the Board in the applicable Award agreement or amendment thereto, in the event an Eligible Director ceases to be a director other than due to Retirement, Disability, or death, his or her Stock Options shall become exercisable in accordance with their terms and be exercisable until two years following the Director's last day of service.

(D) No provision of this Section 6(c)(iv) shall be deemed to permit the exercise of any Stock Option after the expiration of the normal stated term of such Stock Option.

7. Stock Appreciation Rights

The Committee may grant Stock Appreciation Rights to employees either alone or in conjunction with and related to previously or concurrently granted Stock Options and/or other Plan Awards. Except as otherwise determined by the Committee and reflected in the applicable Stock Appreciation Rights agreement or an amendment thereto, all Stock Appreciation Rights shall be granted on the following terms and conditions (and such other terms and conditions that the Committee may establish which are consistent with the Plan and applicable law):

(a) *Number of Rights.* The Committee shall determine, absolutely or by formula related to the Fair Market Value of a share of Common Stock, the number of Stock Appreciation Rights which shall be granted. As to any Stock Appreciation Rights granted in tandem with a Stock Option, such number shall not be greater than the number of shares which are then subject to the related Stock Option, and the number of such Stock Appreciation Rights will be reduced on a one-for-one basis to the extent that shares under the related Stock Option are purchased. In no event shall the number of Stock Appreciation Rights granted to any Participant in any Fiscal Year (excluding Stock Appreciation Rights granted in tandem with a Stock Option, which shall be subject to the limitation in Section 6(b)), exceed 1,000,000, subject to adjustment as provided in Section 12.

(b) *Exercise.* Stock Appreciation Rights shall entitle the Participant to receive upon exercise, without any payment to the Company, an amount of cash and/or a number of shares determined and payable as provided in Section 7(c). Except as otherwise determined by the Committee and reflected in the applicable Award agreement or amendment thereto, Stock Appreciation Rights shall be exercisable to the extent and upon the same conditions that Stock Options are exercisable under Section 6(c). A Participant wishing to exercise Stock Appreciation

Rights shall give written notice of such exercise to the Company. The date of receipt of such notice shall be the "Exercise Date" for such Stock Appreciation Rights. Promptly after the Exercise Date the Company shall pay and/or deliver to the Participant the cash and/or shares to which he or she is entitled.

(c) *Amount of Cash and/or Number of Shares.* Except as otherwise provided in Section 11, the amount of the payment to be made upon exercise of Stock Appreciation Rights shall be determined by multiplying (i) that portion of the total number of shares as to which the Participant exercises the Stock Appreciation Rights award as of the Stock Appreciation Right Exercise Date, by (ii) 100% of the amount by which the Fair Market Value of a share of Common Stock on the Exercise Date exceeds the Fair Market Value of a share of Common Stock on the date the Stock Appreciation Rights were granted. The Committee may make payment in cash or partly in cash and partly in Common Stock, all as determined by the Committee in its sole discretion. To the extent that payment is made in Common Stock, the number of shares to be paid shall be determined by dividing the amount of such payment by the Fair Market Value of a share of Common Stock on the Exercise Date. No fractional shares shall be issued, but instead the Participant shall be entitled to receive a cash adjustment equal to the same fraction of the Fair Market Value on the Exercise Date.

(d) *Termination of Employment or Death.* Except as otherwise provided by the Committee in the applicable Award agreement or amendment thereto, in the event that a recipient of Stock Appreciation Rights ceases to be employed by the Company or a Subsidiary by reason of Retirement, Disability or death, his or her Stock Appreciation Rights shall continue to be or become exercisable following such termination of employment to the extent and upon the same conditions that a Stock Option is exercisable under Section 6(c)(iv). In the event a recipient of Stock Appreciation Rights ceases to be employed by the Company or a Subsidiary for a reason other than Retirement, Disability or death, his or her Stock Appreciation Rights shall automatically terminate unless and to the extent the Committee, in its sole discretion, shall determine otherwise.

8. Restricted Shares

The Administrator may grant Restricted Share awards to Participants on the following terms and conditions (and/or such other conditions as are consistent with the Plan and applicable law):

(a) *Restrictions.* Restricted Shares shall be granted subject to such restrictions on the full enjoyment of the Shares as the Administrator shall specify; which restrictions may be based on the passage of time, satisfaction of performance criteria, or the occurrence of one or more events; and shall lapse separately or in combination upon such conditions and at such time or times, in installments or otherwise, as the Administrator shall specify. Except for limited circumstances determined by the Administrator, including but not limited to special recruitment or retention awards, death, Disability, or Retirement, Restricted Shares shall have a restriction period of not less than three years; provided that, Restricted Shares shall have a minimum restriction period of one year if lapse of the restriction is based on performance criteria. In no event shall the number

of Restricted Shares granted to any Participant in any Fiscal Year exceed 100,000, subject to adjustment as provided in Section 12.

(b) *Dividends; Voting.* While any restriction applies to any Participant's Restricted Shares, (i) unless the Administrator provides otherwise, the Participant shall receive the dividends paid on the Restricted Shares and shall not be required to return those dividends to the Company in the event of the forfeiture of the Restricted Shares, (ii) the Participant shall receive the proceeds of the Restricted Shares in any stock split, reverse stock split, recapitalization, or other change in the capital structure of the Company, which proceeds shall automatically and without need for any other action become Restricted Shares and be subject to all restrictions then existing as to the Participant's Restricted Shares, and (iii) the Participant shall be entitled to vote the Restricted Shares.

(c) *Transfer of Restricted Shares.* While any restriction applies to the Restricted Shares, the Participant shall not have the right to sell, transfer, assign, convey, pledge, hypothecate, grant any security interest in or mortgage on, or otherwise dispose of or encumber any shares of Restricted Shares or any interest therein.

(d) *Evidence of Share Ownership.* The Restricted Shares will be book-entry shares only unless the Administrator decides to issue certificates to evidence shares of the Restricted Shares. Any stock certificate(s) representing the Restricted Shares that is so issued to a Participant shall bear an appropriate legend describing the restrictions to which the shares are subject.

9. Deferred Stock Units

The Administrator, may grant Deferred Stock Units to Participants on the following terms and conditions (and/or such other terms and conditions that the Administrator may establish which are consistent with the Plan and applicable law):

(a) *Number, Value, and Manner of Payment of Deferred Stock Units.* Each Deferred Stock Unit shall be equivalent in value to one share of Common Stock and, subject to satisfaction of any applicable performance conditions, shall entitle the Participant to receive from the Company at the end of the deferral period (the "Deferral Period") applicable to such Unit the value at such time of each Unit. Except as otherwise determined by the Administrator, Deferred Stock Units shall be granted without payment of cash or other consideration to the Company but in consideration of services performed for or for the benefit of the Company or a Participating Subsidiary by such Participant. Deferred stock units may be conditioned on the satisfaction of performance conditions. Payment of the value of Deferred Stock Units may be made by the Company in shares of Common Stock, cash or both as determined by the Administrator. If paid in Common Stock, the Participant shall receive a number of shares of Common Stock equal to the number of matured or earned Deferred Stock Units, and if paid in cash, the Participant shall receive for each matured Deferred Stock Unit an amount equal to the Fair Market Value of a share of Common Stock on the last day of the applicable Deferral Period (except as otherwise provided in Section 11). Upon payment in respect of a Deferred Stock Unit, such Unit shall be

canceled. In no event shall the number of Deferred Stock Units granted to any Participant in any Fiscal Year exceed 100,000, subject to adjustment as provided in Section 12.

(b) *Deferral Period.* Except as otherwise provided in Section 9(c), payments in respect of Deferred Stock Units shall be made only at the end of the Deferral Period applicable to such Units, the duration of which Deferral Period shall be fixed by the Administrator at the time of grant of such Deferred Stock Units. Except for limited circumstances determined by the Committee, including but not limited to, special recruitment or retention awards, death, Disability or Retirement, Deferral Periods for employee Participants shall not be less than three years; provided that, Deferral Periods may be less than three years but not less than one year if payment is conditioned on satisfaction of performance criteria. Except as determined by the Board, Deferral Periods for director participants shall end upon cessation of service as a director.

(c) *Termination of Service or Death.* Unless otherwise determined by the Administrator:

(i) in the case of Deferred Stock Units granted to employee Participants:

(A) If during a Deferral Period a Participant's employment with the Company or a Subsidiary is terminated for any reason other than Retirement, Disability or death, such Participant shall forfeit his or her Deferred Stock Units which would have matured or been earned at the end of such Deferral Period, unless the Committee determines in its discretion that such Deferred Stock Units should be paid at the end of such Deferral Period or, notwithstanding any other provision of the Plan, on some accelerated basis; and

(B) Unless otherwise specified by the Committee in the applicable Deferred Stock Units agreement, in the event a Participant's employment with the Company or a Subsidiary terminates during a Deferral Period due to Retirement, Disability, or death, such Participant, or his or her Designated Beneficiary in the event of death, shall receive payment in respect of such Participant's Deferred Stock Units which would have matured or been earned at the end of such Deferral Period, at such time and in such manner as if the Participant were still employed at the end of the Deferral Period or, notwithstanding any other provision of the Plan, on such accelerated basis as the Committee may determine.

(ii) Deferred Stock Units granted to Eligible Directors shall not be forfeited upon termination of service as a director.

(d) *Time of Payment of Deferred Stock Units.* Payment of Deferred Stock Units shall be made as soon as administratively feasible after such Awards become payable, but in no event shall payment be after the later of (1) the date that is 2 1/2 months after the close of the Participant's first taxable year in which the Deferred Stock Units become payable, or (2) the date that is 2 1/2 months after the close of the Company's fiscal year in which the Deferred Stock Units become payable.

(e) *Dividends*. No cash dividends or equivalent amounts shall be paid on outstanding Deferred Stock Units. However, the Administrator may specify that an Award will earn "Dividend Equivalents," i.e., an additional amount equal to the cash dividends, if any, which would have been paid during the period since the Award was granted with respect to issued and outstanding shares of Common Stock equal in number to the number of Deferred Stock Units being paid. The Administrator may also specify that any Dividend Equivalents will be paid in cash or shares of Common Stock at the time payment in respect of the Deferred Stock Units is made and/or that Dividend Equivalents shall be deemed to be reinvested in Common Stock. Dividend Equivalents which are deemed reinvested shall be converted into additional Deferred Stock Units and payment of the value of the Award shall include the value of such additional Units. No interest shall be paid on a Dividend Equivalent or any part thereof.

(f) *Director's Elective Deferral of Fees*. Eligible Directors may, under such terms as may be determined by the Board, elect to defer compensation otherwise payable to them and to receive such deferred compensation in the form of Deferred Stock Units.

10. Other Stock Awards

The Administrator shall have the authority in its discretion to grant to eligible Participants such other Awards that are denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, shares of Common Stock as deemed by the Administrator to be consistent with the purposes of the Plan, including, without limitation, purchase rights, shares awarded without restrictions or conditions, or securities or other rights convertible or exchangeable into shares of Common Stock. The Administrator shall determine the terms and conditions, if any, of any Other Stock Awards made under the Plan. In no event shall Other Stock Awards be granted to any Participant in any Fiscal Year with respect to more than 100,000 shares of Common Stock (i.e., have a value greater than the value of 100,000 shares of Common Stock), subject to adjustment as provided in Section 12.

11. Change in Control

Following or in connection with the occurrence of a Change in Control, the following shall or may occur as specified below, notwithstanding any other provisions of this Plan to the contrary:

(a) *Acceleration and Exercisability of Stock Options and Stock Appreciation Rights; Amount of Cash and/or Number of Shares for Stock Appreciation Rights*. All Stock Options and Stock Appreciation Rights shall become immediately exercisable in full for the period of their remaining terms automatically and without any action by the Administrator; provided, however, that the acceleration of the exercisability of any Stock Option or Stock Appreciation Right that has not been outstanding for a period of at least six months from its respective date of grant shall occur on the first day following the end of such six-month period. The amount of the payment to be made upon the exercise of a Stock Appreciation Right following a Change in Control shall be determined by multiplying (i) the number of Stock Appreciation Rights which the Participant exercises, by (ii) 100% of the amount by which

(A) the greater of (1) the highest tender or exchange offer price paid or to be paid for Common Stock pursuant to the offer associated with the Change in Control (such price to be determined by the Administrator from such source or sources of information as it shall determine including, without limitation, the Schedule 13D or an amendment thereto filed by the offeror pursuant to Rule 13d-1 under the Act), or the price paid or to be paid for Common Stock under an agreement associated with the Change in Control, as the case may be, and (2) the highest Fair Market Value of a share of Common Stock on any day during the sixty-day period immediately preceding the Exercise Date of the Stock Appreciation Rights, exceeds

(B) the Fair Market Value of a share of Common Stock on the date of grant of the Stock Appreciation Rights.

For purposes of determining the price paid or to be paid for Common Stock under clause (1) of paragraph (A) of the preceding formula, consideration other than cash forming part or all of the consideration for Common Stock paid or to be paid pursuant to the exchange offer or agreement associated with the Change in Control shall be valued at the higher of the valuation placed thereon by the Board of Directors or by the person making the offer or entering into the agreement with the Company.

(b) *Cash Surrender of Stock Options.* All or certain outstanding Stock Options may, at the discretion of the Board or Committee, be required to be surrendered by the holder thereof for cancellation in exchange for a cash payment for each such Stock Option. In the absence of Administrator action requiring the surrender of Stock Options, each holder of Stock Options may elect to surrender all or certain of his or her outstanding Options which are then exercisable for cancellation in exchange for a cash payment for each such Stock Option. In any case, the cash payment received for each share subject to the Stock Option shall be 100% of the amount, if any, by which the amount described in paragraph (A) of Section 11(a) exceeds the Fair Market Value of a share of Common Stock on the date of grant of the Stock Option. Such payments shall be due and payable immediately upon surrender to the Administrator for cancellation of appropriate Award agreements or other evidence in writing of the Participant's relinquishment of his or her rights to such Award or at such earlier date as the Administrator shall determine (but in no event earlier than the occurrence of a Change in Control) and shall be valued as if the Exercise Date were the date of receipt of said materials or such earlier date as the Administrator shall determine.

(c) *Reduction in Accordance with Plan.* The number of shares covered by Stock Options and Stock Appreciation Rights will be reduced on a one-for-one basis to the extent related Stock Options or Stock Appreciation Rights are exercised, or surrendered for cancellation in exchange for a cash payment, as the case may be, under this Section 11.

(d) *Lapse of Restrictions on Restricted Shares.* Unless the applicable Award agreement or an amendment thereto shall otherwise provide, all restrictions applicable to an outstanding award of Restricted Shares shall lapse immediately upon the occurrence of such Change in Control regardless of the scheduled lapse of such restrictions.

(e) *Accelerated Payment of Deferred Stock Units.* Unless otherwise provided in the applicable Award agreement or an amendment thereto, all outstanding Deferred Stock Units, together with any Dividend Equivalents for the period for which such Units have been outstanding, shall be paid in full notwithstanding that the Deferral Periods as to such Deferred Stock Units have not been completed. Such payment shall be in cash and shall be due and payable to Participants immediately upon the occurrence of a Change in Control in an amount in respect of each Deferred Stock Unit equal to the greater of (i) the highest tender or exchange offer price paid or to be paid for Common Stock pursuant to the offer associated with the Change in Control (such price to be determined by the Administrator from such source or sources of information as the Administrator shall determine including, without limitation, the Schedule 13D or an amendment thereto filed by the offeror pursuant to Rule 13d-1 under the Act) or the price paid or to be paid for Common Stock under an agreement associated with the Change in Control, as the case may be, and (ii) the highest Fair Market Value of a share of Common Stock on any day during the sixty-day period immediately preceding the Change in Control. For purposes of determining the price paid or to be paid for Common Stock under clause (i) of the preceding sentence, consideration other than cash forming part or all of the consideration for Common Stock paid or to be paid pursuant to the exchange offer or agreement associated with the Change in Control shall be valued at the higher of the valuation placed thereon by the Board of Directors or by the person making the offer or entering into the agreement with the Company.

12. Dilution and Other Adjustments

Notwithstanding any other provision of the Plan, in the event of any change in the outstanding shares of Common Stock by reason of any stock dividend or split, recapitalization, merger, consolidation, combination or exchange of shares, a rights offering to purchase Common Stock at a price substantially below fair market value, or other similar corporate change, an equitable adjustment shall be made so as to preserve, without increasing or decreasing, the value of Plan Awards and authorizations, in (i) the maximum number or kind of shares issuable or awards which may be granted under the Plan, (ii) the amount payable upon exercise of Stock Appreciation Rights, (iii) the number or kind of shares or purchase price per share subject to outstanding Stock Options, (iv) the number or value, or kind of shares which may be issued in payment of outstanding Stock Appreciation Rights, (v) the value and attributes of Deferred Stock Units, (vi) the number or kind of shares subject to Restricted Share Awards, (vii) the maximum number, kind or value of any Plan awards which may be awarded or paid in general or to any one employee, (viii) the performance-based events or objectives applicable to any Plan awards, (ix) any other aspect or aspects of the Plan or outstanding Awards made thereunder as specified by the Administrator, or (x) any combination of the foregoing. Such adjustments shall be made as determined by the Administrator and shall be conclusive and binding for all purposes of the Plan.

13. Miscellaneous Provisions

(a) *No Shareholder Rights.* Except as otherwise provided here, the holder of a Plan Award shall have no rights as a Company shareholder with respect thereto unless, and until the

date as of which, shares of Common Stock are issued upon exercise or payment in respect of such award.

(b) *Transferability.* Except as the Administrator shall otherwise determine in connection with determining the terms of Awards to be granted or shall thereafter permit, no Award or any rights or interests therein of the recipient thereof shall be assignable or transferable by such recipient except upon death to his or her Designated Beneficiary or by will or the laws of descent and distribution, and, except as aforesaid, during the lifetime of the recipient, an Award shall be exercisable only by, or payable only to such recipient or his or her guardian or legal representative. In no event shall an Award be transferable for consideration.

(c) *Award Agreements.* All Stock Options, Stock Appreciation Rights, Restricted Shares, Deferred Stock Units, and Other Stock Awards granted under the Plan shall be evidenced by agreements in such form and containing and/or incorporating such terms and conditions (not inconsistent with the Plan and applicable domestic and foreign law), in addition to those provided for herein, as the Administrator shall approve. More than one type of Award may be covered by the same agreement.

(d) *Securities Restrictions.* No shares of Common Stock shall be issued, delivered or transferred upon exercise or in payment of any Award granted hereunder unless and until all legal requirements applicable to the issuance, delivery or transfer of such shares have been complied with to the satisfaction of the Administrator, and the Company, including, without limitation, compliance with the provisions of the Securities Act of 1933, the Act and the applicable requirements of the exchanges on which the Company's Common Stock may, at the time, be listed. The Administrator and the Company shall have the right to condition any issuance of shares of Common Stock made to any Participant hereunder on such Participant's undertaking in writing to comply with such restrictions on his or her subsequent disposition of such shares as the Administrator and/or the Company shall deem necessary or advisable as a result of any applicable law, regulation or official interpretation thereof, and certificates representing such shares may be legended to reflect any such restrictions.

(e) *Taxes.* The Company shall have the right to deduct from all Awards hereunder paid in cash any federal, state, local or foreign taxes required by law to be withheld with respect to such cash awards. In the case of Awards to be distributed in Common Stock, the Company shall have the right to require, as a condition of such distribution, that the Participant or other person receiving such Common Stock either (i) pay to the Company at the time of distribution thereof the amount of any such taxes which the Company is required to withhold with respect to such Common Stock or (ii) make such other arrangements as the Company may authorize from time to time to provide for such withholding including without limitation having the number of the units of the award cancelled or the number of the shares of Common Stock to be distributed reduced by an amount with a value equal to the value of such taxes required to be withheld.

(f) *No Employment Right.* No employee or director 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 employee any right to be

retained in the employ of the Company or a Subsidiary or any director any right to continue as a director of the Company. All Company and Subsidiary employees who have or may receive Awards under this Plan are employed, except to the extent provided by law, at the will of the Company or such Subsidiary and in accord with all statutory provisions.

(g) *Stock to be Used.* Distributions of shares of Common Stock upon exercise, in payment or in respect of Awards made under this Plan may be made either from shares of authorized but unissued Common Stock reserved for such purpose by the Board or from shares of authorized and issued Common Stock reacquired by the Company and held in its treasury, as from time to time determined by the Committee, the Board, or pursuant to delegations of authority from either. The obligation of the Company to make delivery of Awards in cash or Common Stock shall be subject to currency or other restrictions imposed by any government.

(h) *Expenses of the Plan.* The costs and expenses of administering this Plan shall be borne by the Company and not charged to any award or to any employee, director or Participant receiving an Award. However, the Company may charge the cost of any Awards that are made to employees of Participating Subsidiaries, including administrative costs and expenses related thereto, to the respective Participating Subsidiaries by which such persons are employed.

(i) *Plan Unfunded.* This Plan shall be unfunded. The Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Award under this Plan and payment of awards shall be subordinate to the claims of the Company's general creditors.

(j) *Section 409A of the Code.*

(i) If any provision of the Plan or an Award contravenes any regulations or Treasury guidance promulgated under Code Section 409A agreement or could cause an Award to be subject to the interest and penalties under Code Section 409A, such provision of the Plan or Award shall be modified to maintain, to the maximum extent practicable, the original intent of the applicable provision without violating the provisions of Code Section 409A. Moreover, any discretionary authority that the Administrator may have pursuant to the Plan shall not be applicable to an Award that is subject to Code Section 409A to the extent such discretionary authority will contravene Section 409A or the regulations or guidance promulgated thereunder.

(ii) Notwithstanding any provisions of this Plan or any Award agreement granted hereunder to the contrary, no acceleration shall occur with respect to any Award (including awards granted prior to January 26, 2006) to the extent such acceleration would cause the Plan or an Award granted hereunder to fail to comply with Code Section 409A.

(iii) Notwithstanding any provisions of this Plan or any applicable Award agreement to the contrary, no payment shall be made with respect to any Award granted under this Plan (including Awards granted prior to January 26, 2006) to a "specified

employee” (as such term is defined for purposes of Code Section 409A) prior to the six-month anniversary of the employee’s separation of service to the extent such six-month delay in payment is required to comply with Code Section 409A.

(k) *Governing Law.* This Plan shall be governed by the laws of the Commonwealth of Pennsylvania and shall be construed for all purposes in accordance with the laws of said Commonwealth except as may be required by the General Corporation Law of Delaware or by applicable federal law.

14. Definitions

In addition to the 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.

“Award” shall mean a grant of incentive compensation under the Plan in the form of Stock Options, Restricted Shares, Deferred Stock Units, Stock Appreciation Rights or Other Stock Awards.

“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 or trust 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 20% 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 20% 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 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 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.

(iv) *Code Section 409A Limitation*. Notwithstanding the foregoing or anything in the Plan to the contrary, with respect to an Award that is subject to Code Section 409A, no event shall constitute a Change in Control for purposes of the Plan unless such event also constitutes a “change in ownership”, “change in effective control”, or “change in the ownership of a substantial portion of the Company’s assets” as defined under Section 409A.

“Code” shall mean the Internal Revenue Code of 1986, and regulations thereunder, as amended from time to time, or any successor thereto. References to particular Code sections shall include successor provisions.

“Designated Beneficiary” shall mean the person or persons, if any, last designated as such by the Participant on a form filed by him or her with the Company in accordance with such procedures as the Administrator shall approve, or, if none, his or her estate.

“Disability” shall mean permanent and total disability of an employee or director participating in the Plan as determined by the Administrator in accordance with uniform principles consistently applied, upon the basis of such evidence as the Administrator deems necessary and desirable. Notwithstanding the foregoing, with respect to an Award that is subject to Code Section 409A, no condition shall constitute a “Disability” for purposes of the Plan unless such condition also constitutes a disability as defined under Section 409A.

“Fair Market Value” of a share of Common Stock of the Company on any date shall mean an amount equal to the mean of the high and low sale prices for such date on the New York Stock Exchange, as reported on the composite transaction tape, or on such other exchange as the Administrator may determine. If there are no such sale price quotations for the date as of which Fair Market Value is to be determined, the previous trading date prior to such date for which there are reported sales prices on the composite transaction tape. If there are no such sale price quotations on or within a reasonable period both before and after the date as of which Fair Market Value is to be determined, then the Administrator shall in good faith determine the Fair Market Value of the Common Stock on such date. Notwithstanding the foregoing, Fair Market Value may be determined as of a date not more than two trading days prior to the date of grant or exercise in order to facilitate compliance with the reporting requirements under Section 16 of the Act.

“Fiscal Year” shall mean the twelve-month period used as the annual accounting period by the Company and shall be designated according to the calendar year in which such period ends.

“Incentive Stock Option” shall mean a Stock Option designated by the Committee as an Incentive Stock Option which is intended to comply with the requirements in Subsection (b) of Code Section 422 so as to be eligible for preferential income tax treatment.

“Nonstatutory Stock Option” shall mean a Stock Option which is not eligible for preferential tax treatment under Code Section 421(a).

“Participant” shall mean, as to any Award granted under this Plan and for so long as such Award is outstanding, the employee or director to whom such Award has been granted.

“Participating Subsidiary” shall mean any Subsidiary designated by the Administrator 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

(a) in the case of an employee Participant, separating from service with the Company or a Subsidiary, on or after a customary retirement age for the Participant’s location, with the right to begin receiving immediate pension benefits under the Company’s Pension Plan for Salaried Employees or under another pension plan sponsored or otherwise maintained by the Company or a Subsidiary for its employees, in either case as then in effect or, in the absence of such pension plan being applicable to any Participant, as determined by the Committee in its sole discretion; and

(b) in the case of an Eligible Director, (i) resigning from serving as a director, failing to stand for re-election as a director or failing to be re-elected as a director after at least six (6) full years of service as a director of the Company. More than six (6) months’ service during any twelve (12) month period after a director’s first election by the shareholders to the Board shall be considered as a full year’s service for this purpose.

“Subsidiary” shall mean any domestic or foreign corporation, partnership, association, joint stock company, trust or unincorporated organization “affiliated” with the Company, that is, directly or indirectly, through one or more intermediaries, “controlling”, “controlled by” or “under common control with”, the Company. “Control” for this purpose means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, contract or otherwise.

15. Amendments and Termination; Requisite Shareholder Approval

The Board may at any time terminate or from time to time amend or suspend the Plan in whole or in part in such respects as the Board may deem advisable in order that Awards granted

thereunder shall conform to any change in the law, or in any other respect which the Board may deem to be in the best interests of the Company; provided, however, that no amendment of the Plan shall be made without shareholder approval if shareholder approval of the amendment is at the time required by applicable law, or by the rules of the New York Stock Exchange or any stock exchange on which Common Stock may be listed.

The Board shall have the power to amend the Plan in any manner contemplated by Section 12 or deemed necessary or advisable for Awards granted under the Plan to qualify for the exemption provided by Rule 16b-3 (or any successor rule relating to exemption from Section 16(b) of the Act), to qualify as “performance-based” compensation under Code Section 162(m), or to comply with applicable law including Code Section 409A, and any such amendment shall, to the extent deemed necessary or advisable by the Board, be applicable to any outstanding Awards theretofore granted under the Plan notwithstanding any contrary provisions contained in any Award agreement. In the event of any such amendment to the Plan, the holder of any Award outstanding under the Plan shall, upon request of the Board and as a condition to the exercisability thereof, execute a conforming amendment in the form prescribed by the Board to any Award agreement relating thereto within such reasonable time as the Board shall specify in such request.

With the consent of the Participant affected, the Board may amend outstanding agreements evidencing Plan Awards in a manner not inconsistent with the terms of the Plan; provided that, no outstanding Stock Option (or Stock Appreciation Right) will have its exercise price reduced, or will be cancelled and replaced with a new Stock Option (or Stock Appreciation Right) with a lower exercise price where the economic effect would be the same as reducing the exercise price of the cancelled Stock Option (or Stock Appreciation Right) without shareholder approval. Notwithstanding anything contained in this Section 15 or in any other provision of the Plan, unless required by law, no action contemplated or permitted by this Section 15 shall adversely affect any rights of Participants or obligations of the Company to Participants with respect to any award theretofore made under the Plan without the consent of the affected Participant.

16. Effective Date, Amendment and Restatement, and Term of the Plan

(a) This Plan, previously denominated the “Air Products and Chemicals, Inc. 1990 Long-Term Incentive Plan,” became effective for the Fiscal Year commencing October 1, 1989 for awards to be made for the Fiscal Year commencing October 1, 1989 and for Fiscal Years thereafter and was continued in effect indefinitely until terminated, amended, or suspended as permitted by its terms, following approval by a majority of those present at the January 26, 1989 annual meeting of shareholders of the Company and entitled to vote thereon. Following approval by the holders of a majority of the shares of Common Stock of the Company present at the January 25, 1996 annual meeting of shareholders of the Company and entitled to vote thereon, the Plan was amended, restated, denominated the “Air Products and Chemicals, Inc. 1997 Long-Term Incentive Plan”, and continued in effect indefinitely for awards made for the Fiscal Year commencing October 1, 1996 and for Fiscal Years thereafter, until terminated, amended, or suspended as permitted by its terms. Following approval by the holders of a majority of the

shares of Common Stock of the Company present at the January 25, 2001 annual meeting of shareholders of the Company and entitled to vote thereon, the Plan was amended, restated, denominated the "Air Products and Chemicals, Inc. Long-Term Incentive Plan", and continued in effect indefinitely for awards made for the Fiscal Year commencing October 1, 2001 and for Fiscal Years thereafter, until terminated, amended, or suspended as permitted by its terms. Following approval by the holders of a majority of the shares of Common Stock of the Company present at the January 23, 2003 Annual Meeting of Shareholders of the Company and entitled to vote thereon, the Plan was amended, restated, and continued in effect for awards made on or after January 23, 2003, until terminated, amended, or suspended as permitted under Section 15.

(b) The Plan, as amended and restated herein, was adopted by the Board of Directors on November 17, 2005 subject to the approval by a majority of the shareholders present and entitled to vote thereon at the January 26, 2006 Annual Meeting of Shareholders of the Company and is continued in effect for Awards made on or after January 26, 2006, until terminated, amended, or suspended as permitted under Section 15; provided, however, that no Award shall be granted under the Plan on or after January 26, 2016.

*** Denotes certain parts that have not been disclosed and have been filed separately with the Securities and Exchange Commission and are subject to a request for confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934.

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

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 *** 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 *** 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 *** represented by a certain Promissory Note dated July 1, 2005, in the original principal amount of ***.

“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 *** in consideration of his past efforts on behalf of the Company. For avoidance of doubt, *** 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 *** 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” *** .

“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)**.

“*** Options” means the Company’s outstanding options *** .

“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 *** (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 *** .

"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)**.

“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 *** 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 *** (the “Closing Payment”) to the Stockholders in the respective amounts set forth on **Schedule 2.3**;

(ii) delivery of *** 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 *** 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 *** (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 *** (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 *** 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) *** 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 *** 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 *** 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 *** 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 *** (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, ***.

(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 *** (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 — ***;

(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 — ***;

(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 — ***; 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 — ***;

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	***	***
25-60	***	***
After month 60	***	***

(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 (3rd) anniversary of the Closing Date — any claims for indemnification under **Section 10.1(c)**; (c) the fifth (5th) 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. *** 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) *** 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) *** 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) *** shall be jointly and severally liable for each such Stockholder's Indemnification Share with respect to all indemnification obligations under this Agreement, (y) *** shall be jointly and severally liable for each such Stockholder's Indemnification Share with respect to all indemnification obligations under this Agreement, and (z) *** shall be jointly and severally liable for each such Stockholder's Indemnification Share and the Indemnification Share of *** 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) *** 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: ***
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: _____

By: _____
Name: ***
Title: Trustee

FIRST CITIZENS STATE BANK cust, f/b/o ***

By: _____
*** Attorney-in-Fact

SBKGP, INC.

By: _____
*** President

NORTHSTAR MEZZANINE
PARTNERS, III L.P.

By: Northstar Capital, LLC, its general partner

By: _____
*** 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 ***

By: _____
*** Attorney-in-Fact

SEIDLER EQUITY PARTNERS, L.P.

By: Seidler Equity Managers, LLC,
General Partner

By: _____
*** Director

SEIDLER NORTH, L.P.

By: _____
*** 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 PARTICIPATION
INVESTORS

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.

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.

ANTARES CAPITAL CORPORATION

By: _____
Name: _____
Title: _____

Attachments:

- Exhibit A** (Building Purchase Agreement)
- Exhibit B-1** (Form of *** Agreement)
- Exhibit B-2** (Form of *** 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**

AIR PRODUCTS AND CHEMICALS, INC., AND SUBSIDIARIES
COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES
(Unaudited)

	Year Ended 30 September					Six Months Ended 31 Mar
	2001	2002	2003	2004	2005	2006
Earnings:						
Income from continuing operations	\$ 465.6	\$ 525.4	\$ 400.2	\$ 604.1	\$ 711.7	\$ 384.7
Add (deduct):						
Provision for income taxes	196.2	247.5	154.0	232.5	269.4	149.8
Fixed charges, excluding capitalized interest	226.5	150.3	150.6	149.3	143.1	68.9
Capitalized interest amortized during the period	7.1	7.2	6.5	9.1	6.4	3.4
Undistributed earnings of less-than-fifty-percent-owned affiliates	(34.3)	(42.8)	(2.6)	(31.1)	(30.1)	(27.3)
Earnings, as adjusted	<u>\$ 861.1</u>	<u>\$ 887.6</u>	<u>\$ 708.7</u>	<u>\$ 963.9</u>	<u>\$ 1,100.5</u>	<u>\$ 579.5</u>
Fixed Charges:						
Interest on indebtedness, including capital lease obligations	\$ 201.6	\$ 126.4	\$ 126.9	\$ 124.4	\$ 113.8	\$ 50.7
Capitalized interest	8.8	11.7	6.2	7.9	14.9	11.8
Amortization of debt discount premium and expense	5.6	2.2	2.1	1.4	4.1	4.9
Portion of rents under operating leases representative of the interest factor	19.3	21.7	21.6	23.5	25.3	13.3
Fixed charges	<u>\$ 235.3</u>	<u>\$ 162.0</u>	<u>\$ 156.8</u>	<u>\$ 157.2</u>	<u>\$ 158.1</u>	<u>\$ 80.7</u>
Ratio of Earnings to Fixed Charges (1):	<u>3.7</u>	<u>5.5</u>	<u>4.5</u>	<u>6.1</u>	<u>7.0</u>	<u>7.2</u>

(1) The ratio of earnings to fixed charges is determined by dividing earnings, which includes income 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 P. Jones III, 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
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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: 28 April 2006

/s/ John P. Jones III

John P. Jones III

Chairman, 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
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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: 28 April 2006

/s/ Paul E. Huck

Paul E. Huck

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 2006, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, John P. Jones III, 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: 28 April 2006

/s/ John P. Jones III

John P. Jones III
Chief Executive Officer

/s/ Paul E. Huck

Paul E. Huck
Chief Financial Officer