Model Stock Purchase Agreement, Second Edition

Fact Pattern

The following facts, and certain of Buyer's intentions with respect to the acquisition, are assumed as background for the *Model Stock Purchase Agreement*:

Sellers. The target (the "Company") is a closely held corporation with two principal shareholders (the "Principal Shareholders"). Both have been active in the business. One will remain so after the closing (the "Continuing Principal Shareholder"), and the other will retire. There are also eight other shareholders who are employees of the Company or relatives of the Principal Shareholders and who hold, in the aggregate, 10 % of the issued and outstanding stock of the Company. The employee shareholders have been involved in the business, but not at the top decision-making levels. The family shareholders have never been involved in running the business. All the shareholders (collectively, "Sellers") will sign the agreement.

Capitalization of the Company. Sellers collectively own all the outstanding common stock of the Company. The Company has no other capital stock, options, warrants, or securities convertible into capital stock outstanding.

Subsidiaries. The Company has two wholly owned subsidiaries.

Buyer. Buyer is a strategic buyer (one that anticipates the Company's business will complement or otherwise fit into its own long-range business plans and objectives), but does not intend to be active in the day-to-day operations of the Company's business.

Nature of the Company's Business. The Company is a manufacturing concern with a full range of business activities, including the design and manufacture of products and the furnishing of advisory and consulting services to customers.

Purchase Price. The purchase price will be a combination of cash and nonnegotiable promissory notes. Sellers have agreed that Buyer will have the right to offset any claims for indemnification against amounts due under the promissory notes.

Real Estate and Environmental Issues. The business is conducted from two sites. The principal site is owned by the Company outright and the other is leased from an unrelated third party. These are industrial properties, but neither site has been the subject of any governmental investigation or action.

Taxes. The Company is a C corporation for tax purposes.

Regulatory Matters. The closing will be subject to compliance with the Hart-Scott-Rodino Antitrust Improvements Act and with any other applicable laws and regulations.

Liens. The stock of the Company will be conveyed free and clear of all encumbrances. The assets of the Company and its subsidiaries are free and clear of all encumbrances, except certain liens arising by operation of law in the ordinary course of business or identified in Sellers' Disclosure Letter.

Licensing and Intellectual Property. A number of the Company's products are manufactured pursuant to licensing agreements with unrelated third parties. These licensing agreements are not assignable (including an indirect transfer by way of a change in control of the Company), without the respective licensor's consent. The Company has patented a number of the products it manufactures, and descriptive literature relating to the products is subject to copyright protection. Certain trademarks of the Company have been registered.

Other Consents. In addition to the licensing agreements, a major supply contract, a capital lease of a major item of equipment, and the real property lease require consents of the other parties for any change in control of the Company and such consents will be a condition to closing.

Employee Benefits and Pension Plans. The Company has employee benefit, vacation, health, bonus, and other similar plans, including a 401(k) plan.

Post-Closing Adjustment. Buyer will prepare a balance sheet of the Company as of the closing date and the purchase price will be adjusted (up or down), on a dollar-for-dollar basis, based on the difference between shareholders' equity as of the closing date and shareholders' equity reflected on the interim balance sheet.

Employment and Noncompetition Agreements. The Continuing Principal Shareholder will sign an employment agreement. All Sellers will be bound by the noncompetition provisions of the Model Agreement.

Sellers' Indemnification; Escrow. Buyer will require that all Sellers jointly and severally indemnify Buyer with respect to their representations and obligations under, and any certificates delivered by them pursuant to, the Model Agreement. A portion of the sales proceeds will be held in escrow by a third party escrow agent to secure Sellers' indemnification obligations.