

**REPRESENTATIONS AND WARRANTIES**  
**IN A BUSINESS PURCHASE AGREEMENT**

**By: Stuart M. Bordman, Esq.**

I. EXAMPLES OF REPRESENTATIONS AND WARRANTIES.

- A. Lack of restrictions on transfer.
- B. Organizational matters.
- C. Capitalization.
- D. Title to equipment and real estate.
- E. Litigation.
- F. Intellectual property.
- G. Financial statements.
- H. Collectability of accounts receivable.
- I. Tax liabilities, audits and related matters.
- J. Personnel matters.
- K. Labor practices.
- L. Benefit plans.
- M. Events since the last balance sheet.
- N. Environmental matters.
- O. Insurance.
- P. Compliance with governmental matters including licenses permits etc.

- Q. Customers and suppliers.
- R. Foreign Corrupt Practices Act.
- S. Inventory.
- T. Product liabilities.

II. REPRESENTATIONS AND WARRANTIES REGARDING FINANCIAL STATEMENTS AND TAXES.

- A. The Financial Statements attached as Exhibit A present fairly in all material respects the financial position of the Company and each Subsidiary as of the dates designated therein and the results of operations and cash flows for the periods designated therein, and were prepared in accordance with GAAP (except as disclosed in the notes to those financial statements). The Financial Statements reflect the consistent application of such accounting principles throughout the periods involved.

The Interim Financial Statements attached as Exhibit B were prepared for management use on an unadjusted accrual basis. The Interim Financial Statements present fairly in all material respects the financial position of the Company and its Subsidiaries as of the date of the Interim Financial Statement.

- B. **Schedule B** sets forth a listing of all outstanding trade accounts receivable as of the Effective Date. All trade accounts receivable of the Company and any Subsidiary reflected on the Financial Statements represent valid obligations arising from sales actually made or services actually performed in the Ordinary Course of Business. Except as set forth on **Schedule B** and subject to any reserve shown on the Financial Statements or the Closing Financial Statements, each of the accounts receivable will be collected in full, without any setoff, within six (6) months of the Closing Date.

- C. The Company has no liabilities of any kind that are required to be reflected on a balance sheet prepared in accordance with GAAP, other than (i) liabilities that have arisen after the Balance Sheet Date in the Ordinary Course of Business which would not individually or in the aggregate have a material adverse impact on the Business as a whole, (ii) to the extent and for the amount reflected as a liability on any of the Financial Statements or the Closing Financial Statements.
- D. The Company and each Subsidiary has duly and timely filed all Tax Returns required to be filed prior to the Closing Date and such Tax Returns are true, correct and complete in all material respects. The Company and each Subsidiary has complied in all material respects with all applicable Legal Requirements relating to the withholding of Taxes and has duly and properly withheld from salaries, wages and other compensation, and paid over to the appropriate Governmental Bodies, all amounts required to be so withheld and paid over for all periods. The Company and each Subsidiary has collected all sales, use or similar Taxes required to be collected, and has remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Bodies.
- E. Neither the Company nor any Subsidiary has waived any statute of limitations in respect of any Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.
- F. None of the Tax Returns of the Company or any Subsidiary is currently the subject of an audit by a Governmental Body. **Schedule C** contains a list of all audits of all Tax Returns of the Company and any Subsidiary during the three (3) years immediately preceding the Closing Date. There are no Liens for Taxes upon any of the assets of the Company or any Subsidiary.

III. REPRESENTATIONS REGARDING BASKET AMOUNT, MAXIMUM AMOUNT OF INDEMNIFICATION AND LIMITATIONS NOT APPLICABLE TO CERTAIN REPRESENTATIONS.

- A. Notwithstanding anything contained in this Agreement to the contrary, the Seller shall not be obligated to indemnify any Buyer Indemnified Party with respect to any losses pursuant to Section A above, unless and until the aggregate losses from all claims with respect thereto exceed, in the aggregate, One Hundred Thousand Dollars (\$100,000) (the "Basket Amount") and then indemnification hereunder shall be only to the extent such losses exceed the Basket Amount.
- B. Notwithstanding anything contained in this Agreement to the contrary, but subject in all respects to Section (c), below, in no event shall the Seller's aggregate obligation to provide indemnification for losses, exceed forty percent (40%) of the Purchase Price.
- C. Notwithstanding anything contained in this Agreement to the contrary, the limitations set forth in Section (b) shall not apply to limit the indemnification to which the Buyer may be entitled for Losses arising from any breach of the Fundamental Representations provided, however, that in no event shall Seller's obligation to provide indemnification for losses exceed the final Purchase Price received by Seller.