

**MEMORANDUM OF UNDERSTANDING**

Between:

**THE UNDERSIGNED:**

1. **[Name of the Vendor]**, having its registered office in [\_\_\_\_] and its principal place of business in [\_\_\_\_], hereinafter referred to as "[\_INTERESTED BUYER\_\_\_\_]", duly represented by [\_\_\_\_];
2. **[name of the purchaser]**, having its registered office in [\_\_\_\_] and its principal place of business in [\_\_\_\_], hereinafter referred to as "[\_INTERESTED SELLER\_\_\_\_]", duly represented by [\_\_\_\_];
3. **[name of the company]**, having its registered office in [\_\_\_\_] and its principal place of business in [\_\_\_\_], hereinafter referred to as "**the Company**", duly represented by [\_\_\_\_],
4. [\_\_Manager/ shareholder\_\_], residing at [\_\_\_\_], [\_\_\_\_], hereinafter referred to as: "**manager**";

**WHEREAS:**

- [\_INTERESTED BUYER\_\_\_\_], as a company of the [\_\_\_\_]-group, is a developer and manufacturer of certain machinery/ systems and markets its printing systems in many countries all over the world;
- [\_INTERESTED SELLER\_\_\_\_] is engaged in the research, development, marketing, distribution and servicing of certain;
- [\_INTERESTED BUYER\_\_\_\_] intends to acquire [\_Company\_\_\_\_] by taking over the share capital of [\_Company\_\_\_\_] and other subsidiaries of [\_INTERESTED SELLER\_\_\_\_];
- manager is the owner of the majority of the shares of [\_INTERESTED SELLER\_\_\_\_] and intends to sell them.

*Now, therefore,* the Parties to this Memorandum of Understanding (MoU) agree as follows:

**1. Purpose of negotiations and schedule**

- 1.1 The Parties intend to enter into negotiations immediately (hereinafter called "Negotiations") for the purpose of concluding a contract (hereinafter called "Contract") on the acquisition of all issued shares of the share capital of [\_\_Company\_\_] and its subsidiaries (hereinafter called "Subject of the Contract").
- 1.2 The Parties intend to take the following measures in accordance with the time schedule as [\_\_interested seller\_\_] forth in Annex 1.
- 1.3 The Parties shall negotiate in a later phase – but not later than [\_\_\_\_date\_\_\_\_] the basic principles for the determination of the purchase price.
- 1.4 [\_\_INTERESTED BUYER \_\_] has been informed by [\_\_manager\_\_] of his view concerning the purchase price of the Subject of the Contract, i.e.

Net as [\_\_interested seller\_\_] value (as it will appear on the  
\_\_\_\_consolidated balance sheet;  
plus [\_\_\_\_\_]

[\_\_manager\_\_\_\_\_] has been informed by [\_\_INTERESTED BUYER\_\_] and [\_\_\_\_INTERESTED SELLER\_\_\_\_] that, whatever formula will be used, the purchase consideration should reflect the real value of the company taking into account its net as [\_\_INTERESTED SELLER\_\_] value and earning capacity.

- 1.4 During the validity of the MoU, manager shall continue to manage the Company in conformity with [\_\_INTERESTED SELLER\_\_]'s strategy and objective. [\_\_INTERESTED SELLER\_\_] shall be able to conclude any sales and/or distribution agreements even with competitors of [\_\_\_\_INTERESTED BUYER\_\_\_\_]. In case of the latter, manager and [\_\_INTERESTED SELLER\_\_] are obligated to inform [\_\_INTERESTED BUYER\_\_] without undue delay of this fact.

**2. Legally binding Provisions**

- 2.1 The Parties shall not be legally committed to concluding the Contract.
- 2.2 Each Party shall bear its own – internal and external – costs connected with the Negotiations and the other measures mentioned in section 1.2 and 2.8.

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- 2.3 Either of the Parties shall be entitled to terminate the Negotiations at any time without stating the reasons by issuing a written notification to this effect to the other Party.
- 2.4 In the event no Contract is concluded or the time schedule mentioned in section 1.2 is not observed, neither of the parties shall have ground for any claim (e. g. – without limitation – claims for damages, cost-reimbursement and the like) against the other for failure to conclude the Contract or to observe the time schedule. Furthermore, no Party shall be liable in the event information is not provided or is not provided in time.
- 2.5 [\_INTERESTED SELLER\_\_\_] and manager shall hold no discussions or negotiations with any third party on the subject of the Contract or any other equivalent contract until the end of [\_\_\_\_\_date\_\_\_\_\_]
- 2.6 Each Party shall treat the Negotiations and the contents of this MoU as confidential, unless the other Party gives its prior written consent to its (or any part thereof) disclosure. [\_INTERESTED SELLER\_\_\_]/ manager are entitled to disclose this MoU to the shareholders of [\_INTERESTED SELLER\_\_\_] and to its major banks.
- 2.7 Manager and [\_INTERESTED SELLER\_\_\_] shall endeavour to provide the other Parties with all information necessarily required for the purpose of Negotiations.
- 2.8 Each Party shall use any Confidential Information which is received from the other Party during the course of discussions or Negotiations, only for the purposes for which it has been provided, and shall prevent third parties from gaining access to it and treat it in the same way as its own business secrets.  
Confidential Information may only be disclosed to the Party's directors, officers or employees who need to know such Confidential Information and who agreed to be bound by the provisions of this MoU.

The term "Confidential Information" also includes without limitation trade secrets, commercial and financial information, inventions, know-how, practical experience, methodology, technical and scientific data, specifications and formulae, drawings, designs or software and which each Party has the right to and deems necessary to disclose. Confidential Information will be disclosed either in writing, by delivery of items, documents, listings by initiation of access to information, such as may be contained in a data base, or by oral and/or visual presentation. If information is disclosed orally or otherwise in a non-tangible form it shall be identified as confidential at the time of its disclosure and a written memorandum identifying such information in summary forms and stating the same to be confidential shall be deliv-

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ered to the recipient within thirty (30) days of such disclosure”.

This confidentiality obligation shall not apply to information which is generally known, which can be shown to have been produced by a third party which is independent of the recipient, or which has been acquired from a third party without non disclosure obligation to the disclosing Party or which is independently developed by the recipient. This obligation shall likewise not apply if a Party is required by statutory regulations to reveal any of the information it has obtained or which is independently developed by the recipient. This obligation shall survive for a period of [\_\_\_\_] years after this MoU has lost its force.

For a period of two years after signature of this MoU a Party shall not, without the prior written consent of the other Party, directly or indirectly, and whether alone or jointly with or through any other person solicit or endeavour to entice away any employee of the other Party.

- 2.9 Any disputes that may arise in Connection with this MoU or its validity shall exclusively and finally be settled under the arbitration rules (hereinafter referred to as “Rules”) of the International Chamber of Commerce, Paris, by three arbitrators appointed in accordance with the Rules. Seat of arbitration shall be [\_\_\_\_]. The procedural law of this place shall apply where the Rules are silent.

The language to be used in the arbitration procedure shall be English. The substantive law governing this MoU shall be that of [\_\_\_\_\_].

- 2.10 Additions and amendments to this MoU shall only be valid if made in writing. The requirement of the written form can only be waived in writing.
- 2.11 This MoU shall become effective upon signature by all Parties. It shall terminate when the Contract has been concluded or in the event of the Negotiations being terminated but in no case later after than expiration of 7 months after signature of this MoU. Sections 2.2, 2.4, 2.6, 2.8, 2.9, 2.11 shall survive termination.
- 2.12 This MoU supersedes and replaces all previous agreements between the Parties, either in oral or in writing, especially the “Agreement for Exchange of Confidential Information” as of [\_\_\_\_\_].

This declared and signed at [\_\_\_\_\_], on [\_\_\_\_\_]

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**Annex 1**

1. Time Schedule

The present intention of the Parties with regard to the Negotiations is to consider the following time schedule/periods:

- discussions
- Letter of Intent
- Due Diligence (if necessary)
- Evaluation by working-groups
- Negotiations on Contract
- Conclusion of the Contract
- Closing

The Parties will endeavour to reduce the duration of the Negotiations.

2. Prerequisite Measures/Information

[\_\_\_\_\_]