UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

# FORM 10-Q

(MARK ONE)

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2002

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 001-15149

Lennox International Inc.

Incorporated pursuant to the Laws of the State of DELAWARE

Internal Revenue Service Employer
Identification No. 42-0991521

2140 Lake Park Blvd., Richardson, Texas 75080
(972) 497-5000

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 /X/ NO / /

As of November 1, 2002, the number of shares outstanding of the registrant's common stock, par value $.01 per share, was 57,777,159.



LENNOX INTERNATIONAL INC.

INDEX



PART I-- FINANCIAL INFORMATION

Item 1. Financial Statements.

LENNOX INTERNATIONAL INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
As of September 30, 2002 and December 31, 2001
(In thousands, except share data)

ASSETS

| | September 30, 2002 | December 31, 2001 |
|---|---|---|
| | (Unaudited) | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | $ 55,925 | $ 34,393 |
| Accounts and notes receivable, net | 364,252 | 291,485 |
| Inventories | 250,340 | 281,170 |
| Deferred income taxes | 45,281 | 42,662 |
| Other assets | 62,725 | 63,655 |
| Total current assets | 778,523 | 713,365 |
| PROPERTY, PLANT AND EQUIPMENT, net | 238,017 | 291,531 |
| GOODWILL, net | 418,003 | 704,713 |
| OTHER ASSETS | 146,954 | 84,379 |
| TOTAL ASSETS | $ 1,581,497 | $ 1,793,988 |

LIABILITIES AND STOCKHOLDERS' EQUITY

| | | |
|---|---|---|
| CURRENT LIABILITIES: | | |
| Short-term debt | $ 24,778 | $ 23,701 |
| Current maturities of long-term debt | 15,278 | 28,895 |
| Accounts payable | 261,614 | 242,534 |
| Accrued expenses | 278,620 | 249,546 |
| Income taxes payable | 35,387 | 9,870 |
| Total current liabilities | 615,677 | 554,546 |
| LONG-TERM DEBT | 369,992 | 465,163 |
| DEFERRED INCOME TAXES | 876 | 673 |
| POSTRETIREMENT BENEFITS, OTHER THAN PENSIONS | 13,642 | 14,014 |
| OTHER LIABILITIES | 111,467 | 103,301 |
| Total liabilities | 1,111,654 | 1,137,697 |
| MINORITY INTEREST | 1,412 | 1,651 |
| COMMITMENTS AND CONTINGENCIES | | |
| STOCKHOLDERS' EQUITY: | | |
| Preferred stock, $.01 par value, 25,000,000 shares authorized, no shares issued or outstanding | -- | -- |
| Common stock, $.01 par value, 200,000,000 shares authorized,62,589,638 shares and 60,690,198 shares issued for 2002 and 2001, respectively | 626 | 607 |
| Additional paid-in capital | 396,755 | 372,877 |
| Retained earnings | 171,780 | 383,566 |
| Accumulated other comprehensive loss | (59,516) | (68,278) |
| Deferred compensation | (10,498) | (3,710) |
| Treasury stock, at cost, 3,009,656 and 2,980,846 shares for 2002 and 2001, respectively | (30,716) | (30,422) |
| Total stockholders' equity | 468,431 | 654,640 |
| TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY | $ 1,581,497 | $ 1,793,988 |

The accompanying notes are an integral part of these consolidated financial statements.



---

LENNOX INTERNATIONAL INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
For the Three Months and Nine Months Ended September 30, 2002 and 2001
(Unaudited, in thousands, except per share data)

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2002 | 2001 | 2002 | 2001 |
| NET SALES (Note 14) | $818,844 | $825,060 | $2,321,403 | $2,386,564 |
| COST OF GOODS SOLD (Notes 12 and 14) | 562,737 | 575,664 | 1,590,605 | 1,665,036 |
| Gross profit | 256,107 | 249,396 | 730,798 | 721,528 |
| OPERATING EXPENSES: | | | | |
| Selling, general and administrative expense (Note 14) | 205,672 | 208,140 | 618,275 | 644,252 |
| Restructurings (Note 12) | 6,742 | -- | 8,617 | 34,631 |
| (Gains) losses and other expenses (Note 8) | (8,931) | -- | (8,931) | -- |
| Income from operations | 52,624 | 41,256 | 112,837 | 42,645 |
| INTEREST EXPENSE, net | 8,945 | 10,330 | 25,086 | 34,608 |
| OTHER | (288) | (93) | (819) | 285 |
| MINORITY INTEREST | 77 | 2 | 204 | 135 |
| Income before income taxes and cumulative effect of accounting change | 43,890 | 31,017 | 88,366 | 7,617 |
| PROVISION FOR INCOME TAXES | 16,312 | 15,838 | 34,591 | 9,697 |
| Income (loss) before cumulative effect of accounting change | 27,578 | 15,179 | 53,775 | (2,080) |

| | | | | |
|---|---|---|---|---|
| CUMULATIVE EFFECT OF ACCOUNTING CHANGE..... | -- | -- | (249,224) | -- |
| Net income (loss)..... | $ 27,578 | $ 15,179 | $ (195,449) | $ (2,080) |
| INCOME (LOSS) PER SHARE BEFORE CUMULATIVE EFFECT OF ACCOUNTING CHANGE: | | | | |
| Basic..... | $ 0.48 | $ 0.27 | $ 0.94 | $ (0.04) |
| Diluted..... | $ 0.46 | $ 0.27 | $ 0.91 | $ (0.04) |
| CUMULATIVE EFFECT OF ACCOUNTING CHANGE PER SHARE: | | | | |
| Basic..... | $ -- | $ -- | $ (4.36) | $ -- |
| Diluted..... | $ -- | $ -- | $ (4.24) | $ -- |
| NET INCOME (LOSS) PER SHARE: | | | | |
| Basic..... | $ 0.48 | $ 0.27 | $ (3.42) | $ (0.04) |
| Diluted..... | $ 0.46 | $ 0.27 | $ (3.32) | $ (0.04) |

The accompanying notes are an integral part of these consolidated financial statements.



LENNOX INTERNATIONAL INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Nine Months Ended September 30, 2002 and 2001
(Unaudited, in thousands)

| | For the Nine Months Ended September 30, | |
|---|---|---|
| | **2002** | **2001** |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net loss..... | $(195,449) | $ (2,080) |
| Adjustments to reconcile net loss to net cash provided by operating activities - | | |
| Minority interest..... | 204 | 135 |
| (Income) loss from joint ventures..... | (3,469) | 72 |
| Non-cash cumulative effect of accounting change..... | 249,224 | -- |
| Depreciation and amortization..... | 45,683 | 63,061 |
| Non-cash restructuring charge..... | 1,458 | 20,202 |
| Other (gains) losses and expenses..... | (9,136) | 219 |
| Other..... | (1,711) | 333 |
| Changes in assets and liabilities, net of effects of acquisitions and divestitures - | | |
| Accounts and notes receivable..... | (95,995) | 13 |
| Inventories..... | 16,332 | 33,235 |
| Other current assets..... | 525 | (2,122) |
| Accounts payable..... | 41,400 | (3,340) |
| Accrued expenses..... | 27,073 | 42,140 |
| Deferred income taxes..... | 3,723 | 534 |
| Income taxes payable and receivable..... | 25,345 | (5) |
| Long-term warranty, deferred income and other liabilities.... | 8,457 | (7,761) |
| Net cash provided by operating activities..... | 113,664 | 144,636 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Proceeds from the disposal of property, plant and equipment.. | 2,887 | 6,638 |
| Purchases of property, plant and equipment..... | (19,896) | (13,568) |
| Proceeds from disposal of businesses and investments..... | 55,506 | -- |
| Acquisitions, net of cash acquired..... | (3,604) | (16,835) |
| Net cash provided by (used in) investing activities..... | 34,893 | (23,765) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Proceeds from revolving short-term debt..... | 42 | 174 |
| Repayments of revolving long-term debt..... | (212,700) | (105,541) |
| Proceeds from issuance of long-term debt..... | 143,750 | -- |
| Repayment of long-term debt..... | (41,801) | (11,766) |
| Proceeds from issuance of common stock..... | 9,942 | 5,127 |
| Repurchases of common stock..... | (295) | (214) |
| Payment of deferred finance costs..... | (5,318) | -- |
| Cash dividends paid..... | (21,711) | (21,314) |
| Net cash used in financing activities..... | (128,091) | (133,534) |
| INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS..... | 20,466 | (12,663) |
| EFFECT OF EXCHANGE RATES ON CASH AND CASH EQUIVALENTS..... | 1,066 | (277) |
| CASH AND CASH EQUIVALENTS, beginning of period..... | 34,393 | 40,633 |
| CASH AND CASH EQUIVALENTS, end of period..... | $ 55,925 | $ 27,693 |
| Supplementary disclosures of cash flow information: | | |
| Cash paid during the period for: | | |
| Interest..... | $ 18,603 | $ 33,292 |
| Income taxes..... | $ 14,320 | $ 7,298 |

The accompanying notes are an integral part of these consolidated financial statements.



LENNOX INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

**1. Basis of Presentation and other Accounting Information:**

The accompanying unaudited consolidated balance sheet as of September 30, 2002, and the consolidated statements of operations for the three months and nine months ended September 30, 2002 and 2001 and the consolidated statements of cash flows for the nine months ended September 30, 2002 and 2001 should be read in conjunction with Lennox International Inc.'s (the "Company" or "LII") consolidated financial statements and the accompanying footnotes as of December 31, 2001 and 2000 and for each of the three years in the period ended December 31, 2001. In the opinion of management, the accompanying consolidated financial statements contain all material adjustments, consisting principally of normal recurring adjustments, necessary for a fair presentation of the Company's financial position, results of operations, and cash flows. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to applicable rules and regulations, although the Company believes that the disclosures herein are adequate to make the information presented not misleading. The operating results for the interim periods are not necessarily indicative of the results to be expected for a full year.

The Company's fiscal year ends on December 31 of each year, and the Company's interim quarters are each comprised of 13 weeks. For convenience, throughout these financial statements, the 13 weeks comprising each three month period are denoted by the last day of the respective calendar quarter.

**2. Reportable Business Segments:**

The Company's business operations are organized within the following reportable business segments (in thousands):

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| **Net Sales** | **2002** | **2001** | **2002** | **2001** |
| Residential | $342,527 | $317,615 | $ 965,131 | $ 932,611 |
| Commercial | 126,294 | 133,042 | 328,081 | 355,362 |
| Heating and Cooling | 468,821 | 450,657 | 1,293,212 | 1,287,973 |
| Service Experts | 251,573 | 266,683 | 708,053 | 759,400 |
| Refrigeration | 92,811 | 86,847 | 273,152 | 263,775 |
| Corporate and other (a) | 33,055 | 48,548 | 128,150 | 156,866 |
| Eliminations | (27,416) | (27,675) | (81,164) | (81,450) |
| | $818,844 | $825,060 | $2,321,403 | $ 2,386,564 |

| | For the Three Months Ended September 30, | | | For the Nine Months Ended September 30, | | |
|---|---|---|---|---|---|---|
| **Segment Profit (b)** | **2002** | **2001** | **2001 Adj.(c)** | **2002** | **2001** | **2001 Adj.(c)** |
| Residential | $ 33,924 | $ 27,340 | $28,081 | $ 85,544 | $ 72,088 | $ 74,524 |
| Commercial | 7,486 | 11,681 | 11,783 | 13,041 | 18,486 | 18,800 |
| Heating and Cooling | 41,410 | 39,021 | 39,864 | 98,585 | 90,574 | 93,324 |
| Service Experts | 13,076 | 3,840 | 7,409 | 26,169 | (5,291) | 3,981 |
| Refrigeration | 8,818 | 7,078 | 7,391 | 26,032 | 20,559 | 21,529 |
| Corporate and other (a) | (13,010) | (9,561) | (9,136) | (37,566) | (27,952) | (26,817) |
| Eliminations | 141 | 878 | 878 | (697) | (614) | (614) |
| Segment Profit | 50,435 | 41,256 | 46,406 | 112,523 | 77,276 | 91,403 |
| Reconciliation to Income from Operations: | | | | | | |
| Restructurings | 6,742 | -- | -- | 8,617 | 34,631 | 34,631 |
| (Gains) losses and other expenses | (8,931) | -- | -- | (8,931) | -- | -- |
| Income from operations | $ 52,624 | $ 41,256 | $ 46,406 | $ 112,837 | $ 42,645 | $ 56,772 |



| **Total Assets** | **As of September 30, 2002** | **As of December 31, 2001** |
|---|---|---|
| Residential | $ 416,490 | $ 475,494 |
| Commercial | 177,051 | 161,190 |
| Heating and Cooling | 593,541 | 636,684 |
| Service Experts | 541,149 | 702,451 |
| Refrigeration | 218,259 | 236,282 |
| Corporate and other (a) | 249,267 | 235,783 |
| Eliminations | (20,719) | (17,212) |
| | $1,581,497 | $1,793,988 |

(a) In August of 2002, the Company formed joint ventures with Outokumpu Oyj ("Outokumpu") of Finland by selling to Outokumpu a 55 percent interest in the Company's heat transfer business segment for approximately $55 million in cash and notes. The Company accounts for its remaining 45% interest using the equity method of accounting and includes such amounts in the Corporate and other segment. The historical net sales, results of operations and total assets of the Corporate and other segment have been restated to include the portions of the heat transfer business segment that was sold to Outokumpu. The historical net sales and results of operations of the heat transfer business segment now presented in the Corporate and other segment were $33.1 million and $(1.7) million for the three months ended September 30, 2002, $48.5 million and $0.7 million for the three months ended September 30, 2001, $128.2 million and $(2.8) million for the nine months ended September 30, 2002 and $156.9 million and $4.8 million for the nine months ended September 30, 2001, respectively.

(b) During the second quarter of 2002, the Company changed its measure of segment profit. Segment profit is based upon income from operations included in the accompanying consolidated statement of operations except that it excludes restructuring charges and other operating gains, losses and expenses. All historical amounts have been restated to conform with the current year presentation. Restructuring charges excluded from segment profit generally consist of long-lived asset impairments, severance, contract termination and other costs associated with exiting activities within the segment and are considered non-recurring in nature. See Footnote 12 for the amounts and segments impacted by the Company's restructuring charges.

(c) To facilitate comparisons, the reported segment profit amounts for the three and nine months ended September 30, 2001 have been adjusted to reflect the discontinuation of goodwill and trademark amortization under Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets” (“SFAS 142”).

**3. Inventories:**

Components of inventories are as follows (in thousands):

| | As of September 30, 2002 | As of December 31, 2001 |
|---|---|---|
| Finished goods | $159,653 | $179,965 |
| Repair parts | 35,826 | 37,197 |
| Work in process | 15,925 | 17,664 |
| Raw materials | 86,366 | 95,438 |
| | 297,770 | 330,264 |
| Reduction for last-in, first-out | (47,430) | (49,094) |
| | $250,340 | $281,170 |

**4. Shipping and Handling:**

Shipping and handling costs are included as part of selling, general and administrative expense in the accompanying Consolidated Statements of Operations in the following amounts (in thousands):

| For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|
| 2002 | 2001 | 2002 | 2001 |
| $31,485 | $30,852 | $93,893 | $95,000 |

**5. Cash, Lines of Credit and Financing Arrangements:**

The Company has bank lines of credit aggregating $323 million, of which $25 million was borrowed and outstanding, and $35 million was committed to standby letters of credit at September 30, 2002. Of the remaining $263 million, approximately $120 million was available for future borrowings after consideration of covenant limitations. Included in the lines of credit is a domestic facility in the amount of $270 million governed by agreements between the Company and a syndicate of banks. The facility was decreased from $300 million to $270 million as a result of the formation of joint ventures with Outokumpu Oyj of Finland (“Outokumpu”) in August



2002. The facility contains certain financial covenants and bears interest, at the Company’s option, at a rate equal to either (a) the greater of the bank’s prime rate or the federal funds rate plus 0.5% or (b) the London Interbank Offered Rate plus a margin equal to 0.5% to 2.25%, depending upon the ratio of total funded debt to earnings before interest, taxes, depreciation and amortization (“EBITDA”). The Company pays a commitment fee, depending upon the ratio of total funded debt to EBITDA, equal to 0.15% to 0.50% of the unused commitment. The agreements place restrictions on the Company’s ability to incur additional indebtedness, encumber its assets, sell its assets, or pay dividends. As of September 30, 2002, LII was in compliance with all covenant requirements and LII believes that cash flow from operations, as well as available borrowings under its revolving credit facility, will be sufficient to fund its operations for the foreseeable future. The Company has included in cash and cash equivalents in the accompanying consolidated balance sheet $17 million of restricted cash related to letters of credit of $20.5 million.

**6. Accounts and Notes Receivable:**

Accounts and Notes Receivable have been shown net of allowance for doubtful accounts of $23.6 million and $28.4 million, and net of accounts receivable sold under an ongoing asset securitization arrangement of $159.8 million and $143.1 million as of September 30, 2002 and December 31, 2001, respectively. The Company has no significant concentration of credit risk within its accounts and notes receivable. The reduction in doubtful accounts from December 31, 2001 is due to a specific customer reserve of $2.8 million that was written off in the second quarter of 2002.

**7. Convertible Notes:**

On May 8, 2002, the Company issued $143.8 million of 6.25% convertible subordinated notes, maturing June 1, 2009, and received proceeds totaling approximately $139 million after debt issuance costs. Interest will be paid on the notes in arrears semi-annually on June 1 and December 1 of each year, starting on December 1, 2002. The notes are redeemable at the Company’s option on or after June 3, 2005, provided that the closing price of the Company’s common stock has exceeded 130% of the conversion price of approximately $18.09 for at least 20 trading days within a period of 30 consecutive trading days ending on the trading day prior to the date of mailing of the optional redemption notice.

A holder may convert its notes into the Company's common stock during any quarterly conversion period if the closing price of the Company's common stock for at least 20 consecutive trading days during the 30 consecutive trading-day period ending on the first day of the conversion period exceeds 110% of the conversion price in effect on that thirtieth trading day. A "conversion period" will be the period from and including the thirtieth trading day in a fiscal quarter to, but not including, the thirtieth trading day in the immediately following fiscal quarter.

A holder may also convert its notes into the Company's common stock during the five business-day period following any 10 consecutive trading-day period in which the daily average of the trading prices for the notes for that 10 trading-day period was less than 95% of the average conversion value for the notes during that period. Each note is convertible into 55.2868 shares of the Company's common stock per $1,000 note.

**8. Acquisitions and Divestitures:**

During August 2002, the Company completed the formation of joint ventures with Outokumpu. Outokumpu purchased a 55 percent interest in the Company's former heat transfer business segment in the U.S. and Europe for $55 million in cash and notes, with the Company retaining 45 percent ownership. A pre-tax gain of approximately $23.1 million (subject to post-closing balance sheet audit adjustments) was recognized in conjunction with the sale and is included in the (Gains) losses and other expenses line item in the accompanying consolidated statement of operations. In conjunction with the sale, the Company incurred $10.6 million of other charges and expenses. Included in this amount are asset impairments that reduced to zero the carrying value of non-core heat transfer assets not included in the sale and that were identified for abandonment in the third quarter of 2002. Additionally, this amount includes transaction costs, a pension curtailment in connection with U.S. based heat transfer employees and indemnification of flood losses that occurred at a heat transfer manufacturing facility in Europe in August 2002. After deducting these expenses, the Company recognized a net pre-tax gain of $12.5 million ($7.0 million net of tax). The Company is accounting for its remaining 45% ownership in the joint ventures using the equity method of accounting.

In August 2002, the Company sold its 50% ownership interest in Fairco S.A., an Argentina joint venture, to its joint venture partner. The Company recognized a pre-tax loss on the sale of $3.6 million ($1.2 million net of tax). The proceeds from the sale were immaterial. The Company's equity in earnings of Fairco S.A. was immaterial for all prior periods.



---

During June 2002, the Company's Lennox Global Ltd. subsidiary purchased the remaining 14% interest in Heatcraft do Brasil S.A., a Brazilian company that manufactures primarily commercial refrigeration equipment, for approximately $2.4 million.

In June 2002 the Company sold the net assets of a heating, ventilation and air conditioning ("HVAC")distributor for $4.2 million in cash and notes. The sale resulted in a pre-tax loss of approximately $150 thousand. The revenues and results of operations of the distributor were immaterial for all prior periods.

**9. Earnings per Share:**

Basic earnings per share are computed by dividing net income by the weighted average number of common shares outstanding during the period. Diluted earnings per share are computed by dividing net income by the sum of the weighted average number of shares and the number of equivalent shares assumed outstanding, if dilutive, under the Company's stock-based compensation plans. Weighted average shares outstanding used to calculate diluted earnings per share are determined as follows (in thousands):

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | **2002** | **2001** | **2002** | **2001** |
| Weighted average shares outstanding..... | 57,603 | 56,397 | 57,175 | 56,109 |
| Effect of diluted securities attributable to stock options and performance share awards.... | 1,817 | 580 | 1,601 | -- |
| Weighted average shares outstanding, as adjusted. | 59,420 | 56,977 | 58,776 | 56,109 |

Additionally, options to purchase 2,704,524 and 4,298,809 shares of common stock were outstanding at September 30, 2002 and September 30, 2001, respectively, but were not included in the diluted earnings per share calculation because the assumed exercise of such options would have been anti-dilutive.

**10. Derivatives:**

The Company hedges its exposure to the fluctuation in the prices paid for copper and aluminum by purchasing commodity futures contracts on these metals. Quantities covered by these commodity futures contracts are for less than expected actual quantities to be purchased. As of September 30, 2002, the Company had metals futures contracts maturing at various dates through April 30, 2004 with an estimated fair value of a liability of $2.2 million. These commodity futures contracts are considered hedges of forecasted transactions and are accounted for as cash flow hedges. Accordingly, the Company has recorded an unrealized loss of $1.4 million, net of tax benefit of $0.8 million, in the Accumulated Other Comprehensive Loss component of stockholders' equity. This deferred loss will be reclassified into earnings as the commodity futures contracts settle, substantially all of which will happen in the next 12 months. Hedge ineffectiveness during the period was immaterial.

The Company also hedges its exposure to fluctuations in foreign currency exchange rates incurred by its Australian subsidiary. This subsidiary manufactures sophisticated machine tools which generally require long manufacturing and installation times and which generally are sold at prices established in the customer's currency at the time of the order. This exposure to the fluctuations in foreign currency exchange rates from the time of order to the time of sale is hedged through the use of futures contracts for the various currencies. These futures contracts are considered cash flow hedges of forecasted foreign currency denominated transactions. At September 30, 2002, the notional amount and fair value of these futures contracts were immaterial. Hedge ineffectiveness during the period was immaterial.

**11. Comprehensive Income (Loss):**

Comprehensive income (loss) is computed as follows (in thousands):

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | **2002** | **2001** | **2002** | **2001** |
| Net income (loss)..... | $27,578 | $15,179 | $(195,449) | $ (2,080) |

| | | | | |
|---|---|---|---|---|
| Foreign currency translation adjustments | (10,401) | (6,256) | 7,102 | (22,245) |
| Derivatives (see additional information in Note 10) | (2,041) | (516) | 1,667 | (4,843) |
| Total comprehensive income (loss) | $15,136 | $ 8,407 | $(186,680) | $(29,168) |



**12. Restructuring Charges:**

During 2001, the Company undertook separate restructuring initiatives of its retail operations and certain of its manufacturing and distribution operations. During 2002, the Company undertook an additional restructuring initiative of its non-core heat transfer engineering business.

*Retail Restructuring Program.* In the second quarter of 2001, the Company recorded a pre-tax restructuring charge of $38.0 million ($25.6 million, net of tax), of which $3.4 million was included in cost of goods sold, for the selling, closing or merging of 38 company-owned dealer service centers. These centers were either under-performing financially, located in geographical areas requiring disproportionate management effort or focused on non-HVAC activities. The major actions of the plan consist of employee terminations, closure, sale or merger of retail centers and completion of in-process commercial construction jobs. All actions have been completed, with long-term lease and other exit cost payments continuing into 2003. The revenue and net operating loss of the service centers sold, merged or closed as a part of the Retail Restructuring Program were $3.0 million and $0.4 million, respectively, for the three months ended September 30, 2001 and $23.4 million and $4.0 million, respectively, for the nine months ended September 30, 2001.

The $38.0 million restructuring charge consisted of asset impairments and estimates of future cash expenditures. Charges based on estimated cash expenditures are as follows (in millions):

| | Original Charge | New Charges | Cash Payments | Other Changes | Balance December 31, 2001 |
|---|---|---|---|---|---|
| Severance and benefits | $ 4.8 | $0.1 | $ (2.5) | $(1.9) | $0.5 |
| Other exit costs | 12.3 | 0.3 | (10.3) | 3.3 | 5.6 |
| Total | $17.1 | $0.4 | $(12.8) | $ 1.4 | $6.1 |

| | Balance December 31, 2001 | New Charges | Cash Payments | Other Changes | Balance September 30, 2002 |
|---|---|---|---|---|---|
| Severance and benefits | $0.5 | $0.1 | $ (0.4) | $(0.2) | $ -- |
| Other exit costs | 5.6 | 0.5 | (1.2) | (0.2) | 4.7 |
| Total | $6.1 | $0.6 | $ (1.6) | $(0.4) | $4.7 |

The original severance charge of $4.8 million included the termination of 605 employees. As of September 30, 2002, all employee termination actions had been completed. The original other exit costs charged included $4.7 million to complete in-process commercial construction jobs at the exit date, $4.7 million for non-cancelable operating lease commitments on closed service center facilities and $2.9 million of other closure related costs. Payments for these charges will continue through 2003.

In the third and fourth quarter of 2001, the Company identified an additional 15 centers for closure. The $0.4 million and $0.6 million of new charges in the above table reflect the Company’s estimate of costs related to closure of these centers.

The other changes in severance and benefits included in the above table were revisions to the original number of employees to be terminated as a result of the Company finding buyers for service centers that had previously been identified for closure. The other changes in other exit costs included in the above table relate to higher than expected costs to complete the in-process commercial jobs at closed centers.

Asset impairments included in the restructuring charge consisted of the following:

The restructuring charge included impairments of $6.6 million for long-lived assets, principally property, plant and equipment used in the operations of the closed service centers, $5.7 million in goodwill, $3.4 million for inventory write-downs (included as a component of cost of goods sold) and $5.2 million in accounts receivable. All asset impairment charges were related to assets included in the Service Experts reportable segment.

The impairment charges for the long-lived assets reduced the carrying amount of the assets to management’s estimate of fair value which was based primarily on the estimated proceeds, if any, to be generated from the sale or disposal of the assets. The property, plant and equipment carrying value after consideration of the impairment charge was immaterial. The goodwill impairment charge reduced to zero any goodwill that had been recorded in



conjunction with acquisitions of specific service centers that were completely idled and for which expected future cash flows were not sufficient to cover the related property, plant and equipment. For the nine months ended September 30, 2002, the Company has recognized as a component of the Restructurings line item in the accompanying statement of operations $0.2 million in net gains that represent differences between the original estimate of fair value and actual proceeds received.

The inventory and accounts receivable impairment charges recorded in conjunction with the restructuring reduced the carrying value of service center inventories and accounts receivables to net realizable value. These revisions to net realizable value resulted directly from the Company’s decision to close the related service center operations. For the nine months ended September 30, 2002, the Company has recognized as a component of the Restructurings line item in the accompanying statement of operations, $0.3 million in net gains that represent differences between the original estimate of net realizable value and actual proceeds received.

*Manufacturing and Distribution Restructuring Program.* In the fourth quarter of 2001, the Company recorded pre-tax restructuring charges totaling $35.2 million ($31.0 million, net of tax) for severance and other exit costs that resulted from the Company’s decision to sell or abandon certain manufacturing and distribution operations. Inventory impairments of $4.4 million were included in cost of goods sold. The major actions included in the plan were the closing of a domestic distribution facility,

the Company's Mexico sales office, manufacturing plants in Canada, Australia and Europe and the disposal of other non-core heat transfer businesses. All actions under the plan were completed by September 30, 2002 except for closing the domestic distribution facility, which will be complete by May 2003 and the disposal of the non-core heat transfer businesses to be completed in 2003. The revenue and net operating loss of separately identifiable operations were $7.1 million and $0.9 million, respectively, for the three months ended September 30, 2001 and $24.2 million and $1.5 million, respectively, for the nine months ended September 30, 2001.

A summary of the asset impairments by action and the operating segment impacted are included in the following table (in millions):

| | Asset Impairments and Write-Downs | | | | |
|---|---|---|---|---|---|
| **Major Action and Operating Segment Impacted:** | **PP & E** | **Goodwill** | **Accounts Receivable** | **Inventory** | **Total** |
| Residential segment: | | | | | |
| Canadian manufacturing facility..... | $1.0 | $ -- | $ -- | $ -- | $ 1.0 |
| Domestic distribution facility..... | 0.5 | -- | -- | 1.0 | 1.5 |
| Residential segment..... | 1.5 | -- | -- | 1.0 | 2.5 |
| Commercial segment: | | | | | |
| Australian manufacturing facility..... | 0.3 | 1.5 | -- | 1.2 | 3.0 |
| Closure of Mexico sales office..... | -- | -- | 1.0 | -- | 1.0 |
| Commercial segment..... | 0.3 | 1.5 | 1.0 | 1.2 | 4.0 |
| Refrigeration segment: | | | | | |
| European manufacturing facility..... | -- | -- | -- | 1.4 | 1.4 |
| Heat transfer segment - engineering business.... | 1.9 | 9.4 | 5.8 | 0.8 | 17.9 |
| Total..... | $3.7 | $10.9 | $6.8 | $4.4 | $25.8 |

The property, plant and equipment impairment consisted primarily of manufacturing equipment written down to the cash expected to be received upon sale or abandonment, if any. The goodwill impairment charges reduced the goodwill associated with the closed operation to zero. The accounts receivable and inventory write-downs were recorded in conjunction with the restructuring since the decisions to close the operations directly impacted the net realizable value of the related assets. Included in restructurings in the accompanying statement of operations for the nine months ended September 30, 2002 are $2.0 million of net gains upon disposal of these impaired assets that resulted from differences between original estimates of fair and net realizable value and amounts realized upon disposal.



A summary of the severance and other exit costs associated with the Manufacturing and Distribution Restructuring Program are included in the following table (in millions):

| | **Original Charge** | **New Charges** | **Cash Payments** | **Other Changes** | **Balance September 30, 2002** |
|---|---|---|---|---|---|
| Severance and benefits.... | $6.0 | $3.3 | $(6.7) | $ 0.3 | $2.9 |
| Other exit costs..... | 3.4 | 1.1 | (1.9) | (0.1) | 2.5 |
| Total..... | $9.4 | $4.4 | $(8.6) | $ 0.2 | $5.4 |

The original severance and benefits charge of $6.0 million primarily related to the termination of 250 hourly and 46 salaried employees in Canada. The $3.3 million of new charges represents the 2002 termination of 64 European Refrigeration, 49 Heat Transfer and other Australian personnel. As of September 30, 2002, five employees have not been terminated. Severance and benefit payments will continue through November 2003.

The other exit costs consist of $2.5 million for contractual lease obligations associated with the vacated corporate office lease space and the closed Australian manufacturing facility. The cash obligations associated with these exit costs continue through 2004.

*Engineering Business Restructuring Program.* In the third quarter of 2002, the Company recorded a pre-tax restructuring charge totaling $7.5 million ($5.2 million, net of tax) consisting of $1.0 million of inventory impairments included in cost of goods sold, severance and other exit costs that resulted from the Company's decision to abandon the residual portion of the heat transfer business that does not fit with the Company's strategic focus and was not included in the joint venture with Outokumpu. The Company will continue to wind down the business through 2003 and anticipates an additional $1.0 million in related restructuring charges. The revenue and net operating loss associated with the engineering business was $4.0 million and $2.6 million, respectively, for the three months ended September 30, 2002 and $8.6 million and $6.0 million, respectively, for the nine months ended September 30, 2002.

A summary of the severance and other exit costs, recorded in the quarter ended September 30, 2002, associated with the Engineering Business Restructuring Program are included in the following table (in millions):

| | **Original Charge** | **New Charges** | **Cash Payments** | **Other Changes** | **Balance September 30, 2002** |
|---|---|---|---|---|---|
| Severance and benefits..... | $3.7 | $ - | $ - | $ - | $3.7 |
| Other exit costs..... | 2.8 | - | - | - | 2.8 |
| Total..... | $6.5 | $ - | $ - | $ - | $6.5 |

The severance and benefits charge primarily related to the termination of 147 personnel. As of September 30, 2002, 61 employees have been terminated. Severance and benefit payments will continue through December 2004.

The other exit costs consist of contractual lease and contract takeover obligations. The cash obligations associated with these exit costs will continue through November 2005.

**13. Goodwill:**

On January 1, 2002, the Company adopted Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets”, and recorded a $285.7 million impairment of goodwill ($249.2 million, net of tax). The adoption of SFAS No. 142 requires that goodwill and other intangible assets with an indefinite useful life no longer be amortized as expenses of operations but rather tested for impairment at least annually by using a fair-value-based test. The impairment charge relates primarily to the 1998 - 2000 acquisitions of the Company’s retail and hearth products operations, where lower than expected operating results occurred. The Company’s estimates of fair value for its reporting units were determined based on a combination of the future earnings forecasts using discounted values of projected cash flows and market values of comparable businesses.



The changes in the carrying amount of goodwill for the quarter ended September 30, 2002, in total and by segment, are as follows (in thousands):

| Segment | Balance December 31, 2001 | Goodwill Impairment | Foreign Currency Translation & Other | Balance September 30, 2002 |
|---|---|---|---|---|
| Residential | $104,089 | $ (77,124) | $ -- | $ 26,965 |
| Commercial | 22,681 | -- | 2,297 | 24,978 |
| Heating and Cooling | 126,770 | (77,124) | 2,297 | 51,943 |
| Service Experts | 510,804 | (200,514) | (2,963) | 307,327 |
| Refrigeration | 57,229 | -- | 1,504 | 58,733 |
| Heat Transfer | 9,910 | (8,047) | (1,863) | -- |
| Total | $704,713 | $ (285,685) | $ (1,025) | $ 418,003 |

The following reflects the Company’s income (loss) before the cumulative effect of accounting change and income (loss) adjusted to exclude goodwill amortization for all periods presented (in thousands):

| | Three Months Ended September 30, 2002 | Three Months Ended September 30, 2001 | Nine Months Ended September 30, 2002 | Nine Months Ended September 30, 2001 |
|---|---|---|---|---|
| Income (loss) before cumulative effect of accounting change | $27,578 | $15,179 | $ 53,775 | $ (2,080) |
| Add back: goodwill amortization, net of income tax | -- | 4,586 | -- | 12,510 |
| Adjusted income before cumulative effect of accounting change | $27,578 | $19,765 | $ 53,775 | $ 10,430 |
| Basic earnings per share: | | | | |
| Income (loss) before cumulative effect of accounting change | $ 0.48 | $ 0.27 | $ 0.94 | $ (0.04) |
| Add back: goodwill amortization, net of income tax | -- | 0.08 | -- | 0.22 |
| Adjusted income before cumulative effect of accounting change | $ 0.48 | $ 0.35 | $ 0.94 | $ 0.18 |
| Diluted earnings per share: | | | | |
| Income (loss) before cumulative effect of accounting change | $ 0.46 | $ 0.27 | $ 0.91 | $ (0.04) |
| Add back: goodwill amortization, net of income tax | -- | 0.08 | -- | 0.22 |
| Adjusted income before cumulative effect of accounting change | $ 0.46 | $ 0.35 | $ 0.91 | $ 0.18 |
| Reported net income (loss) | $27,578 | $15,179 | $(195,449) | $ (2,080) |
| Add back: goodwill amortization, net of income tax | -- | 4,586 | -- | 12,510 |
| Adjusted net income (loss) | $27,578 | $19,765 | $(195,449) | $ 10,430 |
| Basic earnings per share: | | | | |
| Reported net income (loss) | $ 0.48 | $ 0.27 | $ (3.42) | $ (0.04) |
| Add back: goodwill amortization | -- | 0.08 | -- | 0.22 |
| Adjusted net income (loss) | $ 0.48 | $ 0.35 | $ (3.42) | $ 0.18 |
| Diluted earnings per share: | | | | |
| Reported net income (loss) | $ 0.46 | $ 0.27 | $ (3.32) | $ (0.04) |
| Add back: goodwill amortization | -- | 0.08 | -- | 0.22 |
| Adjusted net income (loss) | $ 0.46 | $ 0.35 | $ (3.32) | $ 0.18 |

Identifiable intangible assets as of September 30, 2002 are recorded in Other Assets in the accompanying consolidated balance sheet and are comprised of the following (in thousands):

| | Gross Amount | Accumulated Amortization |
|---|---|---|
| Deferred financing costs..... | $10,427 | $(3,870) |
| Non-compete agreements and other ..... | 10,225 | (5,917) |
| Total..... | $20,652 | $(9,787) |

Amortization of intangible assets for the nine months ended September 30, 2002 and September 30, 2001 was approximately $4.5 million and $4.7 million, respectively. Amortization expense for 2002 to 2006 is estimated to be approximately $5.4 million in 2002, $3.1 million in 2003, $2.2 million in 2004, $0.6 million in 2005 and $0.5 million in 2006. During 2004, the Company anticipates that a certain non-compete agreement and certain deferred financing costs will become fully amortized resulting in lower estimated aggregate amortization expense in 2004, 2005 and 2006. As of September 30, 2002, the Company had $4.1 million of intangible assets, primarily trademarks, which are not subject to amortization.

14. **Promotional Payments**

The Company has adopted Emerging Issues Task Force (“EITF”) Issue 01-9, “Accounting for Consideration Given by a Vendor to a Customer or a Reseller of the Vendor’s Products” (“EITF 01-9”), issued by the EITF in November 2001. EITF 01-9 addressed various issues related to the income statement classification of certain promotional payments, including consideration from a vendor to a reseller or another party that purchases the vendor’s products. As a result of adopting EITF 01-9 in 2002, the Company restated prior year net sales, cost of goods sold and selling, general and administrative expenses. The adoption of EITF 01-9 reduced 2001 third quarter net sales by $1.8 million, increased cost of goods sold by $0.5 million and decreased expenses by $2.3 million. Year-to-date net sales for 2001 decreased by $4.6 million, cost of goods sold increased $0.9 million and expenses decreased by $5.5 million.



**Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

**Overview**

The Company participates in four reportable business segments of the heating, ventilation, air conditioning and refrigeration (“HVACR”) industry. The first reportable segment is residential, in which LII manufactures and markets a full line of heating, air conditioning and hearth products for the residential replacement and new construction markets in the United States and Canada. The second reportable segment is commercial, in which LII manufactures and sells primarily rooftop products and related equipment for commercial applications. Combined, the residential and commercial reportable business segments form LII’s heating and cooling business. The third reportable segment is Service Experts, which includes sales and installation of, and maintenance and repair services for, HVACR equipment by LII-owned service centers in the United States and Canada. The fourth reportable segment is refrigeration, which consists of unit coolers, condensing units and other commercial refrigeration products.

During August 2002, LII formed joint ventures with Outokumpu Oyj of Finland (“Outokumpu”). Outokumpu purchased a 55 percent interest in the Company’s former heat transfer business segment in the U.S. and Europe for $55 million in cash and notes, with LII retaining 45 percent ownership. In its former heat transfer business segment, LII designed, manufactured and sold evaporator and condenser coils, copper tubing and related manufacturing equipment to original equipment manufacturers and other specialty purchasers on a global basis. LII recognized a pre-tax gain on the sale of $23.1 million, subject to post-closing balance sheet audit adjustments, and incurred related expenses and charges of $10.6 million. The net after-tax gain on the sale and the related expenses and charges was $7.0 million. LII accounts for its remaining 45 percent ownership interest using the equity method of accounting. The Company currently reports the historical results of operations of its former heat transfer business segment in the “Corporate and other” business segment.

LII’s customers include distributors, installing dealers, property owners, national accounts and original equipment manufacturers. The demand for LII’s products is influenced by national and regional economic and demographic factors, such as interest rates, the availability of financing, regional population and employment trends, new construction and general economic conditions, especially consumer confidence. In addition to economic cycles, demand for LII’s products is seasonal and dependent on the weather. Hotter than normal summers generate strong demand for replacement air conditioning and refrigeration products and colder than normal winters have the same effect on heating products. Conversely, cooler than normal summers and warmer than normal winters depress sales of HVACR products.

In LII’s manufacturing operations, the principal components of cost of goods sold are component costs, raw materials, factory overhead, labor and estimated costs of warranty expense. In LII’s Service Experts segment, the principal components of cost of goods sold are equipment, parts and supplies and labor. The principal raw materials used in LII’s manufacturing processes are copper, aluminum and steel. In instances where LII is unable to pass on to its customers increases in the costs of copper and aluminum, LII enters into forward contracts for the purchase of those materials. LII attempts to minimize the risk of price fluctuations in key components by entering into contracts, typically at the beginning of the year, which generally provide for fixed prices for its needs throughout the year. These hedging strategies enable LII to establish product prices for the entire model year while minimizing the impact of price increases of components and raw materials on its margins. Warranty expense is estimated based on historical trends and other factors.

LII’s fiscal year ends on December 31 of each year and its interim fiscal quarters are each comprised of 13 weeks. For convenience, throughout this Management’s Discussion and Analysis of Financial Condition and Results of Operations, the 13 week periods comprising each fiscal quarter are denoted by the last day of the calendar quarter.

**Results of Operations**

The following table sets forth, as a percentage of net sales, income d ata for the three months and nine months ended September 30, 2002 and 2001:



| For the Three Months Ended September 30, | | | For the Nine Months Ended September 30, | | |
|---|---|---|---|---|---|
| 2002 | 2001 | 2001 Adjusted[1] | 2002 | 2001 | 2001 Adjusted[1] |

| | | | | | | |
|---|---|---|---|---|---|---|
| Net sales | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of goods sold | 68.7 | 69.8 | 69.8 | 68.5 | 69.8 | 69.8 |
| Gross profit | 31.3 | 30.2 | 30.2 | 31.5 | 30.2 | 30.2 |
| Selling, general and administrative expense | 25.1 | 25.2 | 24.6 | 26.6 | 27.0 | 26.4 |
| Restructurings | 0.8 | -- | -- | 0.4 | 1.4 | 1.4 |
| (Gains) losses and other expenses | (1.1) | -- | -- | (0.4) | -- | -- |
| Income from operations | 6.5 | 5.0 | 5.6 | 4.9 | 1.8 | 2.4 |
| Interest expense, net | 1.1 | 1.3 | 1.3 | 1.1 | 1.5 | 1.5 |
| Other | -- | -- | -- | -- | -- | -- |
| Income before income taxes and cumulative effect of accounting change | 5.4 | 3.7 | 4.3 | 3.8 | 0.3 | 0.9 |
| Provision for income taxes | 2.0 | 1.9 | 1.9 | 1.5 | 0.4 | 0.5 |
| Income (loss) before cumulative effect of accounting change | 3.4 | 1.8 | 2.4 | 2.3 | (0.1) | 0.4 |
| Cumulative effect of accounting change | -- | -- | -- | (10.7) | -- | -- |
| Net income (loss) | 3.4% | 1.8% | 2.4% | (8.4)% | (0.1)% | 0.4% |

[1]Income data, as a percentage of sales, has been adjusted for the three months and nine months ended September 30, 2001 to reflect the discontinuation of goodwill and trademark amortization under Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets.”

The following table sets forth net sales by business segment and geographic market (dollars in millions):

| | Three Months Ended September 30, | | | | Nine Months Ended September 30, | | | |
|---|---|---|---|---|---|---|---|---|
| | 2002 | | 2001 | | 2002 | | 2001 | |
| | Amount | % | Amount | % | Amount | % | Amount | % |
| **Business Segment:** | | | | | | | | |
| Residential | $ 342.5 | 41.8% | $317.6 | 38.5% | $965.1 | 41.6% | $932.6 | 39.1% |
| Commercial | 126.3 | 15.5 | 133.1 | 16.1 | 328.1 | 14.1 | 355.4 | 14.9 |
| Heating and cooling | 468.8 | 57.3 | 450.7 | 54.6 | 1,293.2 | 55.7 | 1,288.0 | 54.0 |
| Service Experts | 251.6 | 30.7 | 266.7 | 32.3 | 708.1 | 30.5 | 759.4 | 31.8 |
| Refrigeration | 92.8 | 11.3 | 86.8 | 10.5 | 273.2 | 11.8 | 263.8 | 11.1 |
| Corporate and other | 33.1 | 4.0 | 48.5 | 5.9 | 128.2 | 5.5 | 156.9 | 6.6 |
| Eliminations | (27.5) | (3.3) | (27.6) | (3.3) | (81.3) | (3.5) | (81.5) | (3.5) |
| Total net sales | $ 818.8 | 100.0% | $825.1 | 100.0% | $2,321.4 | 100.0% | $2,386.6 | 100.0% |
| **Geographic Market** | | | | | | | | |
| U.S. | $ 640.5 | 78.2% | $652.7 | 79.1% | $1,831.3 | 78.9% | $1,893.3 | 79.3% |
| International | 178.3 | 21.8 | 172.4 | 20.9 | 490.1 | 21.1 | 493.3 | 20.7 |
| Total net sales | $ 818.8 | 100.0% | $825.1 | 100.0% | $2,321.4 | 100.0% | $2,386.6 | 100.0% |

***Three Months Ended September 30, 2002 Compared to Three Months Ended September 30, 2001***

The Company has adopted Emerging Issues Task Force (“EITF”) Issue 01-9, “Accounting for Consideration Given by a Vendor to a Customer or a Reseller of the Vendor’s Products” (“EITF 01-9”), issued by the EITF in November 2001. EITF 01-9 addressed various issues related to the income statement classification of certain promotional payments, including consideration from a vendor to a reseller or another party that purchases the vendor’s products. As a result of adopting EITF 01-9 in 2002, the Company restated prior year net sales, cost of goods sold and selling, general and administrative (“SG&A”) expense. The adoption of EITF 01-9 decreased net sales by $1.8 million, increased cost of goods sold by $0.5 million and decreased SG&A expenses by $2.3 million for the three months ended September 30, 2001.

*Net sales.* Net sales decreased $6.3 million, or 0.8%, to $818.8 million for the three months ended September 30, 2002 from $825.1 million for the three months ended September 30, 2001. Adjusted for the favorable impact of foreign currency translation, net sales declined 1.4% compared to the same period last year. The sales decline was attributable to lower sales in the Company’s Service Experts business segment and to the absence of sales from the



Company’s former heat transfer business segment, 55 percent of which was sold to Outokumpu during the third quarter of 2002. The Company currently reports the historical results of operations of its former heat transfer business segment in the “Corporate and other” business segment.

Net sales in the residential segment increased $24.9 million, or 7.8%, to $342.5 million for the three months ended September 30, 2002 from $317.6 million for the three months ended September 30, 2001. Adjusted for the impact of foreign currency translation, net sales increased 8.0%, or $25.4 million, compared to the three months ended September 30, 2001. This increase was driven primarily by favorable weather during the cooling season and low inventory levels in the supply chain.

Net sales in the commercial segment declined $6.8 million, or 5.1%, to $126.3 million for the three months ended September 30, 2002 compared to the three months ended September 30, 2001. The sales decline was 7.4% after adjusting for the impact of foreign currency exchange. The decline was due primarily to lower demand levels for commercial air conditioning equipment in North America as well as the absence of sales from the Company’s Australian commercial air conditioning operations, which were exited during the second quarter of 2002. North American industry shipments of unitary commercial heating, ventilation and air conditioning (“HVAC”) equipment were down approximately 5% in the first nine months of 2002.

Net sales in the Service Experts segment were $251.6 million for the three months ended September 30, 2002, a decrease of $15.1 million, or 5.7%, from $266.7 million for the three months ended September 30, 2001. After adjusting for the impact of foreign currency translation, net sales decreased 5.4%, or $14.5 million, compared to the three months ended September 30, 2001. On a same store basis, after adjusting for sold or closed service centers in connection with a restructuring program announced in 2001, net sales declined 3.7% for the three months ended September 30, 2002 compared to the same period last year. As a result of this restructuring program, the primary operating focus of this segment has been improving operating efficiency through cost

reduction programs, expense control initiatives and reductions in personnel. LII anticipates the operational focus in this segment will broaden to increasing sales as efforts to improve operating efficiency are completed.

Refrigeration segment net sales increased $6.0 million, or 6.9%, to $92.8 million for the three months ended September 30, 2002. Slightly less than half of the sales increase was a result of favorable foreign currency exchange. In addition, a sustained strengthening order rate for commercial refrigeration equipment in the Company's domestic and Asia Pacific operations also resulted in higher net sales for the three months ended September 30, 2002.

*Gross profit*. Gross profit was $256.1 million for the three months ended September 30, 2002 compared to $249.4 million for the three months ended September 30, 2001, an increase of $6.7 million. Gross profit margin improved 1.1% to 31.3% for the three months ended September 30, 2002 from 30.2% for the three months ended September 30, 2001. Gross profit margin in the Company's Service Experts segment improved 2.4% for the third quarter of 2002 compared to last year's third quarter due primarily to direct labor personnel reductions and increased productivity of existing direct labor personnel. Service Experts direct labor personnel reductions were made in connection with a restructuring program announced in 2001 as well as efforts to staff individual service centers to match market demand. The gross profit margin improvement was also due to factory efficiencies, particularly in the areas of improved labor utilization and lower overhead.

*Selling, general and administrative expense*. SG&A expenses were $205.7 million for the three months ended September 30, 2002, a decrease of $2.4 million, or 1.2%, from $208.1 million for the three months ended September 30, 2001. SG&A expenses represented 25.1% and 25.2% of total revenues for the three months ended September 30, 2002 and 2001, respectively. The third quarter of 2001 included $5.2 million of goodwill and trademark amortization which has been discontinued with the adoption of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets," ("SFAS No. 142") on January 1, 2002. Excluding the impact of SFAS No. 142, cost reduction programs, expense control initiatives and reductions in personnel in the Company's Service Experts segment and the absence of SG&A expenses from the former heat transfer business segment were slightly more than offset by increases in SG&A in all remaining business segments for the third quarter of 2002 compared to the third quarter of 2001.

*Restructurings*. During 2001, the Company undertook separate restructuring initiatives of its retail operations and certain of its manufacturing and distribution operations. During 2002, the Company undertook an additional restructuring initiative of its non-core heat transfer engineering business. The three initiatives are as follows:



1. Retail Restructuring Program

In the second quarter of 2001, the Company recorded a pre-tax restructuring charge of $38.0 million ($25.6 million, net of tax), which covered the selling, closing or merging of 38 company-owned dealer service centers in the Company's Service Experts segment. Inventory impairments of $3.4 million were included in cost of goods sold. These centers were either under-performing financially, located in geographical areas requiring disproportionate management effort or focused on non-HVAC activities. The major actions of the plan consist of employee terminations, closure, sale or merger of retail centers and completion of in-process commercial construction jobs. All actions under the plan have been completed, with long-term lease and other exit cost payments continuing into 2003. The revenue and net operating loss of the service centers sold, closed or merged as part of the Retail Restructuring Program were $3.0 million and $0.4 million, respectively, for the three months ended September 30, 2001 and $23.4 million and $4.0 million, respectively, for the nine months ended September 30, 2001.

The $38.0 million pre-tax charge for the Retail Restructuring Program consisted of $4.8 million of severance and benefit charges, $12.3 million of other exit costs and $20.9 million of asset impairments. The asset impairments in the restructuring charge included $6.6 million for long-lived assets, principally property, plant and equipment used in the operations of the closed service centers, $5.7 million in goodwill, $3.4 million for inventory write-downs and $5.2 million in accounts receivable. The accounts receivable and inventory write-downs were recorded in conjunction with the restructuring since the decisions to close the operations directly impacted the net realizable value of the related assets. The inventory write-downs totaling $3.4 million were included in cost of goods sold.

Through September 2002, the Company has made cash payments of $14.4 million under this program. These payments included $2.9 million for severance and benefit payments and $11.5 million for other exit costs payments. The Company anticipates making future cash expenditures of approximately $4.7 million for other exit costs of which $1.4 million is anticipated to be spent in 2002 and $3.3 million is anticipated to be spent in 2003. The Company estimates the improvement in net operating income due to the elimination of net operating losses of service centers sold, closed or merged under this restructuring program to be in the range of $3.5 million to $6.0 million for the year ended December 31, 2002.

2. Manufacturing and Distribution Restructuring Program

In the fourth quarter of 2001, the Company recorded pre-tax restructuring charges totaling $35.2 million ($31.0 million, net of tax) for severance and other exit costs that resulted from the Company's decision to sell or abandon certain manufacturing and distribution operations. Inventory impairments of $4.4 million were included in cost of goods sold. The major actions included in the plan were the closing of a domestic distribution facility, the Company's Mexico sales office, manufacturing plants in Canada, Australia and Europe and the disposal of other non-core heat transfer businesses. All actions under the plan were completed by September 30, 2002, except for closing the domestic distribution facility, which will be complete by May 2003 and the disposal of the non-core heat transfer businesses, which will be completed in 2003. The revenue and net operating loss of separately identifiable operations were $7.1 million and $0.9 million, respectively, for the three months ended September 30, 2001 and $24.2 million and $1.5 million, respectively, for the nine months ended September 30, 2001.

The $35.2 million pre-tax charge for the Manufacturing and Distribution Restructuring Program consisted of $6.0 million of severance and benefit charges, $3.4 million of other exit costs and $25.8 million of asset impairments. The asset impairments in the restructuring charge included $3.7 million for property, plant and equipment written down to the cash expected to be received upon sale or abandonment, if any, $10.9 million in goodwill, $4.4 million for inventory write-downs and $6.8 million in accounts receivable. The accounts receivable and inventory write-downs were recorded in conjunction with the restructuring since the decisions to close the operations directly impacted the net realizable value of the related assets. The inventory write-downs of $4.4 million were included in cost of goods sold.

Through September 2002, the Company has made cash payments of $8.6 million under this program. These payments included $6.7 million for severance and benefit payments and $1.9 million for other exit cost payments. The Company anticipates making future cash expenditures of approximately $6.5 million under this program. The Company estimates the improvements in net operating income to be in the range of $5.0 million to $7.0 million for the year ended December 31, 2002.



3. Engineering Business Restructuring Program

In the third quarter of 2002, the Company recorded a pre-tax restructuring charge of $7.5 million ($5.2 million, net of tax) for inventory impairments, severance and other exit costs that resulted from the Company's decision to abandon a residual portion of the heat transfer business that does not fit with the Company's strategic focus and was not included in the joint ventures with Outokumpu formed during the third quarter of 2002. The $7.5 million charge included $1.0 million related to inventory write-downs which has been included in cost of goods sold.

The $7.5 million pre-tax charge for the Engineering Business Restructuring Program consisted of $3.7 million of severance and benefit charges, $2.8 million for other exit costs and $1.0 million of inventory impairment. The Company will continue to wind down this business through 2003 and anticipates an additional $1.0 million in related restructuring charges. During the wind-down period, the Company estimates that the operating losses from this business will be in the range of $1.0 million to $1.5 million for the remainder of 2002 and $2.5 million to $3.5 million in 2003. Operating losses from this business are reported in the "Corporate and other" business segment.

Pre-tax restructuring charges for the three months ended September 30, 2002 of $6.7 million represented $6.5 million related to the engineering business restructuring, as discussed previously, and $0.2 million related to the 2001 Manufacturing and Distribution Restructuring Program, which included $2.0 million of personnel termination charges in connection with the relocation of production lines in Europe in the Company's refrigeration segment partially offset by $1.8 million of net gains recognized upon disposal of certain impaired assets. These net gains on impaired assets resulted from differences between original estimates of fair and net realizable value and amounts realized upon disposal. The net tax benefit of these charges was $1.4 million for the three months ended September 30, 2002.

*(Gains) losses and other expenses*. During the third quarter of 2002, LII recognized two non-recurring events aggregating in a net pre-tax gain of $8.9 million. These events were related to narrowing LII's strategic focus on its core businesses. These events are detailed as follows:

1. Sale of Heat Transfer Business

In August 2002, LII formed joint ventures with Outokumpu. Outokumpu purchased a 55 percent interest in the Company's former heat transfer business segment in the U.S. and Europe for $55 million in cash and notes, with LII retaining 45 percent ownership. LII recognized a pre-tax gain on the sale of $23.1 million, subject to post-closing balance sheet audit adjustments. In conjunction with the sale, LII incurred $10.6 million of other charges and expenses. Included in this amount are asset impairments that reduced to zero the carrying value of non-core heat transfer assets not included in the sale and that were identified for abandonment in the third quarter of 2002. Additionally, this amount included a pension curtailment in connection with U.S. based heat transfer employees, indemnification of flood losses that occurred at a heat transfer manufacturing facility in Prague of the Czech Republic in August 2002 and other related transaction expenses. The net after-tax gain on the sale was $7.0 million. LII accounts for its remaining 45 percent ownership using the equity method of accounting.

2. Exit from Commercial HVAC Operations in Argentina

In August 2002, LII sold its 50% ownership interest in its Fairco S.A. joint venture to the joint venture partner, a manufacturing and service company based in Argentina. Operationally, this joint venture was under-performing, in large part due to recent volatile economic conditions in Argentina. The Company recognized a pre-tax loss on the sale of $3.6 million. The tax benefit recognized on the loss on sale was $2.4 million resulting in a net after-tax loss of $1.2 million. The proceeds from the sale were immaterial.

*Interest expense, net*. Interest expense, net, for the three months ended September 30, 2002 decreased $1.4 million, or 13.6%, from $10.3 million for the three months ended September 30, 2001. The decrease in interest expense was attributable to lower debt levels and lower interest rates.

*Other*. Other income was $0.3 million for the three months ended September 30, 2002 and $0.1 million for the three months ended September 30, 2001. Other income is primarily comprised of currency exchange gains or losses, which relate principally to the Company's operations in Canada, Australia and Europe.



*Provision for income taxes*. The provision for income taxes was $16.3 million for the three months ended September 30, 2002 and $15.8 million for the three months ended September 30, 2001. The effective tax rates were 37.2% and 51.1% for the three months ended September 30, 2002 and 2001, respectively. During the third quarter of 2002, the Company reduced the provision for income taxes by $3.0 million due to the favorable outcome of tax contingencies from a prior year. The tax benefit from restructuring charges was $1.4 million and the net tax provision for (gains), losses and other expenses was $3.1 million during the three months ended September 30, 2002. Excluding the net after-tax impact of these non-recurring items, the effective tax rate was 42.2% for the three months ended September 30, 2002. These effective rates differ from the statutory federal rate of 35.0% principally due to state and local taxes, non-deductible goodwill expenses (in 2001 only), foreign operating losses for which no tax benefits have been recognized and foreign taxes at rates other than 35%.

***Nine Months Ended September 30, 2002 Compared to Nine Months Ended September 30, 2001***

The Company has adopted EITF 01-9 which addressed various issues related to the income statement classification of certain promotional payments, including consideration from a vendor to a reseller or another party that purchases the vendor's products. As a result of adopting EITF 01-9 in 2002, the Company restated prior year net sales, cost of goods sold and SG&A expenses. The adoption of EITF 01-9 decreased net sales by $4.6 million, increased cost of goods sold by $0.9 million and decreased SG&A expenses by $5.5 million for the nine months ended September 30, 2001.

*Net sales.* Net sales decreased $65.2 million, or 2.7%, to $2,321.4 million for the nine months ended September 30, 2002 from $2,386.6 million for the nine months ended September 30, 2001. Adjusted for the impact of foreign currency translation, net sales declined 2.9% compared to the same period last year. The sales decline was attributable to lower sales in the Company's Service Experts and commercial business segments, the wind-down of the Company's engineering business (see *"Restructurings"*) and the absence of sales from the Company's former heat transfer business segment, 55 percent of which was sold to Outokumpu during the third quarter of 2002. The Company currently reports the historical results of operations of its former heat transfer business segment in the "Corporate and other" business segment.

Net sales in the residential segment increased $32.5 million, or 3.5%, to $965.1 million for the nine months ended September 30, 2002 from $932.6 million for the nine months ended September 30, 2001. Adjusted for the impact of foreign currency translation, net sales increased 3.7%, or $34.6 million, compared to the nine months ended September 30, 2001. According to the Air Conditioning and Refrigeration Institute year-to-date U.S. factory shipments of unitary air conditioners and heat pumps increased 7% industry wide through September 2002, due primarily to favorable weather during the cooling season and low inventory levels in the supply chain. Net sales of the Company's Lennox and Ducane branded product as well as evaporator coils from its Advanced Distributor Products unit were particularly strong for the nine months ended September 30, 2002.

Net sales in the commercial segment decreased $27.3 million, or 7.7%, to $328.1 million for the nine months ended September 30, 2002 compared to the nine months ended September 30, 2001. The sales decrease was 8.6% after adjusting for the impact of foreign currency exchange. The decline was due primarily to lower demand levels for commercial air conditioning equipment in North America as well as lower demand for such equipment in Europe. North American industry shipments of unitary commercial HVAC equipment were down approximately 5% in the first nine months of 2002. The absence of sales from the Company's Australian commercial air conditioning operations, which were exited during the second quarter of 2002, also contributed to the sales decline.

Net sales in the Service Experts segment were $708.1 million for the nine months ended September 30, 2002, a decrease of $51.3 million, or 6.8%, from $759.4 million for the nine months ended September 30, 2001. LII realized an additional week of net sales

in the first nine months of 2002 in the Service Experts segment when compared to the same period last year. Due to the decentralized nature of LII's Service Experts operations, LII's reporting of Service Experts results through the first nine months of the year historically lagged other operations by one week. However, with an enhanced enterprise system in place in fiscal 2002, LII was able to synchronize the timing of its Service Experts results with the results of its other operations. Accounting for the additional week added $10.7 million of net sales to the Service Experts segment results for the nine months ended September 30, 2002.

On a same store basis, after adjusting for sold or closed service centers in connection with a restructuring program announced in 2001 and the additional week of results, net sales in the Service Experts segment declined 5.3% for the nine months ended September 30, 2002 compared to the same period last year. As a result of this restructuring program, the primary operating focus of this segment has been improving operating efficiency through cost reduction programs, expense control initiatives and reductions in personnel. LII anticipates the operational focus in this segment will broaden to increasing sales as efforts to improve operating efficiency are completed.



Refrigeration segment net sales increased $9.4 million, or 3.6%, to $273.2 million for the nine months ended September 30, 2002 compared to the nine months ended September 30, 2001. After adjusting for the impact of foreign currency exchange, the sales increase was 2.3%. A sustained strengthening order rate for commercial refrigeration equipment in the Company's domestic and Asia Pacific operations resulted in higher net sales for the nine months ended September 30, 2002.

*Gross profit.* Gross profit was $730.8 million for the nine months ended September 30, 2002 compared to $721.5 million for the nine months ended September 30, 2001, an increase of $9.3 million. Gross profit margin improved 1.3% to 31.5% for the nine months ended September 30, 2002 from 30.2% for the nine months ended September 30, 2001. Gross profit margin in the Company's Service Experts segment improved 2.5% for the nine months ended September 30, 2002 compared to the same period last year due primarily to direct labor personnel reductions and increased productivity of existing direct labor personnel. Service Experts direct labor personnel reductions were made in connection with a restructuring program announced in 2001 as well as efforts to staff individual service centers to match market demand. The gross profit margin improvement was also due to factory efficiencies, particularly in the areas of labor utilization, purchasing savings and lower overhead. Based on projected 2002 year-end inventory levels, the Company believes LIFO (last in, first out) inventory adjustments will not have a material impact on gross margins.

*Selling, general and administrative expense.* SG&A expenses were $618.3 million for the nine months ended September 30, 2002, a decrease of $26.0 million, or 4.0%, from $644.3 million for the nine months ended September 30, 2001. SG&A expenses represented 26.6% and 27.0% of total revenues for the three months ended September 30, 2002 and 2001, respectively. The first nine months of 2001 included $14.1 million of goodwill and trademark amortization which has been discontinued with the adoption of SFAS No. 142 on January 1, 2002. Bad debt expense, which is driven largely by overall economic conditions, totaled $7.7 million and $9.1 million for the nine month periods ended September 30, 2002 and 2001, respectively. The Company has no significant concentration of credit risk among its diversified customer base. The balance of the SG&A decrease was largely due to cost reduction programs, expense control initiatives and reductions in personnel, particularly in the Company's Service Experts segment. Additionally, the absence of SG&A expenses from the Company's former heat transfer business segment contributed to the decline.

*Restructurings*. Pre-tax restructuring charges for the nine months ended September 30, 2002 were $8.6 million. Of these charges, $2.1 million stem from the Manufacturing and Distribution Restructuring Program discussed previously (see "Results of Operations - Three months ended September 30, 2002 Compared to Three Month Ended September 30, 2001") and principally include personnel termination charges in the Company's residential segment, the relocation of production lines and net gains upon disposal of certain impaired assets. The remaining $6.5 million of these charges stem from the Engineering Business Restructuring Program also discussed previously and include personnel termination charges and other exit costs in the Company's former heat transfer business segment. Pre-tax restructuring charges for the nine months ended September 30, 2001 were $38.0 million, of which $3.4 million was included in cost of goods sold. These restructuring charges relate to the Retail Restructuring Program also discussed previously. The tax benefit of these charges for the nine months ended September 30, 2002 and 2001 was $1.9 million and $12.4 million, respectively.

*(Gains) losses and other expenses*. During the third quarter of 2002, LII recognized two non-recurring events aggregating in a net pre-tax gain of $8.9 million. These events were related to narrowing LII's strategic focus on its core businesses. These events were discussed previously (see "Results of Operations - Three Months Ended September 30, 2002 Compared to Three Months Ended September 30, 2001").

*Interest expense, net.* Interest expense, net, for the nine months ended September 30, 2002 decreased $9.5 million, or 27.5%, from $34.6 million for the nine months ended September 30, 2001. The lower interest expense resulted from lower debt levels and lower interest rates.

*Other.* Other expense (income) was $(0.8) million for the nine months ended September 30, 2002 and $0.3 million for the nine months ended September 30, 2001. Other expense (income) is primarily comprised of currency exchange gains or losses, which relate principally to the Company's operations in Canada, Australia and Europe.

*Provision for income taxes.* The provision for income taxes was $34.6 million for the nine months ended September 30, 2002 and $9.7 million for the nine months ended September 30, 2001. During the third quarter of 2002, the Company reduced the provision for income taxes by $3.0 million due to the favorable outcome of tax contingencies from a prior year. The tax benefits from restructuring charges were $1.9 million and $12.4 million for



the nine months ended September 30, 2002 and 2001, respectively. The net tax provision for (gains), losses and other expenses was $3.1 million in the nine months ended September 30, 2002. Excluding the net after-tax impact of these non-recurring items, the effective tax rates were 41.3% and 48.4% during the nine months ended September 30, 2002 and 2001, respectively. These effective rates differ from the statutory federal rate of 35.0% principally due to state and local taxes, non-deductible goodwill expenses (in 2001 only), foreign operating losses for which no tax benefits have been recognized and foreign taxes at rates other than 35%. Had SFAS No. 142 been in effect in the first nine months of 2001, the tax benefit would have been $1.6 million lower than reported.

*Cumulative effect of accounting change.* The cumulative effect of accounting change represents an after-tax, non-cash, goodwill impairment charge of $249.2 million for the nine months ended September 30, 2002. This charge resulted from the adoption of SFAS No. 142 which became effective January 1, 2002 and requires that goodwill and other intangible assets with an indefinite useful life no longer be amortized as expenses of operations but rather be tested for impairment upon adoption and at least annually by applying a fair-value-based test. During the first quarter of 2002, LII conducted such fair-value-based tests and recorded a pre-tax goodwill impairment charge of $285.7 million. The charge primarily relates to the Company's Service Experts and North American residential business segments. The tax benefit of this charge was $36.5 million.

**Liquidity and Capital Resources**

Lennox's working capital and capital expenditure requirements are generally met through internally generated funds and bank lines of credit.

During the first nine months of 2002, cash provided by operations was $113.7 million compared to $144.6 million for the same period in 2001. If the effects of asset securitization were excluded, cash provided by operating activities would have been $97.0

million in 2002 and $100.8 million in 2001. Net cash provided by investing activities includes acquiring a partner's remaining 14% interest in Heatcraft do Brasil S. A., a Brazilian company that manufactures primarily commercial refrigeration equipment, and proceeds from the sale of the net assets of a distributor in the residential segment. Additionally, during August 2002, the Company completed the formation of joint ventures with Outokumpu. Outokumpu purchased a 55 percent interest in the Company's former heat transfer business segment in the U.S. and Europe for $55 million in cash and notes, with the Company retaining 45 percent ownership. Cash used in financing activities reflects the Company's issuance of $143.8 million of 6.25% convertible subordinated notes due 2009 offset by the use of these net proceeds, the cash from the Outokumpu transaction and cash from operations to reduce its indebtedness under its revolving credit facility.

Capital expenditures of $19.9 million and $13.6 million in the first nine months of 2002 and 2001, respectively, were primarily for production equipment in the North American heat transfer and residential products manufacturing plants.

The Company has bank lines of credit aggregating $323 million, of which $25 million was borrowed and outstanding, and $35 million was committed to standby letters of credit at September 30, 2002. Of the remaining $263 million, approximately $120 million was available for future borrowings, after consideration of covenant limitations. Included in the lines of credit is a domestic facility in the amount of $270 million governed by agreements between the Company and a syndicate of banks. The facility was decreased from $300 million to $270 million as a result of the formation of joint ventures with Outokumpu Oyj of Finland ("Outokumpu") joint venture formation in August 2002. The facility contains certain financial covenants and bears interest, at the Company's option, at a rate equal to either (a) the greater of the bank's prime rate or the federal funds rate plus 0.5% or (b) the London Interbank Offered Rate plus a margin equal to 0.5% to 2.25%, depending upon the ratio of total funded debt to earnings before interest, taxes, depreciation and amortization ("EBITDA"). The Company pays a commitment fee, depending upon the ratio of total funded debt to EBITDA, equal to 0.15% to 0.50% of the unused commitment. The agreements place restrictions on the Company's ability to incur additional indebtedness, encumber its assets, sell its assets, or pay dividends. As of September 30, 2002, LII was in compliance with all covenant requirements and LII believes that cash flow from operations, as well as available borrowings under its revolving credit facility, will be sufficient to fund its operations for the foreseeable future. The Company has included in cash and cash equivalents in the accompanying consolidated balance sheet $17.0 million of restricted cash related to letters of credit of $20.5 million. at September 30, 2002.

Under an on-going asset securitization arrangement, the Company had sold, at September 30, 2002, $159.8 million of receivables on a non-recourse basis. The accounts receivable that were sold are shown as a reduction of accounts and notes receivable in the accompanying consolidated balance sheets. The discount of $2.8 million incurred in the sale of such receivables is included as part of selling, general and administrative expense in the accompanying Consolidated Statements of Operations.



**Recent Accounting Pronouncements**

In September 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard No. 143, "Accounting for Asset Retirement Obligations," which addresses the accounting and reporting obligations associated with the retirement of tangible long-lived assets and the associated retirement costs. The Company is currently assessing the impact on the consolidated financial statements and will adopt the provisions in the first quarter of 2003.

In July 2002, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard No. 146, "Accounting for the Costs of Exit or Disposal Activities," which addresses the accounting and reporting of one-time severance benefits, contract termination costs and other related exit costs. This guidance in this statement is required for all exit plans announced after December 31, 2002 and significantly reduces an entity's ability to recognize a liability for future expenses related to a restructuring. The Company did not elect to early adopt the guidance in this standard.

**Forward Looking Information**

This Report contains forward-looking statements and information that are based on the beliefs of LII's management as well as assumptions made by and information currently available to management. All statements other than statements of historical fact included in this Report constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including but not limited to statements identified by the words "may," "will," "should," "plan," "predict," "anticipate," "believe," "intend," "estimate" and "expect" and similar expressions. Such statements reflect LII's current views with respect to future events, based on what it believes are reasonable assumptions; however, such statements are subject to certain risks, uncertainties and assumptions. These include, but are not limited to, warranty and product liability claims; ability to successfully complete and integrate acquisitions; ability to manage new lines of business; the consolidation trend in the HVACR industry; adverse reaction from customers to LII's acquisitions or other activities; the impact of the weather on business; competition in the HVACR business; increases in the prices of components and raw materials; general economic conditions in the U.S. and abroad; labor relations problems; operating risks and environmental risks. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may differ materially from those in the forward-looking statements. LII disclaims any intention or obligation to update or review any forward-looking statements or information, whether as a result of new information, future events or otherwise.

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

LII's results of operations can be affected by changes in exchange rates. Net sales and expenses in currencies other than the United States dollar are translated into United States dollars for financial reporting purposes based on the average exchange rate for the period. Net sales from outside the United States represented 21.1% and 20.7% of total net sales for the nine months ended September 30, 2002 and 2001, respectively. Historically, foreign currency transaction gains (losses) have not had a material effect on Lennox's overall operations.

The Company from time to time enters into foreign exchange contracts to hedge receivables or payables denominated in foreign currencies. These contracts do not subject the Company to risk from exchange rate movements because the gains or losses on the contracts offset losses or gains, respectively, on the items being hedged. As of September 30, 2002, the Company had obligations to deliver $0.9 million of various currencies over the next three months. The fair value of the various contracts was an immaterial asset as of September 30, 2002.

The Company enters into commodity futures contracts to stabilize prices to be paid for raw materials and parts containing high copper and aluminum content. These contracts are for quantities equal to, or less than, quantities expected to be consumed in future production. As of September 30, 2002, the Company had metal futures contracts maturing at various dates through April 30, 2004 with a fair value of a liability of $2.2 million. Accordingly, the Company recorded an after-tax charge of $1.4 million to Accumulated Other Comprehensive Loss.

On July 25, 2002, the Company announced anticipated product price increases as a result of the tariff levied on steel as a result of U.S. Presidential Proclamation 7529 issued March 5, 2002. This proclamation was issued in connection with the U.S. International Trade Commission's investigation under section 201 of the Trade Act of 1974 with respect to imports of certain steel products. Although the intent of the proclamation targeted imported steel, the market result was an increase in domestic steel product pricing as well. The Company filed requests with the U.S. Department of Commerce in May 2002 seeking to exclude from the safeguard tariffs those steel products most commonly used in the Company's manufacturing processes as steel represents a significant amount of the

Company's purchased raw material. During the third quarter of 2002, the U.S. Department of Commerce denied these requests. As a result, the Company expects to implement product price increases during the fourth quarter of 2002. The Company expects the increases to be, on average within a range from 3% to 6% depending on the steel content of a given product line. The price increases may also differ from operating company to operating company. Actual realization of the price increases could vary though, based on competitive pricing from other companies in the heating, ventilation, air conditioning and refrigeration industry.

**Item 4. Controls and Procedures**

The Company's management, including the Chief Executive Officer and Chief Financial Officer, have conducted an evaluation of the effectiveness of the Company's disclosure controls and procedures within 90 days of the filing of this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that the Company's current disclosure controls and procedures are effective for the purpose of ensuring that information required to be disclosed by the Company in this report has been processed, summarized and reported in a timely manner. There have been no significant changes in internal controls, or in factors that could significantly affect internal controls, subsequent to the date the Chief Executive Officer and Chief Financial Officer completed their evaluation.



---

Item 6. Exhibits and Reports on Form 8-K.

| Exhibit Number | | Description |
|---|---|---|
| *3.1 | -- | Restated Certificate of Incorporation of Lennox (Incorporated herein by reference to Exhibit 3.1 to Lennox' Registration Statement on Form S-1 (Registration No. 333-75725)). |
| *3.2 | -- | Amended and Restated Bylaws of Lennox (Incorporated herein by reference to Exhibit 3.2 to Lennox' Registration Statement on Form S-1 (Registration No. 333-75725)). |
| *4.1 | -- | Specimen stock certificate for the Common Stock, par value $.01 per share, of Lennox (Incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 (Registration No. 333-75725)). |
| 10.1 | -- | Share Purchase Agreement between Outokumpu Copper Products OY, Outokumpu Copper Holdings, Inc. and Lennox International Inc. dated July 18, 2002 (filed herewith). |
| 10.2 | -- | Amendment to Share Purchase Agreement between Outokumpu Copper Products OY, Outokumpu Copper Holdings, Inc. and Lennox International Inc. dated August 26, 2002 (filed herewith). |
| 10.3 | -- | Amendment No. 2 to Share Purchase Agreement between Outokumpu Copper Products OY, Outokumpu Copper Holdings, Inc. and Lennox International Inc. dated August 26, 2002 (filed herewith). |
| 10.4 | -- | Share Purchase Agreement between Outokumpu Copper Products OY, LGL Holland B.V. and LGL Europe Holding Co. dated July 18, 2002 (filed herewith). |
| 10.5 | -- | Amendment to Share Purchase Agreement between Outokumpu Copper Products OY, LGL Holland B.V. and LGL Europe Holding Co. dated August 26, 2002 (filed herewith). |
| 10.6 | -- | Amendment No. 2 to Share Purchase Agreement between Outokumpu Copper Products OY, LGL Holland B.V. and LGL Europe Holding Co. dated August 26, 2002 (filed herewith). |
| 10.7 | -- | Joint Venture & Members' Agreement between Lennox International Inc., Outokumpu Copper Products OY, Outokumpu Copper Holdings, Inc. and Heatcraft Heat Transfer LLC dated July 18, 2002 (filed herewith). |
| 10.8 | -- | Shareholders Agreement between LGL Holland B.V., Outokumpu Copper Products OY and Outokumpu Heatcraft B.V. dated July 18, 2002 (filed herewith). |
| 10.9 | -- | Shared Services Agreement by and between Lennox International Inc., Outokumpu Heatcraft USA LLC and Outokumpu Heatcraft B.V. dated August 30, 2002 (filed herewith). |
| 10.10 | -- | Joint Technology Development Agreement by and between Lennox International Inc., Outokumpu Oyj, Outokumpu Heatcraft USA LLC, Outokumpu Heatcraft B.V. and Advanced Heat Transfer LLC dated August 30, 2002 (filed herewith). |
| 12.1 | -- | Lennox International Inc. and Subsidiaries Computation of Ratio of Earnings to Fixed Charges (Unaudited) For the Nine Months Ended September 30, 2002 (filed herewith). |
| 99.1 | -- | Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith). |
| 99.2 | -- | Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith). |

*Incorporated herein by reference as indicated.

Reports on Form 8-K

During the three-month period ending September 30, 2002, the Company filed or furnished:

(1) two Current Reports on Form 8-K under Item 5 - Other Events:

(i) Report dated August 14, 2002 and filed August 14, 2002, submittal to the Securities and Exchange Commission ("SEC") of the Company's Statements under Oath of Principal Executive Officer and Principal Financial Officer ("Sworn Statements") in accordance with the SEC's June 27, 2002 order requiring the filing of sworn statements pursuant to Section 21(a)(1) of the Securities Exchange Act of 1934 (SEC File No. 4-460); and

(ii) Report dated September 3, 2002 and filed September 3, 2002, announcing the completion of the joint venture between the Company and Outokumpu Oyj.

**SIGNATURE**

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.

LENNOX INTERNATIONAL, INC.

/s/ Richard A. Smith
---
Chief Financial Officer

Date: November 14, 2002

CERTIFICATION

I, Richard A. Smith, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Lennox International Inc.;

2. Based on my knowledge, this quarterly 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 quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;

4. The registrant’s other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a) designed such disclosure controls and procedures 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 quarterly report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing of this quarterly report (the "Evaluation Date");

   c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant’s other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function);

   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant’s ability to record, process, summarize and report financial data and have identified for the registrant’s auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant’s other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ Richard A. Smith
---
Chief Financial Officer

CERTIFICATION

I, Robert E. Schjerven, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Lennox International Inc.;

2. Based on my knowledge, this quarterly 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 quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;

4. The registrant’s other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a) designed such disclosure controls and procedures 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 quarterly report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing of this quarterly report (the "Evaluation Date");

   c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant’s other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function);

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant’s ability to record, process, summarize and report financial data and have identified for the registrant’s auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant’s other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ Robert E. Schjerven
---
Chief Executive Officer

**SHARE PURCHASE AGREEMENT**

THIS SHARE PURCHASE AGREEMENT ("***Agreement***") is made as of July 18, 2002, by and among OUTOKUMPU COPPER PRODUCTS OY, a Finnish company ("***OCP***"), OUTOKUMPU COPPER HOLDINGS, INC., a Delaware corporation ("***Buyer***"), and LENNOX INTERNATIONAL, INC., a Delaware corporation ("***Seller***").

**RECITALS**

Seller desires to sell, and Buyer desires to purchase, membership interests of HEATCRAFT HEAT TRANSFER LLC (to be renamed OUTOKUMPU HEATCRAFT USA LLC), a Delaware limited liability company (the "Company") as hereinafter provided, for the consideration and on the terms and conditions set forth in this Agreement. Buyer is a wholly-owned subsidiary of OCP.

**AGREEMENT**

Buyer, OCP and Seller, intending to be legally bound, agree as follows:

**1.** ***DEFINITIONS.***

For purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1:

***"Acquired Companies"*** -- the Company and the Heat Transfer Subsidiaries, collectively.

***"Applicable Contract"*** -- any Contract (a) under which any Acquired Company has or may acquire any rights, (b) under which any Acquired Company has or may become subject to any obligation or liability, or (c) by which any Acquired Company or any of the assets owned or used by it is or may become bound.

***"Balance Sheet"*** -- as defined in Section 3.4.

***"Balance Sheet Net Assets"*** -- the combined net assets ((i) total assets minus (ii) total liabilities other than any Indebtedness) of the Acquired Companies shown on the Base Balance Sheet calculated in accordance with GAAP.

***"Base Balance Sheet"*** -- means the unaudited balance sheet for the Acquired Companies attached hereto as Schedule 1-A.

***"Base Business Plan"*** -- means the initial base business plan of the Company set forth as Attachment A to the Members' Agreement.

---

***"Best Efforts"*** -- the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to ensure that such result with due consideration for timing where appropriate; provided, however, that an obligation to use Best Efforts under this Agreement does not require the Person subject to that obligation to take actions that would result in a materially adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions.

***"Breach"*** -- a "Breach" of a representation, warranty, covenant, obligation or other provision of this Agreement or any instrument delivered pursuant to this Agreement will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation or other provision, and the term "Breach" means any such inaccuracy, breach, failure, claim, occurrence or circumstance.

***"Business"*** -- consists of:

(a) Subject to clause (b) below, Seller's heat transfer business in North America, which includes its original equipment manufacturing ("***OEM***") heat transfer division located in Grenada, Mississippi, its commercial coil heat transfer operation located in Grenada, Mississippi and its Livernois operations in Dearborn, Michigan and its operations in Juarez, Mexico. The Business includes all plant, property, equipment and working capital presently used or useable in the designated facilities; those licenses, patent rights, trademarks and trade names used in the Business (including Heatcraft), know-how, and other commercial or proprietary information associated and/or necessary to conduct the Business as presently conducted and foreseen, including all agreements with trade representatives, agents, distributors engaged in marketing activities related to the Business, with products currently manufactured by the Business; and the real estate (including all rights to leaseholds) wherein the Business conducts its manufacturing, distribution or administrative functions in the designated facilities (collectively "***Assets***").

(b) "Business" does not include (i) the heat transfer operations of Seller which are integrated into Seller's other businesses, including its HVAC/R operations in the United States consisting of the following companies: Lennox Industries Inc.; Armstrong Air Conditioning Inc.; Advanced Distributor Products LLC; Excel Comfort Systems Inc.; Allied Air Enterprises Inc. and Heatcraft Refrigeration Products or (ii) Seller's interest in Frigus-Bohn S.A. de C.V. or, for clarification purposes, Seller's interest in its joint venture company in Brazil, Heatcraft do Brasil Ltda.

***"Business Day"*** -- means a day (other than a Saturday or Sunday) on which banks in both New York, New York (USA) and Helsinki, Finland are open for general business.

***"Buyer"*** -- as defined in the first paragraph of this Agreement.

***"Buyer's Accountants"*** -- PricewaterhouseCoopers LLP.

***"Closing"*** -- as defined in Section 2.3.

***"Closing Date"*** -- the date and time as of which the Closing actually takes place.



---

***"Closing Date Net Assets"*** -- the combined net assets (total assets minus (ii) total liabilities other than any Indebtedness) of the Acquired Companies as of the Closing Date calculated in accordance with GAAP.

***"Company"*** -- as defined in the Recitals of this Agreement.

***"Competition Law"*** -- Any Legal Requirement intended to prohibit or regulate mergers, restraints of trade or monopolization of trade, including the HSR Act and Council Regulation (EEC) No. 4064/89 or similar laws within Finland or other applicable jurisdictions including France, Italy and the Czech Republic.

***"Consent"*** -- any approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

***"Contemplated Transactions"*** -- all of the transactions contemplated by this Agreement, including:

(c) the sale of the Shares by Seller to Buyer;

(d) the JV Transactions;

(e) the performance by Buyer and Seller of their respective covenants and obligations under this Agreement; and

(f) The Company's exercise of 100% control over the Heat Transfer Subsidiaries including the transactions provided for in Section 6.1.

***"Contract"*** -- any agreement, contract, obligation, promise or undertaking (whether written or oral and whether express or implied) that is legally binding.

***"Damages"*** -- as defined in Section 10.1.

***"Effective Time"*** -- 11:59:59 p.m. on the Closing Date.

***"Encumbrance"*** -- any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal or any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

***"Environment"*** -- soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

***"Environmental, Health and Safety Liabilities"*** - -- any cost, damages, expense, liability, obligation or other responsibility arising



from the requirements for compliance with or arising from the violation of any applicable Environmental Law or Occupational Safety and Health Law and consisting of or relating to:

(a) any actions required to be taken to comply with applicable law or regulation relating to environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of chemical substances or products);

(b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial or inspection costs and expenses resulting from any requirements under Environmental Law or Occupational Safety and Health Law;

(c) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment or other remediation or response actions ("***Cleanup***") required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) with authority to require such Cleanup; or

(d) any other compliance, corrective, investigative or remedial measures required under the applicable Environmental Law or Occupational Safety and Health Law.

The terms "removal," "remedial" and "response action," include the types of activities covered by the United States Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.ss.9601 et seq., as amended ("CERCLA").

***"Environmental Law"*** -- any Legal Requirement that requires:

(a) advising appropriate authorities, employees and the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable 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) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;



(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been released, preventing the threat of release, or paying the costs of such clean up or prevention; or

(h) 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.

***"ERISA"*** -- the Employee Retirement Income Security Act of 1974 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

***"European Share Purchase Agreement"*** -- the Share Purchase Agreement to be entered into as of the Closing Date by and between LGL Holland B.V. and OCP with respect to the purchase by OCP (or its Related Person) of 55% of the shares or other equity interests of Outokumpu Heatcraft B.V. ("*EU JVCo*").

***"Facilities"*** -- any real property, leaseholds or other interests currently or formerly owned or operated by Seller or any Related Person thereof and any buildings, structures or equipment (including motor vehicles, tank cars and rolling stock) currently or formerly owned or operated by Seller or any Related Person thereof for which Buyer or any of the Acquired Companies could have any legal liability under Environmental Law.

***"GAAP"*** -- generally accepted United States accounting principles, applied on a basis consistent with the basis on which the Balance Sheet and the other financial statements referred to in Section 3.4 were prepared.

***"Governmental Authorization"*** -- any approval, consent, license, permit, waiver or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

***"Governmental Body"*** - -- any:

(a) nation, state, county, city, town, village, district or other jurisdiction of any nature;

(b) federal, state, local, municipal, foreign or other government;

(c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal);

(d) multi-national organization or body; or



(e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

***"Grenada Real Property"*** - -- all real property owned or leased by Heatcraft Inc. or any Related Persons in the State of Mississippi used for the activities of the Business.

**"Hazardous Activity"** -- 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 Materials in, on, under, about or from the Facilities or any part thereof, and any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm to persons or property or the Environment on or off the Facilities.

***"Hazardous Materials"*** - -- any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic

substitutes therefore and asbestos or asbestos-containing materials.

***"Heat Transfer Existing Subsidiaries"*** - the direct and indirect, wholly or partially owned, subsidiaries of Seller in existence as of December 31, 2001 and through which the Business has been operated.

***"Heat Transfer Subsidiaries"*** - the Persons formed or to be formed that, in addition to the Company, are listed on Schedule 3.1(a).

***"HSR Act"*** -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

***"Indebtedness"***-- without duplication with respect to any Person, (a) all indebtedness of such Person for borrowed money (including all accrued interest and accumulated amortization), (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables created in the Ordinary Course of Business), (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (d) all obligations of such Person as lessee under leases that have been, in accordance with GAAP, recorded as capital leases, (e) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities that have been, in accordance with GAAP, recorded as indebtedness, and (f) Indebtedness of others referred to in clauses (a) through (e) above guaranteed in any manner by such Person, or in effect guaranteed by such Person under or pursuant to one or more Contracts.

***"Independent Accountants***" - -- Ernst & Young, LLP.

***"Intellectual Property Assets***" -- as defined in Section 3.22.



---

***"Interim Closing Period***" -- the period beginning as of the Effective Time and continuing through and ending on the Closing Date.

***"IRC***" -- the Internal Revenue Code of 1986 or any successor law, and regulations issued by the IRS pursuant to the Internal Revenue Code or any successor law.

***"IRS***" -- the United States Internal Revenue Service or any successor agency, and, to the extent relevant, the United States Department of the Treasury.

***"JV Closings***" -- the completion and consummation of the JV Transactions as provided for in the Members' Agreement.

***"JV Transactions***" -- the Contracts and actions provided for, and as defined, in the Members' Agreement.

***"Key Executives***" - -- the individuals listed on Schedule 1-B.

***"Knowledge***" - -- an individual will be deemed to have "Knowledge" of a particular fact or other matter if:

(a) such individual is actually aware of such fact or other matter; or

(b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.

A Person (other than an individual) will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, or manager (as it might relate to an LLC) of such Person or any subsidiary thereof (or in any similar capacity) has, or at any time had, Knowledge of such fact or other matter. Notwithstanding the foregoing, "Knowledge" of Seller means the knowledge of the officers and directors of Seller, the Acquired Companies and the Heat Transfer Existing Subsidiaries; the management team members of Seller in Dallas, Texas listed on Schedule 1- C and of Heatcraft Inc. in Grenada, Mississippi and Livernois Engineering Inc. in Dearborn Michigan listed on Schedule 1-D; and the management team members for Seller's heat transfer operations in Europe, and the directors of such subsidiaries listed on Schedule 1-E.

***"LLC Agreement***" - -- the Restated Limited Liability Company Agreement of the Company, the form of which is attached to the Members' Agreement as Attachment G.

***"Legal Requirement***" -- any federal, state, local, municipal, foreign, international, multinational or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute or treaty.



---

***"Members' Agreement***" -- the Joint Venture and Members' Agreement among Buyer, OCP, Seller and the Company, dated July 18, 2002.

***"Membership Interests***" -- as defined in the LLC Agreement.

***"Net Assets Adjustment***" -- the amount by which (a) the Closing Date Net Assets are greater (the "Positive Net Assets Adjustment") or less (the "Negative Net Assets Adjustment") than (b) the Balance Sheet Net Assets.

***"OCP***"-- as defined in the first paragraph of this Agreement.

***"Occupational Safety and Health Law***" - -- any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards.

***"Order***" -- any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Body or by any arbitrator.

***"Ordinary Course of Business***" -- an action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" if such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.

***"Organizational Documents***" -- (a) the articles or certificate of incorporation and the bylaws of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the certificate of formation and limited liability company agreement, memorandum of association, or operating agreement of a limited liability company, (e) any charter or similar document adopted or filed in connection with the creation, formation or organization of a Person, and (f) any amendment to or restatement of any of the foregoing.

***"Permitted Indebtedness***" - any Indebtedness of the Acquired Companies incurred after the Effective Time which has been approved in writing by Buyer.

***"Person***" -- any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Body.

***"Plan***" -- as defined in Section 3.13.

***"Proceeding***" -- any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

***"Related Person***" -- with respect to a particular individual:

(a) each other member of such individual's immediately family (including spouse, parents and children, natural or adopted) (the ***"Family"***);

(b) any Person that is directly or indirectly controlled by such individual or one or more members of such individual's Family.

With respect to a specified Person other than an individual:

(c) any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person;

(d) any Person that holds a Material Interest in such specified Person; and

(e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

***"Release"*** -- any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment, whether intentional or unintentional.

***"Representative"*** -- with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors which has been designated by a Person and acknowledged by the other Party which are limited in number to those reasonably necessary to accomplish the required activities under this Agreement.

***"Search Expenses"*** -- the fees and expenses incurred by Buyer or its Related Person in connection with environmental searches and investigations reasonably incurred by or on behalf of Buyer (but excluding the fees of Buyer's attorneys).

***"Securities Act"*** -- the Securities Act of 1933 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

***"Seller"*** -- as defined in the first paragraph of this Agreement.

***"Seller's Accountants"*** -- KPMG LLP.

***"Seller's Release"*** -- as defined in Section 2.4.

***"Shared Services Agreement"*** -- an agreement between the Company, EU JVCo and Seller in the form attached to the Members' Agreement as Attachment I pursuant to which (a) Seller and/or its Related Persons shall provide certain transition services to the Company, EU JVCo and the other Acquired Companies and (b) the Company will provide certain services to Advanced Distributor Products LLC, an affiliate of Seller.

***"Shares"*** -- 55% of the Membership Interests in the Company.



***"Subsidiary"*** -- with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body are held by the Owner or one or more of its Subsidiaries; when used without reference to a particular Person, "Subsidiary" means a Subsidiary of the Company.

***"Tax" and "Taxes"*** -- any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, transfer pricing, 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"*** -- any return (including any information return), report, statement, schedule, notice, form or other document or information required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

***"Threat of Release"*** -- a substantial likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

***"Threatened"*** -- a claim, Proceeding, dispute, action or other matter will be deemed to have been "Threatened" if any demand or statement has been made (orally or in writing) or any notice has been given (orally or in writing), or if any other event has occurred or any other circumstances exist, that would lead a prudent Person with adequate Knowledge of all of the relevant facts to conclude that such a claim, Proceeding, dispute, action or other matter is likely to be asserted, commenced, taken or otherwise pursued in the future.

***"Transaction Expenses"*** -- all fees, costs, expenses and disbursements, incurred by Seller and the Acquired Companies, in connection with the Contemplated Transactions and the transactions provided for in the European Share Purchase Agreement, including: (a) the fees and expenses of any counsel retained by Seller, (b) the fees and expenses of any investment or financial advisors retained by Seller or any Acquired Company, (c) the fees and expenses of Seller's Accountants, (d) any amounts payable in accordance with Section 10.4.3, (e) any incentive bonuses payable to the management, and any severance or similar payments payable to any employee, of any of the Acquired Companies in connection with the transactions contemplated hereby and in the European Share Purchase Agreement, (f) Seller's share of the fees and expenses of the Independent Accounting Firm, if any, (g) any fees and expenses of any other counsel, accountants or other similar professionals with respect to services rendered to Seller or the Acquired Companies in connection with the transactions contemplated by this Agreement and the European Share Purchase Agreement and (h) one–half of Buyer's Search Expenses.



**2.** ***SALE AND TRANSFER OF SHARES; CLOSING.***

**2.1** ***SHARES***. Subject to the terms and conditions of this Agreement, at the Closing Seller will sell and transfer the Shares to Buyer, and Buyer will purchase the Shares from Seller.

**2.2** ***CONSIDERATION***.

(a) The total consideration payable by Buyer for the purchase of the Shares (the "***Purchase Price***") shall be (i) $45,320,000 minus (ii) any Indebtedness other than Permitted Indebtedness of the Acquired Companies that Seller shall not have repaid in full pursuant to Section 6.3(b) that is outstanding as of the Closing Date (including the unpaid principal, accrued and unpaid interest, any premium (including any prepayment penalties or other charges payable by reason of the prepayment of such Indebtedness on the Closing Date) and other charges payable in connection therewith) and (iii) either (A) plus 55% of the Positive Net Assets Adjustment or (B) minus 55% of the Negative Net Assets Adjustment.

(b) At least three (3) Business Days prior to the Closing Date, the chief financial officer of Seller shall certify in writing to Buyer the estimated amount of the Indebtedness, Permitted Indebtedness, Closing Date Net Assets and, based thereon, a preliminary calculation of the Net Assets Adjustment and the adjustment for Indebtedness. As soon as practicable prior to the Closing Date and based on the certification referred to above, Buyer and Seller shall jointly calculate the amount of the Purchase Price to be paid at Closing subject to adjustment as provided for in Section 2.2(c) (the ***"Preliminary Purchase Price"***). The Closing shall occur and the payments to be made at Closing as provided for in Section 2.4 shall be based upon the notice provided for herein, and upon such joint calculations.

(c) As promptly as possible and in any event, not later than 30 days after the Closing, the Company, under the direction of Buyer after consultation with Seller, shall prepare and deliver initially to Buyer and Buyer's Accountants (i) financial statements of the Company including a consolidated balance sheet (the ***"Closing Balance Sheet"***) and an income statement with consolidating schedule of the Acquired Companies as of the Closing Date in accordance with GAAP which shall be subject to an audit or review by Buyer's Accountants and (ii) a supplemental report setting forth the Indebtedness, the Permitted Indebtedness, Closing Date Net Assets and, based thereon, the Net Assets Adjustment (identified as either the Positive Net Assets Adjustment or the Negative Net Assets Adjustment), and the adjustment for Indebtedness (the "***Closing Adjustments***"), each of which shall be reported on by Buyer's Accountants (the ***"Closing Date Financial Report"***). The Closing Date Financial Report shall reflect a physical inventory conducted in accordance with subsection (e) of this Section 2.2 with any necessary adjustments required to reflect

any changes from the date of the inventory and the Closing Date. Any third-party expenses or fees incurred by Company in preparing or in connection with the Closing Date Financial Report and the Closing Adjustment (including the fees of Buyer's Accountants) shall be borne by the Company. The Company and Buyer's Accountants shall make available any work papers or other information relating to the Closing Date Financial Report then or thereafter requested by Seller. Any expenses incurred by Seller's Accountants in reviewing the Closing Date Financial Report, such work papers and other information and in providing



Seller with its report thereon shall be borne by the Company. If Seller does not object, or otherwise fails to respond, to the Closing Date Financial Report within 30 days after delivery to Seller, such Closing Date Financial Report shall automatically become final and conclusive. In the event that Seller objects to the Closing Date Financial Report within such 30 day review period, Seller and Buyer shall promptly meet and endeavor to reach agreement as to the content of the Closing Date Financial Report. If Seller and Buyer agree on the content of the Closing Date Financial Report, such Closing Date Financial Report shall become final and conclusive. If Seller and Buyer are unable to reach agreement within 30 days after the end of Seller's 30 day review period, then the Independent Accountants shall promptly be retained to undertake a determination of the Closing Date Financial Report, which determination shall be made as quickly as possible (it being understood that the parties shall direct the Independent Accountants to complete their work within 30 days). Only disputed items shall be submitted to the Independent Accountants for review. In resolving any disputed item, the Independent Accountants may not assign a value to such item greater than the greatest value for such item claimed by either party or less than the lowest value for such item claimed by either party, in each case as presented to the Independent Accountants. Such determination of the Independent Accountants shall be final and binding on Seller and Buyer, and all expenses of the Independent Accountants shall be borne equally by Seller and Buyer. The Purchase Price and the payments required to be made after the Closing Date pursuant to Section 2.2(d) shall be finally determined on the basis of the Closing Date Financial Report and the Closing Adjustment.

(d) Within five (5) Business Days after the final determination of the Closing Adjustments, Buyer or Seller, as the case may be, shall pay to the other the amount by which the Purchase Price, as adjusted by the Closing Adjustments, is greater or less than the Preliminary Purchase Price (such difference being the ***"Closing Purchase Price Reconciliation***"). If the Closing Purchase Price Reconciliation is positive, Buyer shall pay such difference to Seller. If the Closing Purchase Price Reconciliation is negative, Seller shall pay such difference to Buyer. If (i) Buyer fails to pay any amount owing to Seller pursuant to this subsection (d) or (ii) Seller fails to pay any amount owing to Buyer pursuant to this subsection (d), within the specified five (5) Business Day period, then the amount so owing shall be payable on demand and interest shall accrue on the unpaid amount at the rate of 18% per annum.

(e) The target date for the physical inventory referred to in subsection (c) above is August 24, 2002, except for Italy, which is on or about August 10, 2002. Buyer agrees to notify Seller by August 2, 2002 if it appears that the approval of the European Commission will not be received by August 22, 2002, in which case the date of the physical inventory will be postponed by mutual agreement of the parties to a date that is closer to the Closing Date but in no event earlier than 35 days prior to a new target Closing Date. The physical inventory will be taken ~~as~~ by the employees of the Acquired Companies under the direction of Buyer, after consultation with Seller who shall have the right to be present thereat.

(f) (i) Subject to clause (ii) of this Section 2.2(f), if any Accounts Receivable that are included in the Closing Balance Sheet and taken into account in calculating the Net Assets Adjustment are not collected in full within later of 180 days after the Closing or 90 days after the due date (the aggregate amount of any such uncollected Accounts Receivable less any reserve for doubtful



accounts being herein referred to as the ***"Shortfall Amount"***), Buyer shall promptly notify Seller in writing as to the Shortfall Amount. Within five (5) Business Days after delivery of such notice, unless Seller disputes the amount thereof, Seller shall pay Buyer by wire transfer of immediately available funds an amount equal to the Shortfall Amount. The receivables in question will then be transferred to Seller and Buyer agrees to provide any reasonable assistance requested by Seller to collect said receivables. For purposes hereof, it is understood that the Accounts Receivable included in the current assets to be set forth on the Closing Balance Sheet will be net of any reserve for doubtful accounts. Any disputes as to the Shortfall Amount shall be submitted to and resolved by the Independent Accountants in the same manner as provided for in Section 2.2(c).

(ii) Buyer acknowledges Seller's disclosure that the aggregate amount of the Accounts Receivable on the Balance Sheet includes two Accounts Receivable (the "Showa A/R's") the sum of which is, on the date hereof, approximately $1,265,000, which arise out of a Contract that Livernois (one of the Heat Transfer Existing Subsidiaries) has performed (the "Showa Contract"). Seller agrees that, notwithstanding clause (i) of this Section 2.2(f), if the Showa A/R's are not collected in full prior to the Closing, (A) the amount of any shortfall in collecting the Showa A/R's shall not be included as a current asset on the Closing Balance Sheet used in the determination of the Closing Date Net Assets and (B) the Company shall cause Livernois to assign its rights to collect the Showa A/R's or the shortfall to Seller. Buyer agrees to provide Buyer any reasonable assistance requested by Seller to collect the Showa A/R's or any shortfall amount thereunder.

**2.3** ***CLOSING***. The purchase and sale (the "***Closing"***) provided for in this Agreement will take place at the offices of Seller in Dallas, Texas, at 10:00 a.m. (local time) as soon as all of the conditions to Closing set forth in Articles 7 and 8 have been or can be satisfied, on a date that, subject to the foregoing, will be reasonably specified by Buyer by written notice to Seller at least five (5) Business Days in advance or at such other time and place as the parties may agree. Subject to the provisions of Section 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.3 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

**2.4** ***CLOSING OBLIGATIONS***. At or prior to the Closing:

(a) Seller will deliver, or cause a Related Person to deliver, to Buyer:

(i) an assignment executed by Seller of the Shares to Buyer, in a form reasonably acceptable to Buyer;

(ii) a certificate executed by Seller representing and warranting to Buyer that each of Seller's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to any supplements to and schedules or exhibits attached hereto that were delivered by Seller to Buyer prior to the Closing Date in accordance with Section 5.5); and



(iii) resignations, effective as of the Closing, of such directors and officers of the Acquired Companies as may be designated by the Board of the Company prior to Closing.

(b) Buyer will deliver, or cause a Related Person to deliver:

(i) the Preliminary Purchase Price by wire transfer to Seller, to an account to be specified by Seller;

(ii) a certificate executed by Buyer to the effect that, except as otherwise stated in such certificate, each of Buyer's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date.

**2.5** ***ALLOCATION OF PURCHASE PRICE.***

(a) Not later than ninety (90) days after the Closing Date, (i) Buyer shall prepare and deliver to Seller a proposed allocation of the Purchase Price among the Company's assets other than those owned by Livernois and (ii) Seller shall prepare and deliver to Buyer a proposed allocation of the Purchase Price among the assets owned by Livernois. Buyer and Seller each agrees to keep the other party informed with respect to the identity and credentials of any appraiser retained for purposes of such allocation and to provide the other party with such information related thereto as the other party may reasonably request. Unless either party objects to a proposed allocation within thirty (30) days after receipt of such proposed allocation from the party responsible for preparing it hereunder, that allocation will be considered to be final (each, a ***"Final Allocation"***). If a party objects to a proposed allocation, the parties shall negotiate in good faith to reach agreement upon a Final Allocation. If the parties do not agree upon a Final Allocation, the parties shall submit the matter to the Independent Accountants for determination of the Final Allocation. The determination of any Final Allocation by the Independent Accountants will be final and binding upon the parties. Neither Seller nor Buyer shall take any position on any Tax Return or other filing with a Governmental Body that is inconsistent with any Final Allocation. Buyer and Seller shall duly prepare and timely file such reports and information returns as may be prescribed or appropriate under Code Section 1060 and any regulations thereunder and any corresponding provisions of applicable state income Tax laws to report the allocation of the Purchase Price in accordance with the Final Allocation. Any adjustments to the Purchase Price after the Closing will be allocated among the Company's assets in a manner consistent with the foregoing.

**3.** ***REPRESENTATIONS AND WARRANTIES OF SELLER.*** Seller represents and warrants to Buyer as follows:

**3.1.** ***ORGANIZATION AND GOOD STANDING.***

(a) Schedule 3.1(a) contains a complete and accurate list for each Acquired Company of its name, its jurisdiction of incorporation or formation, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each shareholder and the number of shares or other ownership interests held by each). Each Acquired Company is duly



organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use and to perform all its obligations under Applicable Contracts. Each Acquired Company is duly qualified to do business as a foreign corporation or other entity and is in good standing under the laws of each other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification where the lack of such qualification would have a material adverse effect on the Business.

(b) The Company is, and at all times since its formation has been, a limited liability company with only a single member.

(c) Seller has delivered to Buyer copies of the Organizational Documents of each Acquired Company, as currently in effect.

**3.2** ***AUTHORITY; NO CONFLICT.***

(a) This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms. Upon the execution and delivery by Seller of the LLC Agreement and the Members' Agreement (collectively, the "***Seller's Closing Documents***"), the Seller's Closing Documents will constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms. Seller has all the necessary right, power, authority and capacity to execute and deliver this Agreement and the Seller's Closing Documents and to perform its obligations under this Agreement and the Seller's Closing Documents.

(b) Except as set forth in Schedule 3.2(b), neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of (A) any provision of the Organizational Documents of Seller or of the Acquired Companies, or (B) any resolution adopted by the board of directors or the shareholders of Seller or of any Acquired Company;

(ii) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which any Acquired Company or Seller, or any of the assets owned or used by any Acquired Company or otherwise in connection with the Business, may be subject;

(iii) contravene, conflict with or result in a violation of any of the terms or requirements of, any Governmental Authorization that is held by any Acquired Company or that otherwise relates to the Business or the business of, or any of the assets owned or used by, any Acquired Company;



(iv) cause any Acquired Company to become subject to, or to become liable for the payment of, any Tax;

(v) contravene or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Applicable Contract; or

(vi) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by any Acquired Company or otherwise in connection with the Business.

Except as set forth in Schedule 3.2(b), neither Seller nor any Acquired Company is or will be required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

**3.3** ***CAPITALIZATION.***

(a) All of the Membership Interests have been validly authorized and issued in compliance with all Legal Requirements. Seller is and will be on the Closing Date the record and beneficial owners and holders of the Shares, free and clear of all Encumbrances.

(b) With the exception of the Shares (which are owned by Seller), all of the outstanding equity securities and other securities of each Acquired Company are owned of record and beneficially by one or more of the Acquired Companies, free and clear of all Encumbrances except where the ownership of shares is required under the Legal Requirements of the jurisdiction of organization to be vested in those Persons serving on the Board of Directors of an Acquired Company. No legend or other reference to any purported Encumbrance appears upon any certificate representing equity securities of any Acquired Company. All of the outstanding equity securities of each Acquired Company have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth on Schedule 3.3(b), there are no Contracts relating to the issuance, sale, or transfer of any equity securities or other securities of any Acquired Company. Seller is not a party to any option, warrant, purchase right or other contract or commitment that could require Seller to sell, transfer, or otherwise dispose of any equity securities of the Acquired Companies. There are no voting trust, proxy or other agreement with respect to the voting of any Shares of the Acquired Companies. None of the outstanding equity securities or other securities of any Acquired Company was issued in violation of any Legal Requirement.

(c) Except as set forth on Schedule 3.3(c), no Acquired Company owns, or has any Contract to acquire, any equity securities or other securities of any Person (other than Acquired Companies) or any direct or indirect equity or ownership interest in any other business.

**3.4** ***FINANCIAL STATEMENTS***. Seller has delivered to Buyer: (i) all available audited financial statements of the Acquired Companies and the Business as of December 31 for each of the years



2000 and 2001, (ii) unaudited financial statements for the Heat Transfer Existing Subsidiaries for each of the years 2000 and 2001 and (iii) a proforma unaudited consolidated balance sheet of the Acquired Companies and the Business as at the Effective Time (the "Balance Sheet") all of which are attached hereto as Schedule 3-4. Buyer acknowledges that the audited financial statements, if any, may be audited according to local accounting principles or according to GAAP, and nothing in this section requires Seller to restate these financial statements. The Balance Sheet is true and correct and fairly presents the financial condition of the Acquired Companies and the Business in all material respects and reflects the consistent application of accounting principles.

**3.5** ***BOOKS AND RECORDS.*** The books of account, minute books, stock record books, and other records of the Acquired Companies for the period of time as the Acquired Companies have been owned by the Seller, all of which have been made available to Buyer, are complete and correct and have been maintained in accordance with reasonable business practices of the Seller, including the maintenance of an adequate system of internal controls. For such time as the Acquired Companies have been owned by the Seller, such minute books contain records of all meetings held of, and corporate action taken by, the stockholders, the Boards of Directors, and committees of the Boards of Directors of the applicable Persons, which are accurate and complete in all material respects and, to Seller's Knowledge, no 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, where the absence of such record would have a material adverse effect on the Acquired Companies. At the Closing, all of those books and records will be in the possession of the Acquired Companies.

**3.6** ***TITLE TO PROPERTIES; ENCUMBRANCES***. Schedule 3.6 contains a complete and accurate list of all real property, leaseholds or other interests therein used in connection with the Business. Seller has delivered or made available to Buyer copies of the deeds and other instruments (as recorded) by which Seller or one of the Acquired Companies acquired such real property and/or interests, and copies of all title insurance policies, opinions, abstracts and surveys that, to Seller's Knowledge, are in the possession of Seller or the Acquired Companies and relating to such property or interests. The Acquired Companies own, or will as of the Closing Date own, (with good and marketable title in the case of owned real property, subject only to the matters permitted by the following sentence) all the properties and assets (whether real, personal or mixed and whether tangible or intangible) that are used in connection with the Business, or

reflected as owned in the books and records of the Acquired Companies or the Business, including all of the properties and assets reflected in the Balance Sheet (except for assets held under capitalized leases or operating leases disclosed or not required to be disclosed in Schedule 3.6 and personal property sold since the date of the Balance Sheet in the Ordinary Course of Business), and all of the properties and assets purchased or otherwise acquired to be owned by the Acquired Companies or otherwise in connection with the Business since the date of the Balance Sheet (except for personal property acquired and sold since the date of the Balance Sheet in the Ordinary Course of Business and consistent with past practice). All material properties and assets reflected in the Balance Sheet are free and clear of all Encumbrances and are not, in the case of real property, subject to any rights of way, building use restrictions, exceptions, variances, reservations or limitations of any material nature except, with respect to all such properties and assets, (a) mortgages or security interests shown on the Balance Sheet as securing specified liabilities or obligations, with respect to which no default (or event that, with notice or lapse of time or



both, would constitute a default) exists, (b) mortgages or security interests incurred in connection with the purchase of property or assets after the date of the Balance Sheet (such mortgages and security interests being limited to the property or assets so acquired), with respect to which no material default (or event that, with notice or lapse of time or both, would constitute a default) exists, (c) liens for current taxes not yet due, and (d) with respect to real property, any restrictions which have not been identified in documents of ownership or title insurance. All buildings, plants and structures owned by the Acquired Companies or otherwise used in connection with the Business lie wholly within the boundaries of the real property owned by the Acquired Companies and to Seller's Knowledge, do not encroach upon the property of, or otherwise conflict with the property rights of, any other Person.

**3.7** ***CONDITION AND SUFFICIENCY OF ASSETS***. The buildings, structures and equipment used in the Business are structurally sound, are in good operating condition and repair and are adequate for the uses to which they are being put, and none of such buildings, structures or equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost or other repairs included in the Base Business Plan. The buildings, structures and equipment of the Acquired Companies are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing. One or more of the Acquired Companies is, or will be as of the Closing Date, the owner of all right, title and interest in and to all of the assets that have been used in connection with the operation of the Business by Seller or the Heat Transfer Existing Subsidiaries (including all material Applicable Contracts, Intellectual Property Assets, inventory, insurance, Governmental Authorizations, licenses and permits), whether tangible or intangible, free and clear of all Encumbrances, and such assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing.

**3.8** ***ACCOUNTS RECEIVABLE***. All trade accounts receivable of the Business that are reflected on the Balance Sheet (whether or not they were factored as of the date of the Balance Sheet) and all accounts receivable of the Business that will be reflected on the accounting records of the Acquired Companies as of the Closing Date (collectively, the ***"Accounts Receivable"***) represent or will represent valid obligations arising from sales actually made or services actually performed in the Ordinary Course of Business, and the respective reserves shown on the Balance Sheet or on the accounting records of the Company as of the Closing Date are calculated consistent with GAAP and, in the case of the reserve as of the Closing Date, will be so calculated. There is no contest, claim or right of set-off which has been asserted by any account debtor, other than those incurred in the Ordinary Course of Business, under any Contract with any obligor of an Accounts Receivable relating to the amount or validity of such Accounts Receivable.

**3.9** ***INVENTORY***. All inventory of the Business, whether or not reflected in the Balance Sheet, is owned by the Acquired Companies and to Seller's Knowledge, 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 or on the accounting records of the Acquired Companies as of the Closing Date, as the case may be. All inventories not written off have been priced at the lower of cost or net realizable value.



The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Acquired Companies.

**3.10** ***NO UNDISCLOSED LIABILITIES***. Except as set forth in Schedule 3.10 or Schedule 3.19, to Seller's Knowledge, the Business, the Acquired Companies have no material liabilities or obligations whether absolute, accrued, contingent or otherwise) except for liabilities or obligations reflected or reserved against in the Balance Sheet and such trade payables and short term trade indebtedness relating to the Business as may have been incurred in the Ordinary Course of Business since the date thereof.

**3.11** ***TAXES.***

(a) To Seller's Knowledge, Seller and the Acquired Companies have filed or caused to be filed all Tax Returns that are or were required to be filed by or with respect to the Business or any of them, either separately or as a member of a group of corporations, pursuant to applicable Legal Requirements where the failure to file such Tax Return would have a material adverse effect on the Business or the Acquired Companies. Seller will make available to Buyer or its Representatives, at its request, copies of, and Schedule 3.11 contains a complete and accurate list of, all such Tax Returns since January 1, 1998. To Seller's Knowledge, Seller and the Acquired Companies have paid, or made provision for the payment of, all material Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received with respect to the Business or by Seller or any Acquired Company, except such Taxes, if any, as are listed in Schedule 3.11 and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Balance Sheet.

(b) The U.S. Federal income Tax Returns of Seller and each Acquired Company subject to such Taxes have been audited by the IRS or other Governmental Body or are closed by the applicable statute of limitations for all taxable years through 1997. To Seller's Knowledge, all deficiencies proposed as a result of such audits have been paid, reserved against, settled, or, as described in Schedule 3.11, are being contested in good faith by appropriate proceedings. Except as described in Schedule 3.11, neither Seller nor any Acquired Company has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of Seller or any Acquired Company or for which Seller or any Acquired Company may be liable.

(c) To Seller's Knowledge, the charges, accruals and reserves with respect to Taxes on the respective books of Seller and each Acquired Company are adequate (determined in accordance with GAAP) and are at least equal to Seller's and that Acquired Company's expected liability for Taxes. There exists no proposed tax assessment against Seller, any Acquired Company or the Business except as disclosed in the Balance Sheet or in Schedule 3.11. To Seller's Knowledge, all material Taxes that Seller or any Acquired Company is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Body or other Person.



(d) All Tax Returns filed with respect to the Business or by (or that include on a consolidated basis) Seller or any Acquired Company, to the Knowledge of the Seller, are true, correct and complete in all material respects. There is no tax sharing agreement that will require any payment by Seller or any Acquired Company after the date of this Agreement. Neither Seller nor any Acquired Company is, or within the five-year period preceding the Closing Date has been, an "S" corporation.

**3.12** ***NO MATERIAL ADVERSE CHANGE***. Except as disclosed on Schedule 3.12, since December 31, 2001, there has not been any material adverse change in the business, operations, properties, prospects, assets or condition of the Business or any Acquired Company, and no event has occurred or circumstance exists that may result in such a material adverse change.

**3.13** ***EMPLOYEE BENEFITS.***

(a) As used in this Section 3.13, the following terms have the meanings set forth below:

" ***Company Other Benefit Obligation***" means an Other Benefit Obligation owed, adopted or followed by an Acquired Company.

"***Company Plan***" means all Plans of which an Acquired Company or its predecessor is or was a Plan Sponsor, or to which an Acquired Company or its predecessor otherwise contributes or has contributed, or in which an Acquired Company or its predecessor otherwise participates or has participated. All references to Plans are to Company Plans unless the context requires otherwise.

"***Company VEBA***" means a VEBA whose members include employees of any Acquired Company.

"***ERISA Affiliate***" means, with respect to an Acquired Company, any other person that, together with the Company, would be treated as a single employer under IRC § 414.

"***MultiEmployer Plan***" has the meaning given in ERISA § 3(37)(A).

"***Other Benefit Obligations***" means all obligations, arrangements or customary practices, whether or not legally enforceable, to provide bonus or other payments or benefits, other than salary, as compensation for services rendered or in connection with the Contemplated Transactions, to present or former directors, employees or agents, other than obligations, arrangements, and practices that are Plans. Other Benefit Obligations include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of IRC § 132.

"***PBGC***" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"***Pension Plan***" has the meaning given in ERISA § 3(2)(A).



"***Plan***" has the meaning given in ERISA §3(3).

"***Plan Sponsor***" has the meaning given in ERISA §3(16)(B).

"***Qualified Plan***" means any Plan that meets or purports to meet the requirements of IRC § 401(a).

"***Title IV Plans***" means all Pension Plans that are subject to Title IV of ERISA, 29 U.S.C. § 1301 et seq., other than MultiEmployer Plans.

"***VEBA***" means a voluntary employees' beneficiary association under IRC § 501(c)(9).

"***Welfare Plan***" has the meaning given in ERISA § 3(1).

(b) Schedule 3.13(b) contains a complete and accurate list of all Company Plans, Company Other Benefit Obligations and Company VEBAs, and identifies as such all Company Plans that are (i) defined benefit Pension Plans, (ii) Qualified Plans or (iii) Title IV Plans.

(i) Schedule 3.13(b)(i) sets forth a calculation of the liability, if any, of the Acquired Companies for post-retirement benefits other than pensions, made in accordance with Financial Accounting Statement 106 of the Financial Accounting Standards Board, regardless of whether any Acquired Company is required by this Statement to disclose such information.

(ii) Schedule 3.13(b)(ii) sets forth the material financial cost of all obligations owed under any Company Plan or Company Other Benefit Obligation that is not subject to the disclosure and reporting requirements of ERISA.

(c) Seller has delivered to Buyer:

(i) its most recent documents that set forth the terms of each Company Plan, Company Other Benefit Obligation or Company VEBA and of any related trust, including (A) all plan descriptions and summary plan descriptions of Company Plans for which Seller or the Acquired Companies are required to prepare, file and distribute plan descriptions and summary plan descriptions, and (B) its most recent summaries and descriptions, to the extent prepared and furnished to participants and beneficiaries regarding Company Plans, Company Other Benefit Obligations and Company VEBAs for which a plan description or summary plan description is not required;

(ii) all recent personnel, payroll and employment manuals and policies;

(iii) all recent collective bargaining agreements pursuant to which contributions have been made or obligations incurred (including both pension and welfare benefits) by the Acquired Companies, and all collective bargaining agreements pursuant to which contributions are being made or obligations are owed by such entities;



(iv) any recent written description of any Company Plan or Company Other Benefit Obligation that is not otherwise in writing;

(v) all current registration statements filed with respect to any Company Plan;

(vi) all current insurance policies purchased by or to provide benefits under any Company Plan;

(vii) all current contracts with third party administrators, actuaries, investment managers, consultants and other independent contractors that relate to any Company Plan, Company Other Benefit Obligation or Company VEBA;

(viii) all reports submitted within the two (2) years preceding the date of this Agreement by third party administrators, actuaries, investment managers, consultants or other independent contractors with respect to any Company Plan, Company Other Benefit Obligation or Company VEBA;

(ix) all current notifications to employees of their rights under ERISA § 601 et seq. and IRC § 4980B;

(x) the Form 5500 filed in each of the most recent three (3) plan years with respect to each Company Plan, including all schedules thereto and the opinions of independent accountants;

(xi) all notices that were given by any Acquired Company or any Company Plan to the IRS, the PBGC or any participant or beneficiary, pursuant to statute, within the two (2) years preceding the date of this Agreement, including notices that are expressly mentioned elsewhere in this Section 3.13;

(xii) all notices that were given by the IRS, the PBGC or the Department of Labor to any Acquired Company or any Company Plan within the two (2) years preceding the date of this Agreement;

(xiii) with respect to Qualified Plans, the most recent IRS determination letter for each Plan of the Acquired Companies and, with respect to VEBAs, the most recent IRS determination letter that the trust is exempt from income taxes; and

(xiv) with respect to Title IV Plans, the Form PBGC-1 filed for each of the two (2) most recent plan years.

(d) Except as set forth in Schedule 3.13(d):

(i) The Acquired Companies have performed all of their respective material obligations under all Company Plans, Company Other Benefit Obligations and Company VEBAs.



The Acquired Companies have made appropriate entries in their financial records and statements for all obligations and liabilities under such Plans, VEBAs and Other Benefit Obligations that have accrued but are not due.

(ii) No material statement, either written or oral, has been made by any Acquired Company to any Person with entitlements with regard to any Plan or Other Benefit Obligation that was not in accordance with the Plan or Other Benefit Obligation and that could have a material adverse economic consequence to any Acquired Company or to Buyer.

(iii) The Acquired Companies, with respect to all Company Plans, Company Other Benefits Obligations and Company VEBAs, are, and each Company Plan, Company Other Benefit Obligation and Company VEBA is, in compliance with ERISA, the IRC and other applicable Laws in all material respects including the provisions of such Laws expressly

mentioned in this Section 3.13, and with any applicable collective bargaining agreement.

(A) No material transaction prohibited by ERISA § 406 and no "prohibited transaction" under IRC § 4975(c) have occurred with respect to any Company Plan.

(B) Neither Seller nor any Acquired Company has any material liability to the IRS with respect to any Plan, including any liability imposed by IRC Chapter 43.

(C) Neither Seller nor any Acquired Company has any material liability to the PBGC with respect to any Plan other than premiums as and when due or has any liability under ERISA § 502 or § 4071.

(D) All material filings required by ERISA and the IRC as to each Plan have been timely filed, and all material notices and disclosures to participants required by either ERISA or the IRC have been timely provided.

(E) All material contributions and payments made or accrued with respect to all Company Plans, Company Other Benefit Obligations and Company VEBAs are deductible under IRC § 162 or § 404. No material amount, or any asset of any Company Plan or Company VEBA, is subject to Tax as unrelated business taxable income.

(iv) Each Company Plan can be terminated within thirty (30) days, without payment of any additional contribution or amount and without the vesting or acceleration of any benefits promised by such Plan.

(v) Since January 1, 2001, there has been no establishment or amendment of any Company Plan, Company VEBA or Company Other Benefit Obligation.

(vi) To the Knowledge of Seller, no event has occurred or circumstance exists that could result in a material increase in premium costs of Company Plans and Company Other Benefit Obligations that are insured, or a material increase in benefit costs of such Plans and Obligations that are self-insured.



(vii) Other than claims for benefits submitted by participants or beneficiaries, no claim against, or legal proceeding involving, any Company Plan, Company Other Benefit Obligation or Company VEBA is pending or, to Seller's Knowledge, is Threatened.

(viii) No Company Plan is a stock bonus or employee stock ownership plan within the meaning of IRC § 401(a).

(ix) Each Qualified Plan of each Acquired Company is qualified in form and operation under IRC § 401(a); each trust for each such Plan is exempt from federal income tax under IRC § 501(a). Each Company VEBA is exempt from federal income tax. No event has occurred or circumstance exists that will or could give rise to disqualification or loss of tax-exempt status of any such Plan or trust.

(x) Each Acquired Company has met or is expected to meet the minimum funding standard, and has made all contributions required, under ERISA § 302 and IRC § 402.

(xi) No Company Plan is subject to Title IV of ERISA.

(xii) The Acquired Companies have paid all amounts due to the PBGC pursuant to ERISA § 4007.

(xiii) No Acquired Company has ceased operations at any facility or has withdrawn from any Title IV Plan in a manner that would subject to any entity or Seller to liability under ERISA § 4062(e), § 4063 or § 4064.

(xiv) No Acquired Company has filed a notice of intent to terminate any Plan or has adopted any amendment to treat a Plan as terminated. The PBGC has not instituted proceedings to treat any Company Plan as terminated. No event has occurred or circumstance exists that may constitute grounds under ERISA § 4042 for the termination of, or the appointment of a trustee to administer, any Company Plan.

(xv) No amendment has been made to any Plan that has required or could require the provision of security under ERISA § 307 or IRC § 401(a)(29).

(xvi) No accumulated funding deficiency, whether or not waived, exists with respect to any Company Plan, and no event has occurred or circumstance exists that may result in an accumulated funding deficiency as of the last day of the current plan year of any such Plan.

(xvii) The actuarial report for each Pension Plan of each Acquired Company fairly presents the financial condition and the results of operations of each such Plan in accordance with GAAP.

(xviii) Since the last valuation date for each Pension Plan of each Acquired Company, no event has occurred or circumstance exists (excluding the accrual of additional service by active employees) that would materially increase the amount of benefits under any such Plan or



that would cause the excess of Plan assets over benefit liabilities (as defined in ERISA § 4001) to materially decrease, or the amount by which benefit liabilities exceed assets to materially increase.

(xix) No reportable event (as defined in ERISA § 4043 and in regulations issued thereunder) has occurred.

(xx) Neither Seller nor any Acquired Company has Knowledge of any facts or circumstances that may give rise to any liability of any Seller, any Acquired Company or the Company to the PBGC under Title IV of ERISA.

(xxi) No Acquired Company or its predecessor has ever established, maintained, or contributed to or otherwise participated in, or had an obligation to maintain, contribute to or otherwise participate in, any MultiEmployer Plan.

(xxii) Except to the extent required under ERISA § 601 et seq. and IRC § 4980B, no Acquired Company provides health or welfare benefits for any retired or former employee or is obligated to provide health or welfare benefits to any active employee following such employee's retirement or other termination of service.

(xxiii) Each Acquired Company has the right to modify and terminate benefits to retirees (other than pensions) without incurring any liability for future benefits with respect to both retired and active employees.

(xxiv) Seller and all Acquired Companies have complied with the provisions of ERISA § 601 et seq. and IRC § 4980B.

(xxv) No payment that is owed or may become due to any director, officer, employee or agent of any Acquired Company will be non-deductible to the Acquired Companies or subject to tax under IRC § 280G or § 4999; nor will any Acquired Company be required to "gross up" or otherwise compensate any such person because of the imposition of any excise tax on a payment to such person.

(xxvi) The consummation of the Contemplated Transactions will not result in the payment, vesting or acceleration of any benefit unless otherwise provided in this Agreement.

**3.14** ***COMPLIANCE WITH LEGAL REQUIREMENTS; GOVERNMENTAL AUTHORIZATIONS.***

(a) Except as set forth in Schedule 3.14 or Schedule 3.19:

(i) each Acquired Company is, and at all times since January 1, 1998 has been, and the Business has been conducted at all times since January 1, 1998, in full compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets except for any such failure that would not result in a material adverse effect.



(ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by the Business or any Acquired Company of, or a failure on the part of the Business or any Acquired Company to comply with, any Legal Requirement, or (B) may give rise to any obligation on the part of the Company, Seller, any Acquired Company or Buyer to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(iii) neither Seller nor any Acquired Company has received at any time since January 1, 1998 any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement which would have a material effect on the Business or any Acquired Company, or (B) any actual, alleged or potential obligation on the part of Seller, the Business or any Acquired Company arising under any applicable Legal Requirement to undertake, or to bear any material portion of the cost of, any remedial action of any material nature.

(b) Schedule 3.14 contains a complete and accurate list of each material Governmental Authorization that is required to be held by the Business for its operation or that is otherwise required for the Business or any Acquired Company to own or use any of its assets. Each Governmental Authorization listed or required to be listed in Schedule 3.14 is valid and in full force and effect. Except as set forth in Schedule 3.14 or Schedule 3.19:

(i) all of the material terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 3.14 have been at all required times complied with by the Business and, to the extent applicable, by each Acquired Company in all material respects;

(ii) no event has occurred or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result in a violation of or a failure to comply with any material term or requirement of any Governmental Authorization listed or required to be listed in Schedule 3.14, or (B) result in the revocation, withdrawal, suspension, cancellation or termination of, or any material modification to, any Governmental Authorization listed or required to be listed in Schedule 3.14;

(iii) neither Seller nor any Acquired Company has received, at any time since January 1, 1998, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged or potential violation of, or failure to comply with, any material term or requirement of any Governmental Authorization, or (B) any actual, proposed or potential revocation, withdrawal, suspension, cancellation, termination of or material modification to any Governmental Authorization; and

(iv) all material applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Schedule 3.14 or which are required by or in connection with the Contemplated Transactions have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other material filings required to have been



made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations listed in Schedule 3.14 collectively constitute all of the Governmental Authorizations necessary to permit the Business to be lawfully conducted in the manner it is currently conducted in all material respects and to permit the Acquired Companies to own and use their assets in the manner in which they currently own and use such assets in all material respects.

**3.15** ***LEGAL PROCEEDINGS; ORDERS.***

(a) Except as set forth in Schedule 3.15 or Schedule 3.19, to the Knowledge of Seller, there is no pending Proceeding:

(i) that has been commenced by or against any Acquired Company or may affect the Business or the business of, or any of the assets owned or used by, any Acquired Company in any material respect; or

(ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with in any material way, any of the Contemplated Transactions.

To Seller's Knowledge, no such Proceeding has been Threatened. Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Schedule 3.15 requested by Buyer. The Proceedings listed in Schedule 3.15 will not have a material adverse effect on the Business or the business, operations, assets, condition or prospects of any Acquired Company.

(b) Except as set forth in Schedule 3.15:

(i) there is no material Order to which the Business or any of the Acquired Companies, or any of the assets owned or used by any Acquired Company or otherwise in connection with the Business, is subject;

(ii) Seller is not subject to any material Order that relates to the Business or the business of, or any of the assets owned or used by, any Acquired Company; and

(iii) no officer, director, agent or employee of any Acquired Company is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Business or the business of any Acquired Company which would have a material adverse effect on the Business or the business of any Acquired Company.

(c) Except as set forth in Schedule 3.15:



(i) the Seller and each Acquired Company are in full compliance with all of the terms and requirements of each material Order to which the Business or they, or any of the assets owned or used by it, is or has been subject;

(ii) no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a material violation of or failure to comply with any term or requirement of any Order to which Seller, the Business or any Acquired Company, or any of the assets owned or used by any Acquired Company is subject; and

(iii) neither Seller nor any Acquired Company has received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged potential violation of, or failure to comply with, any material term or requirement of any Order to which the Seller, the Business or any Acquired Company, or any of the assets owned or used by any Acquired Company or otherwise in connection with the Business, is or has been subject.

**3.16** ***ABSENCE OF CERTAIN CHANGES AND EVENTS*** . Except as set forth in Schedule 3.16, since December 31, 2001 and for clauses (f), (g), and (i) of this Section 3.16, since December 31, 2000, the Business has been conducted by the Seller and its Related Persons only in the Ordinary Course of Business and there has not been, with respect to or relating to the Business, any:

(a) issuance of any membership interests in or shares of capital stock of any Acquired Company except as necessary to provide for the creation of the Acquired Companies and consistent with Section 3.3; grant of any stock option or right to purchase membership interests in or shares of capital stock of any Acquired Company; issuance of any security convertible into such capital stock; grant of any registration rights; purchase, redemption, retirement or other acquisition by any Acquired Company of any membership interests in or shares of any such capital stock; or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock;

(b) amendment to the Organizational Documents of any of the Heat Transfer Existing Subsidiaries or any Acquired Company except as may be necessary to provide for the creation of the Acquired Companies;

(c) except in the Ordinary Course of Business, payment or increase by any Acquired Company of any management fee or any bonuses, salaries, or other compensation to any stockholder, director, officer or employee or entry into any employment, severance or similar Contract with any director, officer or employee;

(d) except in the Ordinary Course of Business, adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement or other employee benefit plan for or with any employees of any Acquired Company;



(e) damage to or destruction or loss of any asset or property of any Acquired Company, whether or not covered by insurance, materially and adversely affecting the properties, assets, business, financial condition or prospects of the Business or the Acquired Companies, taken as a whole;

(f) entry into, termination of or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit or similar agreement which would have a material impact on the Business, or (ii) any Contract or transaction involving a total remaining commitment by or to any Acquired Company of at least $100,000;

(g) except in the Ordinary Course of Business, sale, lease or other disposition of any asset or property of any Acquired Company or mortgage, pledge or imposition of any lien or other encumbrance on any material asset or property of any Acquired Company or otherwise relating to the Business, including the sale, lease or other disposition of any of the Intellectual Property Assets;

(h) cancellation or waiver of any claims or rights with a value to any Acquired Company in excess of $25,000;

(i) material change in the accounting methods used by any Acquired Company; or

(j) agreement, whether oral or written, by Seller or any Acquired Company to do any of the foregoing.

**3.17** ***CONTRACTS; NO DEFAULTS.***

(a) Schedule 3.17(a) contains a complete and accurate list, and Seller has delivered to Buyer true and complete copies, of:

(i) each Applicable Contract that involves performance of services or delivery of goods or materials by one or more Acquired Companies or otherwise in connection with the Business of an amount or value in excess of $100,000;

(ii) each Applicable Contract that involves performance of services or delivery of goods or materials to one or more Acquired Companies or otherwise in connection with the Business of an amount or value in excess of $100,000;

(iii) each Applicable Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of one or more Acquired Companies or otherwise in connection with the Business in excess of $25,000;

(iv) each lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Applicable Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in, any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than $25,000 and with terms of less than one year);



(v) each licensing agreement or other Applicable Contract with respect to patents, trademarks, copyrights or other intellectual property, including agreements with current or former employees which are still in effect, consultants or contractors regarding the appropriation or the non-disclosure of any of the Intellectual Property Assets other than those agreements with employees entered into in the normal course of business;

(vi) each collective bargaining agreement and other Applicable Contract to or with any labor union or other employee representative of a group of employees;

(vii) each joint venture, partnership and other Applicable Contract (however named) involving a sharing of profits, losses, costs, or liabilities by any Acquired Company with any other Person;

(viii) each Applicable Contract containing covenants that in any material way purport to restrict the business activity of the Business or any Acquired Company or any Related Person of an Acquired Company or limit the freedom of the Business or any Acquired Company or any Related Person of an Acquired Company in any material way to engage in any of its line of business or to compete with any Person in its lines of business;

(ix) each Applicable Contract providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods;

(x) each power of attorney that is currently effective and outstanding which could effect in a material way the Business or the Acquired Companies;

(xi) each Applicable Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by any Acquired Company to be responsible for indirect, consequential or punitive damages;

(xii) each Applicable Contract for capital expenditures in excess of $25,000;

(xiii) each written warranty, guaranty and other similar undertaking with respect to contractual performance extended by any Acquired Company other than in the Ordinary Course of Business; and

(xiv) each material amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.

Schedule 3.17(a) sets forth sufficient details concerning such Contracts to identify the Contracts, and the Acquired Companies' office where details relating to the Contracts are located.

(b) Except as set forth in Schedule 3.17(b):

(i) Neither Seller nor any Related Person of Seller has or may acquire any rights under, and Seller has not become subject to any obligation or liability under, any material Contract that relates to the business of, or any of the material assets owned or used by, any Acquired Company; and



(ii) To Seller's Knowledge, no officer or employee of any Acquired Company is bound by any Contract that purports to limit the ability of such officer or employee to (A) engage in or continue any conduct, activity or practice relating to the business of any Acquired Company, or (B) assign to any Acquired Company any material rights to any invention, improvement or discovery made in the course of said officer's or employee's employment.

(c) Except as set forth in Schedule 3.17(c), each Contract identified or required to be identified in Schedule 3.17(a) is in full force and effect and is valid and enforceable in accordance with its terms in all material respects.

(d) Except as set forth in Schedule 3.17(d)

(i) to Seller's Knowledge, each Acquired Company is, and at all times has been, in compliance in all material respects with all applicable terms and requirements of each Contract under which such Acquired Company has or had any obligation or liability or by which such Acquired Company or any of the assets owned or used by such Acquired Company or otherwise in connection with the Business is or was bound;

(ii) to Seller's Knowledge, each other Person that has or had any obligation or liability under any Contract under which an Acquired Company has or had any rights is, and at all times has been, in compliance in all material respects with all applicable terms and requirements of such Contract;

(iii) to Seller's Knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a material violation or breach of, or give any Acquired Company or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Applicable Contract; and

(iv) neither Seller nor any Acquired Company has given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged potential material violation or breach of, or default under, any Contract.

(e) There are no renegotiations of any material amounts paid or payable to Seller or any Acquired Company under current or completed Contracts with any Person and no such Person has made written demand for such renegotiation.

(f) The Contracts relating to the sale, design, manufacture, or provision of products or services by the Acquired Companies or otherwise in connection with the Business have been entered into in the Ordinary Course of Business and have been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in material violation of any Legal Requirement.



**3.18** ***INSURANCE.***

(a) Seller has delivered to Buyer a true and complete list of all policies of insurance to which any Acquired Company is a party or under which the Business, any Acquired Company, or any director of any Acquired Company, is or has been covered at any time within the five (5) years preceding the date of this Agreement and a list of all pending applications for policies of insurance.

(b) Schedule 3.18(b) describes:

(i) any self-insurance arrangement by or affecting the Business or any Acquired Company, including any reserves established thereunder;

(ii) any contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk by any Acquired Company or otherwise in connection with the Business; and

(iii) all obligations of the Acquired Companies or otherwise in connection with the Business to third parties with respect to insurance (including such obligations under leases and service agreements) and identifies the policy under which such coverage is provided.

(c) Schedule 3.18(c) sets forth, by year, for the current policy year and each of the five (5) preceding policy years:

(i) a summary of the loss experience under each policy;

(ii) a statement describing each claim under an insurance policy for an amount in excess of $50,000, which sets forth:

(A) the name of the claimant;

(B) description of the policy by insurer, type of insurance and period of coverage; and

(C) the amount and a brief description of the claim; and

(iii) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims.

(d) Except as set forth on Schedule 3.18(d), to Seller's Knowledge:

(i) All policies to which any Acquired Company is a party or will be a party at the Effective Time, or that provide coverage to Seller, the Business, any Acquired Company or any director or officer of an Acquired Company in all material respects:

(A) are valid, outstanding and enforceable;



(B) are issued by an insurer that is financially sound and reputable;

(C) taken together, provide adequate insurance coverage for the Business and the assets and the operations of the Acquired Companies;

(D) are sufficient for compliance with all Legal Requirements and Contracts to which any Acquired Company is a party, by which any Acquired Company is bound or otherwise in connection with the Business to the extent insurance is customarily available therefor;

(E) will continue in full force and effect following the consummation of the Contemplated Transactions or, as applicable, will have been replaced by similar policies on or before the Closing Date; and

(F) do not provide for any retrospective premium adjustment or other experienced-based liability on the part of any Acquired Company or otherwise in connection with the Business.

(ii) Neither Seller nor any Acquired Company has received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights, or (B) any notice of cancellation or any other indication that any insurance policy is no longer in full force or effect or will not be renewed or that the issuer of any policy is not willing or able to perform its obligations thereunder.

(iii) The Acquired Companies or Seller have paid all premiums due, and have otherwise performed all of their respective obligations, under each policy to which any Acquired Company is a party or that provides coverage to the Business or to any Acquired Company or director thereof.

(iv) To Seller's Knowledge, the Acquired Companies have given notice to the insurer of all claims that may be insured thereby.

3.19 ENVIRONMENTAL MATTERS. Except as set forth in Schedule 3.19 or as described in the reports supplied by Seller or obtained by Buyer and each of which reports is specifically listed on Schedule 3.19, to Seller's Knowledge:

(a) Each of the Acquired Companies and the Business is in compliance with in all material respects and is not in violation of or liable under in any material respect, any Environmental Law. Neither Seller nor any Acquired Company has any reasonable basis to expect, nor has any of them received, any actual or Threatened order or notice from (i) any Governmental Body or private citizen acting in the public interest, or (ii) the current or prior owner or operator of any Facilities, of any actual or potential material violation or material failure to comply with any Environmental Law, or of any actual or Threatened obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which Seller or any Acquired Company has or had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined,



transferred, imported, used, or processed by Seller, any Acquired Company, or any other Person for whose conduct they are or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(b) There are no pending or Threatened claims, Encumbrances, or other material restrictions of any nature, resulting from any Environmental, Health, and Safety Liabilities or arising under or pursuant to any Environmental Law, with respect to or affecting any of the Facilities or any other properties and assets (whether real, personal, or mixed) in which Seller or any Acquired Company has or had an interest.

(c) Neither Seller nor any Acquired Company has any basis to expect, nor has any of them or any other Person for whose conduct they are or may be held responsible, received, any citation, directive, inquiry, notice, Order, summons or warning that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which Seller or any Acquired Company had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used, or processed by Seller, any Acquired Company, or any other Person for whose conduct they are or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(d) Neither Seller nor any Acquired Company nor any other Person for whose conduct they are or may be held responsible has any Environmental, Health, and Safety Liabilities with respect to the Facilities or with respect to any other properties and assets (whether real, personal, or mixed) in which any Acquired Company (or any predecessor), has or had an interest, or at any property geologically or hydrologically adjoining the Facilities or any such other property or assets.

(e) Except in material compliance with or as permitted by applicable Environmental Law, there are no Hazardous Materials present on or in the Environment at the Facilities or at any geologically or hydrologically adjoining property in material quantities that emanated from Seller, any Acquired Company or any predecessor thereof, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facilities or such adjoining property, or incorporated into any structure therein or thereon. Except in material compliance with or as permitted by applicable Environmental Law, neither Seller nor any Acquired Company nor any other Person for whose conduct they are or may be held responsible has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to the Facilities or any other properties or assets (whether real, personal, or mixed) in which any Acquired Company has or had an interest.

(f) Except in material compliance with or as permitted by applicable Environmental Law, there has been no Release or Threat of Release, of any material amounts of Hazardous Materials at or from the Facilities.



(g) Seller has delivered or made available to Buyer true and complete copies and results of the most recent material reports, studies, analyses, tests, or monitoring possessed or initiated by Seller or any Acquired Company or such other reports as Buyer has requested pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance by Seller, any Acquired Company, or any other Person for whose conduct they are or may be held responsible, with Environmental Laws.

**3.20** ***EMPLOYEES.***

(a) Schedule 3.20(a) contains a complete and accurate list of the following information for each employee of the Acquired Companies whose compensation in 2001 exceeded $100,000.00 US Dollars, including each employee on leave of absence or layoff status: employer, name, job title, current compensation paid or payable and any change in compensation since the Effective Time, vacation accrued and service credited for purposes of vesting and eligibility to participate under any Acquired Company's severance pay plan.

(b) No employee or director of any Acquired Company is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality, noncompetition or proprietary rights agreement, between such employee or director and any other Person (*"**Proprietary Rights Agreement**"*) that in any material way adversely affects or will affect (i) the performance of his or her duties as an employee or director of the Acquired Companies, or (ii) the ability of the Business to be conducted or of any Acquired Company to conduct its business, including any Proprietary Rights Agreement with Seller or the Acquired Companies by any such employee or director. To Seller's Knowledge, no director, officer or other key employee of any Acquired Company intends to terminate his or her employment with such Acquired Company.

**3.21** ***LABOR RELATIONS; COMPLIANCE.***

(a) Except as set forth on Schedule 3.21(a), neither the Business nor any Acquired Company has been or is a party to or bound by any collective bargaining or other material labor Contract.

(b) Except as set forth on Schedule 3.21(b), since January 1, 1998, there has not been, there is not presently pending or existing and, to Seller's Knowledge, there is not Threatened, (i) any strike, work stoppage or material employee grievance process, (ii) any Proceeding against or affecting the Business or any Acquired Company relating to the alleged material violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental Body, organizational activity or other material labor or employment dispute against or affecting the Business or any of the Acquired Companies or their premises, or (iii) any application for certification of a collective bargaining agent. No event has occurred or circumstance exists that could on any reasonable basis provide the basis for any work stoppage or other labor dispute. There is no lockout of any employees by the Seller or any Acquired Company, and no such action is contemplated by the Seller or any Acquired Company.



(c) Except as set forth on Schedule 3.21(c), the Seller and each Acquired Company have complied in all material respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health and plant closing. Except as set forth on Schedule 3.21(c), no Acquired Company is liable for the payment of any material compensation, damages, taxes, fines, penalties or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

**3.22** ***INTELLECTUAL PROPERTY.***

(a) ***Intellectual Property Assets*** . The term "***Intellectual Property Assets***" includes to the extent owned or used by the Business:

(i) the names Heatcraft, Livernois, and all derivatives or combinations thereof, and all fictional business names, trading names, registered and unregistered trademarks, service marks and applications (collectively, "***Marks***");

(ii) all patents, patent applications and inventions that may be patentable (collectively, "***Patents***");

(iii) all copyrights in both published works and unpublished works (collectively, "***Copyrights***");

(iv) all rights in mask works (collectively, "***Rights in Mask Works***"); and

(v) all know-how, trade secrets, confidential information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints (collectively, "***Trade Secrets***") owned, used or licensed in connection with the Business.

(vi) the internet domain names relating to the Business.

(b) ***Agreements.*** Schedule 3.22(b) contains a complete and accurate list and summary description, including any royalties paid or received by Seller or the Acquired Companies, of all Contracts relating to the Intellectual Property Assets to which Seller or any Acquired Company is a party or by which Seller or any Acquired Company is bound, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs with a value of less than $10,000 under which Seller or an Acquired Company is the licensee. There are no outstanding and, to Seller's Knowledge, no Threatened disputes or disagreements of a material nature with respect to any such agreement.

(c) ***Know-How Necessary for the Business.***

(i) The Intellectual Property Assets are all those necessary for the operation of the Business as it is currently conducted. One or more of the Acquired Companies is the owner of all right, title and interest in and to each of the Intellectual Property Assets which are, except as set



forth on Schedule 3.22(c)(i), free and clear of all Encumbrances, and has the right to use without payment to a third party all of the Intellectual Property Assets.

(ii) Except as set forth in Schedule 3.22(c)(ii), all current employees of each Acquired Company have executed written Contracts with Seller or one or more of the Acquired Companies that assign to Seller or one or more of the Acquired Companies all rights to any inventions, improvements, discoveries or information relating to the Business. No employee, officer or director of Seller or any Acquired Company 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 Seller or one or more of the Acquired Companies.

(d) ***Patents.***

(i) Schedule 3.22(d)(i) contains a complete and accurate list and summary description of all Patents. Seller or one or more of the Acquired Companies is the owner of all right, title and interest in and to each of the Patents, free and clear of all Encumbrances.

(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), to Seller's Knowledge, are valid and enforceable and, except as set forth on Schedule 3.22(d)(ii), are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date.

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

(iv) No Patent is infringed or, to Seller's Knowledge, has been challenged or threatened in any way. None of the products manufactured and sold, nor any process or know-how used, by the Business or any Acquired Company infringes or is alleged to infringe any patent or other proprietary right of any other Person.

(e) ***Trademarks.***

(i) Schedule 3.22(e)(i) contains a complete and accurate list and summary description of all Marks. One or more of the Acquired Companies is or will be at Closing the owner of all right, title, and interest in and to each of the Marks, free and clear of all Encumbrances.

(ii) All Marks that have been registered with the United States Patent and Trademark Office are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, except as disclosed on Schedule 3.22(e)(ii), and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date.



(iii) No Mark has been or is now involved in any opposition, invalidation or cancellation and, to Seller's Knowledge, no such action is Threatened with the respect to any of the Marks.

(iv) To Seller's Knowledge, there is no potentially interfering trademark or trademark application of any third party.

(v) To Seller's Knowledge, no Mark is infringed or has been challenged or threatened in any way. None of the Marks used by any Acquired Company infringes or is alleged to infringe any trade name, trademark or service mark of any third party.

(f) ***Copyrights***.

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

(g) ***Trade Secrets***.

(i) Seller and the Acquired Companies have taken all reasonable precautions to protect the secrecy, confidentiality and value of their Trade Secrets.

(ii) One or more of the Acquired Companies has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets. To the Seller's Knowledge, the Trade Secrets are not part of the public knowledge or literature, and, to Seller's Knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than one or more of the Acquired Companies) or to the detriment of the Acquired Companies. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

**3.23** ***CERTAIN PAYMENTS***. To Seller's Knowledge, no Acquired Company or director, officer, agent or employee of any Acquired Company, nor any other Person associated with or acting for or on behalf of the Business or any Acquired Company, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, (iii) to obtain special concessions or for special concessions already obtained, for or in respect of the Business, any Acquired Company or any Related Person of an Acquired Company, or (iv) in violation of any Legal Requirement, or (b) established or maintained any fund or asset that has not been recorded in the books and records of the Acquired Companies.



**3.24** ***DISCLOSURE***.

(a) No representation or warranty of Seller in this Agreement and no statement in any Schedule attached hereto omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

(b) No notice given pursuant to Section 5.5 will contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Agreement, in light of the circumstances in which they were made, not misleading.

(c) There is no fact known to Seller that has specific application to Seller or any Acquired Company (other than general economic or industry conditions) and that materially adversely affects the assets, business, prospects, financial condition, or results of operations of the Business or Acquired Companies (on a consolidated basis) that has not been set forth in this

Agreement.

**3.25** ***RELATIONSHIPS WITH RELATED PERSONS***. Neither Seller nor any Related Person of Seller or of any Acquired Company currently has, or since January 1, 1998 has owned (of record or as a beneficial owner), an equity interest or any other financial or profit interest in, a Person that has (i) had business dealings or a material financial interest in any transaction with any Acquired Company other than business dealings or transactions conducted in the Ordinary Course of Business with the Acquired Companies at substantially prevailing market prices and on substantially prevailing market terms except for less than one percent (1%) of the outstanding capital stock of any such business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Schedule 3.25, neither Seller nor any Related Person of Seller or of any Acquired Company is a party to any Contract with, or has any claim or right against, any Acquired Company.

**3.26** ***BROKERS OR FINDERS***. Except as set forth in Schedule 3.26, Seller and its agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

**4.** ***REPRESENTATIONS AND WARRANTIES OF BUYER AND OCP***. Buyer and OCP represent and warrant to Seller as follows:

**4.1** ***ORGANIZATION AND GOOD STANDING***. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

**4.2** ***AUTHORITY; NO CONFLICT***.

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer and OCP, enforceable against Buyer and OCP in accordance with its terms. Upon the execution and delivery by Buyer of the LLC Agreement, and the Members' Agreement (collectively, the "***Buyer's Closing Documents***"), the Buyer's Closing Documents will constitute the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. Buyer has all the necessary rights, power and authority to execute and deliver this Agreement and the Buyer's



Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents.

(b) Except as set forth in Schedule 4.2, neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will contravene, conflict with or result in a violation of or give any Government or other Person the right to challenge, prevent, delay or otherwise interfere with any of the Contemplated Transactions or exercise any remedy or obtain any relief under or pursuant to:

(i) any provision of Buyer's or OCP's Organizational Documents;

(ii) any resolution adopted by the board of directors or the stockholders of Buyer or OCP;

(iii) any Legal Requirement or Order to which Buyer or OCP may be subject; or

(iv) any Contract to which Buyer or OCP is a party or by which Buyer or OCP may be bound.

Except as set forth in Schedule 4.2, Buyer and OCP are not and will not be required to give notice or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

**4.3** ***INVESTMENT INTENT***. Buyer is acquiring the Shares for its own account and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act.

**4.4** ***CERTAIN PROCEEDINGS***. There is no pending Proceeding that has been commenced against Buyer or OCP and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To the Knowledge of Buyer and OCP, no such Proceeding has been Threatened.

**4.5** ***BROKERS OR FINDERS***. Buyer, OCP and their officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement and will indemnify and hold Seller harmless from any such payment alleged to be due by or through Buyer or OCP as a result of the action of Buyer, OCP or their officers or agents.

**5.** ***ADDITIONAL COVENANTS OF SELLER AND BUYER***.

**5.1** ***ACCESS AND INVESTIGATION***.

(a) Between the date of this Agreement and the Closing Date, Seller will, and will cause each Acquired Company and its Representatives to, (a) afford Buyer and its Representatives and prospective lenders and their Representatives (collectively, "***Buyer's Advisors***") reasonable access to



each Acquired Company's personnel, properties (including subsurface testing), contracts, books and records, and other documents and data, (b) furnish Buyer and Buyer's Advisors with copies of all such material contracts, books and records, and other existing documents and data as Buyer may reasonably request, and (c) furnish Buyer and Buyer's Advisors with such additional financial, operating and other data and information as Buyer may reasonably request.

(b) In addition to any environmental investigations and audits conducted by Buyer or its Representatives prior to the date of this Agreement, Buyer shall be permitted to cause further environmental audits of the Facilities to be conducted as are reasonably necessary for assessing the presence and or disposition of Hazardous Materials and compliance with Environmental Laws, including such Phase II environmental audits as Buyer and Seller may mutually agree upon. Seller hereby agrees to permit Buyer's qualified environmental consultants to enter upon the Facilities, upon giving Seller reasonable notice, with men and materials reasonably necessary to conduct such environmental audits. In connection with any such environmental audits and at the request of Seller, Buyer shall from time to time enter into agreements relating to indemnification for damages and confidentiality of audit results.

**5.2** ***OPERATION OF THE BUSINESSES OF THE ACQUIRED COMPANIES***. Except as provided for in Section 6, between the Effective Time and the Closing Date, Seller will, and will cause each Acquired Company to:

(i) conduct the Business only in the Ordinary Course of Business and without any material deviation from the Base Business Plan;

(ii) use its Best Efforts to preserve intact the current business organization of the Business, keep available the services of the current officers, employees and agents of the Business and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with the Business;

(iii) consult with Buyer concerning operational matters of a material nature (subject to any Legal Requirement limiting any such consultation); and

(iv) otherwise report periodically to Buyer concerning the status of the business, operations and finances of the Business and such Acquired Company.

**5.3** ***NEGATIVE COVENANT***. Except as otherwise expressly permitted by this Agreement, between the date of this Agreement and the Closing Date, Seller will not, and will cause each Acquired Company not to, without the prior written consent of Buyer, take any affirmative action, or fail to take any reasonable action within their or its control, as a result of which any of the changes or events listed in Section 3.16 is reasonably likely to occur. Without limiting the foregoing, Seller will cause the Acquired Companies not to incur any Indebtedness other than Permitted Indebtedness.

**5.4** ***REQUIRED APPROVALS***.

(a) As promptly as practicable after the date of this Agreement, Seller and Buyer will, and Seller will cause each Acquired Company to, make all filings required by Legal Requirements to be made by them in order to consummate the Contemplated Transactions, including all filings required under the HSR Act (if any) and the competition laws of any other Governmental Body, including Council Regulation (EEC) No. 4064/89 or similar laws within Finland or other applicable jurisdictions such as France, Italy and the Czech Republic. In addition, each of Seller and Buyer agree that if any Governmental Body requests additional information under the HSR Act or any other Legal Requirement, it will use its reasonable commercial efforts to comply with such requests as promptly as possible.

(b) Between the date of this Agreement and the Closing Date, Seller will, and will cause each Acquired Company to, (i) cooperate with Buyer with respect to all filings that Buyer required by Legal Requirements to make in connection with the Contemplated Transactions, and (ii) cooperate with Buyer in obtaining all consents identified in Schedule 4.2. provided that this Agreement will not require Seller to dispose of or make any change in any portion of its business or to incur any other burden to obtain a Governmental Authorization.

(c) Between the date of this Agreement and the Closing Date, Buyer will, and will cause each Related Person to, (i) cooperate with Seller with respect to all filings that Seller is required by Legal Requirements to make in connection with the Contemplated Transactions, and (ii) cooperate with Seller in obtaining all consents identified in Schedule 3.2; provided that this Agreement will not require Buyer to dispose of or make any change in any portion of its business or to incur any other burden to obtain a Governmental Authorization.

**5.5** ***NOTIFICATION***. Between the date of this Agreement and the Closing Date, either party will promptly notify the other party in writing if such party, including any Acquired Company becomes aware of any fact or condition that causes or constitutes a Breach of any of either party's representations and warranties as of the Effective Time or as of the date of this Agreement (as applicable), or that party becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. If any such fact or condition requires any change in any Schedule if the Schedule were dated the date of the occurrence or discovery of any such fact or condition, the party responsible for the Schedule will promptly deliver to other party a supplement to the Schedule specifying such change. During the same period, either party will promptly notify the other party of the occurrence of any Breach of any covenant of a party in this Agreement or of the occurrence of any event that may make the satisfaction of the conditions in the Agreement impossible or unlikely.

**5.6** ***NO NEGOTIATION***. Until such time, if any, as this Agreement is terminated pursuant to Section 9, Seller will not, and will cause each Acquired Company and each of their Representatives not to, directly or indirectly solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any unsolicited inquiries or proposals from, any Person (other than Buyer) relating to any transaction involving the



sale of the business or assets (other than in the Ordinary Course of Business) of the Business or of any Acquired Company, or any of the capital stock of any Acquired Company, or any merger, consolidation, business combination, or similar transaction involving the Business and any Acquired Company.

**5.7** ***BEST EFFORTS***. Between the date of this Agreement and the Closing Date, both Buyer and Seller will use its Best Efforts to cause the conditions in Sections 7 and 8 to be satisfied except as set forth in the provisos to Sections 5.4(b) and 5.4(c), as applicable.

**5.8** ***STATUTE OF LIMITATIONS***. Prior to the Closing, Seller shall not permit any Acquired Company to agree with any Governmental Body to extend the statute of limitations with respect to any Taxes, without the prior written consent of Buyer.

**5.9** ***INTERIM FINANCIAL STATEMENTS***. From the date of this Agreement through the Closing Date, Seller will prepare monthly financial statements for the Business and the Acquired Companies on a consolidated basis (beginning with the month of January, 2002), and will promptly (and in any event not later than the fifteenth Business Day following the end of the month to which a statement relates) deliver them to Buyer. These unaudited financial statements will be prepared in accordance with GAAP (except for the absence of footnotes and subject to normal year end adjustments which will be immaterial in amount) and in a manner consistent with the basis of presentation used in the unaudited financial statements referred to in Section 3.4, and will fairly present, in all material respects, the consolidated financial position,and results of operations of the Business and the Acquired Companies as at and for the periods indicated.

**5.10** ***MATTERS RELATING TO REAL PROPERTY***.

(a) Buyer shall obtain, at Buyer's sole cost and expense, a commitment from Chicago Title Insurance Company or any other title insurance company acceptable to Buyer (the "***Title Company***") for the issuance of an extended coverage owner's policy of fee title insurance (including mechanics' lien coverage) for each parcel included in the Grenada Real Property setting forth the status of title to each such parcel (individually a "Title Commitment" and collectively the "***Title Commitments***"). The Title Commitments shall be accompanied by true, complete and legible copies of all Encumbrances identified therein. At Closing, the policies to be issued pursuant to the Title Commitments (individually a "***Title Policy***" and collectively the "***Title Policies***") shall insure that the Company will have good, marketable and indefeasible title to such Grenada Real Property, subject only to those Encumbrances accepted by Buyer pursuant to subparagraph (c) of this Section 5.10 ("***Permitted Title Encumbrances***"). At the Closing, Buyer shall pay all premiums for the issuance of the Title Policy and such standard endorsements as Buyer may reasonably require (the "Endorsements"), and Seller shall deliver to the Title Company such affidavits, indemnities and other documentation as is necessary to enable the Title Company to issue the Title Policies with the Endorsements subject only to Permitted Title Encumbrances.

(b) Buyer shall obtain, at Buyer's sole cost and expense, surveys covering each parcel included in the Grenada Real Property (individually a "***Survey***" and collectively the "***Surveys***"),



dated subsequent to this Agreement, each of which shall be prepared by a surveyor duly licensed under the laws of the state in which the Grenada Real Property is located. Each survey shall be in form and substance reasonably satisfactory to Buyer and the Title Company, and (ii) shall be certified to Buyer and the Title Company using a form of certification acceptable to Buyer.

(c) On or prior to the fifth Business Day following Buyer's receipt of the Title Commitment or all of the Surveys, whichever is later, Buyer shall notify Seller in writing (the "***Defect Notice***") of any unacceptable Encumbrances or other matters disclosed by either the Title Commitments or the Surveys (individually a ***"Disapproved Encumbrance***" and collectively the "***Disapproved Encumbrances***"). Seller agrees to use commercially reasonable efforts to eliminate the Disapproved Encumbrances or otherwise resolve the Disapproved Encumbrances to the satisfaction of Buyer on or before the Closing Date. Seller shall have three (3) days after receipt of the Defect Notice to notify Buyer in writing (i) that the Disapproved Encumbrances will be eliminated an otherwise resolved as provided above or (ii) that the Disapproved Encumbrances will not be eliminated or otherwise resolved. If Seller elects not to cause any Disapproved Encumbrance to be eliminated or otherwise resolved, Buyer shall have the right, in its sole discretion, for a period of five (5) days following the expiration of the three (3) day period provided for above, to notify Seller of Buyer's election to either waive such objection and proceed with the Closing, without impairing any right of indemnification or other right or remedy hereunder, or to terminate this Agreement. Absent any notice from Buyer within such five (5) day period, Buyer shall be deemed to have elected to terminate this Agreement. If Seller gives notice that one or more Disapproved Encumbrances will be eliminated or otherwise resolved, and such Disapproved Encumbrances are not so eliminated or otherwise resolved on or before the Closing Date, Buyer shall have the right to terminate this Agreement by written notice to Seller.

**5.11** ***TRIDAN CONTRACT***. Heatcraft Inc., one of the Heat Transfer Existing Subsidiaries ("HI"), is a party to a Contract with Tridan International Inc. dated on or about May 3, 2000 (the "Tridan Contract"). Buyer and Seller acknowledge and agree that notwithstanding any other provision of this Agreement or the Members' Agreement (a) the Tridan Contract will be assigned to the Company in connection with the JV Transactions and (b) if HI's failure to purchase any product covered by the Tridan Contract prior to the Closing Date cannot be cured by the Company purchasing such product, then the Seller shall indemnify the Company against any payment required as a result of such failure. Seller agrees (for itself and HI) and Buyer agrees to cooperate with HI to the extent commercially reasonable in connection with preserving all rights under the Tridan Contract (including but not limited to the right to purchase fin presses).

**6.** ***CERTAIN ACTIONS PRIOR TO CLOSING DATE; TRANSITION AND EMPLOYEE MATTERS***

**6.1** ***THE ACQUIRED COMPANIES***. Prior to the Closing Date, Seller will take or cause to be taken all actions necessary or advisable to effectuate the actions described on Attachment E to the Members' Agreement and will cause the ownership of the Acquired Companies to be as set forth on Attachment E to the Members' Agreement.



**6.2** ***TRANSITION MATTERS***.

(a) At or prior to the Closing, Buyer and Seller shall cause the Company to enter into the Shared Services Agreement.

(b) At or prior to the Closing, Seller shall cause all right, title and interest in and to the trademark "Heatcraft" to be assigned to the Company and Buyer and Seller shall cause the Company to license the name "Heatcraft" to Seller for use in certain refrigeration operations mutually agreeable to Buyer and Seller pursuant to a Trademark License Agreement in the form attached as Exhibit 6.2(b).

**6.3** ***PAYMENT OF INDEBTEDNESS***.

(a) Except as expressly provided in Paragraph (b) of this Section 6.3, Seller will cause all Indebtedness owed by any Acquired Company to Seller (or any Related Person of Seller), or owed to any Acquired Company by Seller (or any Related Person of Seller) to be paid in full prior to Closing, except that any account payable from Seller or any Related Person arising out of sales of goods or from any shared services will be paid in accordance with its terms.

(b) Seller will cause all Indebtedness owed by any Acquired Company to be paid in full prior to Closing and will have caused the termination of all other financing activities of the Company prior to the Closing (other than Permitted Indebtedness or Indebtedness otherwise approved in writing by Buyer), it being the general intent of the parties that the Acquired Companies shall be free of Indebtedness other than Permitted Indebtedness as of the Closing (with the provisions of Section 2.2 and the Closing Adjustment for Indebtedness being intended to take into account any failure to effectuate such intent).

**6.4** ***EMPLOYEES AND BENEFITS***

6.4.1 ***Background***.

(a) The Business has been managed, operated and maintained by employees of Seller or its Subsidiaries. Prior to the Closing Date, such employees have been compensated at established wage and salary rates, and some or all of such employees have had rights under some or all of the following: (i) employee benefit plans, as defined in ERISA Section 3(3) and (ii) published employment policies in effect at their respective work locations. All such benefit plans, published policies, and any other agreements or policies affecting employment are described in Schedule 3.13(b). Seller's salaried employees assigned to the Business (except those who at the Closing Date have retired or are on long-term disability, and those whom Buyer and Seller have excluded are herein called "***Continuing Salaried Employees***."

(b) The Continuing Salaried Employees will remain employed by the Company after the Closing under essentially the same terms and conditions as in effect immediately prior to the



Closing Date. The Company will also continue the employment of all hourly employees after Closing at the Facilities (except those who are on layoff), herein called "***Continuing Hourly Employees***". Continuing Salaried Employees and Continuing Hourly Employees are collectively referred to herein as ***"Continuing Employees***". Nothing in this Section will limit the right of the Company to terminate the employment or to make any adjustments, including both increases and decreases, in salary and benefits of any Continuing Employee at any time after the Closing Date. Except as otherwise provided in this Section, the Company will have absolute discretion with respect to the terms and conditions of employment of any Continuing Employee and other persons at any time employed by the Company, including the right to hire, terminate, promote, demote, transfer, reduce compensation or benefits or change the job status of any employee of the Company at any time after the Closing Date. No provision of this Agreement is intended or will be construed as a promise or guaranty of the continued employment of any Continuing Employee or any other employee of either party.

6.4.2 ***Seller's Defined Contribution Plans***.

(c) Seller has delivered to Buyer copies of the qualified 401(k) plans and profit sharing plans, which plans are listed in Schedule 3.13(b) (the "***Defined Contribution Plans***") under which the interest of each participant is maintained in an individual account.

(d) Seller will continue to maintain the Defined Contribution Plans with respect to Continuing Employees who are participants therein, and will distribute 100% of the respective account balances to such participants upon their request (or to a qualified plan established by the Company or an IRA of a participant) on a fully vested basis as soon as practicable following the Closing Date. There will be no employer or employee contributions under the Defined Contribution Plans with respect to such participants following the Closing Date except for Seller's fulfillment of contribution obligations incurred under any such plans prior to the Closing Date. Neither Buyer nor the Company will assume, adopt or have any responsibility with respect to, such plans.

6.4.3 ***Seller's Defined Benefit Plans***.

(a) Seller presently maintains the Lennox International Inc. Pension Plan for Salaried Employees ("***Salaried Pension Plan***") and the Heatcraft Inc. Hourly Employees Pension Plan ("***Hourly Pension Plan***"). Such plans are defined benefit pension plans as defined in ERISA Section 3(35) and are herein called the "***Defined Benefit Plans***".

(b) Following the Closing Date, the Company may adopt one or more defined benefit pension plans covering Continuing Employees ("***New Pension Plan***"), providing such benefits and containing such provisions as the Company may determine. The Company will be responsible for administration, funding and benefit payments under the New Pension Plan, and Seller does not assume any responsibility or liability thereunder.

(c) Seller will retain all liability for administration and funding of the Defined Benefit Plans, based upon the accrued benefits as of the Closing Date and 100% vesting in their accrued benefits for all Continuing Employees, and will provide to Continuing Employees who were



participants in either of the Defined Benefit Plans on the Closing Date (and to their beneficiaries) all benefits under the Defined Benefit Plans, including unreduced benefits and benefit supplements set forth in the Defined Benefit Plans; and neither Buyer, the Company nor the New Pension Plan will have any liability therefor. In addition, the Defined Benefit Plans will provide unreduced benefits and benefit supplements under its early retirement provisions to Continuing Employees except as expressly provided for in the Defined Benefit Plan, taking into account attained age and service with the Seller prior to the Closing Date. In addition, if any Continuing Employee who is on disability on the Closing Date thereafter completes the period of disability required for disability retirement under either of the Defined Benefit Plans, such plan will provide such disability retirement benefit, and Seller will provide to such retiree the benefits, if any, referred to in Subsection 6.4.5(d) below.

(d) Seller will be responsible for the funding and administration of the Defined Benefit Plans and the payment of benefits thereunder after the Closing Date, and neither Buyer nor the Company assumes any responsibility or liability in connection therewith.

6.4.4 ***Service Credit***.

(a) Service with Seller up to the Closing Date will be credited by the Company for eligibility and vesting purposes in any qualified pension benefit plan that Buyer or the Company may adopt on or after the Closing Date with respect to Continuing Employees. Seller will furnish to Buyer and the Company as soon as practicable after the Closing, a list of Continuing Employees and the amount of pre-Closing service of each such person under Seller's qualified pension benefit plans, all certified by Seller to be true and correct on the basis of Seller's records pertaining thereto; and Buyer and the Company will have the right to rely thereon.

(b) Service with the Company after the Closing Date will not be credited by Seller under its Defined Contribution Plans and Defined Benefit Plans, but all Continuing Employees will be treated as 100% vested in their accrued benefits under such plans as a result of the transactions contemplated by this Agreement.

6.4.5 ***Employee Welfare Plans and Policies.***

(a) As used in this Subsection 6.4.5, "***Welfare Plan or Policy***" means any employee welfare benefit plan as defined in ERISA Section 3(1), and also any policy, practice or program maintained by Seller for the Company and the Acquired Companies as of the Closing Date with respect to any employee fringe benefits. Except as provided in Subsection 6.4.6 below, the Company will have no liability under any Welfare Plan or Policy for any employment-related claim of an employee arising out of care or service received on or before the Closing Date. Seller will

retain liability for any claim under each Welfare Plan or Policy based upon care or service received on or prior to the Closing Date. In patient stays begun prior to Closing will remain Seller's liability until such time as the stay has ended. Such liability will include all claims arising out of events on or prior to the Closing Date (i) under severance or termination pay plans, long term disability plans, salary continuation plans and accident and sickness plans and (ii) for medical, dental, life/survivor, accidental death and dismemberment, Company travel accident and workers' compensation benefits.



(b) Seller will have no liability under any employee Welfare Plan or Policy adopted by the Company after the Closing Date. Except as provided in Subsection 6.4.4 or under continuation coverage referred to in Paragraph (e) of this Subsection 6.4.5, Seller will have no liability for any employment-related claim of an employee of the Company arising out of occurrences after the Closing Date. The Company will have the right at any time to adopt such Welfare Plans and Policies as the Company may determine, and to modify, amend or terminate any such plan or policy.

(c) Any of the Company's Welfare Plans or Policies in which benefits are calculated on the basis of service will provide credit for service with Seller for Continuing Employees up to the Closing Date. Seller will furnish to Buyer and the Company, as soon as practicable after the Closing, a list of Continuing Employees and the amount of pre-Closing service of each such person under any Welfare Plan or Policy in which service is relevant, all certified by Seller to be true and correct on the basis of Seller's records pertaining thereto; and Buyer and the Company will have the right to rely thereon.

(d) At such time as any Continuing Employee who is eligible to retire at or before the Closing Date under either of the Defined Benefit Plans terminates employment with the Company after the Closing Date, Seller will be responsible to offer to provide each such Person, commencing on the date when such Person so terminates, the individual and family medical and life insurance benefits that Seller would have provided on the Closing Date to its employees who retired on the Closing Date (subject to any changes made by Seller in such benefits between the Closing Date and the date such Person so terminates). Neither Buyer nor the Company assumes any obligation, liability or any other responsibility to provide, fund or otherwise pay for any post-employment medical or health coverage of any Continuing Employee or of any other employee of Seller that was earned or accrued on or before the Closing Date.

(e) All Continuing Employees and any qualified beneficiaries who are covered under any group health plan, as defined in ERISA Section 607 and for which the Closing is deemed to be a termination of employment, of Seller as of the Closing Date will be entitled to continuation coverage under such group health plan as a result of the transactions contemplated by this Agreement. The Company will establish a group health plan to cover Continuing Employees and their qualified beneficiaries as soon as practicable after the Closing Date. If such a group health plan is not in place the day after the Closing Date, the Company may, on behalf of all Continuing Employees and their qualified beneficiaries, agree to pay to Seller the amount of the applicable continuation premium under ERISA Section 604 for the period of continuation coverage. Seller agrees to cooperate with the Company to coordinate the group health plan to be effective after the Closing Date and the payment of continuation premiums by the Company, if applicable. All continuation premiums payable by the Company will be paid promptly on the due date.

During any period of continuation coverage, the only liability of the Company will be to pay the applicable premium to Seller or to Seller's group health plan on behalf of Continuing Employees who are actively employed by the Company. The cost of health and related benefits will be allocated as of the Effective Time.



With respect to the Continuing Employees and any qualified beneficiaries who are covered under any group health plan, as defined in ERISA Section 607 and for which the Closing is deemed to not to be a termination of employment, if the Company's group health plan to cover Continuing Employees and their qualified beneficiaries is not in place the day after the Closing Date, the Company may, on behalf of all Continuing Employees and their qualified beneficiaries, agree to pay to Seller the cost of the claims filed under the continuation coverage. Seller agrees to cooperate with the Company to coordinate the group health plan to be effective after the Closing Date and the payment of the costs of any claims arising under the continuation coverage by the Company, if applicable. All continuation costs payable by the Company will be paid promptly on the due date.

During any period of continuation coverage, the only liability of the Company will be to pay the applicable costs to Seller or to Seller's group health plan on behalf of Continuing Employees who are actively employed by the Company. The cost of health and related benefits will be allocated as of the Effective Time.

6.4.6 ***Vacation Policy***.

(f) Seller represents that Continuing Employees earn vacation rights ratably each year, to be taken or paid for during the calendar year in which earned, in accordance with Seller's vacation policy, a true copy of which is annexed hereto as Schedule 6.4.6(a). The Company will assume liability for 2002 calendar year vacations of Continuing Employees not yet taken or paid for as of the Closing Date.

(g) The Company will have the right to establish from time to time such vacation policies with respect to its employees as the Company may determine subject to applicable Legal Requirements.

6.4.7 ***Cooperation***. Following the Closing Date, Seller, Buyer and the Company will supply one another sufficient employee data and records to carry out the purposes of this Section 6.4, including the data necessary to complete all required actuarial valuations, reports and disclosures, and any other mandated government filings. Without limiting the foregoing, Seller will cooperate as requested by Buyer or the Company in providing data as to the status of employee welfare benefits, including available deductible amounts and other relevant benefit information.

## 7. *CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE*

Buyer's obligation to purchase the Shares and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

**7.1** ***ACCURACY OF REPRESENTATIONS***. All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement or as of the Effective Time (as applicable), and must be accurate in all material



respects as of the Closing Date as if made on the Closing Date, without giving effect to any supplement to any Schedule.

**7.2** ***SELLER'S PERFORMANCE***.

(a) All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

(b) Each document required to be delivered pursuant to Section 2.4 must have been delivered, and each of the other covenants and obligations in Sections 5.4 and 5.7 must have been performed and complied with in all respects.

**7.3** ***CONSENTS***. Each of the Consents identified in Schedule 3.2 must have been obtained and must be in full force and effect.

7.4 ***ADDITIONAL DOCUMENTS***. Each of the following documents must have been delivered to or obtained by Buyer:

(a) employment agreements, in form and substance satisfactory to Buyer executed by the Company and the Key Executives; and

(b) such other documents as Buyer may reasonably request for the purpose of (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, (iii) evidencing the satisfaction of any condition referred to in this Section 7, or (iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions.

**7.5** ***NO PROCEEDINGS***. Since the date of this Agreement, there must not have been commenced or Threatened against Buyer, or against any Person affiliated with Buyer, any Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal,

or otherwise interfering with any of the Contemplated Transactions.

**7.6** ***NO CLAIM REGARDING SHARE OWNERSHIP OR SALE PROCEEDS***. There must not have been made or Threatened by any Person any claim asserting that such Person (a) is the holder or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, any Membership Interests of the Company or any stock of, or any other voting, equity or ownership interest in, any of the other Acquired Companies, or (b) is entitled to all or any portion of the Purchase Price payable for the Shares.



**7.7** ***NO PROHIBITION***. Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Buyer or any Person affiliated with Buyer to suffer any material adverse consequence under, (a) any applicable Legal Requirement or Order, or (b) any Legal Requirement or Order that has been published, introduced or otherwise formally proposed by or before any Governmental Body.

**7.8** ***JV CLOSINGS***. The JV Closings shall have been completed.

**8.** ***CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE***

Seller's obligation to sell the Shares and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller, in whole or in part):

**8.1** ***ACCURACY OF REPRESENTATIONS***. All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

**8.2** ***BUYER'S PERFORMANCE***

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyer must have delivered each of the documents required to be delivered by Buyer pursuant to Section 2.4, and each of the other covenants and obligations in Section 5.4 and 5.7 must have been performed and complied in all respects and (ii) made the cash payments required to be made by Buyer pursuant to Sections 2.4(b)(i).

**8.3** ***CONSENTS***. Each of the Consents identified in Schedule 3.2 must have been obtained and must be in full force and effect.

**8.4** ***ADDITIONAL DOCUMENTS.***. Buyer must have caused to be delivered to Seller such other documents as Seller may reasonably request for the purpose of (a) evidencing the accuracy of any representation or warranty of Buyer, (b) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer, (c) evidencing the satisfaction of any condition referred to in this Section 8, or (d) otherwise facilitating the consummation of any of the Contemplated Transactions.

**8.5** ***NO PROCEEDINGS***. Since the date of this Agreement, there must not have been commenced or Threatened against Seller, or against any Person affiliated with Seller, any Proceeding



(a) involving any challenge to, or seeking damages or other relief in connection with any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

**8.6** ***NO CLAIM REGARDING SHARE OWNERSHIP OR SALE PROCEEDS***. There must not have been made or Threatened by any Person any claim asserting that such Person (a) is the holder or the beneficial or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, any Membership Interests of the Company of the Company or any stock of, or any other voting, equity or ownership interest in, any of the other Acquired Companies, or (b) is entitled to all or any portion of the Purchase Price payable for the Shares.

**8.7** ***NO PROHIBITION***. Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Seller or any Person affiliated with Seller to suffer any material adverse consequence under (a) any applicable Legal Requirement or Order, or (b) any Legal Requirement or Order that has been published, introduced or otherwise formally proposed by or before any Governmental Body.

**8.8** ***JV CLOSINGS***. The JV Closings shall have been completed.

**9.** ***TERMINATION***.

**9.1** ***TERMINATION EVENTS***. This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) by either Buyer or Seller if a material Breach of any provision of this Agreement has been committed prior to Closing by the other party and such Breach has not been waived;

(b) (i) by Buyer if any of the conditions in Section 7 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition on or before the Closing Date; or (ii) by Seller, if any of the conditions in Section 8 has not been satisfied of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement) and Seller has not waived such condition on or before the Closing Date;

(c) by mutual consent of Buyer and Seller; or

(d) by either Buyer or Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before September 30, 2002 (the "***Target Date***"), or such later date as the parties may agree upon. If any Governmental Body with jurisdiction over the enforcement of any Competition Laws requests additional information relating to the JV Transactions or the parties and/or if any waiting period has not expired or any clearance or approval under any such Competition Law has not been satisfied or obtained by the Target Date, the Target Date will automatically be extended for such period



of time as may be reasonably necessary for the parties to have complied with the Competition Laws and all such requests for information thereunder to the extent applicable to the JV Transactions, but in no event shall the Target Date be extended by this sentence beyond December 31, 2002.

**9.2** ***EFFECT OF TERMINATION***. Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 11.1 and 11.3 will survive; provided, however, that if this Agreement is terminated by a party because of the Breach of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

**10.** ***INDEMNIFICATION; REMEDIES; DISPUTE RESOLUTION***

**10.1** ***SURVIVAL; RIGHT TO INDEMNIFICATION NOT AFFECTED BY KNOWLEDGE; DEFINITIONS***.

(a) All representations, warranties, covenants and obligations in this Agreement, the Schedules, the supplements to the Schedules, the certificate delivered pursuant to Section 2.4(a)(ii) and any other certificate or document delivered pursuant to this Agreement will survive the Closing as set forth in this Article 10. Except as expressly provided for in Section 10.2(b) and the last sentence of Section 10.2, the right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants and obligations will not be affected by any investigation conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation, and 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 affect the right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants and obligations.

(b) For purposes of this Article 10, the following terms have the meanings specified or referred to in this Section 10.1(b):

**"Buyer Indemnified Persons**" -- means Buyer, OCP, the Acquired Companies and their respective Representatives and Related Persons.

**"Seller Indemnified Persons**"-- means Seller and its - -Representatives and Related Persons.

**"Damages**" -- means any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable



attorneys' fees and expenses of attorneys, accountants, engineers and other experts and consultants), fine, penalty or obligation, whether or not involving a third-party claim.

**"Indemnified Party**" -- any Person entitled to indemnification under this Article 10.

**"Indemnifying Party**" -- any Person required to indemnify another Person under this Article 10.

**"Loss**" -- means an amount for the applicable Livernois Contract determined by subtracting (A) the sum of all direct costs of designing, manufacturing, selling and distributing the product and/or services necessary to meet the specifications set forth in such Livernois Contract plus an amount for overhead such that the product and/or service is fully burdened with overhead in the same manner that Livernois historically has allocated overhead for the same product or service or, if it is a new product and/or service, in the manner that is used for the product or service of Livernois that is most comparable thereto from (B) the net proceeds received under the Livernois Contract, provided, however, that (i) "Loss" shall not include any discount, rebate or credit to the customer under any Livernois Contract pursuant to a decision made after the Effective Time; and (ii) to the extent that any Loss represents a Loss that has been incurred prior to the Effective Time (based on revenues received or booked on Livernois records as an unbilled receivable, and costs incurred by Livernois prior to the Effective Time), the Loss will be reduced to that extent.

**"Livernois Contracts**" -- means the Contracts for the delivery of products or services by Livernois to any other Person that was in effect or entered into at any time prior to the Closing Date. including but not limited to those listed on Schedule 10.1; provided, however, that the Livernois Contracts shall not include the Showa Contract (other than with respect to any services to be provided by Livernois under the Showa Contract after the Closing Date).

**10.2** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER***. Seller will indemnify and hold harmless the Buyer Indemnified Persons, for, and will pay to the Buyer Indemnified Persons the amount of, any Damages, arising, directly or indirectly, from or in connection with:

(a) any Breach of any representation or warranty made by Seller in this Agreement or by Seller or any Related Person thereof in the European Share Purchase Agreement (without giving effect to any supplement to any Schedule) or any other certificate or document delivered by Seller or such Related Person pursuant to this Agreement or the European Share Purchase Agreement (provided, however, that this Section 10.2(a) shall only apply if the Closing shall not occur),

(b) any Breach of any representation or warranty made by Seller in this Agreement or by Seller or any Related Person thereof in the European Share Purchase Agreement as if such representation or warranty were made on and as of the Closing Date (without giving effect to any supplement to any Schedule), other than any such Breach that is disclosed in a supplement to any Schedule and is expressly identified in the certificate delivered pursuant to Section 2.4(a)(ii) as having caused the condition specified in Section 7.1 not to be satisfied;



(c) any Breach by Seller of any covenant or obligation of Seller in this Agreement or by Seller or any Related Person thereof in the European Share Purchase Agreement;

(d) the operation of the Business prior to the Closing Date, including Damages relating to any product shipped by, or any services provided by the Business or any Acquired Company or by the EU JVCo or any subsidiary or predecessor thereof prior to the Closing Date including but not limited to any liabilities assumed by the Company or any other Acquired Company arising from the Seller's actions provided for by Attachment E to the Members' Agreement whether pursuant to a certain Reorganization Agreement among Heatcraft Inc. or certain Affiliates thereof and a certain Heat Transfer Contribution Agreement (the "US Reorganization Agreements") or othrwise.

(e) the Proceedings and matters disclosed in Schedule 3.15 and Schedule 3.15 to the European Share Purchase Agreement;

(f) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made by any such Person with Seller or any Acquired Company (or any Person acting on their behalf or on behalf of the Business for which they are responsible) in connection with any of the Contemplated Transactions or the transactions contemplated by the European Share Purchase Agreement; and

(g) all Losses, in the aggregate, arising from the Livernois Contracts. On a semi-annual basis after the Closing, the Company shall prepare and deliver initially to Buyer and Seller accounting statements for each Livernois Contract in a form agreed upon by the parties (the "***Contract Status Sheet***"). The Contract Status Sheet shall reflect the status of the contract, the costs incurred, revenue received, expected completion date and any changes to the terms of the original contract. Once completed, a detailed income statement for the completed contract and the adjustment for any losses incurred (the "***Contract Loss Adjustment***"), will be prepared in accordance with GAAP which shall be subject to an audit or review by Seller's Accountants. The Company shall make available any work papers or other information relating to the Contract Loss Adjustment then or thereafter requested by Seller's Accountants. If Seller does not object, or otherwise fails to respond, to the Contract Loss Adjustment within 30 days after delivery to Seller, such Contract Loss Adjustment shall automatically become final and conclusive and shall be payable by Seller to Company within ten (10) Business Days. In the event that Seller objects to the Contract Loss Adjustment within such 30 day review period, Seller and Buyer shall promptly meet and endeavor to reach agreement as to the content of the Contract Loss Adjustment. If Seller and Buyer agree on the content of the Contract Loss Adjustment, such Contract Loss Adjustment shall become final and conclusive and shall be payable by Seller to Company within ten (10) Business Days. If Seller and Buyer are unable to reach agreement within 30 days after the end of Seller's 30 day review period, then the Independent Accountants shall promptly be retained to undertake a determination of the Contract Loss Adjustment, which determination shall be made as quickly as possible (it being understood that the parties shall direct the Independent Accountants to complete their work within 30 days). Only disputed items shall be submitted to the Independent Accountants for review. In resolving any disputed item, the Independent Accountants may not assign a value to such item greater than the greatest value for such item claimed by either party or less than the lowest value for such item claimed by either party, in each case as presented to



the Independent Accountants. Such determination of the Independent Accountants shall be final and binding on Seller and Buyer, and all expenses of the Independent Accountants shall be borne equally by Seller and Buyer. The payments required to be made after the final determination of the Independent Accountants shall be payable by Seller to Company within ten (10) Business Days. The parties shall make appropriate and equitable reconciliations from time to time to account for the requirement that Losses be determined on an aggregate basis.

Notwithstanding the provisions of clauses (a) and (b) of this Section 10.2, to the extent that Seller can prove (and Seller has the burden of proof in that regard) that Buyer had Knowledge that any of Seller's representations or warranties contained in this Agreement or in the European Share Purchase Agreement were false at the time such agreement was signed, Seller shall have no indemnification obligation for the Breach of such representation or warranty.

In the event of any conflict between this Agreement and either of the US Reorganization Agreements, this Agreement shall control in all respects.

**10.3** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER -- ENVIRONMENTAL MATTERS***.

**10.3.1** ***Indemnification***. In addition to the provisions of Section 10.2, Seller will indemnify and hold harmless the Buyer Indemnified Persons for, and will pay to Buyer, the Acquired Companies and the other Buyer Indemnified Persons the amount of, any Damages (including costs of investigation, cleanup, containment or other remediation and associated operation, maintenance and monitoring) arising, directly or indirectly, from or in connection with:

(a) any Environmental, Health and Safety Liabilities arising out of or relating to: (i) (A) the ownership, operation or condition at any time on or prior to the Closing Date of the Facilities or any other properties and assets (whether real, personal or mixed and whether tangible or intangible) in which Seller, any Heat Transfer Existing Subsidiary or any Acquired Company has or had an interest, including any fact, event, condition, circumstance, incident, operation or practice identified or covered in any of the reports listed in Schedule 3.19 (the "Known Environmental Liabilities"), or (B) any Hazardous Materials or other contaminants that were present on the Facilities or such other properties and assets at any time on or prior to the Closing Date; or (ii) (A) any Hazardous Materials or other contaminants, wherever located, that were generated, transported, stored, treated, Released or otherwise handled by Seller, any Heat Transfer Existing Subsidiary or any Acquired Company 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 (B) any Hazardous Activities with respect to the Facilities or relating to the Business that were conducted by Seller, any Heat Transfer Existing Subsidiary or any Acquired Company or by any other Person for whose conduct they are or may be held responsible, including any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19; or

(b) any bodily injury (including illness, disability and death, and regardless of when any such bodily injury occurred, was incurred or manifested itself), 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 Seller, any Heat Transfer Existing Subsidiary or any Acquired Company or any other Person for whose conduct they are or may be held responsible, in any way arising from or allegedly arising from any Hazardous Activity conducted with respect to the Facilities or the operation of the Acquired Companies, any Heat Transfer Existing Subsidiary or the Business prior to the Closing Date,including any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19, or from Hazardous Material that was (i) present on or before the Closing Date on or at the Facilities (or present or suspected to be present on any other property, if such Hazardous Material emanated from any of the Facilities and was present on any of the Facilities on or prior to the Closing Date), including any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19 or (ii) Released by Seller, any Heat Transfer Existing Subsidiary or any Acquired Company or any other Person for whose conduct they are or may be held responsible, at any time on or prior to the Closing Date, including any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19.

**10.3.2** ***Environmental Management***.

(c) Contractual Predicate:

(i) The reports listed on Schedule 3.19 or the additional Phase II reports prepared under Section 5.1(b) identify operating practices of the Acquired Companies or their predecessors and/or physical conditions at one or more of the Facilities which are not in full compliance with Environmental Law and/or which create latent or actual Environmental, Health and Safety Liabilities.

(ii) Under Section 10.3.1, Seller is obligated to indemnify and hold harmless Buyer, the Acquired Companies and the other Buyer Indemnified Persons for and has agreed to pay Buyer, the Acquired Companies and the other Buyer Indemnified Persons the amount of any Damages arising, directly or indirectly, from or in connection with Environmental, Health and Safety Liabilities.

(iii) The liabilities associated with the matters identified in the reports listed on Schedule 3.19 are covered by Seller's indemnification and payment obligations under Section 10.3.1. The purpose of this Section 10.3.2 is to provide for the efficient administration of the rights of Seller, Buyer, the Acquired Companies and the other Buyer Indemnified Persons and the obligations of Seller under Section 10.3.

(d) Management Framework:

(i) All of the tasks necessary to manage and/or resolve the Environmental, Health and Safety Liabilities, including Cleanup, arising from the matters identified in the reports listed in Schedule 3.19 and any other Environmental, Health and Safety Liabilities for which Seller is



obligated to provide indemnity and pay Damages under Section 10.3.1, including Cleanup, constitutes the "***Work***" to be governed by this Section 10.3.

(ii) Seller and its Representatives shall manage the Work. Buyer will be given the opportunity to participate in the Work as defined in the subsequent provisions of this section.

(iii) Seller hereby appoints Mark Yohman to serve as its initial overall project coordinator ("**PC**") for the Work. Buyer hereby appoints Earl Robinson to serve as its initial representative ("**OR**") to review and provide input on the Work. Either party may change its appointed representative by written notice to the other. The rights and responsibilities of the PC and the OR with respect to managing the Work and /or any Cleanup are as follows:

(A) The PC, with the OR's concurrence, will select such environmental/engineering firms as may be necessary to plan and carry out the Work. The PC, with the OR's concurrence, can change or supplement such environmental/engineering firms as necessary to efficiently and effectively carry out the Work.

(B) The PC and OR in consultation with the environmental/ engineering firms, will jointly develop long-range plans, budgets, schedules and execution strategies (for at least one year in advance) for the Work.

(C) The PC, OR and engineering/environmental consulting firms will jointly develop project specific scopes of work and related work plans.

(D) The PC will take the lead in managing the environmental/ engineering firms. The firms will be instructed to provide duplicate originals of all written correspondence including teleconferencing communications and work products, to the PC and the OR simultaneously.

(E) The PC shall require performance of the Work according to each project's schedule; that schedule will reflect that the Work must be performed economically and expeditiously.

(F) All relevant correspondence and work products generated by Buyer, Seller or their respective Representatives or by the environmental/engineering firms engaged to perform any Work, or received by Buyer, Seller or their respective Representatives from any environmental/engineering firms or any Governmental Bodies, will be transmitted to the other party as soon as practicable, to the extent that such material has not already been forwarded directly.

(G) The PC will be responsible for dealing with all Governmental Bodies, but the PC shall give the OR prompt notice of all scheduled meetings, conference calls and other pre-arranged conversations with Governmental Bodies and shall allow the OR to attend or participate in all scheduled meetings, conference calls and other pre-arranged conversations with such Governmental Bodies which relate to the Work at any of the Facilities. The OR will be given a



reasonable time in advance to review, discuss and propose modifications to the timing or content of any proposed communication with such agencies which pertain to the Work.

(H) The PC and the OR will jointly develop negotiating positions and strategies for communicating with the Governmental Bodies about the process for evaluating and selecting Cleanup or other remedies, compliance strategies or other necessary actions.

(I) If the PC and OR disagree on any element of the Work (including plans, Cleanup or other execution strategies, scopes of the Work, work plans, schedules, budgets or contract terms of the Work proposals) or on the content or timing of any communication to a Governmental Body or if the OR believes that the PC is failing to diligently attend to or prosecute any element of the Work, (collectively, "***ENV Disagreements***"), the OR shall promptly and concisely state its position in writing. The PC shall give due consideration to the LR's position, and the PC shall then make a determination which, subject to Paragraph (J) below, resolves the ENV Disagreement.

(J) If the OR or Buyer requests, the PC's decision will be subject to review by the CEO of Buyer and Seller, after a meeting or telephone conference between the CEO of Buyer and the CEO of Seller. After the foregoing review, Buyer will have the authority to resolve any ENV Disagreement and to effect any actions with respect to the Work with any Governmental Body; provided, however, that Seller will no longer be obligated to indemnify Buyer or any other Buyer Indemnified Person. At the election of the Buyer, the dispute may be submitted to a qualified independent third party for resolution. The parties will select this party by mutual agreement, all costs for the review will be shared equally by Buyer and Seller and any decisions will be governed by the principle that any Work performed must be that necessary to comply with any applicable Legal Requirement and in the most cost-effective manner.

(K) If the manner in which Seller is managing any element of the Work negatively impacts or harms the Business (with any ENV Disagreement regarding the same to be resolved as provided in paragraph (J) above), Buyer will have the right to assume management of such Work by notice to Seller.

(e) Cost Control: The PC and Buyer will take all reasonable steps to insure the project costs which are subject to payment by Seller or Company are closely monitored and controlled.

(f) Project Controls: Every environmental/engineering firm who performs any Work shall prepare periodic written progress reports in a format jointly developed by the PC and OR for the specific tasks and projects they are contracted to perform. Each environmental/ engineering firm shall also be available to confer with the PC and the OR as the PC and the OR determine is necessary, about the Work.

(g) Funding/Invoicing Procedures:

(i) Each environmental/engineering firm who performs any Work shall submit invoices for payment in a form developed jointly by both the PC and the OR. Invoices must be sent to both the PC and OR concurrently. The OR shall communicate any questions about or



objections to any environmental/engineering firm invoice within thirty (30) days after receipt. After completing its review, and conferring with the OR the PC shall make a decision concerning payment of the invoice. On determining that an invoice is to be paid, the PC shall arrange for such payment to be by Seller, which payment will be made by Seller in its ordinary accounts payable cycle unless Paragraph (ii) below applies.

(ii) If the OR and Buyer disagree with the PC's decision as to payment of any invoice amount, Seller or Buyer shall deliver a Dispute Notice (as defined in Section 10.13(a)) with respect to any portion or the entire all of the invoice. In such event the Dispute will be resolved pursuant to Section 10.13. If it is ultimately determined pursuant to Section 10.13 that Seller is required to pay any amount which was the subject of a Dispute Notice sent pursuant to this section, Seller shall pay such amount to the Company.

**10.3.3.** ***Procedure***. Notwithstanding Section 10.3.2, the procedure described in Section 10.11 will apply to any claim solely for monetary damages relating to a matter covered by this Section 10.3.

**10.4** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER - TAX MATTERS***.

10.4.1 ***General***.

(a) In addition to the provisions of Section 10.2, Seller shall indemnify each Buyer Indemnified Person and hold them harmless from (i) all liability for Taxes that may be imposed or assessed against the Acquired Companies (which for purposes only of this Section 10.4 shall include the Acquired Companies and the entities set forth on Schedule 10.4.1(a) or the assets of the Acquired Companies based on income attributable to all taxable periods ending on or before the Closing Date reduced without duplication by the actual payment of Taxes prior to the Closing Date and any reserves with respect to Taxes set forth on the Closing Balance Sheet, (ii) all liability (as a result of Treasury Regulation § 1.1502-6 or otherwise) for Taxes of any Person (other than any of the Acquired Companies) with which any of the Acquired Companies is or has been affiliated or has filed or has been required to file a consolidated, combined or unitary Tax Return, and (iii) subject to the last sentence of Section 10.4.2(b), all liability for reasonable legal, accounting, consulting or similar fees and expenses for any item attributable to any item in clauses (i) or (ii) of this sentence.

(b) In the case of any taxable period that includes (but does not end on) the Closing Date (a "***Straddle Period***"):

(i) real, personal and intangible property Taxes ("***Property Taxes***") of the Acquired Companies attributable to all taxable periods ending on or before the Closing Date will be equal to the amount of such property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in all taxable periods ending on or before the Closing Date and the denominator of which is the number of days in the Straddle Period; and



(ii) the Taxes of the Acquired Companies (other than Property Taxes) attributable to all taxable periods straddling the Closing Date will be computed as if such taxable period ended as of the close of business on the Closing Date and, in the case of any Taxes attributable to the ownership by any of the Acquired Companies of any equity interest in any non-U.S. corporation, partnership or other "flow through" entity, as if a taxable period of such corporation, partnership or other "flow through" entity ended as of the closing of business on the Closing Date.

10.4.2 ***Tax Indemnification Procedures***

(c) If a claim is made by any Governmental Body, which, if successful, would result in an indemnity payment to any Indemnified Person pursuant to Section 10.4.1, then the Company shall give notice to Seller in writing of such claim within thirty (30) days after receipt of such a claim (a "***Tax Claim***"); provided, however, the failure to give such notice shall not affect the indemnification provided pursuant to Section 10.4.1 except to the extent that Seller has been actually prejudiced as a result of such failure. Notice to Seller hereunder will constitute notice to Seller.

(d) With respect to any Tax Claim relating to a taxable period ending on or prior to the Closing Date, Seller shall control all proceedings and may make all decisions taken in connection with such Tax Claim (including selection of counsel) and, without limiting the foregoing, may in its sole discretion pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any Governmental Body with respect thereto, and may, in its sole discretion, either pay the Tax claimed and sue for a refund where applicable law permits such refunded suits or contest the Tax Claim in any permissible manner; provided, however, that Seller must first consult in good faith with Buyer before taking any action with respect to the conduct of a Tax Claim.

(e) Seller and Buyer shall jointly control and participate in all proceedings taken in connection with any Tax Claim relating to Taxes of the Acquired Companies for a Straddle Period. Neither Seller nor Buyer shall settle any such Tax Claim without the prior written consent of the other parties. Each party shall pay its own expenses with respect to any such Tax Claim.

(f) The Company shall control all proceedings with respect to any Tax Claim relating to a taxable period beginning after the Closing Date.

(g) Buyer and the Acquired Companies on the one hand, and Seller on the other, shall reasonably cooperate in contesting any Tax Claim, which cooperation will include the retention and, upon request, the provision to the requesting Person of records and information which are reasonably relevant to such Tax Claim, and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder or to testify at proceedings relating to such Tax Claim.

10.4.3 ***Transfer and Similar Taxes***. Seller shall pay and shall hold each Buyer Indemnified Person harmless from all transfer, documentary, sales, use, registration and similar Taxes (including all applicable real estate transfer or gains taxes and state transfer taxes, and related fees,

including any penalties interest and additions to Tax) ("***Transfer Taxes***"). The procedures set forth in Section 10.4.1 apply to Transfer Taxes. On or prior to the Closing, Seller shall present Tax receipts or other documents, satisfactory to Buyer, demonstrating that all Transfer Taxes have been paid in full.

**10.5** ***INDEMNIFICATION AND PAYMENT BY SELLER - TRANSACTION EXPENSES***.

(a) Prior to the Closing Date, Seller shall have requested final invoices from all relevant third parties (including accountants, attorneys and other similar professionals) reflecting all fees and expenses payable by Seller and the Acquired Companies with respect to services rendered in connection with the transactions contemplated hereby and by the European Share Purchase Agreement. Not later than three (3) Business Days prior to the Closing Date, the chief financial officer of Seller shall certify in writing to Buyer the amount of (i) any Transaction Expenses that will have been paid by Seller or any Acquired Company immediately prior to the Closing Date, (ii) an estimate of any Transaction Expenses incurred but not paid as of the Closing Date, and (iii) an estimate of any Transaction Expenses reasonably expected to be incurred after the Closing Date.

(b) In addition to the provisions of Section 10.2, Seller agrees to indemnify, defend and hold the Buyer Indemnified Persons harmless from and against any and all Losses that the Buyer Indemnified Persons may suffer, sustain, incur or become subject to arising out of or due to the failure of Seller to pay in full all Transaction Expenses. Any amounts to be paid under this Section 10.5 by Seller to a Buyer Indemnified Person shall be paid by Seller immediately upon receipt of written notice from Buyer demanding payment.

**10.6** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY BUYER.*** Buyer and OCP agree, jointly and severally, to indemnify and hold harmless the Seller Indemnified Persons, and will pay to Seller Indemnified Persons the amount of any Damages arising, directly or indirectly, from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or by Buyer or any Related Person thereof in the European Share Purchase Agreement (without giving effect to any supplement to any Schedule) or any other certificate or document delivered by Buyer or such Related Person pursuant to this Agreement or the European Share Purchase Agreement (provided, however, that this Section 10.6(a) shall only apply if the Closing shall not occur),

(b) any Breach of any representation or warranty made by Buyer in this Agreement or by Buyer or any Related Person thereof in the European Share Purchase Agreement as if such representation or warranty were made on and as of the Closing Date (without giving effect to any supplement to any Schedule), other than any such Breach that is disclosed in a supplement to any Schedule and is expressly identified in the certificate delivered pursuant to Section 2.4(b)(ii) as having caused the condition specified in Section 8.1 not to be satisfied;

(c) any Breach by Buyer of any covenant or obligation of Buyer in this Agreement or by Buyer or any Related Person thereof in the European Share Purchase Agreement;



(d) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made by such Person with Buyer (or any Person acting on its behalf) in connection with any of the Contemplated Transactions.

**10.7** ***TIME LIMITATIONS***.

(a) If the Closing occurs, Seller will have no liability (for indemnification or otherwise) with respect to:

(i) any representation or warranty unless notice is given to Seller in accordance with Section 10.10 or Section 10.11 prior to the expiration of the following periods:

(A) for the representations and warranties set forth in Sections 3.1 through 3.3, 3.12, 3.14, 3.16, 3.20, 3.21 and 3.23 through 3.25 - two years after the Closing Date

(B) for the representations and warranties set forth in Sections 3.4 through 3.9, 3.13. 3.17, 3.18 and 3.22 - three years after the Closing Date;

(C) for the representations and warranties set forth in Sections 3.10, 3.15, 3.19 and 3.26 - five years after the Closing Date; and

(D) for the representations and warranties set forth in Section 3.11 - 60 days following expiration of the applicable statute of limitations, or

(ii) any covenant or obligation to be performed and complied with prior to the Closing Date unless on or before the fourth anniversary of the Closing Date Buyer notifies Seller of a claim in accordance with Section 10.10 or Section 10.11. Seller shall have no liability for indemnification or reimbursement (x) under Section 10.2 not based upon any representation or warranty, (y) under Section 10.3, 10.4 or 10.5, or (z) with respect to any covenant or obligation to be performed and complied with after the Closing Date, unless notice is given to Seller in accordance with Section 10.10 or Section 10.11 prior to the expiration of the periods **("Notice Periods")** set forth below:

(A) For Section 10.3:

(I) With respect to any Known Environmental Liabilities, the Notice Period shall continue in perpetuity.

(II) With respect to any Environmental, Health and Safety Liabilities that are not Known Environmental Liabilities **(the "Unknown Environmental Liabilities")**, the Notice Period shall run from the Closing Date until the tenth ($10^{th}$) anniversary of the Closing Date. Seller shall be required to indemnify the Buyer Indemnified Persons for any Unknown Environmental Liabilities according to the following schedule: For Unknown Environmental Liabilities notice of which is delivered to Seller prior to the eighth ($8^{th}$) anniversary of the Closing Date - 100%; for Unknown Environmental Liabilities notice of which is delivered to Seller after the eighth ($8^{th}$)



anniversary, and prior to the ninth ($9^{th}$) anniversary of the Closing Date - 67%; and for Unknown Environmental Liabilities notice of which is delivered to Seller after the ninth ($9^{th}$), and prior to the tenth ($10^{th}$) anniversary of the Closing Date - 33%. Notwithstanding the foregoing provisions of this clause (II): (x) if Seller proves that any Release, act, omission or violation of Environmental Law giving rise to any Unknown Environmental Liability first occurred after the Closing Date, Seller shall have no indemnity obligation under this Agreement with respect to such Unknown Environmental Liability, and (y) with respect to a Release, act, omission or violation of Environmental Law giving rise to an Unknown Environmental Liability that first occurs before the Closing Date, if Seller can prove that an Acquired Company's acts or omissions after the Closing Date exacerbated the conditions giving rise to such Unknown Environmental Liability, the Seller's indemnity obligation under Section 10.3 and as limited by this Section 10.7(a)(ii)(A)(II) will be reduced in equitable proportion to the respective contribution of Seller (or its Affiliates) and the Acquired Companies to the Unknown Environmental Liability.

(B) For Section 10.2 (i.e., indemnity claims not based on a breach of any representation or warranty), 10.4 or 10.5 or for indemnity claims with respect to any covenant to be performed and complied with after the Closing Date, the Notice Period shall commence on the Closing Date and continue until the longer of (y) the fifth anniversary of the Closing Date or (z) 60 days after the applicable statute of limitations.

(b) If the Closing occurs, Buyer will have no liability (for indemnification or otherwise) with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, unless on or before fifth anniversary of the Closing Date Seller notifies Buyer of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Seller.

(c) If the Closing does not occur, Buyer and Seller will have liability under Section 10.6 or 10.2 (as applicable) only if notice is given to the other party within one year after this Agreement has been terminated.

(d) The indemnifying party's obligations to indemnify for any matter notice of which is given within the applicable notice period will continue thereafter until satisfied.

**10.8** ***LIMITATIONS ON AMOUNT--SELLER***. Seller will have no liability (for indemnification or otherwise) with respect to the matters described in Sections 10.2(a) through 10.2(d), Section 10.2(f) and Section 10.3 until Buyer has suffered Damages in excess of a $500,000 aggregate Threshold (the "Threshold") at which point Seller will be obligated to indemnify Buyer from and against such Damages relating back to the first dollar. Notwithstanding the foregoing, there is no threshold with respect to Seller's indemnification obligations under Section 10.3 with respect to Known Environmental Liabilities (provided, however, that if the Base Business Plan includes any accrual for or otherwise includes expenses specifically identical as intended to cover the cost

of remediating any Known Environmental Liability, Seller shall indemnify the Buyer Indemnified Persons only for the amount of costs incurred in connection with such remediation in any year that are in excess of the accrual or other amounts expressly identified for such expenses in the Base Business



Plan for that year or, for years after 2006, the amount accrued for 2006 in the Base Business Plan). For clarification purposes, there is also no Threshold with respect to Seller's indemnification obligations under Section 10.2(e), Section 10.2(g), Section 10.4 or Section 10.5. This Section 10.8 does not apply to any Breach of any of Seller's representations and warranties of which Seller had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by Seller of any covenant or obligation, and Seller will be jointly and severally liable for all Damages with respect to such Breaches. The parties agree that the $500,000 aggregate Threshold can be satisfied by Damages that are indemnifiable under this Agreement or the European Share Purchase Agreement.

**10.9** ***LIMITATIONS ON AMOUNT--BUYER***. Buyer will have no liability (for indemnification or otherwise) with respect to the matters described in clause (a) or (b) of Section 10.6 until Seller shall has suffered Damages in excess of a $500,000 threshold (at which point Buyer will be obligated to indemnify Seller from and against such Damages relating back to the first dollar). However, this Section 10.9 will not apply to any Breach of any of Buyer's representations and warranties of which Buyer had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by Buyer of any covenant or obligation, and Buyer will be liable for all Damages with respect to such Breaches.

**10.10** ***PROCEDURE FOR INDEMNIFICATION--THIRD PARTY CLAIMS.***

(a) Promptly after receipt by an Indemnified Party under Section 10.2, 10.4, or (to the extent provided in Section 10.3) Section 10.3.3 of notice of the commencement of any Proceeding against it, such Indemnified Party will, if a claim is to be made against an Indemnifying Party under such Section, give notice to the Indemnifying Party of the commencement of such claim, but the failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action is prejudiced by the Indemnifying Party's failure to give such notice.

(b) If any Proceeding referred to in Section 10.9(a) is brought against an Indemnified Party and it gives notice to the Indemnifying Party of the commencement of such Proceeding, the Indemnifying Party will, unless the claim involves Taxes, be entitled to participate in such Proceeding and, to the extent that it wishes (unless (i) the Indemnifying Party is also a party to such Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate, or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such Proceeding and provide indemnification with respect to such Proceeding), to assume the defense of such Proceeding with counsel satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such Proceeding, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this Section 10 for any fees of other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of such Proceeding, other than reasonable costs of investigation. If the Indemnifying Party assumes the defense of a Proceeding, (A) it will be conclusively established for purposes of this Agreement that the claims made



in that Proceeding are within the scope of and subject to indemnification; (B) no compromise or settlement of such claims may be effected by the Indemnifying Party without the Indemnified Party's consent unless (Y) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party, and (Z) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; and (C) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an Indemnifying Party of the commencement of any Proceeding and the Indemnifying Party does not, within ten Business Days after the Indemnified Party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such Proceeding, the Indemnifying Party will be bound by any determination made in such Proceeding or any compromise or settlement effected by the Indemnified Party.

(c) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such Proceeding, but the Indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

**10.11** ***PROCEDURE FOR INDEMNIFICATION--OTHER CLAIMS***. A claim for indemnification under Sections 10.2, 10.3, 10.4, 10.5 and/or 10.6 (as applicable) for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought which notice shall set forth in reasonable detail the basis for such claim to the extent their known by such party.

**10.12** ***EXCLUSIVITY***. The parties agree that, except in the case of fraud, their sole and exclusive remedy for, under or in connection with this Agreement, including any violations or any breach of this Agreement, is a claim under and in accordance with the provisions of this Section 10.

**10.13** ***DISPUTE RESOLUTION.***

(a) ***Negotiated Resolution***. - If any dispute arises (i) out of or relating to, this Agreement or any alleged Breach thereof, (ii) with respect to any of the transactions or events contemplated hereby or (iii) with respect to any Person's right to indemnification ("Dispute"), the party desiring to resolve such Dispute shall deliver a written notice describing such Dispute with reasonable specificity to the other parties ("Dispute Notice"). If any party delivers a Dispute Notice pursuant to this Section 10.13, the Chief Executive Officers of the parties or their designees involved in the Dispute shall meet at least twice within the 30 day period commencing with the date of the Dispute Notice and in good faith shall attempt to resolve such Dispute, including any rejected indemnification claim.



(b) ***Mediation***. - If any Dispute is not resolved or settled by the parties as a result of negotiation pursuant to Section 10.13(a) above, the parties shall submit the Dispute to non-binding mediation in accordance with Attachment P to the Members' Agreement.

(c) ***Arbitration***. - If the Dispute is not resolved by mediation pursuant to Section 10.13(b) above, the Dispute shall be settled by arbitration conducted in accordance with Attachment P to the Members' Agreement

(d) ***Equitable Relief***. - The provisions of this Section 10.14 shall not preclude Buyer from seeking an injunction or other equitable relief to enforce the provisions of Article 9 of the Members' Agreement.

**11.** ***GENERAL PROVISIONS***

**11.1** ***EXPENSES***.

(a) Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel, accountants and investment bankers.

(b) Buyer and Seller will each pay one-half of the HSR Act filing fee.

(c) Seller shall pay all costs of reorganizing the Business into the Acquired Companies.

(d) In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by another party. In addition, Seller shall reimburse Buyer for one-half of Buyer's Search Expenses.

**11.2** ***PUBLIC ANNOUNCEMENTS***.

(a) Seller and Buyer agree that, promptly after the execution and delivery of this Agreement or at such times as otherwise agreed upon by the parties, they shall each issue a press release substantially in the form for Seller and Buyer, respectively, that are provided for in the Members' Agreement. Unless required by Legal Requirements, any other public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued prior to the Closing, if at all, at such time and in such manner as Buyer and Seller may mutually determine. Prior to the Closing, Buyer and Seller will consult with each other concerning the means by which the Acquired Companies' employees, customers and suppliers and others having dealings with the Acquired Companies will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

(b) With respect to public communications on the Closing Date or otherwise with respect to the Closing, Seller and Buyer shall consult in good faith regarding appropriate press releases



and, unless otherwise required by Legal Requirements, the form and content of, any press release, public announcement or similar publicity relating to the Closing, the Company and the parties will be mutually determined.

**11.3** ***CONFIDENTIALITY***.

(a) Between the date of this Agreement and the Closing Date, Buyer and Seller will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of Buyer and the Acquired Companies to maintain in confidence, and not use to the detriment of another party or an Acquired Company any written, oral or other information obtained in confidence from another party or an Acquired Company in connection with this Agreement or the Contemplated Transactions, unless (i) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (ii) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Contemplated Transactions, or (iii) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings.

(b) If the Contemplated Transactions are not consummated, each party will return or destroy as much of such written information as the other party may reasonably request. Whether or not the Closing takes place, Seller waives and will, upon Buyer's request, cause the Acquired Companies to waive, any cause of action, right or claim arising out of the access of Buyer or its representatives to any trade secrets or other confidential information of the Acquired Companies except for the intentional competitive misuse by Buyer of such trade secrets or confidential information.

(c) Nothing herein contained is intended to void, replace in whole or in part or limit the application of any Confidentiality Agreements previously entered into by and between the parties or their Related Persons which shall remain in full force and effect in accordance with the terms thereof.

**11.4** ***NOTICES***. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Seller:

Lennox International, Inc.
P.O. Box 799900
Dallas, Texas 75379-9900
Attention: Carl E. Edwards, Jr.
Facsimile No.: 972-497-5268



Buyer or OCP:

Outokumpu Copper Products Oy
Riihitontuntie 7D
P.O. Box 280
Espoo, Finland 02201
Attention: Corporate General Counsel
Facsimile No.: 011-358-9-421-2428

with a copy to:

Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203
Attention: Robert B. Fleming, Jr., Esq.
Facsimile No.: 716-849-0349

**11.5** ***JURISDICTION; SERVICE OF PROCESS***. Except as otherwise set forth in Section 10.13 or elsewhere in this Agreement, any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought in the courts of the State of Florida, Dade County, or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of Florida. Each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

**11.6** ***FURTHER ASSURANCES; INFORMATION.***

(a) The parties agree (i) to furnish upon request to each other such further information, (ii) to execute and deliver to each other such other documents, and (iii) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

(b) From and after the Closing, Seller and its Representatives will be allowed, upon reasonable request, to inspect and copy at their expense the business records and accounts of the Company. Buyer agrees with Seller that the Company shall not destroy or abandon any business records or accounts relating to the Business except upon thirty (30) days' advance written notice to Seller for a period of five (5) years thereafter. If Seller requests the surrender of such records or



accounts, then the Company shall surrender, at Seller's expense, such records or accounts so required rather than proceeding with such destruction.

(c) From and after the Closing, Buyer, the Acquired Companies and their Representatives will be allowed upon reasonable request to inspect and copy at their expense the records of Seller and its Related Persons relating to the Acquired Companies and the Business through the Closing Date that are in the possession or control of Seller or any of its Related Persons and are not transferred to the Acquired Companies, including all financial records and tax returns relating to the Business. Seller agrees not to destroy or abandon any such records for a period of five (5) years following the Closing.

(d) If at any time within three (3) years after the date of this Agreement, Buyer or any of its Related Persons proposes to register under the Securities Act of 1933, as amended, any securities in connection with any registered offering thereof and in connection therewith the Securities and Exchange Commission ("***SEC***") makes any comments or requests any information with

respect to accounting information presented in the registration statement pertaining to any period prior to the Closing Date, then Seller will cooperate fully in responding promptly to such comments or questions, and will use its reasonable best efforts to cause Seller's Accountants to respond to comments on the relevant financial statements or to provide such information as the SEC requests in order to cause the SEC to declare effective such registration statement, at the expense of Buyer or its designated Related Persons, as the case may be. In addition, Seller will provide to any underwriter relating to financial information pertaining to any period prior to the Closing Date as required by Legal Requirements or applicable regulations or guidance of the accounting profession.

**11.7** ***WAIVER***. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

**11.8** ***ENTIRE AGREEMENT AND MODIFICATION***. This Agreement supersedes all prior agreements between the parties with respect to its subject matter (including without limitation the Memorandum of Agreement between Outokumpu Oyj and Seller dated on or about April 9, 2002) and constitutes (along with the Schedules and documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.



This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

**11.9** ***ASSIGNMENTS, SUCCESSORS AND NO THIRD-PARTY RIGHTS***. Neither party may assign any of its rights under this Agreement without the prior consent of the other parties, except that Buyer or Seller may assign any of its rights under this Agreement to any Subsidiary of Buyer or Seller. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns.

**11.10** ***SEVERABILITY***. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**11.11** ***SECTION HEADINGS, CONSTRUCTION***. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All references to "Schedule" or "Schedules" refer to the corresponding Schedule or Schedules attached to and made a part of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

**11.12** ***TIME OF ESSENCE***. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

**11.13** ***GOVERNING LAW***. This Agreement is governed by the laws of the State of New York without regard to conflicts of laws principles.

**11.14** ***COUNTERPARTS***. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

**[SIGNATURES APPEAR ON NEXT PAGE]**



IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Seller:

LENNOX INTERNATIONAL, INC.

By: /s/ Robert E. Schjerven
Name: Robert E. Schjerven
Title: Chief Executive Officer

Buyer:

OUTOKUMPU COPPER
HOLDINGS, INC.

By: /s/ Kalevi Nikkilä
Name: Kalevi Nikkilä
Title: President

OCP:

OUTOKUMPU COPPER PRODUCTS OY

By: /s/ Kalevi Nikkilä
Name: Kalevi Nikkilä
Title: President

AMENDMENT TO SHARE PURCHASE AGREEMENT

THIS AMENDMENT ("Agreement") is made as of August 26, 2002, by and among OUTOKUMPU COPPER PRODUCTS OY, a Finnish company ("OCP"), OUTOKUMPU COPPER HOLDINGS, INC., a Delaware corporation ("Buyer"), and LENNOX INTERNATIONAL, INC., a Delaware corporation ("Seller").

Buyer, OCP and Seller, intending to be legally bound and in consideration of the mutual promises herein contained, agree as follows:

1. Reference is made to a Share Purchase Agreement as of July 18, 2002 (the "Purchase Agreement") by and among Seller, Buyer and OCP. This Agreement is intended to set forth certain amendments and agreements among the parties relative to the Purchase Agreement. Any specially capitalized terms not otherwise defined in this Agreement shall have the same meaning as set forth in the Purchase Agreement.

2. Section 1 of the Purchase Agreement is hereby amended to change the definition of "Effective Time" to provide that it means, with respect to each of the Acquired Companies, 12:00:01 A.M. (local time for each Acquired Company) on August 26, 2002 (and not 11:59:59 P.M. on the Closing Date).

3. Buyer acknowledges that certain of the JV Transactions have not been completed by Seller or its Related Persons prior to Closing including (A) those items referred to in Paragraph 10 of the Amendment to Share Purchase Agreement entered into by and among OCP, LGL Holland B.V. and LGL Europe Holdings Co. ("EU Amendment") and (B) some of the actions referred to in Section 5.10 of the Purchase Agreement. Seller agrees to take, or cause to be taken, all actions as soon as practicable after Closing at its expense that are necessary or desirable to complete all JV Transactions.

4. Except as provided for in this Agreement, all of the provisions of the Purchase Agreement shall remain in full force and effect.

[SIGNATURES APPEAR ON NEXT PAGE]

---

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Seller:

LENNOX INTERNATIONAL, INC.

By:_____
Name:
Title:

Buyer:

OUTOKUMPU COPPER
HOLDINGS, INC.

By:_____
Name:
Title:

OCP:

OUTOKUMPU COPPER PRODUCTS OY

By:_____
Name:
Title:

**AMENDMENT NO. 2 TO SHARE PURCHASE AGREEMENT**

THIS AMENDMENT ("Agreement") is made as of August 30, 2002, by and among OUTOKUMPU COPPER PRODUCTS OY, a Finnish company ("OCP"), OUTOKUMPU COPPER HOLDINGS, INC., a Delaware corporation ("Buyer"), and LENNOX INTERNATIONAL, INC., a Delaware corporation ("Seller").

Buyer, OCP and Seller, intending to be legally bound and in consideration of the mutual promises herein contained, agree as follows:

1. Reference is made to a Share Purchase Agreement as of July 18, 2002, as amended (the "Purchase Agreement"), by and among Seller, Buyer and OCP. This Agreement is intended to set forth certain amendments and agreements among the parties relative to the Purchase Agreement. Any specially capitalized terms not otherwise defined in this Agreement shall have the same meaning as set forth in the Purchase Agreement.

2. For purposes of Article 2 of the Purchase Agreement, the Indebtedness, Permitted Indebtedness, Closing Date Net Assets, Net Assets Adjustment and Indebtedness Adjustment shall all be calculated and determined as of the Effective Time. Accordingly, although the transfer of the Shares will occur on, and the Closing Date will be, August 30, 2002, the parties agree that the economic effect of the Contemplated Transactions shall be as of the Effective Time. Notwithstanding anything to the contrary above and notwithstanding that the assignment of the Shares provided for in Section 2.1 and certain of the agreements among the parties and their Related Persons are dated on or as of August 26, 2002, (A) the certificates required by Sections 2.4, 7.4 and 8.4 under the Purchase Agreement shall be as of the Closing Date, (B) the Acquired Companies have been managed by Seller and its Related Persons during the Interim Closing Period (the period beginning as of the Effective Time and continuing through and ending on the Closing Date) and (C) Seller's obligations under Article 10 under the Purchase Agreement shall be as of the Closing Date.

3. Except as provided for in this Agreement, all of the provisions of the Purchase Agreement shall remain in full force and effect.

[SIGNATURES APPEAR ON NEXT PAGE]

---

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Seller:

LENNOX INTERNATIONAL, INC.

By: /s/ Carl E. Edwards, Jr.
Name: Carl E. Edwards, Jr.
Title: EVP

Buyer:

OUTOKUMPU COPPER
HOLDINGS, INC.

By: /s/ Kalevi Nikkilä
Name: Kalevi Nikkilä
Title: President - Outokumpu
Copper Products Oy

OCP:

OUTOKUMPU COPPER PRODUCTS OY

By: /s/ Kalevi Nikkilä
Name: Kalevi Nikkilä
Title: President

**SHARE PURCHASE AGREEMENT**

THIS SHARE PURCHASE AGREEMENT ("***Agreement***") is made as of July 18, 2002, by and among OUTOKUMPU COPPER PRODUCTS OY, a Finnish company ("***Buyer***") and LGL Holland B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands and having its official seat (*statutaire zetel*) in Amsterdam, The Netherlands and its registered office at Watergoorweg 87, 3861MA Nijkerk, the ,The Netherlands and registered with the Commercial Register under number 32069974 ("***Seller***") and LGL EUROPE HOLDING CO. (the "***Guarantor***").

**RECITALS**

Seller desires to sell, and Buyer desires to purchase, shares in OUTOKUMPU HEATCRAFT B.V., a private limited liability company *(besloten vennootschap met beperkte aansprakelijkheid*) to be incorporated by Seller under the laws of The Netherlands and having its official seat *(statutaire zetel*) in Amsterdam, (the "**Company**") as hereinafter provided, for the consideration and on the terms and conditions set forth in this Agreement. Seller is a wholly-owned subsidiary of the Guarantor.

**AGREEMENT**

Buyer, Seller and the Guarantor, intending to be legally bound, agree as follows:

1. ***DEFINITIONS***.

For purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1:

"***Acquired Companies***" -- the Company and the Heat Transfer Subsidiaries, collectively.

"***Applicable Contract***" -- any Contract (a) under which any Acquired Company has or may acquire any rights, (b) under which any Acquired Company has or may become subject to any obligation or liability, or (c) by which any Acquired Company or any of the assets owned or used by it is or may become bound.

"***Balance Sheet***" -- as defined in Section 3.4.

"***Balance Sheet Net Assets***" -- the combined net assets ((i) total assets minus (ii) total liabilities other than Indebtedness) of the Acquired Companies shown on the Base Balance Sheet calculated in accordance with GAAP.

"***Base Balance Sheet***" -- means the unaudited balance sheet for the Acquired Companies attached hereto as Schedule 1-A .

---

"***Base Business Plan***" -- means the initial base business plan of the Company set forth as Attachment A to the Shareholders Agreement.

"***Best Efforts***" -- the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to ensure that such result with due consideration for timing where appropriate; provided, however, that an obligation to use Best Efforts under this Agreement does not require the Person subject to that obligation to take actions that would result in a materially adverse change in the benefits to such Person of this Agreement and the Contemplated Transactions.

"***Breach***" -- a "Breach" of a representation, warranty, covenant, obligation or other provision of this Agreement or any instrument delivered pursuant to this Agreement will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with such representation, warranty, covenant, obligation or other provision, and the term "Breach" means any such inaccuracy, breach, failure, claim, occurrence or circumstance.

"***Business***" -- consists of:

(a) Subject to clause (b) and (c) below, Seller's heat transfer business in Europe, which includes its heat transfer division operations located in Cremieu, France, Torreglia, Italy and Prague, Czech Republic. The Business includes all plant, property, equipment and working capital presently used or useable in the designated facilities; those licenses (including all licenses relating to the software used in the Business), patent rights, trademarks and trade names used in the Business (including Heatcraft), know-how, and other commercial or proprietary information associated and/or necessary to conduct the Business as presently conducted and foreseen, including all agreements with trade representatives, agents, distributors engaged in marketing activities related to the Business, with products currently manufactured by the Business; and the real estate (including all rights to leaseholds) wherein the Business conducts its manufacturing, distribution or administrative functions in the designated facilities (collectively "***Assets***");

(b) With respect to Asia Pacific, (A) the Assets include certain idle manufacturing equipment located at Lennox International, Inc.'s Australian facility set forth in Schedule A which shall be provided by Lennox on or before Closing (and thereby attached to this Agreement) which equipment shall have an aggregate book value of at least $ 100,000 and which will be moved to China (the "Kirby Equipment") and (B) with respect to the Singapore and Shanghai offices, the Company will have the right to hire those employees of those offices who have been primarily involved in the heat transfer business. In connection with subpoint (A) above, the parties further agree that if additional idle equipment is identified after Closing, such additional equipment shall be deemed to form part of the Kirby Equipment up to the aggregate book value of $100,000 and Seller undertakes at its own cost to assign and transfer them



---

to the Company free of charge without encumbrances (as is, where is). So far as any additional idle equipment are identified in excess of the above referred additional $100,000 book value, the Company shall have the option, but not the obligation, to acquire such idle equipment from the Seller at book value.

(c) "Business" does not include (i) the heat transfer operations of Seller which are integrated into Seller's other businesses, including its HVAC/R operations in Europe, Australia/New Zealand and the United States or (ii) Seller's interest in Frigus-Bohn S.A. de C.V or, for clarification purposes, Sellers's interest in its joint venture company in Brazil, Heatcraft do Brasil Ltda.

"***Business Day***" -- means a day (other than a Saturday or Sunday) on which banks in both New York, New York (USA) and Helsinki, Finland are open for general business.

"***Buyer***" -- as defined in the first paragraph of this Agreement.

"***Buyer's Accountants***" -- PricewaterhouseCoopers LLP.

"***Closing***" -- as defined in Section 2.3.

"***Closing Date***" -- the date and time as of which the Closing actually takes place.

"***Closing Date Net Assets***" -- the combined net assets (total assets minus (ii) total liabilities other than any Indebtedness) of the Acquired Companies as of the Closing Date calculated in accordance with GAAP.

"***Company***" -- as defined in the Recitals of this Agreement.

"***Company's Articles of Association***" -- the Articles of Association of the Company, the form of which is attached to the Shareholders Agreement as .

"***Competition Law***" -- Any Legal Requirement intended to prohibit or regulate mergers, restraints of trade or monopolization of trade, including the HSR Act and Council Regulation (EEC) No. 4064/89 or similar laws within Finland or other applicable jurisdictions including France, Italy and the Czech Republic.

"***Consent***" -- any approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

"***Contemplated Transactions***" -- all of the transactions contemplated by this Agreement, including:

(a) the sale of the Shares by Seller to Buyer;



*[sic]*(d) the JV Transactions;

(e) the performance by Buyer and Seller of their respective covenants and obligations under this Agreement; and

(f) The Company's exercise of 100% control over the Heat Transfer Subsidiaries including the transactions provided for in Section 6.1.

"***Contract***" -- any agreement, contract, obligation, promise or undertaking (whether written or oral and whether express or implied) that is legally binding.

"***Damages***" -- as defined in Section 10.1.

"***Deed of Transfer***"--the notarial deed of transfer attached hereto as Schedule 1-D.

"***Dutch Notary***"--a Dutch notary to be mutually appointed by the parties prior to Closing.

"***Effective Time***" - 11:59:59 p.m. on the Closing Date.

"***Encumbrance***" -- any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal or any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership other than pursuant to the Company's Articles of Association.

"***Environment***" -- soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"***Environmental, Health and Safety Liabilities***" -- any cost, damages, expense, liability, obligation or other responsibility arising from the requirements for compliance with or arising from the violation of any applicable Environmental Law or Occupational Safety and Health Law and consisting of or relating to:

(a) any actions required to be taken to comply with applicable law or regulation relating to environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of chemical substances or products);

(b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial or inspection costs and expenses resulting from any requirements under Environmental Law or Occupational Safety and Health Law;



(c) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment or other remediation or response actions ("***Cleanup***") required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) with authority to require such Cleanup; or

(d) any other compliance, corrective, investigative or remedial measures required under the applicable Environmental Law or Occupational Safety and Health Law.

"***Environmental Law***" -- any Legal Requirement that requires:

(a) advising appropriate authorities, employees and the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable 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) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been released, preventing the threat of release, or paying the costs of such clean up or prevention; or

(h) 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.

"***Facilities***" -- any real property, leaseholds or other interests currently or formerly owned or operated by Seller or any Related Person thereof and any buildings, structures or equipment (including motor vehicles, tank cars and rolling stock) currently or formerly owned or operated by Seller or any Related Person thereof for which Buyer or any of the Acquired Companies could have any legal liability under Environmental Law.



"***GAAP***" -- generally accepted United States accounting principles, applied on a basis consistent with the basis on which the Balance Sheet and the other financial statements referred to in Section 3.4 were prepared.

"***Governmental Authorization***" -- any approval, consent, license, permit, waiver or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"***Governmental Body***" -- any:

(a) nation, state, county, city, town, village, district or other jurisdiction of any nature;

(b) federal, state, local, municipal, foreign or other government;

(c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal);

(d) multi-national organization or body; or

(e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"***Guarantor***"-- as defined in the first paragraph of this Agreement.

"***Hazardous Activity***" -- 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 Materials in, on, under, about or from the Facilities or any part thereof, and any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm to persons or property or the Environment on or off the Facilities.

"***Hazardous Materials***" -- any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefore and asbestos or asbestos-containing materials.

"***Heat Transfer Existing Subsidiaries***" - the direct and indirect, wholly or partially owned, subsidiaries of Seller in existence as of December 31, 2001 and through which the Business has been operated.

"***Heat Transfer Subsidiaries***" - the Persons formed or to be formed that, in addition to the Company, are listed on Schedule 3.1(a).



"***Indebtedness***" -- without duplication with respect to any Person, (a) all indebtedness of such Person for borrowed money (including all accrued interest and accumulated amortization), (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables created in the Ordinary Course of Business), (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (d) all obligations of such Person as lessee under leases that have been in accordance with GAAP, recorded as capital leases, (e) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, that have been in accordance with GAAP, recorded as indebtedness, and (f) Indebtedness of others referred to in clauses (a) through (e) above guaranteed in any manner by such Person, or in effect guaranteed by such Person under or pursuant to one or more Contracts.

"***Independent Accountants***" - Ernst & Young, LLP

"***Intellectual Property Assets***" -- as defined in Section 3.22.

"***Interim Closing Period***" -- the period beginning as of the Effective Time and continuing through and ending on the Closing Date.

"***JV Closings***" -- the completion and consummation of the JV Transactions as provided for in the Shareholders Agreement.

"***JV Transactions***" -- the Contracts and actions provided for, and as defined, in the Shareholders Agreement and Joint Venture and Member's Agreement with respect to USJVCO.

"***Key Executives***" -- the individuals listed on Schedule 1-B.

"***Knowledge***" -- an individual will be deemed to have "Knowledge" of a particular fact or other matter if:

(a) such individual is actually aware of such fact or other matter; or

(b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.

A Person (other than an individual) will be deemed to have "Knowledge" of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer or partner of such Person or any subsidiary thereof (or in any similar capacity) has, or at any time had, Knowledge of such fact or other matter. Notwithstanding the foregoing, "Knowledge" of Seller means the knowledge of the officers and directors of Seller, the Acquired Companies and the Heat Transfer Existing Subsidiaries; the management team members of Seller in Dallas, Texas listed on



Schedule 1-C and of Heatcraft Inc. in Grenada, Mississippi and Livernois Engineering Inc. in Dearborn Michigan listed on Schedule 1-D; and the management team members for Seller's heat transfer operations in Europe, and the directors of such subsidiaries, listed on Schedule 1-E.

"***Legal Requirement***" -- any federal, state, local, municipal, foreign, international, multinational or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute or treaty applicable to any of the Acquired Companies.

"***Net Assets Adjustment***" -- the amount by which (a) the Closing Date Net Assets are greater (the "Positive Net Assets Adjustment") or less (the "Negative Net Assets Adjustment") than (b) the Balance Sheet Net Assets.

"***Occupational Safety and Health Law***" -- any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards.

"***Order***" -- any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Body or by any arbitrator.

"***Ordinary Course of Business***" -- an action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" if such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.

"***Organizational Documents***" -- (a) the articles or certificate or deed of incorporation, shareholders register and the bylaws of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the certificate or deed of formation and limited liability company agreement, articles of association, memorandum of association or operating agreement and shareholders register of a limited liability company, (e) any charter or similar document adopted or filed in connection with the creation, formation or organization of a Person, and (f) any amendment to or restatement of any of the foregoing.

"***Permitted Indebtedness***" - any Indebtedness of the Acquired Companies incurred after the Effective Time which has been approved in writing by Buyer.

"***Person***" -- any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Body.

"***Plan***" -- as defined in Section 3.13.

***Proceeding*** -- any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"***Related Person***" -- with respect to a particular individual:

(a) each other member of such individual's immediately family(including spouse, parents and children, natural or adopted) (the "Family");

(b) any Person that is directly or indirectly controlled by such individual or one or more members of such individual's Family.

With respect to a specified Person other than an individual:

(c) any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person;

(d) any Person that holds a Material Interest in such specified Person; and

(e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

"***Release***" -- any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment, whether intentional or unintentional.

"***Representative***" -- with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors which has been designated by a Person and acknowledged by the other Party which are limited in number to those reasonably necessary to accomplish the required activities under this Agreement.

"***Search Expenses***" -- the fees and expenses incurred by Buyer or its Related Person in connection with environmental searches and investigations reasonably incurred by or on behalf of Buyer (but excluding the fees of Buyer's attorneys).

"***Securities Act***" -- the United States Securities Act of 1933 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"***Seller***" -- as defined in the first paragraph of this Agreement.

"***Seller's Accountants***" -- KPMG, LLP.



"***Seller's Release***" -- as defined in Section 2.4.

"***Shared Services Agreement***" -- an agreement between the Company, US JVCo and Seller in the form attached to the Joint Venture Agreement as Attachment I pursuant to which (a) Seller and/or its Related Persons shall provide certain transition services to the Company, US JVCo and the other Acquired Companies and (b) the Company will provide certain services to Advanced Distributor Products LLC, an affiliate of Seller.

"***Shares***" - 100 % of the Class A share, constituting 55% of all outstanding shares in the Company, together with all rights attaching or accruing thereto.

"***Shareholders Agreement***" -- the Shareholders' Agreement among Buyer, OCP, Seller, dated 18 July, 2002.

"***Subsidiary***" -- with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body are held by the Owner or one or more of its Subsidiaries; when used without reference to a particular Person, "Subsidiary" means a Subsidiary of the Company.

***"Tax" and "Taxes"*** -- any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, transfer pricing, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever applicable to any of the Acquired Companies, including any interest, penalty or addition thereto, whether disputed or not.

"***Tax Return***" -- any return (including any information return), report, statement, schedule, notice, form or other document or information required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"***Threat of Release***" -- a substantial likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

"***Threatened***" -- a claim, Proceeding, dispute, action or other matter will be deemed to have been "Threatened" if any demand or statement has been made (orally or in writing) or any notice has been given (orally or in writing), or if any other event has occurred or any other circumstances exist, that would lead a prudent Person with adequate Knowledge of all of the relevant facts to conclude that such a claim, Proceeding, dispute, action or other matter is likely to be asserted, commenced, taken or otherwise pursued in the future.



"***Transaction Expenses***" -- all fees, costs, expenses and disbursements, incurred by Seller and the Acquired Companies, in connection with the Contemplated Transactions, including: (a) the fees and expenses of any counsel retained by Seller, (b) the fees and expenses of any investment or financial advisors retained by Seller or any Acquired Company, (c) the fees and expenses of Seller's Accountants, (d) any amounts payable in accordance with Section 10.4.3, (e) any incentive bonuses payable to the management, and any severance or similar payments payable to any employee, of any of the Acquired Companies in connection with the transactions contemplated hereby, (f) Seller's share of the fees and expenses of the Independent Accounting Firm, if any, and (g) any fees and expenses of any other counsel, accountants or other similar professionals with respect to services rendered to Seller or the Acquired Companies in connection with the transactions contemplated by this Agreement and (h) one-half of Buyer's Search Expenses.

"***US Share Purchase Agreement***" -- the Share Purchase Agreement to be entered into as of the date hereof by and between LENNOX INTERNATIONAL, INC. AND OUTOKUMPU COPPER HOLDINGS INC and OUTOKUMPU COPPER OY with respect to the purchase by OUTOKUMPU COPPER HOLDINGS INC (or its Related Person) of 55% of the Shares (as defined therein) of OUTOKUMPU HEATCRAFT USA LLC ("US JVCo").

2. ***SALE AND TRANSFER OF SHARES; CLOSING.***

2.1 ***SHARES***. Subject to the terms and conditions of this Agreement, Seller hereby sells the Shares to Buyer, and Buyer hereby purchases the Shares from Seller.

2.2 ***CONSIDERATION.***

(a) The total consideration payable by Buyer for the purchase of the Shares (the "***Purchase Price***") shall be (i) $9,680,000 minus (ii) any Indebtedness other than

Permitted Indebtedness of the Acquired Companies that Seller shall not have repaid in full pursuant to Section 6.3 (b) that is outstanding as of the Closing Date (including the unpaid principal, accrued and unpaid interest, any premium (including any prepayment penalties or other charges payable by reason of the prepayment of such Indebtedness on the Closing Date) and other charges payable in connection therewith) and (iii) either (A) plus 55% of the Positive Net Assets Adjustment or (B) minus 55% of the Negative Net Assets Adjustment.

(b) At least three (3) Business Days prior to the Closing Date, the chief financial officer of Seller shall certify in writing to Buyer the estimated amount of the Indebtedness, Permitted Indebtedness, Closing Date Net Assets and, based thereon, a preliminary calculation of the Net Assets Adjustment and the adjustment for



Indebtedness. As soon as practicable prior to the Closing Date and based on the certification referred to above, Buyer and Seller shall jointly calculate the amount of the Purchase Price to be paid at Closing subject to adjustment as provided for in Section 2.2(c) (the "***Preliminary Purchase Price***"). The Closing shall occur and the payments to be made at Closing as provided for in Section 2.4 shall be based upon the notice provided for herein, and upon such joint calculations.

(c) As promptly as possible and in any event, not later than 30 days after the Closing, the Company, under the direction of Buyer after consultation with Seller, shall prepare and deliver initially to Buyer and Buyer's Accountants (i) financial statements of the Company including a consolidated balance sheet (the "Closing Balance Sheet") and an income statement with consolidating schedule of the Acquired Companies as of the Closing Date in accordance with GAAP which shall be subject to an audit or review by Buyer's Accountants and (ii) a supplemental report setting forth the Indebtedness, the Permitted Indebtedness, Closing Date Net Assets and, based thereon, the Net Assets Adjustment (identified as either the Positive Net Assets Adjustment or the Negative Net Assets Adjustment), and the adjustment for Indebtedness (the "***Closing Adjustments***"), each of which shall be reported on by Buyer's Accountants (the ***"Closing Date Financial Report"***). The Closing Date Financial Report shall reflect a physical inventory conducted in accordance with subsection (e) of this Section 2.2. with any necessary adjustments required to reflect any changes from the date of inventory and the Closing Date. Any third-party expenses or fees incurred by Company in preparing or in connection with the Closing Date Financial Report and the Closing Adjustment (including the fees of Buyer's Accountants) shall be borne by the Company. The Company and Buyer's Accountants shall make available any work papers or other information relating to the Closing Date Financial Report then or thereafter requested by Seller. Any expenses incurred by Seller's Accountants in reviewing the Closing Date Financial Report, such work papers and other information and in providing Seller with its report thereon shall be borne by the Company. If Seller does not object, or otherwise fails to respond, to the Closing Date Financial Report within 30 days after delivery to Seller, such Closing Date Financial Report shall automatically become final and conclusive. In the event that Seller objects to the Closing Date Financial Report within such 30 day review period, Seller and Buyer shall promptly meet and endeavor to reach agreement as to the content of the Closing Date Financial Report. If Seller and Buyer agree on the content of the Closing Date Financial Report, such Closing Date Financial Report shall become final and conclusive. If Seller and Buyer are unable to reach agreement within 30 days after the end of Seller's 30 day review period, then the Independent Accountants shall promptly be retained to undertake a determination of the Closing Date Financial Report, which determination shall be made as



quickly as possible (it being understood that the parties shall direct the Independent Accountants to complete their work within 30 days). Only disputed items shall be submitted to the Independent Accountants for review. In resolving any disputed item, the Independent Accountants may not assign a value to such item greater than the greatest value for such item claimed by either party or less than the lowest value for such item claimed by either party, in each case as presented to the Independent Accountants. Such determination of the Independent Accountants shall be final and binding on Seller and Buyer, and all expenses of the Independent Accountants shall be borne equally by Seller and Buyer. The Purchase Price and the payments required to be made after the Closing Date pursuant to Section 2.2(d) shall be finally determined on the basis of the Closing Date Financial Report and the Closing Adjustment.

(d) Within five (5) Business Days after the final determination of the Closing Adjustments, Buyer or Seller, as the case may be, shall pay to the other the amount by which the Purchase Price, as adjusted by the Closing Adjustments, is greater or less than the Preliminary Purchase Price (such difference being the "***Closing Purchase Price Reconciliation***"). If the Closing Purchase Price Reconciliation is positive, Buyer shall pay such difference to Seller. If the Closing Purchase Price Reconciliation is negative, Seller shall pay such difference to Buyer. If (i) Buyer fails to pay any amount owing to Seller pursuant to this subsection (d) or (ii) Seller fails to pay any amount owing to Buyer pursuant to this subsection (d), within the specified five (5) Business Day period, then the amount so owing shall be payable on demand and interest shall accrue on the unpaid amount at the rate of 18% per annum.

(e) In connection with the Purchase Price Reconsiliation referred to in this Section 2.2 above, Parties shall further agree that if the book value of the Kirby Equipment falls below $100,000 as specified in Article 1 (the "Business" definition clause) above, the final Purchase Price shall be reduced by the difference between $100,000 and the actual book value of the Kirby Equipment listed on Schedule A.

(f) The target date for the physical inventory referred to in subsection (c) above is August 24, 2002, except for Italy, which is on or about August 10, 2002. Buyer agrees to notify Seller by August 2, 2002 if it appears that the approval of the European Commission will not be received by August 22, 2002, in which case the date of the physical inventory will be postponed by mutual agreement of the parties to a date that is closer to the Closing Date but in no event earlier than 35 days prior to a new target Closing Date. The physical inventory will be taken as by the employees of the Acquired Companies under the direction of Buyer, after consultation with Seller who shall have the right to be present thereat.(g) If any Accounts Receivable that are included in the



Closing Balance Sheet and taken into account in calculating the Net Assets Adjustment are not collected in full within later of 180 days after the Closing or 90 days after the due date (the aggregate amount of any such uncollected Accounts Receivable less any reserve for doubtful accounts being herein referred to as the "Shortfall Amount"), Buyer shall promptly notify Seller in writing as to the Shortfall Amount. Within five (5) Business Days after delivery of such notice, unless Seller disputes the amount thereof, Seller shall pay Buyer by wire transfer of immediately available funds an amount equal to the Shortfall Amount.The receivables in question will then be transferred to Seller and Buyer agrees to provide any reasonable assistance requested by Seller to collect said receivables. For purposes hereof, it is understood that the Accounts Receivable included in the current assets to be set forth on the Closing Balance Sheet will be net of any reserve for doubtful accounts. Any disputes as to the Shortfall Amount shall be submitted to and resolved by the Independent Accountants in the same manner as provided for in Section 2.2(c).

2.3 ***CLOSING***.The transfer of the Shares (the "***Closing***") provided for in this Agreement will take place by execution of the Deed of Transfer at the offices of Clifford Chance as soon as all of the conditions to Closing set forth in Articles 7 and 8 have been or can be satisfied, on a date, subject to the foregoing, to be reasonably specified by Buyer by written notice at least five (5) Business Days in advance or at such other time and place as the parties may agree. Subject to the provisions of Section 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.3 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

2.4 ***CLOSING OBLIGATIONS***. At the Closing:

(a) Seller will deliver, or cause a Related Person to deliver, to Buyer:

(i) a certificate executed by Seller representing and warranting to Buyer that each of Seller's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement, provided that the representations and warranties in so far as they relate to the Company will be as of the date the Company will have been incorporated and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to any supplements to and schedules or exhibits attached hereto that were delivered by Seller to Buyer prior to the Closing Date in accordance with Section 5.5); and

(ii) resignations, effective as of the Closing, of such directors and officers of the Acquired Companies as may be designated by the Board of the Company prior to Closing.

(b) Buyer, Seller and the Dutch Notary will execute the Deed of Transfer.

(i) Buyer will deliver, or cause a Related Person to deliver:(ii) the Preliminary Purchase Price by wire transfer to Seller, to an account to be specified by Seller; and(iii) a certificate executed by Buyer to the effect that, except as otherwise stated in such certificate, each of Buyer's representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date.

3. ***REPRESENTATIONS AND WARRANTIES OF SELLER***. Seller represents and warrants to Buyer as follows (which representations and warranties in so far as they relate to the Company shall be as of the date when the Company has been incorporated):

3.1 ***ORGANIZATION AND GOOD STANDING***.

(a) Schedule 3.1(a) contains a complete and accurate list for each Acquired Company of its name, its jurisdiction of incorporation or formation, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each shareholder and the number of shares or other ownership interests held by each). Each Acquired Company is duly organized, validly existing and in good standing - to the extent such concept is relevant in its jurisdiction of incorporation or formation - under the laws of its jurisdiction of incorporation or formation, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use and to perform all its obligations under Applicable Contracts. Each Acquired Company is duly qualified to do business as a foreign corporation or other entity and is in good standing under the laws of each other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification where the lack of such qualification would have a material adverse effect on the Business.

(b) The Company is, and at all times since its incorporation has been, a limited liability company with only one shareholder.

(c) Seller has delivered to Buyer copies of the Organizational Documents of each Acquired Company, as currently in effect.

3.2 ***AUTHORITY; NO CONFLICT***.

(a) This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms. Upon the execution and delivery by Seller of the Shareholders Agreement (the "***Seller's Closing Documents***"), the Seller's Closing Documents will



constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms. Seller has all the necessary right, power, authority and capacity to execute and deliver this Agreement and the Seller's Closing Documents and to perform its obligations under this Agreement and the Seller's Closing Documents.

(b) Except as set forth in Schedule 3.2(b), neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of (A) any provision of the Organizational Documents of Seller or of the Acquired Companies, or (B) any resolution adopted by the board of directors or the shareholders of Seller or of any Acquired Company;

(ii) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which any Acquired Company or Seller, or any of the assets owned or used by any Acquired Company or otherwise in connection with the Business, may be subject;

(iii) contravene, conflict with or result in a violation of any of the terms or requirements of, any Governmental Authorization that is held by any Acquired Company or that otherwise relates to the Business or the business of, or any of the assets owned or used by, any Acquired Company;

(iv) cause any Acquired Company to become subject to, or to become liable for the payment of, any Tax;

(v) contravene or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Applicable Contract; or

(vi) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by any Acquired Company or otherwise in connection with the Business.

Except as set forth in Schedule 3.2(b), neither Seller nor any Acquired Company is or will be required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

3.3 ***CAPITALIZATION***.

(a) All Shares have been validly authorized and issued in compliance with all Legal Requirements. All Shares are fully paid up and the Shares constitute



all of the outstanding class A shares in the Company and 55% of all outstanding shares in the Company.

(b) The Seller has full legal and beneficial title (*juridisch en economisch eigendom*) to all of the Shares free and clear of any third party rights and is entitled to sell and transfer the full legal and beneficial ownership (*juridisch en economisch eigendom*) of the Shares under the terms of this Agreement.

(c) No pre-emption rights or other rights, other than pursuant to the Company's Articles of Association, pursuant to which a third party is or shall be entitled to have one or more of the Shares transferred to it or encumbered exist in relation to the Shares.

(d) None of the Shares is encumbered with a right of pledge and/or usufruct (vruchtgebruik) or subject to attachment.

(e) No depository receipts (certificaten van aandelen) are issued in relation to any of the Shares.

(f) With the exception of the Shares and the remaining 45% of the outstanding shares in the Company (which are owned by Seller), all of the outstanding equity securities and other securities of each Acquired Company are owned of record and beneficially by one or more of the Acquired Companies, free and clear of all Encumbrances except where the ownership of shares is required under the Legal Requirements of the jurisdiction of organization to be vested in those Persons serving on the Board of Directors of an Acquired Company. No legend or other reference to any purported Encumbrance appears upon any certificate representing equity securities of any Acquired Company. All of the outstanding equity securities of each Acquired Company have been duly authorized and validly issued and are fully paid and non-assessable. Except as set forth on Schedule 3.3(b), there are no Contracts relating to the issuance, sale, or transfer of any equity securities or other securities of any Acquired Company. Seller is not a party to any

option, warrant, purchase right or other contract or commitment that could require Seller to sell, transfer, or otherwise dispose of any equity securities of the Acquired Companies. There are no voting trust, proxy or other agreement with respect to the voting of any Shares of the Acquired Companies. None of the outstanding equity securities or other securities of any Acquired Company was issued in violation of any Legal Requirement.

(g) Except as set forth on Schedule 3.3(c), no Acquired Company owns, or has any Contract to acquire, any equity securities or other securities of any Person (other than Acquired Companies) or any direct or indirect equity or ownership interest in any other business.



3.4 ***FINANCIAL STATEMENTS***. Seller has delivered to Buyer: (i) all available audited financial statements of the Acquired Companies and the Business as of December 31 for each of the years 2000 and 2001, (ii) unaudited financial statements for the Heat Transfer Existing Subsidiaries ~~as~~ for each of the years 2000 and 2001 and (iii) a proforma unaudited consolidated balance sheet of the Acquired Companies and the Business as at the Effective Time (the "Balance Sheet") all of which are attached hereto as Schedule 3-4. Buyer acknowledges that the audited financial statements, if any, may be audited according to local accounting principles or according to GAAP, and nothing in this section requires Seller to restate these financial statements. The Balance Sheet is true and correct and fairly presents the financial condition of the Acquired Companies and the Business in all material and reflects the consistent application of accounting principles.

3.5 ***BOOKS AND RECORDS.*** The books of account, minute books, stock record books, and other records of the Acquired Companies for the period of time as the Acquired Companies have been owned by the Seller, all of which have been made available to Buyer, are complete and correct and have been maintained in accordance with reasonable business practices of the Seller, including the maintenance of an adequate system of internal controls. For such time as the Acquired Companies have been owned by the Seller, such minute books contain records of all meetings held of, and corporate action taken by, the stockholders, the Boards of Directors, and committees of the Boards of Directors of the applicable Persons, which are accurate and complete in all material respects and, to Seller's Knowledge, no 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, where the absence of such record would have a material adverse effect on the Acquired Companies. At the Closing, all of those books and records will be in the possession of the Acquired Companies.

3.6 ***TITLE TO PROPERTIES; ENCUMBRANCES***. Schedule 3.6 contains a complete and accurate list of all real property, leaseholds or other interests therein used in connection with the Business. Seller has delivered or made available to Buyer copies of the deeds and other instruments (as recorded) by which Seller or one of the Acquired Companies acquired such real property and/or interests, and copies of all title insurance policies, opinions, abstracts and surveys that, to Seller's Knowledge, are in the possession of Seller or the Acquired Companies and relating to such property or interests. The Acquired Companies own, or will as of the Closing Date own, (with good and marketable title in the case of owned real property, subject only to the matters permitted by the following sentence) all the properties and assets (whether real, personal or mixed and whether tangible or intangible) that are used in connection with the Business, or reflected as owned in the books and records of the Acquired Companies or the Business, including all of the properties and assets reflected in the Balance Sheet (except for assets held under capitalized leases disclosed or not required to be disclosed in Schedule 3.6 and personal property sold since the date of the Balance Sheet in the Ordinary Course of Business), and all of the material properties and assets purchased or



otherwise acquired to be owned by the Acquired Companies or otherwise in connection with the Business since the date of the Balance Sheet (except for personal property acquired and sold since the date of the Balance Sheet in the Ordinary Course of Business and consistent with past practice), which subsequently purchased or acquired properties and assets (other than inventory and short-term investments) are listed in Schedule 3.6. All material properties and assets reflected in the Balance Sheet are free and clear of all Encumbrances and are not, in the case of real property, subject to any rights of way, building use restrictions, exceptions, variances, reservations or limitations of any material nature except, with respect to all such properties and assets, (a) mortgages or security interests shown on the Balance Sheet as securing specified liabilities or obligations, with respect to which no default (or event that, with notice or lapse of time or both, would constitute a default) exists, (b) mortgages or security interests incurred in connection with the purchase of property or assets after the date of the Balance Sheet (such mortgages and security interests being limited to the property or assets so acquired), with respect to which no material default (or event that, with notice or lapse of time or both, would constitute a default) exists, (c) liens for current taxes not yet due, and (d) with respect to real property, any restrictions which have not been identified in documents of ownership or title insurance. All buildings, plants and structures owned by the Acquired Companies or otherwise used in connection with the Business lie wholly within the boundaries of the real property owned by the Acquired Companies and to Seller's Knowledge, do not encroach upon the property of, or otherwise conflict with the property rights of, any other Person.

3.7 ***CONDITION AND SUFFICIENCY OF ASSETS***. The buildings, structures and equipment used in the Business are structurally sound, are in good operating condition and repair and are adequate for the uses to which they are being put, and none of such buildings, structures or equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost or other repairs included in the Base Business Plan. The buildings, structures and equipment of the Acquired Companies are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing. One or more of the Acquired Companies is, or will be as of the Closing Date, the owner of all right, title and interest in and to all of the material assets that have been used in connection with the operation of the Business by Seller or the Heat Transfer Existing Subsidiaries (including all material Applicable Contracts, Intellectual Property Assets, inventory, insurance, Governmental Authorizations, licenses and permits), whether tangible or intangible, free and clear of all Encumbrances, and such assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing.

3.8 ***ACCOUNTS RECEIVABLE***. All trade accounts receivable of the Business that are reflected on the Balance Sheet (whether or not they were factored as of the date of the Balance Sheet) and all accounts receivable of the Business that will be reflected on the accounting records of the Acquired Companies as of the Closing



Date (collectively, the ***"Accounts Receivable"***) represent or will represent valid obligations arising from sales actually made or services actually performed in the Ordinary Course of Business, and the respective reserves shown on the Balance Sheet or on the accounting records of the Company as of the Closing Date are calculated consistent with GAAP and, in the case of the reserve as of the Closing Date, will be so calculated. There is no contest, claim or right of set-off which has been asserted by any account debtor, other than those incurred in the Ordinary Course of Business, under any Contract with any obligor of an Accounts Receivable relating to the amount or validity of such Accounts Receivable.

3.9 ***INVENTORY***. All inventory of the Business, whether or not reflected in the Balance Sheet, is owned by the Acquired Companies and to Seller's Knowledge, 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 or on the accounting records of the Acquired Companies as of the Closing Date, as the case may be. All inventories not written off have been priced at the lower of cost or net realizable. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Acquired Companies.

3.10 ***NO UNDISCLOSED LIABILITIES***. Except as set forth in Schedule 3.10 or 3.19, to Seller's Knowledge, the Business and the Acquired Companies have no material liabilities or obligations whether absolute, accrued, contingent or otherwise) except for liabilities or obligations reflected or reserved against in the Balance Sheet and such trade payables and short term trade indebtedness relating to the Business as may have been incurred in the Ordinary Course of Business since the date thereof.

3.11 ***TAXES***.

(a) To Seller's Knowledge, Seller and the Acquired Companies have filed or caused to be filed all Tax Returns that are or were required to be filed by or with respect to the Business or any of them, either separately or as a member of a group of corporations, pursuant to applicable Legal Requirements where the failure to file such Tax Return would have a material adverse effect on the Business or the Acquired Companies. Seller will make available to Buyer or its Representatives, at its request, copies of, and Schedule 3.11 contains a complete and accurate list of, all such Tax Returns since January 1, 1998. To Seller's Knowledge, Seller and the Acquired Companies have paid, or made provision for the payment of, all material Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received with respect to the Business or by Seller or any Acquired Company, except such Taxes, if any, as are listed in Schedule 3.11 and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Balance Sheet.

(b) To Seller's Knowledge, all deficiencies proposed as a result of such audits have been paid, reserved against, settled, or, as described in Schedule 3.11, are being contested in good faith by appropriate proceedings. Except as described in Schedule 3.11, neither Seller nor any Acquired Company has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of Seller or any Acquired Company or for which Seller or any Acquired Company may be liable.

(c) To Seller's Knowledge, the charges, accruals and reserves with respect to Taxes on the respective books of Seller and each Acquired Company are adequate (determined in accordance with GAAP) and are at least equal to Seller's and that Acquired Company's expected liability for Taxes. There exists no proposed tax assessment against Seller, any Acquired Company or the Business except as disclosed in the Balance Sheet or in Schedule 3.11. To Seller's Knowledge, all material Taxes that Seller or any Acquired Company is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Body or other Person.

(d) All Tax Returns filed with respect to the Business or by (or that include on a consolidated basis) Seller or any Acquired Company, to the Knowledge of the Seller, are true, correct and complete in all material respects. There is no tax sharing agreement that will require any payment by Seller or any Acquired Company after the date of this Agreement.

3.12 ***NO MATERIAL ADVERSE CHANGE***. Except as disclosed on Schedule 3.12, since December 31, 2001, there has not been any material adverse change in the business, operations, properties, prospects, assets or condition of the Business or any Acquired Company, and no event has occurred or circumstance exists that may result in such a material adverse change.

3.13 ***EMPLOYEE BENEFITS***.

Schedule 3.13 contains a list of:

(a) all employees employed by any of the Acquired Companies ("***Employees*** ");

(b) all individual benefits in the widest sense of the word, including but not limited to salaries, the Employees or former Employees are entitled to (the "***Individual Benefits***") and all collective rights and benefits with respect to the Employees, including but not limited to collective bargaining agreements (the "***Collective Benefits***");



(c) all obligations and liabilities of any of the Acquired Companies imposed by law or otherwise with respect to its Employees, including but not limited to, by social security or tax authorities ("**Employee Liabilities**");

(d) all rules and regulations applicable to any of the Employees, including but not limited with respect to health, safety and environment protection (the "***Employment Rules***"); and

(e) all disputes between an Acquired Company and any Employee or former Employee ("***Employment Disputes***").

There are no other persons employed by any of the Acquired Companies other than the Employees and any all Employees are employed by the relevant Acquired Company in connection with the Business as conducted at the Effective Date. All Continuing Employees (as defined below) that are hereby transferred directly or indirectly to the Buyer through the Acquired Companies have been exclusively working for the Business since 1 January 2002. There are no Employees entitled to any other individual benefits or collective benefits other than the Individual Benefits and Collective Benefits and (i) each and all of such Individual Benefits and Collective Benefits has been duly paid and/or fulfilled by the relevant Acquired Company and (ii) there is no obligation, by law or otherwise, for any of the Acquired Companies to increase the Individual Benefits or the Collective Benefits. Each of the Acquired Companies has duly paid and fulfilled all and any of its Employee Liabilities and is at the date hereof and at Closing in due compliance with any Employment Rules, also including but not limited to any rules or procedures related to the change of control of the Business and transfer of Business to Acquired Companies. There are no other disputes between any of the Acquired Companies and Employees or former Employees other than the Employment Disputes.

3.14 ***COMPLIANCE WITH LEGAL REQUIREMENTS; GOVERNMENTAL AUTHORIZATIONS***.

(a) Except as set forth in Schedule 3.14 or Schedule 3.19:

(i) each Acquired Company is, and at all times since January 1, 1998 has been, and the Business has been conducted at all times since January 1, 1998, in full compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets except for any such failure that would not result in a material adverse effect;

(ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by the Business or any Acquired Company of, or a failure on the part of the Business or any Acquired Company to comply with, any Legal Requirement, or (B) may give rise to any obligation on the part of the Company, Seller, any Acquired Company or Buyer to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and



(iii) neither Seller nor any Acquired Company has received at any time since January 1, 1998 any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement which would have a material effect on the Business or any Acquired Company, or (B) any actual, alleged or potential obligation on the part of Seller, the Business or any Acquired Company arising under any applicable Legal Requirement to undertake, or to bear any material portion of the cost of, any remedial action of any material nature.

(b) Schedule 3.14 contains a complete and accurate list of each material Governmental Authorization that is required to be held by the Business for its operation or that is otherwise required for the Business or any Acquired Company to own or use any of its assets. Each Governmental Authorization listed or required to be listed in Schedule 3.14 is valid and in full force and effect. Except as set forth in Schedule 3.14 or Schedule 3.19:

(i) all of the material terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 3.14 have been at all required times complied with by the Business and, to the extent applicable, each Acquired Company in all material respects;

(ii) no material event has occurred or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result in a violation of or a failure to comply with any material term or requirement of any Governmental Authorization listed or required to be listed in Schedule 3.14, or (B) result in the revocation, withdrawal, suspension, cancellation or termination of, or any material modification to, any Governmental Authorization listed or required to be listed in Schedule 3.14;

(iii) neither Seller nor any Acquired Company has received, at any time since January 1, 1998, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged or potential violation of, or failure to comply with, any material term or requirement of any Governmental Authorization, or (B) any actual, proposed or potential revocation, withdrawal, suspension, cancellation, termination of or material modification to any Governmental Authorization; and

(iv) all material applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Schedule 3.14 or which are required by or in connection with the Contemplated Transactions have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other material filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations listed in Schedule 3.14 collectively constitute all of the Governmental Authorizations necessary to permit the Business to be lawfully conducted in the manner it is currently conducted in all material respects and to permit the Acquired Companies to own and use their assets in the manner in which they currently own and use such assets in all material respects.

3.15 ***LEGAL PROCEEDINGS; ORDERS***.

(a) Except as set forth in Schedule 3.15 or Schedule 3.19, to the Knowledge of Seller there is no pending Proceeding:

(i) that has been commenced by or against any Acquired Company or may affect the Business or the business of, or any of the assets owned or used by, any Acquired Company in any material respect; or(ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with in any material way, any of the Contemplated Transactions.

To Seller's Knowledge, no such Proceeding has been Threatened. Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Schedule 3.15 requested by Buyer. The Proceedings listed in Schedule 3.15 will not have a material adverse effect on the Business or the business, operations, assets, condition or prospects of any Acquired Company.

(b) Except as set forth in Schedule 3.15:

(i) there is no material Order to which the Business or any of the Acquired Companies, or any of the assets owned or used by any Acquired Company or otherwise in connection with the Business, is subject;

(ii) Seller is not subject to any material Order that relates to the Business or the business of, or any of the assets owned or used by, any Acquired Company; and

(iii) no officer, director, agent or employee of any Acquired Company is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Business or the business of any Acquired Company which would have a material adverse effect on the Business or the business of any Acquired Company.



(c) Except as set forth in Schedule 3.15:

(i) the Seller and each Acquired Company are in full compliance with all of the terms and requirements of each material Order to which the Business or they, or any of the assets owned or used by it, is or has been subject;

(ii) no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a material violation of or failure to comply with any term or requirement of any Order to which Seller, the Business or any Acquired Company, or any of the assets owned or used by any Acquired Company is subject; and

(iii) neither Seller nor any Acquired Company has received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged potential violation of, or failure to comply with, any material term or requirement of any Order to which the Seller, the Business or any Acquired Company, or any of the assets owned or used by any Acquired Company or otherwise in connection with the Business, is or has been subject.

3.16 ***ABSENCE OF CERTAIN CHANGES AND EVENTS***.

Except as set forth in Schedule 3.16, since December 31, 2001 and for clauses (f), (g), and (i) of this Section 3.16, since December 31, 2000 the Business has been conducted by the Seller and its Related Persons only in the Ordinary Course of Business and there has not been, with respect to or relating to the Business, any:

(a) issuance of any membership interests in or shares of capital stock of any Acquired Company except as necessary to provide for the creation of the Acquired Companies and consistent with Section 3.3; grant of any stock option or right to purchase membership interests in or shares of capital stock of any Acquired Company; issuance of any security convertible into such capital stock; grant of any registration rights; purchase, redemption, retirement or other acquisition by any Acquired Company of any membership interests in or shares of any such capital stock; or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock;

(b) amendment to the Organizational Documents of any of the Heat Transfer Existing Subsidiaries or any Acquired Company except as may be necessary to provide for the creation of the Acquired Companies;

(c) except in the Ordinary Course of Business, payment or increase by any Acquired Company of any management fee or any bonuses, salaries, or other compensation to any stockholder, director, officer or employee or entry into any employment, severance or similar Contract with any director, officer or employee;

(d) except in the Ordinary Course of Business, adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement or other employee benefit plan for or with any employees of any Acquired Company;



(e) damage to or destruction or loss of any asset or property of any Acquired Company, whether or not covered by insurance, materially and adversely affecting the properties, assets, business, financial condition or prospects of the Business or the Acquired Companies, taken as a whole;

(f) entry into, termination of or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit or similar agreement which would have a material impact on the Business, or (ii) any Contract or transaction involving a total remaining commitment by or to any Acquired Company of at least $100,000;

(g) except in the Ordinary Course of Business, sale, lease or other disposition of any asset or property of any Acquired Company or mortgage, pledge or imposition of any lien or other encumbrance on any material asset or property of any Acquired Company or otherwise relating to the Business, including the sale, lease or other disposition of any of the Intellectual Property Assets;

(h) cancellation or waiver of any claims or rights with a value to any Acquired Company in excess of $25,000;

(i) material change in the accounting methods used by any Acquired Company; or

(j) agreement, whether oral or written, by Seller or any Acquired Company to do any of the foregoing.

3.17 ***CONTRACTS; NO DEFAULTS.***

(a) Schedule 3.17(a) contains a complete and accurate list, and Seller has delivered to Buyer true and complete copies, of:

(i) each Applicable Contract that involves performance of services or delivery of goods or materials by one or more Acquired Companies or otherwise in connection with the Business of an amount or value in excess of $100,000;

(ii) each Applicable Contract that involves performance of services or delivery of goods or materials to one or more Acquired Companies or otherwise in connection with the Business of an amount or value in excess of $100,000;

(iii) each Applicable Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of one or more Acquired Companies or otherwise in connection with the Business in excess of $25,000;

(iv) each lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Applicable Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in, any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than $25,000 and with terms of less than one year);



(v) each licensing agreement or other Applicable Contract with respect to patents, trademarks, copyrights or other intellectual property, including agreements with current or former employees which are still in effect, consultants or contractors regarding the appropriation or the non-disclosure of any of the Intellectual Property Assets other than those agreements with employees entered into in the ordinary course of business;

(vi) each collective bargaining agreement and other Applicable Contract to or with any labor union or other employee representative of a group of employees;

(vii) each joint venture, partnership and other Applicable Contract (however named) involving a sharing of profits, losses, costs, or liabilities by any Acquired Company with any other Person;

(vii) each Applicable Contract containing covenants that in any material way purport to restrict the business activity of the Business or any Acquired Company or any Related Person of an Acquired Company or limit the freedom of the Business or any Acquired Company or any Related Person of an Acquired Company in any material way to engage in any of its line of business or to compete with any Person in its lines of business;

(ix) each Applicable Contract providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods;

(x) each power of attorney that is currently effective and outstanding which could effect in a material way the Business or the Acquired Companies;

(xi) each Applicable Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by any Acquired Company to be responsible for indirect, consequential or punitive damages;

(xii) each Applicable Contract for capital expenditures in excess of $25,000;

(xiii) each written warranty, guaranty and other similar undertaking with respect to contractual performance extended by any Acquired Company other than in the Ordinary Course of Business; and

(xiv) each material amendment, supplement and modification (whether oral or written) in respect of any of the foregoing.

Schedule 3.17(a) sets forth sufficient details concerning such Contracts to identify the Contracts, and the Acquired Companies' office where details relating to the Contracts are located.

(b) Except as set forth in Schedule 3.17(b):

(i) Neither Seller nor any Related Person of Seller has or may acquire any rights under, and Seller has not become subject to any obligation or liability under, any material Contract that relates to the business of, or any of the material assets owned or used by, any Acquired Company; and



(ii) To Seller's Knowledge, no officer or employee of any Acquired Company is bound by any Contract that purports to limit the ability of such officer or employee to (A) engage in or continue any conduct, activity or practice relating to the business of any Acquired Company, or (B) assign to any Acquired Company any material rights to any invention, improvement or discovery made in the course of said officer's or employee's employment.

(c) Except as set forth in Schedule 3.17(c), each Contract identified or required to be identified in Schedule 3.17(a) is in full force and effect and is valid and enforceable in accordance with its terms in all material respects.

(d) Except as set forth in Schedule 3.17(d)

(i) to Seller's Knowledge, each Acquired Company is, and at all times has been, in compliance in all material respects with all applicable terms and requirements of each Contract under which such Acquired Company has or had any obligation or liability or by which such Acquired Company or any of the assets owned or used by such Acquired Company or otherwise in connection with the Business is or was bound;

(ii) to Seller's Knowledge, each other Person that has or had any obligation or liability under any Contract under which an Acquired Company has or had any rights is, and at all times has been, in compliance in all material respects with all applicable terms and requirements of such Contract;

(iii) to Seller's Knowledge, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a material violation or breach of, or give any Acquired Company or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any Applicable Contract; and (iv) neither Seller nor any Acquired Company has given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged potential material violation or breach of, or default under, any Contract.

(e) There are no renegotiations of any material amounts paid or payable to Seller or any Acquired Company under current or completed Contracts with any Person and no such Person has made written demand for such renegotiation.

(f) The Contracts relating to the sale, design, manufacture, or provision of products or services by the Acquired Companies or otherwise in connection with the Business have been entered into in the Ordinary Course of Business and have been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in material violation of any Legal Requirement.

3.18 ***INSURANCE***.

(a) Seller has delivered to Buyer



true and complete list of all policies of insurance to which any Acquired Company is a party or under which the Business, any Acquired Company, or any director of any Acquired Company, is or has been covered at any time within the five (5) years preceding the date of this Agreement and a list of all pending applications for policies of insurance;

(a)*[sic]*

(b) Schedule 3.18(b) describes:

(i) any self-insurance arrangement by or affecting the Business or any Acquired Company, including any reserves established thereunder;

(ii) any contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk by any Acquired Company or otherwise in connection with the Business; and

(iii) all obligations of the Acquired Companies or otherwise in connection with the Business to third parties with respect to insurance (including such obligations under leases and service agreements) and identifies the policy under which such coverage is provided.

(c) Schedule 3.18(c) sets forth, by year, for the current policy year and each of the five (5) preceding policy years:

(i) a summary of the loss experience under each policy;

(ii) a statement describing each claim under an insurance policy for an amount in excess of $50,000, which sets forth:

(A) the name of the claimant;

(B) description of the policy by insurer, type of insurance and period of coverage; and

(C) the amount and a brief description of the claim; and

(iii) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims.

(d) Except as set forth on Schedule 3.18(d), to Seller's Knowledge:

(i) All policies to which any Acquired Company is a party or will be a party at the Effective Time, or that provide coverage to Seller, the Business, any Acquired Company or any director or officer of an Acquired Company in all material respects:

(A) are valid, outstanding and enforceable;

(B) are issued by an insurer that is financially sound and reputable;



(C) taken together, provide adequate insurance coverage for the Business and the assets and the operations of the Acquired Companies;

(D) are sufficient for compliance with all Legal Requirements and Contracts to which any Acquired Company is a party, by which any Acquired Company is bound or otherwise in connection with the Business to the extent insurance is customarily available therefor;

(E) will continue in full force and effect following the consummation of the Contemplated Transactions or, as applicable, will have been replaced by similar policies on or before the Closing Date; and

(F) do not provide for any retrospective premium adjustment or other experienced-based liability on the part of any Acquired Company or otherwise in connection with the Business.

(ii) Neither Seller nor any Acquired Company has received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights, or (B) any notice of cancellation or any other indication that any insurance policy is no longer in full force or effect or will not be renewed or that the issuer of any policy is not willing or able to perform its obligations thereunder.

(iii) The Acquired Companies or Seller have paid all premiums due, and have otherwise performed all of their respective obligations, under each policy to which any Acquired Company is a party or that provides coverage to the Business or to any Acquired Company or director thereof.

(iv) To Seller’s Knowledge, the Acquired Companies have given notice to the insurer of all claims that may be insured thereby.

3.19 ***ENVIRONMENTAL MATTERS***. Except as set forth in Schedule 3.19 or as described in the reports supplied by Seller or obtained by Buyer and each of which reports is specifically listed on Schedule 3.19, to Seller's Knowledge:

(a) Each of the Acquired Companies and the Business is in compliance with in all material respects and is not in violation of or liable under in any material respect, any Environmental Law. Neither Seller nor any Acquired Company has any reasonable basis to expect, nor has any of them received, any actual or Threatened order or notice from (i) any Governmental Body or private citizen acting in the public interest, or (ii) the current or prior owner or operator of any Facilities, of any actual or potential material violation or material failure to comply with any Environmental Law, or of any actual or Threatened obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which Seller or any Acquired



Company has or had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used, or processed by Seller, any Acquired Company, or any other Person for whose conduct they are or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(b) There are no pending or Threatened claims, Encumbrances, or other material restrictions of any nature, resulting from any Environmental, Health, and Safety Liabilities or arising under or pursuant to any Environmental Law, with respect to or affecting any of the Facilities or any other properties and assets (whether real, personal, or mixed) in which Seller or any Acquired Company has or had an interest.

(c) Neither Seller nor any Acquired Company has any basis to expect, nor has any of them or any other Person for whose conduct they are or may be held responsible, received, any citation, directive, inquiry, notice, Order, summons or warning that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which Seller or any Acquired Company had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used, or processed by Seller, any Acquired Company, or any other Person for whose conduct they are or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(d) Neither Seller nor any Acquired Company nor any other Person for whose conduct they are or may be held responsible has any Environmental, Health, and Safety Liabilities with respect to the Facilities or with respect to any other properties and assets (whether real, personal, or mixed) in which any Acquired Company (or any predecessor), has or had an interest, or at any property geologically or hydrologically adjoining the Facilities or any such other property or assets.

(e) Except in material compliance with or as permitted by applicable Environmental Law, there are no Hazardous Materials present on or in the Environment at the Facilities or at any geologically or hydrologically adjoining property in material quantities that emanated from Seller, any Acquired Company or any predecessor thereof, including any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, equipment (whether moveable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facilities or such adjoining property, or incorporated into any structure therein or thereon. Except in



material compliance with or as permitted by applicable Environmental Law, neither Seller nor any Acquired Company nor any other Person for whose conduct they are or may be held responsible has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to the Facilities or any other properties or assets (whether real, personal, or mixed) in which any Acquired Company has or had an interest.

(f) Except in material compliance with or as permitted by applicable Environmental Law, there has been no Release or Threat of Release, of any material amounts of Hazardous Materials at or from the Facilities.

(g) Seller has delivered or made available to Buyer true and complete copies and results of the most recent material reports, studies, analyses, tests, or monitoring possessed or initiated by Seller or any Acquired Company or such other reports as Buyer has requested pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance by Seller, any Acquired Company, or any other Person for whose conduct they are or may be held responsible, with Environmental Laws.

3.20 ***EMPLOYEES***.

(a) Schedule 3.20(a) contains a complete and accurate list of the following information for each employee of the Acquired Companies whose compensation in 2001 exceeded 80,000, including each employee on leave of absence or layoff status: employer, name, job title, current compensation paid or payable and any change in compensation since January 1, 2002, vacation accrued and service credited for purposes of vesting and eligibility to participate under any Acquired Company's severance pay plan.

(b) No employee or director of any Acquired Company is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality, noncompetition or proprietary rights agreement, between such employee or director and any other Person ("***Proprietary Rights Agreement***") that in any material way adversely affects or will affect (i) the performance of his or her duties as an employee or director of the Acquired Companies, or (ii) the ability of the Business to be conducted or of any Acquired Company to conduct its business, including any Proprietary Rights Agreement with Seller or the Acquired Companies by any such employee or director. To Seller's Knowledge, no director, officer or other key employee of any Acquired Company intends to terminate his or her employment with such Acquired Company.

3.21 ***LABOR RELATIONS; COMPLIANCE***.



(a) Except as set forth on Schedule 3.21(a), neither the Business nor any Acquired Company has been or is a party to or bound by any collective bargaining or other material labor Contract.

(b) Except as set forth on Schedule 3.21(b), since January 1, 1998, there has not been, there is not presently pending or existing and, to Seller's Knowledge, there is not Threatened, (i) any strike, work stoppage or material employee grievance process, (ii) any Proceeding against or affecting the Business or any Acquired Company relating to the alleged material violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with any Governmental Body, organizational activity or other material labor or employment dispute against or affecting the Business or any of the Acquired Companies or their premises, or (iii) any application for certification of a collective bargaining agent. No event has occurred or circumstance exists that could on any reasonable basis provide the basis for any work stoppage or other labor dispute. There is no lockout of any employees by the Seller or any Acquired Company, and no such action is contemplated by the Seller or any Acquired Company.

(c) Except as set forth on Schedule 3.21(c), the Seller and each Acquired Company have complied in all material respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health and plant closing. Except as set forth on Schedule 3.21(c), no Acquired Company is liable for the payment of any material compensation, damages, taxes, fines, penalties or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

3.22 ***INTELLECTUAL PROPERTY***.

(a) ***Intellectual Property Assets***. The term "**Intellectual Property Assets**" includes to the extent owned or used by the Business:

(i) the names Heatcraft, Friga, and all derivatives or combinations thereof, and all fictional business names, trading names, registered and unregistered trademarks, service marks and applications (collectively, ***"Marks"***);

(ii) all patents, patent applications and inventions that may be patentable (collectively, ***"Patents"***;

(iii) all copyrights in both published works and unpublished works (collectively, ***"Copyrights"***;

(iv) all rights in mask works (collectively, ***"Rights in Mask Works "***; and



(v) all know-how, trade secrets, confidential information, customer lists, software, technical information, data, process technology, plans, drawings and blue prints (collectively, *"**Trade Secrets**"*) owned, used or licensed in connection with the Business;

(vi) the internet domain names relating to the Business.

(b) ***Agreements.*** Schedule 3.22(b) contains a complete and accurate list and summary description, including any royalties paid or received by Seller or the Acquired Companies, of all Contracts relating to the Intellectual Property Assets to which Seller or any Acquired Company is a party or by which Seller or any Acquired Company is bound, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs with a value of less than $10,000 under which Seller or an Acquired Company is the licensee. There are no outstanding and, to Seller's Knowledge, no Threatened disputes or disagreements of a material nature with respect to any such agreement.

(c) ***Know-How Necessary for the Business***.

(i) The Intellectual Property Assets are all those necessary for the operation of the Business as it is currently conducted. One or more of the Acquired Companies is the owner of all right, title and interest in and to each of the Intellectual Property Assets which are, except as set forth on Schedule 3.22(c)(i), free and clear of all Encumbrances, and has the right to use without payment to a third party all of the Intellectual Property Assets.

(ii) Except as set forth in Schedule 3.22(c), all current employees of each Acquired Company have executed written Contracts with Seller or one or more of the Acquired Companies that assign to Seller or one or more of the Acquired Companies all rights to any inventions, improvements, discoveries or information relating to the Business. No employee, officer or director of Seller or any Acquired Company 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 Seller or one or more of the Acquired Companies.

(d) ***Patents.***

(i) Schedule 3.22(d) contains a complete and accurate list and summary description of all Patents. Seller or one or more of the Acquired Companies is the owner of all right, title and interest in and to each of the Patents, free and clear of all Encumbrances.

(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), are valid and enforceable, except as set forth on Schedule 3.22(d)(ii), and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date.



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

(iv) No Patent is infringed or, to Seller's Knowledge, has been challenged or threatened in any way. None of the products manufactured and sold, nor any process or know-how used, by the Business or any Acquired Company infringes or is alleged to infringe any patent or other proprietary right of any other Person.

(e) ***Trademarks.***

(i) Schedule 3.22(e) contains a complete and accurate list and summary description of all Marks. One or more of the Acquired Companies or will be at Closing is the owner of all right, title, and interest in and to each of the Marks, free and clear of all Encumbrances.

(ii) All Marks that have been registered are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, except as set forth on Schedule 3.22(e)(ii), and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date.

(iii) No Mark has been or is now involved in any opposition, invalidation or cancellation and, to Seller's Knowledge, no such action is Threatened with the respect to any of the Marks.

(iv) To Seller's Knowledge, there is no potentially interfering trademark or trademark application of any third party.

(v) To Seller's Knowledge, no Mark is infringed or, to Seller's Knowledge, has been challenged or threatened in any way. None of the Marks used by any Acquired Company infringes or is alleged to infringe any trade name, trademark or service mark of any third party.

(f) ***Copyrights.***

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

(g) ***Trade Secrets.***

(i) Seller and the Acquired Companies have taken all reasonable precautions to protect the secrecy, confidentiality and value of their Trade Secrets.

(ii) One or more of the Acquired Companies has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets. To the Seller's Knowledge, the Trade Secrets are not part of the public knowledge or literature, and, to Seller's



Knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than one or more of the Acquired Companies) or to the detriment of the Acquired Companies. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

3.23 ***CERTAIN PAYMENTS***. To Seller's Knowledge,no Acquired Company or director, officer, agent or employee of any Acquired Company, nor any other Person associated with or acting for or on behalf of the Business or any Acquired Company, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any Person, private or public, regardless of form, whether in money, property or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, (iii) to obtain special concessions or for special concessions already obtained, for or in respect of the Business, any Acquired Company or any Related Person of an Acquired Company, or (iv) in violation of any Legal Requirement, or (b) established or maintained any fund or asset that has not been recorded in the books and records of the Acquired Companies.

3.24 ***DISCLOSURE***.

(a) No representation or warranty of Seller in this Agreement and no statement in any Schedule attached hereto omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

(b) No notice given pursuant to Section 5.5 will contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Agreement, in light of the circumstances in which they were made, not misleading.

(c) There is no fact known to Seller that has specific application to Seller or any Acquired Company (other than general economic or industry conditions) and that materially adversely affects the assets, business, prospects, financial condition, or results of operations of the Business or Acquired Companies (on a consolidated basis) that has not been set forth in this Agreement.

3.25 ***RELATIONSHIPS WITH RELATED PERSONS***. Neither Seller nor any Related Person of Seller or of any Acquired Company currently has, or since January 1, 1998 has owned (of record or as a beneficial owner), an equity interest or any other financial or profit interest in, a Person that has (i) had business dealings or a material financial interest in any transaction with any Acquired Company other than business dealings or transactions conducted in the Ordinary Course of Business with the Acquired Companies at substantially prevailing market prices and on substantially prevailing market terms except for less than one percent (1%) of the outstanding capital stock of any such business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Schedule 3.25, neither Seller nor any Related Person of



Seller or of any Acquired Company is a party to any Contract with, or has any claim or right against, any Acquired Company.

3.26 ***BROKERS OR FINDERS***. Except as set forth in Schedule 3.26, Seller and its agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

4. ***REPRESENTATIONS AND WARRANTIES OF BUYER***. Buyer represent and warrant to Seller as follows:

4.1 ***ORGANIZATION AND GOOD STANDING***. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Finland.

4.2 ***AUTHORITY; NO CONFLICT***.

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Shareholders Agreement (the "***Buyer's Closing Documents***"), the Buyer's Closing Documents will constitute the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. Buyer has all the necessary rights, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents.

(b) Except as set forth in Schedule 4.2, neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will contravene, conflict with or result in a violation of or give any Government or other Person the right to challenge, prevent, delay or otherwise interfere with any of the Contemplated Transactions or exercise any remedy or obtain any relief under or pursuant to:

(i) any provision of Buyer's Organizational Documents;

(ii) any resolution adopted by the board of directors or the stockholders of Buyer;

(iii) any Legal Requirement or Order to which Buyer may be subject; or

(iv) any Contract to which Buyer is a party or by which Buyer may be bound.

Except as set forth in Schedule 4.2, Buyer is not and will not be required to give notice or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

4.3 ***CERTAIN PROCEEDINGS***. There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of



preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To the Knowledge of Buyer, no such Proceeding has been Threatened.

4.4 ***BROKERS OR FINDERS***. Buyer and its officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement and will indemnify and hold Seller harmless from any such payment alleged to be due by or through Buyer as a result of the action of Buyer or its officers or agents.

5. ***ADDITIONAL COVENANTS OF SELLER AND BUYER***.

5.1 ***ACCESS AND INVESTIGATION***.

(a) Between the date of this Agreement and the Closing Date, Seller will, and will cause each Acquired Company and its Representatives to, (a) afford Buyer and its Representatives and prospective lenders and their Representatives (collectively, "***Buyer's Advisors***") reasonable access to each Acquired Company's personnel, properties (including subsurface testing), contracts, books and records, and other documents and data, (b) furnish Buyer and Buyer's Advisors with copies of all such material contracts, books and records, and other existing documents and data as Buyer may reasonably request, and (c) furnish Buyer and Buyer's Advisors with such additional financial, operating and other data and information as Buyer may reasonably request.

(b) In addition to any environmental investigations and audits conducted by Buyer or its Representatives prior to the date of this Agreement, Buyer shall be permitted to cause further environmental audits of the Facilities to be conducted as are reasonably necessary for assessing the presence and or disposition of Hazardous Materials and compliance with Environmental Laws, including such Phase II environmental audits as Buyer and Seller may mutually agree upon. Seller hereby agrees to permit Buyer's qualified environmental consultants to enter upon the Facilities, upon giving Seller reasonable notice, with men and materials reasonably necessary to conduct such environmental audits. In connection with any such environmental audits and at the request of Seller, Buyer shall from time to time enter into agreements relating to indemnification for damages and confidentiality of audit results.

5.2 ***OPERATION OF THE BUSINESSES OF THE ACQUIRED COMPANIES***. Except as provided for in Section 6, between the Effective Time and the Closing Date, Seller will, and will cause each Acquired Company to:

(i) conduct the Business only in the Ordinary Course of Business and without any material deviation from the Base Business Plan;



(ii) use its Best Efforts to preserve intact the current business organization of the Business, keep available the services of the current officers, employees and agents of the Business and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with the Business;

(iii) consult with Buyer concerning operational matters of a material nature (subject to any Legal Requirement limiting any such consultation); and

(iv) otherwise report periodically to Buyer concerning the status of the business, operations and finances of the Business and such Acquired Company.

5.3 ***NEGATIVE COVENANT***. Except as otherwise expressly permitted by this Agreement, between the date of this Agreement and the Closing Date, Seller will not, and will cause each Acquired Company not to, without the prior written consent of Buyer, take any affirmative action, or fail to take any reasonable action within their or its control, as a result of which any of the changes or events listed in Section 3.16 is reasonably likely to occur. Without limiting the foregoing, Seller will cause the Acquired Companies not to incur any Indebtedness other than Permitted Indebtedness.

5.4 ***REQUIRED APPROVALS***.

(a) As promptly as practicable after the date of this Agreement, Seller and Buyer will, and Seller will cause each Acquired Company to, make all filings required by Legal Requirements to be made by them in order to consummate the Contemplated Transactions, including all filings under any applicable Competition Laws of any other Governmental Body, including Council Regulation (EEC) No. 4064/89 or similar laws within Finland or other applicable jurisdictions such as France, Italy and the Czech Republic. In addition, each of Seller and Buyer agree that if any Governmental Body requests additional information under any applicable Competition Laws or any other Legal Requirement, it will use its reasonable commercial efforts to comply with such requests as promptly as possible.

(b) Between the date of this Agreement and the Closing Date, Seller will, and will cause each Acquired Company to, (i) cooperate with Buyer with respect to all filings that Buyer required by Legal Requirements to make in connection with the Contemplated Transactions, and (ii) cooperate with Buyer in obtaining all consents identified in Schedule 4.2. provided that this Agreement will not require Seller to dispose of or make any change in any portion of its business or to incur any other burden to obtain a Governmental Authorization.

(c) Between the date of this Agreement and the Closing Date, Buyer will, and will cause each Related Person to, (i) cooperate with Seller with respect to all filings that Seller is

required by Legal Requirements to make in



connection with the Contemplated Transactions, and (ii) cooperate with Seller in obtaining all consents identified in Schedule 3.2; provided that this Agreement will not require Buyer to dispose of or make any change in any portion of its business or to incur any other burden to obtain a Governmental Authorization.

5.5 ***NOTIFICATION***. Between the date of this Agreement and the Closing Date, either party will promptly notify the other party in writing if such party, including any Acquired Company becomes aware of any fact or condition that causes or constitutes a Breach of any of either party's representations and warranties as of the Effective Time or as of the date of this Agreement (as applicable), or that party becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. If any such fact or condition requires any change in any Schedule if the Schedule were dated the date of the occurrence or discovery of any such fact or condition, the party responsible for the Schedule will promptly deliver to other party a supplement to the Schedule specifying such change. During the same period, either party will promptly notify the other party of the occurrence of any Breach of any covenant of a party in this Agreement or of the occurrence of any event that may make the satisfaction of the conditions in the Agreement impossible or unlikely.

5.6 ***NO NEGOTIATION***. Until such time, if any, as this Agreement is terminated pursuant to Section 9, Seller will not, and will cause each Acquired Company and each of their Representatives not to, directly or indirectly solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any unsolicited inquiries or proposals from, any Person (other than Buyer) relating to any transaction involving the sale of the business or assets (other than in the Ordinary Course of Business) of the Business or of any Acquired Company, or any of the capital stock of any Acquired Company, or any merger, consolidation, business combination, or similar transaction involving the Business and any Acquired Company.

5.7 ***BEST EFFORTS***. Between the date of this Agreement and the Closing Date, both Buyer and Seller will use its Best Efforts to cause the conditions in Sections 7 and 8 to be satisfied except as set forth in the provisos to Sections 5.4(b) and 5.4(c), as applicable.

5.8 ***STATUTE OF LIMITATIONS***. Prior to the Closing, Seller shall not permit any Acquired Company to agree with any Governmental Body to extend the statute of limitations with respect to any Taxes, without the prior written consent of Buyer.

5.9 ***INTERIM FINANCIAL STATEMENTS***. From the date of this Agreement through the Closing Date, Seller will prepare monthly financial statements for the Business and the Acquired Companies on a consolidated basis (beginning with



the month of January , 2002), and will promptly (and in any event not later than the fifteenth Business Day following the end of the month to which a statement relates) deliver them to Buyer. These unaudited financial statements will be prepared in accordance with GAAP (except for the absence of footnotes and subject to normal year end adjustments which will be immaterial in amount) and in a manner consistent with the basis of presentation used in the unaudited financial statements referred to in Section 3.4, and will fairly present, in all material respects, the consolidated financial position and results of operations, of the Business and the Acquired Companies as at and for the periods indicated.

5.10 ***MATTERS RELATING TO REAL PROPERTY***. Each of the Acquired Companies has full legal and beneficial title to any and all its real property ("***Real Property***"), unless otherwise disclosed in Schedule 5.10. All Real Property is free from any third party rights, mortgages or other encumbrances whatsoever and is insured in accordance with business practice.

6. ***CERTAIN ACTIONS PRIOR TO CLOSING DATE; TRANSITION AND EMPLOYEE MATTERS***

6.1 ***THE ACQUIRED COMPANIES***. Prior to the Closing Date, Seller will take or cause to be taken all actions necessary or advisable to effectuate the actions described on Attachment E to the Shareholders Agreement and will cause the ownership of the Acquired Companies to be as set forth on Attachment E to the Shareholders Agreement.

Without limiting the foregoing, Seller undertakes and agrees to incorporate the Company by on or prior to July 26, 2002 pursuant to Organizational Document the form and substance of which shall have been approved in advance by Buyer.

Furthermore, and for the purposes of further clarity, Parties expressly agree that the Seller shall be obligated to ensure at its own cost that, in connection with the actions foreseen in the Attachment E to transfer the Business to the Acquired Companies, all the software and other licenses which relate to, support and/or have been used by the Seller or any of its Subsidiaries in connection with the Business shall have been transferred to the applicable Acquired Company on or before Closing, it being understood that the applicable Acquired Company shall be responsible for the payment of any customary fees which relate to the actual use of such licenses in the operation of the Business after the Closing.

6.2 ***TRANSITION MATTERS.***

At or prior to the Closing, Buyer and Seller shall cause the Company to enter into the Shared Services Agreement.

6.3 ***PAYMENT OF INDEBTEDNESS***.

(a) Except as expressly provided in Paragraph (b) of this Section 6.3, Seller will cause all Indebtedness owed by any Acquired Company to Seller (or any Related Person of Seller), or owed to any Acquired Company by Seller (or any Related Person of Seller) to be paid in full prior to Closing, except that any account payable from Seller or any Related Person arising out of sales of goods or from any shared services will be paid in accordance with its terms.

(B) Seller will cause all Indebtedness owed by any Acquired Company to be paid in full prior to Closing and will have caused the termination of all other financing activities of the Company prior to the Closing (other than Permitted Indebtedness or Indebtedness otherwise approved in writing by Buyer), it being the general intent of the parties that the Acquired Companies shall be free of Indebtedness other than Permitted Indebtedness as of the Closing (with the provisions of Section 2.2 and the Closing Adjustment for Indebtedness being intended to take into account any failure to effectuate such intent).

6.4 ***EMPLOYEES AND BENEFITS***

6.4.1 ***Background***.

(a) The Business has been managed, operated and maintained by employees of Seller or its Subsidiaries. Prior to the Closing Date, such employees have been compensated at established wage and salary rates, and some or all of such employees have had rights under some or all of the following: (i) employee benefit plans and (ii) published employment policies in effect at their respective work locations. All such benefit plans, published policies, and any other agreements or policies affecting employment are described in Schedule 3.13(b). Seller's salaried employees assigned to the Business (except those who at the Closing Date have retired or are on long-term disability, and those whom Buyer and Seller have excluded are herein called "***Continuing Salaried Employees***."

(b) The Continuing Salaried Employees will remain employed by the Company after the Closing under essentially the same terms and conditions as in effect immediately prior to the Closing Date. The Company will also continue the employment of all hourly employees after Closing at the Facilities (except those who are on layoff), herein called "***Continuing Hourly Employees***". Continuing Salaried Employees and Continuing Hourly Employees are collectively referred to herein as "***Continuing Employees***". Nothing in this Section will limit the right of the Company to terminate the employment or to make any adjustments, including both increases and decreases, in salary and benefits of any Continuing Employee at any time after the Closing Date. Except as otherwise provided in this Section, the Company will have absolute discretion with respect to the terms

and conditions of employment of any Continuing Employee and other persons at any time employed by the Company, including the right to hire, terminate, promote, demote, transfer, reduce compensation or benefits or change the job status of any employee



of the Company at any time after the Closing Date. No provision of this Agreement is intended or will be construed as a promise or guaranty of the continued employment of any Continuing Employee or any other employee of either party.

6.5 ***INTERCOMPANY CONTRACTS***. Seller and Buyer agree that all Contracts (written and oral) between (a) Seller and any of its affiliates and (b) the Acquired Companies will be terminated prior to the Closing unless otherwise mutually agreed upon by Buyer and Seller except for (i) those Contracts expressly contemplated by this Agreement, (ii) than purchase orders for goods in the ordinary course of Business and (iii) the lease for the Prague facility which is to be amended prior to Closing to provide that either party may terminate it only upon not less than 18 months notice.

## 7. *CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE*

Buyer's obligation to purchase the Shares and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

7.1 ***ACCURACY OF REPRESENTATIONS***. All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement (or, in so far as they relate to the Company, as of the date of its incorporation) or as of the Effective Time (as applicable), and must be accurate in all material respects as of the Closing Date as if made on the Closing Date, without giving effect to any supplement to any Schedule.

7.2 ***SELLER'S PERFORMANCE***.

(a) All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

(b) Each document required to be delivered pursuant to Section 2.4 must have been delivered, and each of the other covenants and obligations in Sections 5.4 and 5.7 must have been performed and complied with in all respects.

7.3 ***CONSENTS***. Each of the Consents identified in Schedule 3.2 must have been obtained and must be in full force and effect.

7.4 ***ADDITIONAL DOCUMENTS***. Each of the following documents must have been delivered to or obtained by the Buyer:



(a) the employment agreements, in form and substance satisfactory to Buyer executed by Company and the Key Executives; and

*[sic]*(a) such other documents as Buyer may reasonably request for the purpose of (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, (iii) evidencing the satisfaction of any condition referred to in this Section 7, or (iv) otherwise facilitating the consummation or performance of any of the Contemplated Transactions.

7.5 ***NO PROCEEDINGS***. Since the date of this Agreement, there must not have been commenced or Threatened against Buyer, or against any Person affiliated with Buyer, any Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

7.6 ***NO CLAIM REGARDING SHARE OWNERSHIP OR SALE PROCEEDS***. There must not have been made or Threatened by any Person any claim asserting that such Person (a) is the holder or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, any Shares or any stock of, or any other voting, equity or ownership interest in, any of the other Acquired Companies, or (b) is entitled to all or any portion of the Purchase Price payable for the Shares.

7.7 ***NO PROHIBITION***. Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Buyer or any Person affiliated with Buyer to suffer any material adverse consequence under, (a) any applicable Legal Requirement or Order, or (b) any Legal Requirement or Order that has been published, introduced or otherwise formally proposed by or before any Governmental Body.

7.8 ***JV CLOSINGS***. The JV Closings shall have been completed.

## 8. *CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE*

Seller's obligation to sell the Shares and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller, in whole or in part):

8.1 ***ACCURACY OF REPRESENTATIONS***. All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.



8.2 ***BUYER'S PERFORMANCE***

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyer must have delivered each of the documents required to be delivered by Buyer pursuant to Section 2.4, and each of the other covenants and obligations in Section 5.4 and 5.7 must have been performed and complied in all respects and (ii) made the cash payments required to be made by Buyer pursuant to Sections 2.4(b)(i).

8.3 ***CONSENTS***. Each of the Consents identified in Schedule 3.2 must have been obtained and must be in full force and effect.

**8.4** ***ADDITIONAL DOCUMENTS.*** Buyer must have caused to be delivered to Seller such other documents as Seller may reasonably request for the purpose of(a) evidencing the accuracy of any representation or warranty of Buyer, (b) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer, (c) evidencing the satisfaction of any condition referred to in this Section 8, or (d) otherwise facilitating the consummation of any of the Contemplated Transactions.

***8.5*** ***NO PROCEEDINGS***. Since the date of this Agreement, there must not have been commenced or Threatened against Seller, or against any Person affiliated with Seller, any Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

***8.6*** ***NO CLAIM REGARDING SHARE OWNERSHIP OR SALE PROCEEDS***. There must not have been made or Threatened by any Person any claim asserting that such Person (a) is the holder or the beneficial or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, the Shares or any stock of, or any other voting, equity or ownership interest in, any of the other Acquired Companies, or (b) is entitled to all or any portion of the Purchase Price payable for the Shares.

***8.7*** ***NO PROHIBITION***. Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Seller or any Person affiliated with Seller to suffer any material adverse consequence under (a) any applicable Legal Requirement or Order, or (b) any Legal Requirement or Order that has been published, introduced or otherwise formally proposed by or before any Governmental Body.



***8.8 . JV CLOSINGS***. The JV Closings shall have been completed.

***9. TERMINATION***.

***9.1 TERMINATION EVENTS***. This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) by either Buyer or Seller if a material Breach of any provision of this Agreement has been committed prior to Closing by the other party and such Breach has not been waived;

(b) (i) by Buyer if any of the conditions in Section 7 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition on or before the Closing Date; or (ii) by Seller, if any of the conditions in Section 8 has not been satisfied of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement) and Seller has not waived such condition on or before the Closing Date;

(c) by mutual consent of Buyer and Seller; or

(d) by either Buyer or Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before September 30, 2002 (the "***Target Date***"), or such later date as the parties may agree upon. If any Governmental Body with jurisdiction over the enforcement of any Competition Laws requests additional information relating to the JV Transactions or the parties and/or if any waiting period has not expired or any clearance or approval under any such Competition Law has not been satisfied or obtained by the Target Date, the Target Date will automatically be extended for such period of time as may be reasonably necessary for the parties to have complied with the Competition Laws and all such requests for information thereunder to the extent applicable to the JV Transactions, but in no event shall the Target Date be extended by this sentence beyond December 31, 2002.

***9.2 EFFECT OF TERMINATION***. Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 11.1 and 11.3 will survive; provided, however, that if this Agreement is terminated by a party because of the Breach of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under



this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

**10.** ***INDEMNIFICATION; REMEDIES; DISPUTE RESOLUTION***

**10.1** ***SURVIVAL; RIGHT TO INDEMNIFICATION NOT AFFECTED BY KNOWLEDGE; DEFINITIONS.***

(a) All representations, warranties, covenants and obligations in this Agreement, the Schedules, the supplements to the Schedules, the certificate delivered pursuant to Section 2.4(a)(ii) and any other certificate or document delivered pursuant to this Agreement will survive the Closing as set forth in this Article 10. Except as expressly provided for in Section 10.2(b) and the last Section of 10.2, the right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants and obligations will not be affected by any investigation conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation, and 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 affect the right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants and obligations.

(b) For purposes of this Article 10, the following terms have the meanings specified or referred to in this Section 10.1(b):

***"Buyer Indemnified Persons"*** -- means Buyer, OCP, the Acquired Companies and their respective Representatives and Related Persons.

***"Seller Indemnified Persons"***-- means Seller and its Representatives and Related Persons.

***"Damages"*** -- means any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable attorneys' fees and expenses of attorneys, accountants, engineers and other experts and consultants), fine, penalty or obligation, whether or not involving a third-party claim relating to the Company, its Business (as defined in this Agreement) or USJVCO and its Business (as defined in the Joint Venture and Member's Agreement.

***"Indemnified Party"*** -- any Person entitled to indemnification under this Article 10.

***"Indemnifying Party"*** -- any Person required to indemnify another Person under this Article 10.



**10.2** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER***. Seller will indemnify and hold harmless the Buyer Indemnified Persons, for, and will pay to the Buyer Indemnified Persons the amount of, any Damages, arising, directly or indirectly, from or in connection with:

(a) any Breach of any representation or warranty made by Seller in this Agreement or by Seller or any Related Person thereof in the US Share Purchase Agreement (without giving effect to any supplement to any Schedule) or any other certificate or document delivered by Seller or such Related Person pursuant to this Agreement or the US Share Purchase Agreement (provided, however, that this Section 10.2(a) shall only apply if the Closing shall not occur),

(b) any Breach of any representation or warranty made by Seller in this Agreement or by Seller or any Related Person thereof in the US Share Purchase Agreement as if such representation or warranty were made on and as of the Closing Date (without giving effect to any supplement to any Schedule), other than any such Breach that is disclosed in a supplement to any Schedule and is expressly identified in the certificate delivered pursuant to Section 2.4(a)(ii) as having caused the condition specified in Section 7.1 not to be satisfied;

(c) any Breach by Seller of any covenant or obligation of Seller in this Agreement or by Seller or any Related Person thereof in the US Share Purchase Agreement;

(d) the operation of the Business prior to the Closing Date, including but not limited to Damages relating to (i) any unpaid employee-related costs, expenses and Taxes (and any fines or penalties for non-payment thereof) that have not been accrued or reserved as a liability in determining the Closing Date Net Assets and (ii) any product shipped by, or any services provided by the Business or any Acquired Company or by the US JVCo or any subsidiary or predecessor thereof prior to the Closing Date;

(e) any activities of any Acquired Company that are not related to the Business as conducted as of the Closing Date;

(f) the Proceedings and matters disclosed in Schedule 3. 15 and Schedule 3.15 to the US Share Purchase Agreement; or

(g) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made by any such Person with Seller or any Acquired Company (or any Person acting on their behalf or on behalf of the Business for which they are responsible) in connection with any of the Contemplated Transactions or the transactions contemplated by the US Share Purchase Agreement.

Notwithstanding the provisions of clauses (a) and (b) of this Section 10.2, to the extent that Seller can prove (and Seller has the burden of proof in that regard) that Buyer had Knowledge that any of Seller's representations or warranties contained in this Agreement or in the US Share Purchase Agreement were false at the



time such agreement was signed, Seller shall have no indemnification obligation for the Breach of such representation or warranty.

**10.3** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER - LOSSES***. Seller shall indemnify and hold harmless the Buyer Indemnified Persons, for losses based on EBIT, if any, incurred by the Company during the period commencing on the Closing Date and ending 31 December 2002 ("Relevant Period") up to an aggregate amount of one million US Dollars ($ 1,000,000) . The Seller and the Purchaser shall procure that as soon as possible after the approval of the audited financial statements of the Company and the verification of any losses, if any, incurred by the Company on a consolidated basis during the Relevant Period, the Company shall issue to each of the Seller and the Buyer the smallest possible number of the kind of shares in the Company each of the Seller and Buyer already holds that preserves the share proportions existing at that time. The amount to be paid up on the shares issued shall equal the amount of the losses incurred by the Company on a consolidated basis during the Relevant Period, with a maximum of one million US Dollars (US$ 1,000,000) and the Seller undertakes that it shall pay to the Company the amounts of the contribution on the shares issued thus payable by the Buyer and the Seller. Upon such payment by the Seller on behalf of the Buyer, the Seller is discharged for its indemnification obligations as mentioned above. The audited financial statements of the Company with respect to the fiscal year 2002 will be prepared and audited consistent with the preparation and audit of the Financial Statements. However, notwithstanding the foregoing, the parties agree that the Seller shall not be responsible for indemnifying or holding harmless the Buyer Indemnified Persons for any losses incurred during the Relevant Period which arise out of any material decision after the Closing by the Company which is not foreseen in the Base Business Plan or which has not been agreed to by the Seller or the majority of its representatives appointed to the Board of the Company.

Notwithstanding the foregoing, the Seller shall indemnify, without limitation, and hold harmless the Buyer Indemnified Persons from and against any loss, liability, damage, cost and expenses whatsoever incurred outside the operation of the Business, in particular in relation to the formation and operation of SCI Groupe Brancher or its conversion into a French Société par Actions Simplifiée and arising from or in connection with any event which is not directly connected with or attributable to the Heatcraft activity and the operation of the factory of Cremieu (France).

**10.4** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER -- ENVIRONMENTAL MATTERS.***

**10.4.1** ***Indemnification***. In addition to the provisions of Section 10.2, Seller will indemnify and hold harmless the Buyer Indemnified Persons for, and will pay to Buyer, the Acquired Companies and the other Buyer Indemnified Persons the amount of, any Damages (including costs of investigation, cleanup, containment or other remediation and associated operation, maintenance and monitoring) arising, directly or indirectly, from or in connection with:



(a) any Environmental, Health and Safety Liabilities arising out of or relating to: (i) (A) the ownership, operation or condition at any time on or prior to the Closing Date of the Facilities or any other properties and assets (whether real, personal or mixed and whether tangible or intangible) in which Seller, any Heat Transfer Existing Subsidiary or any Acquired Company has or had an interest, including specifically any fact, event, condition, circumstance, incident, operation or practice identified or covered in any of the reports listed in Schedule 3.19, or (B) any Hazardous Materials or other contaminants that were present on the Facilities or such other properties and assets at any time on or prior to the Closing Date; or (ii) (A) any Hazardous Materials or other contaminants, wherever located, that were generated, transported, stored, treated, Released or otherwise handled by Seller, any Heat Transfer Existing Subsidiary or any Acquired Company 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 (B) any Hazardous Activities with respect to the Facilities or relating to the Business that were conducted by Seller, any Heat Transfer Existing Subsidiary or any Acquired Company or by any other Person for whose conduct they are or may be held responsible, including specifically any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19; or

(b) any bodily injury (including illness, disability and death, and regardless of when any such bodily injury occurred, was incurred or manifested itself), 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 Seller, any Heat Transfer Existing Subsidiary or any Acquired Company or any other Person for whose conduct they are or may be held responsible, in any way arising from or allegedly arising from any Hazardous Activity conducted with respect to the Facilities or the operation of the Acquired Companies, any Heat Transfer Existing Subsidiary or the Business prior to the Closing Date, including any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19, or from Hazardous Material that was (i) present on or before the Closing Date on or at the Facilities (or present or suspected to be present on any other property, if such Hazardous Material emanated from any of the Facilities and was present on any of the Facilities on or prior to the Closing Date), including specifically any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19 or (ii) Released by Seller, any Heat Transfer Existing Subsidiary or any Acquired Company or any other Person for whose conduct they are or may be held responsible, at any time on or prior to the Closing Date, including specifically any fact, event, condition, circumstance, incident, operation or practice identified in or covered by any of the reports listed in Schedule 3.19.

**10.4.2** ***Environmental Management.***

(c) Contractual Predicate:

(i) The reports listed on Schedule 3.19 or the additional Phase II reports prepared under Section 5.1 (b) identify operating practices of the Acquired Companies or their predecessors and/or physical conditions at one or more of the Facilities which are not in



full compliance with Environmental Law and/or which create latent or actual Environmental, Health and Safety Liabilities.

(ii) Under Section 10.4.1, Seller is obligated to indemnify and hold harmless Buyer, the Acquired Companies and the other Buyer Indemnified Persons for and has agreed to pay Buyer, the Acquired Companies and the other Buyer Indemnified Persons the amount of any Damages arising, directly or indirectly, from or in connection with Environmental, Health and Safety Liabilities.

(iii) The liabilities associated with the matters identified in the reports listed on Schedule 3.19 are covered by Seller's indemnification and payment obligations under Section 10.4.1. The purpose of this Section 10.4.2 is to provide for the efficient administration of the rights of Seller, Buyer, the Acquired Companies and the other Buyer Indemnified Persons and the obligations of Seller under Section 10.3.

(d) Management Framework:

(i) All of the tasks necessary to manage and/or resolve the Environmental, Health and Safety Liabilities, including Cleanup, arising from the matters identified in the reports listed in Schedule 3.19 and any other Environmental, Health and Safety Liabilities for which Seller is obligated to provide indemnity and pay Damages under Section 10.4.1, including Cleanup, constitutes the "***Work***" to be governed by this Section 10.4.

(ii) Seller and its Representatives shall manage the Work. Buyer will be given the opportunity to participate in the Work as defined in the subsequent provisions of this section.

(iii) Seller hereby appoints Mark Yohman to serve as its initial overall project coordinator ("**PC**") for the Work. Buyer hereby appoints Earl Robinson to serve as its initial representative ("**OR**") to review and provide input on the Work. Either party may change its appointed representative by written notice to the other. The rights and responsibilities of the PC and the OR with respect to managing the Work and /or any Cleanup are as follows:

(A) The PC, with the OR's concurrence, will select such environmental/engineering firms as may be necessary to plan and carry out the Work. The PC, with the OR's concurrence, can change or supplement such environmental/engineering firms as necessary to efficiently and effectively carry out the Work.

(B) The PC and OR in consultation with the environmental/ engineering firms, will jointly develop long-range plans, budgets, schedules and execution strategies (for at least one year in advance) for the Work.

(C) The PC, OR and engineering/environmental consulting firms will jointly develop project specific scopes of work and related work plans.



(D) The PC will take the lead in managing the environmental/ engineering firms. The firms will be instructed to provide duplicate originals of all written correspondence including teleconferencing communications and work products, to the PC and the OR simultaneously.

(E) The PC shall require performance of the Work according to each project's schedule; that schedule will reflect that the Work must be performed economically and expeditiously.

(F) All relevant correspondence and work products generated by Buyer, Seller or their respective Representatives or by the environmental/engineering firms engaged to perform any Work, or received by Buyer, Seller or their respective Representatives from any environmental/engineering firms or any Governmental Bodies, will be transmitted to the other party as soon as practicable, to the extent that such material has not already been forwarded directly.

(G) The PC will be responsible for dealing with all Governmental Bodies, but the PC shall give the OR prompt notice of all scheduled meetings, conference calls and other pre-arranged conversations with Governmental Bodies and shall allow the OR to attend or participate in all scheduled meetings, conference calls and other pre-arranged conversations with such Governmental Bodies which relate to the Work at any of the Facilities. The OR will be given a reasonable time in advance to review, discuss and propose modifications to the timing or content of any proposed communication with such agencies which pertain to the Work.

(H) The PC and the OR will jointly develop negotiating positions and strategies for communicating with the Governmental Bodies about the process for evaluating and selecting Cleanup or other remedies, compliance strategies or other necessary actions.

(I) If the PC and OR disagree on any element of the Work (including plans, Cleanup or other execution strategies, scopes of the Work, work plans, schedules, budgets or contract terms of the Work proposals) or on the content or timing of any communication to a Governmental Body or if the OR believes that the PC is failing to diligently attend to or prosecute any element of the Work, (collectively, "***ENV Disagreements***"), the OR shall promptly and concisely state its position in writing. The PC shall give due consideration to the LR's position, and the PC shall then make a determination which, subject to Paragraph (J) below, resolves the ENV Disagreement.

(J) If the OR or Buyer requests, the PC's decision will be subject to review by the CEO of Buyer and Seller, after a meeting or



telephone conference between the CEO of Buyer and the CEO of Seller. After the foregoing review, Buyer will have the authority to resolve any ENV Disagreement and to effect any actions with respect to the Work with any Governmental Body; provided, however, that Seller will no longer be obligated to indemnify Buyer or any other Buyer Indemnified Person. At the election of the Buyer, the dispute may be submitted to a qualified independent third party for resolution. The parties will select this party by mutual agreement, all costs for the review will be shared equally by Buyer and Seller and any decisions will be governed by the principle that any Work performed must be that necessary to comply with any applicable Legal Requirement and in the most cost-effective manner.

(K) If the manner in which Seller is managing any element of the Work negatively impacts or harms the Business (with any ENV Disagreement regarding the same to be resolved as provided in paragraph (J) above), Buyer will have the right to assume management of such Work by notice to Seller.

(e) Cost Control: The PC and Buyer will take all reasonable steps to insure the project costs which are subject to payment by Seller or Company are closely monitored and controlled.

(f) Project Controls: Every environmental/engineering firm who performs any Work shall prepare periodic written progress reports in a format jointly developed by the PC and OR for the specific tasks and projects they are contracted to perform. Each environmental/ engineering firm shall also be available to confer with the PC and the OR as the PC and the OR determine is necessary, about the Work.

(g) Funding/Invoicing Procedures:

(i) Each environmental/engineering firm who performs any Work shall submit invoices for payment in a form developed jointly by both the PC and the OR. Invoices must be sent to both the PC and OR concurrently. The OR shall communicate any questions about or objections to any environmental/engineering firm invoice within thirty (30) days after receipt. After completing its review, and conferring with the OR the PC shall make a decision concerning payment of the invoice. On determining that an invoice is to be paid, the PC shall arrange for such payment to be by Seller, which payment will be made by Seller in its ordinary accounts payable cycle unless Paragraph (ii) below applies.

(ii) If the OR and Buyer disagree with the PC's decision as to payment of any invoice amount, Seller or Buyer shall deliver a Dispute Notice (as defined in Section 9.13(a)) with respect to any portion or the entire all of the invoice. In such event the Dispute will be resolved pursuant to Section 10.13. If it is ultimately determined pursuant to Section 10.13 that Seller is required to pay any amount which was the subject of a



Dispute Notice sent pursuant to this section, Seller shall pay such amount to the Company.

**10.4.3** ***Procedure***.Notwithstanding Section 10.4.2, the procedure described in Section 10.12 will apply to any claim solely for monetary damages relating to a matter covered by this Section 10.4.

**10.5** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER - TAX MATTERS .***

**10.5.1** ***General***.

(a) In addition to the provisions of Section 10.2, Seller shall indemnify each Buyer Indemnified Person and hold them harmless from (i) all liability for Taxes that may be imposed or assessed against the Acquired Companies (which for purposes only of this Section 10.5 shall include the Acquired Companies and the entities set forth on Schedule 10.4.1(a) or the assets of the Acquired

Companies based on income attributable to all taxable periods ending on or before the Closing Date reduced without duplication by the actual payment of Taxes prior to the Closing Date and any reserves with respect to Taxes set forth on the Balance Sheet, (ii) all liability for Taxes of any Person (other than any of the Acquired Companies) with which any of the Acquired Companies is or has been affiliated or has filed or has been required to file a consolidated, combined or unitary Tax Return, and (iii) subject to the last sentence of Section 10.5.2(b), all liability for reasonable legal, accounting, consulting or similar fees and expenses for any item attributable to any item in clauses (i) or (ii) of this sentence.(b) In the case of any taxable period that includes (but does not end on) the Closing Date (a "***Straddle Period***"):

(i) real, personal and intangible property Taxes ("***Property Taxes***") of the Acquired Companies attributable to all taxable periods ending on or before the Closing Date will be equal to the amount of such property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in all taxable periods ending on or before the Closing Date and the denominator of which is the number of days in the Straddle Period; and

(ii) the Taxes of the Acquired Companies (other than Property Taxes) attributable to all taxable periods straddling the Closing Date will be computed as if such taxable period ended as of the close of business on the Closing Date and, in the case of any Taxes attributable to the ownership by any of the Acquired Companies of any equity interest in any non-U.S. corporation, partnership or other "flow through" entity, as if a taxable period of such corporation, partnership or other "flow through" entity ended as of the closing of business on the Closing Date.

**10.5.2** ***Tax Indemnification Procedures***

(c) If a claim is made by any Governmental Body, which, if successful, would result in an indemnity payment to any Indemnified Person pursuant to Section 10.5.1, then the Company shall give notice to Seller in writing of such claim within thirty (30) days after



receipt of such a claim (a "***Tax Claim***"); provided, however, the failure to give such notice shall not affect the indemnification provided pursuant to Section 10.5.1 except to the extent that Seller has been actually prejudiced as a result of such failure. Notice to Seller hereunder will constitute notice to Seller.

(d) With respect to any Tax Claim relating to a taxable period ending on or prior to the Closing Date, Seller shall control all proceedings and may make all decisions taken in connection with such Tax Claim (including selection of counsel) and, without limiting the foregoing, may in its sole discretion pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any Governmental Body with respect thereto, and may, in its sole discretion, either pay the Tax claimed and sue for a refund where applicable law permits such refunded suits or contest the Tax Claim in any permissible manner; provided, however, that Seller must first consult in good faith with Buyer before taking any action with respect to the conduct of a Tax Claim.

(e) Seller and Buyer shall jointly control and participate in all proceedings taken in connection with any Tax Claim relating to Taxes of the Acquired Companies for a Straddle Period. Neither Seller nor Buyer shall settle any such Tax Claim without the prior written consent of the other parties. Each party shall pay its own expenses with respect to any such Tax Claim.(f) The Company shall control all proceedings with respect to any Tax Claim relating to a taxable period beginning after the Closing Date.

(g) Buyer and the Acquired Companies on the one hand, and Seller on the other, shall reasonably cooperate in contesting any Tax Claim, which cooperation will include the retention and, upon request, the provision to the requesting Person of records and information which are reasonably relevant to such Tax Claim, and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder or to testify at proceedings relating to such Tax Claim.

**10.5.3** ***Transfer and Similar Taxes***. Seller shall pay and shall hold each Buyer Indemnified Person harmless from all transfer, documentary, sales, use, registration and similar Taxes (including all applicable real estate transfer or gains taxes and state transfer taxes, and related fees, including any penalties interest and additions to Tax) ("***Transfer Taxes***"). The procedures set forth in Section 10.5.1 apply to Transfer Taxes. On or prior to the Closing, Seller shall present Tax receipts or other documents, satisfactory to Buyer, demonstrating that all Transfer Taxes have been paid in full.

**10.6** ***INDEMNIFICATION AND PAYMENT BY SELLER - TRANSACTION EXPENSES.***

(a) Prior to the Closing Date, Seller shall have requested final invoices from all relevant third parties (including accountants, attorneys and other similar professionals) reflecting all fees and expenses payable by Seller and the Acquired Companies with respect to services rendered in connection with the transactions contemplated hereby and by the US Share Purchase Agreement. Not later than three (3) Business Days prior to the Closing Date, the chief financial officer of Seller shall certify in writing to Buyer the



amount of (i) any Transaction Expenses that will have been paid by Seller or any Acquired Company immediately prior to the Closing Date, (ii) an estimate of any Transaction Expenses incurred but not paid as of the Closing Date, and (iii) an estimate of any Transaction Expenses reasonably expected to be incurred after the Closing Date.

(b) In addition to the provisions of Section 10.2, Seller agrees to indemnify, defend and hold the Buyer Indemnified Persons harmless from and against any and all losses that the Buyer Indemnified Persons may suffer, sustain, incur or become subject to arising out of or due to the failure of Seller to pay in full all Transaction Expenses. Any amounts to be paid under this Section 10.5 by Seller to a Buyer Indemnified Person shall be paid by Seller immediately upon receipt of written notice from Buyer demanding payment.

**10.7** ***INDEMNIFICATION AND PAYMENT OF DAMAGES BY BUYER.***Buyer and OCP agree, jointly and severally, to indemnify and hold harmless the Seller Indemnified Persons, and will pay to Seller Indemnified Persons the amount of any Damages arising, directly or indirectly, from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or by Buyer or any Related Person thereof in the US Share Purchase Agreement (without giving effect to any supplement to any Schedule) or any other certificate or document delivered by Buyer or such Related Person pursuant to this Agreement or the US Share Purchase Agreement (provided, however, that this Section 10.7(a) shall only apply if the Closing shall not occur),

(b) any Breach of any representation or warranty made by Buyer in this Agreement or by Buyer or any Related Person thereof in the US Share Purchase Agreement as if such representation or warranty were made on and as of the Closing Date (without giving effect to any supplement to any Schedule), other than any such Breach that is disclosed in a supplement to any Schedule and is expressly identified in the certificate delivered pursuant to Section 2.4(b)(ii) as having caused the condition specified in Section 8.1 not to be satisfied;

(c) any Breach by Buyer of any covenant or obligation of Buyer in this Agreement or by Buyer or any Related Person thereof in the US Share Purchase Agreement;

(d) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made by such Person with Buyer (or any Person acting on its behalf) in connection with any of the Contemplated Transactions.

**10.8** ***TIME LIMITATIONS.***

(a) If the Closing occurs, Seller will have no liability (for indemnification or otherwise) with respect to:

(i) any representation or warranty unless notice is given to Seller in accordance with Section 10.11 or Section 10.12 prior to the expiration of the following periods:



(A) for the representations and warranties set forth in Sections 3.1 through 3.3, 3.12, 3.14, 3.16, 3.20, 3.21 and 3.23 through 3.25 - two years after the Closing Date;

(B) (B) for the representations and warranties set forth in Sections 3.4 through 3.9, 3.13. 3.17, 3.18 and 3.22 - three years after the Closing Date;

(C) for the representations and warranties set forth in Sections 3.10, 3.15, 3.19 and 3.26 - five years after the Closing Date; and

(D) for the representations and warranties set forth in Section 3.11 - 60 days following expiration of the applicable statute of limitations, or

(ii) any covenant or obligation to be performed and complied with prior to the Closing Date unless on or before the fourth anniversary of the Closing Date Buyer notifies Seller of a claim in accordance with Section 10.11 or Section 10.12. Seller shall have no liability for indemnification or reimbursement (x) under Section 10.2 not based upon any representation or warranty, (y) under Section 10.4, 10.5 or 10.6, or (z) with respect to any covenant or obligation to be performed and complied with after the Closing Date, unless notice is given to Seller in accordance with Section 10.11 or Section 10.12 prior to the expiration of the periods **("Notice Periods")** set forth below:

(A) For Section 10.4:

(I) With respect to any Known Environmental Liabilities, the Notice Period shall continue in perpetuity.

(II) With respect to any Environmental, Health and Safety Liabilities not identified in Schedule 3.15 (**"Unknown Environmental Liabilities"**), the Notice Period shall run from the Closing Date until the tenth (10th) anniversary of the Closing Date. Seller shall be required to indemnify the Buyer Indemnified Persons for any Unknown Environmental Liabilities according to the following schedule: For Unknown Environmental Liabilities notice of which is delivered to Seller prior to the eighth (8th) anniversary of the Closing Date - 100%; for Unknown Environmental Liabilities notice of which is delivered to Seller after the eighth (8th) anniversary, and prior to the ninth (9th) anniversary of the Closing Date - 67%; and for Unknown Environmental Liabilities notice of which is delivered to Seller after the ninth (9th), and prior to the tenth (10th) anniversary of the Closing Date - 33%. Notwithstanding the foregoing provisions of this clause (II): (x) if Seller proves that any Release, act, omission or violation of Environmental Law giving rise to any Unknown Environmental Liability first occurred after the Closing Date, Seller shall have no indemnity obligation under this Agreement with respect to such Unknown Environmental Liability, and (y) with respect to a Release, act, omission or violation of Environmental Law giving rise to an Unknown Environmental Liability that first occurs before the Closing Date, if Seller can prove that an Acquired Company's acts or omissions after the Closing Date exacerbated



the conditions giving rise to such Unknown Environmental Liability, the Seller's indemnity obligation under Section 10.4 and as limited by this Section 10.8(a)(ii)(A)(II) will be reduced in equitable proportion to the respective contribution of Seller (or its Affiliates) and the Acquired Companies to the Unknown Environmental Liability.

(B) For Section 10.2, except for Section 10.2 (d) and (e) for which there shall be no time limitation, (i.e., indemnity claims not based on a breach of any representation or warranty), 10.5 or 10.6 or for indemnity claims with respect to any covenant to be performed and complied with after the Closing Date, the Notice Period shall commence on the Closing Date and continue until the longer of (y) the fifth anniversary of the Closing Date or (z) 60 days after the applicable statute of limitations.

(c) If the Closing occurs, Buyer will have no liability (for indemnification or otherwise) with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, unless on or before fifth anniversary of the Closing Date Seller notifies Buyer of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Seller.

(d) If the Closing does not occur, Buyer and Seller will have liability under Section 10.7 or 10.2 (as applicable) only if notice is given to the other party within one year after this Agreement has been terminated.

*[sic]*(d) The indemnifying party's obligations to indemnify for any matter notice of which is given within the applicable notice period will continue thereafter until satisfied.

**10.9** ***LIMITATIONS ON AMOUNT--SELLER***. Seller will have no liability (for indemnification or otherwise) with respect to the matters described in Sections 10.2(a)through 10.2(c) and Section 10.4 until Buyer has suffered Damages in excess of a $500,000 aggregate threshold (the "Threshold") (at which point Seller will be obligated to indemnify Buyer from and against such Damages relating back to the first dollar). Notwithstanding the foregoing, there is no threshold with respect to Seller's indemnification obligations under Section 10.2 (e) Section 10.3 10.4 with respect to Known Environmental Liabilities (provided, however, that if the Base Business Plan includes any accrual for or otherwise includes expenses specifically identical as intended to cover the cost of remediating any Known Environmental Liability, Seller shall indemnify the Buyer Indemnified Persons only for the amount of costs incurred in connection with such remediation in any year that are in excess of the accrual or other amounts expressly identified for such expenses in the Base Business Plan for that year or, for years after 2006, the amount accrued for 2006 in the Base Business Plan). For clarification purposes, there is also no Threshold with respect to Seller's indemnification obligations under Section 10.2(d), Section 10.2(e), Section 10.2(g), Section 10.5 or Section 10.6. This Section 10.9 does not apply to any Breach of any of Seller's representations and warranties of which Seller had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by Seller of any covenant or obligation, and Seller will be jointly and severally liable for all Damages with respect to such Breaches. The parties agree that the $ 500,000 aggregate Threshold can be satisfied by Damages that are indemnifiable under this Agreement or the US Share Purchase Agreement.



**10.10** ***LIMITATIONS ON AMOUNT--BUYER***. Buyer will have no liability (for indemnification or otherwise) with respect to the matters described in clause (a) or (b) of Section 10.7 until Seller shall has suffered Damages in excess of a $500,000 threshold (at which point Buyer will be obligated to indemnify Seller from and against such Damages relating back to the first dollar). However, this Section 10.10 will not apply to any Breach of any of Buyer's representations and warranties of which Buyer had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by Buyer of any covenant or obligation, and Buyer will be liable for all Damages with respect to such Breaches.

**10.11** ***PROCEDURE FOR INDEMNIFICATION--THIRD PARTY CLAIMS.***

(a) Promptly after receipt by an Indemnified Party under Section 10.2, 10.5, or (to the extent provided in Section 10.4) Section 10.4.3 of notice of the commencement of any Proceeding against it, such Indemnified Party will, if a claim is to be made against an Indemnifying Party under such Section, give notice to the Indemnifying Party of the commencement of such claim, but the failure to notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party, except to the extent that the Indemnifying Party demonstrates that the defense of such action is prejudiced by the Indemnifying Party's failure to give such notice.

(b) If any Proceeding referred to in Section 10.10(a) is brought against an Indemnified Party and it gives notice to the Indemnifying Party of the commencement of such Proceeding, the Indemnifying Party will, unless the claim involves Taxes, be entitled to participate in such Proceeding and, to the extent that it wishes (unless (i) the Indemnifying Party is also a party to such Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate, or (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such Proceeding and provide indemnification with respect to such Proceeding), to assume the defense of such Proceeding with counsel satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such Proceeding, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this Article 10 for any fees of other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of such Proceeding, other than reasonable costs of investigation. If the Indemnifying Party assumes the defense of a Proceeding, (A) it will be conclusively established for purposes of this Agreement that the claims made in that Proceeding are within the scope of and subject to indemnification; (B) no compromise or settlement of such claims may be effected by the Indemnifying Party without the Indemnified Party's consent unless (Y) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party, and (Z) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; and (C) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an Indemnifying Party of the commencement of any Proceeding and the Indemnifying Party does not, within ten Business Days after the Indemnified Party's



notice is given, give notice to the Indemnified Party of its election to assume the defense of such Proceeding, the Indemnifying Party will be bound by any determination made in such Proceeding or any compromise or settlement effected by the Indemnified Party.

(c) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to

defend, compromise, or settle such Proceeding, but the Indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

**10.12** ***PROCEDURE FOR INDEMNIFICATION--OTHER CLAIMS***. A claim for indemnification under Sections 10.2, 10.3, 10.4, 10.5 and/or 10.7 (as applicable) for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought which notice shall set forth in reasonable detail the basis for such claim to the extent their known by such party.

**10.13** ***EXCLUSIVITY***. The parties agree that, except in the case of fraud, their sole and exclusive remedy for, under or in connection with this Agreement, including any violations or any breach of this Agreement, is a claim under and in accordance with the provisions of this Article 10.

The Guarantor independently guarantees in favour of the Buyer timely and proper compliance by the Seller with all its obligations under this Agreement and accepts joint and several liability with the Seller under this Agreement without the Buyer first having to seek recourse against the Seller.

***10.15 DISPUTE RESOLUTION.***

***(a) Negotiated Resolution***. - If any dispute arises (i) out of or relating to, this Agreement or any alleged Breach thereof, (ii) with respect to any of the transactions or events contemplated hereby or (iii) with respect to any Person's right to indemnification ("Dispute"), the party desiring to resolve such Dispute shall deliver a written notice describing such Dispute with reasonable specificity to the other parties ("Dispute Notice"). If any party delivers a Dispute Notice pursuant to this Section 9.14, the Chief Executive Officers of the parties or their designees involved in the Dispute shall meet at least twice within the 30 day period commencing with the date of the Dispute Notice and in good faith shall attempt to resolve such Dispute, including any rejected indemnification claim.

***(b) Mediation***. - If any Dispute is not resolved or settled by the parties as a result of negotiation pursuant to Section 9.15(a) above, the parties shall submit the Dispute to non-binding mediation in accordance with Attachment P to the Shareholders Agreement.



***(c) Arbitration***. - If the Dispute is not resolved by mediation pursuant to Section 9.15(b) above, the Dispute shall be settled by arbitration conducted in accordance with Attachment P to the Shareholders Agreement.

***(d) Equitable Relief***. - The provisions of this Section 9.15 shall not preclude Buyer from seeking an injunction or other equitable relief to enforce the provisions of Article 9 of the Shareholders Agreement.

***11. GENERAL PROVISIONS***

***11.1 EXPENSES.***

(a) Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel, accountants and investment bankers.

(b) Buyer and Seller will each pay one half of the fees in connection with any required competition filing.

(c) Buyer and Seller will each pay one half of the Notary fees;

(d) Seller shall pay all costs of reorganizing the Business into the Acquired Companies.

(e) In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by another party. In addition, Seller shall reimburse Buyer for one-half of Buyer's Search Expenses.

***11.2 PUBLIC ANNOUNCEMENTS.***

(a) Seller and Buyer agree that, promptly after the execution and delivery of this Agreement or at such times as otherwise agreed upon by the parties, they shall each issue a press release substantially in the form for Seller and Buyer, respectively, that are provided for in the Shareholders Agreement. Unless required by Legal Requirements, any other public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued prior to the Closing, if at all, at such time and in such manner as Buyer and Seller may mutually determine. Prior to the Closing, Buyer and Seller will consult with each other concerning the means by which the Acquired Companies' employees, customers and suppliers and others having dealings with the Acquired Companies will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

(b) With respect to public communications on the Closing Date or otherwise with respect to the Closing, Seller and Buyer shall consult in good faith regarding appropriate press releases and, unless otherwise required by Legal Requirements, the form and content of, any press release, public announcement or similar publicity relating to the Closing, the Company and the parties will be mutually determined.



11.3 ***CONFIDENTIALITY.***

(a) Between the date of this Agreement and the Closing Date, Buyer and Seller will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of Buyer and the Acquired Companies to maintain in confidence, and not use to the detriment of another party or an Acquired Company any written, oral or other information obtained in confidence from another party or an Acquired Company in connection with this Agreement or the Contemplated Transactions, unless (i) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (ii) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Contemplated Transactions, or (iii) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings.

(b) If the Contemplated Transactions are not consummated, each party will return or destroy as much of such written information as the other party may reasonably request. Whether or not the Closing takes place, Seller waives and will, upon Buyer's request, cause the Acquired Companies to waive, any cause of action, right or claim arising out of the access of Buyer or its representatives to any trade secrets or other confidential information of the Acquired Companies except for the intentional competitive misuse by Buyer of such trade secrets or confidential information.

(c) Nothing herein contained is intended to void, replace in whole or in part or limit the application of any Confidentiality Agreements previously entered into by and between the parties or their Related Persons which shall remain in full force and effect in accordance with the terms thereof.

**11.4** ***NOTICES***. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Seller or Guarantor:

LGL Holland B.V.

c/o Lennox International, Inc.
2140 Lake Park Bld

Richardson, Texas 75080-2254
Attention: General Counsel
Facsimile No.: 972-497-5268



Buyer:

Outokumpu Copper Products Oy
c/o Outokumpu Oyj
Riihitontuntie 7D
P.O. Box 280
Espoo, Finland 02201
Attention: Corporate General Counsel
Facsimile No.: 011-358-9-421-2428

with a copy to:

Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203
Attention: Robert B. Fleming, Jr., Esq.
Facsimile No.: 716-849-0349

**11.5** ***JURISDICTION;SERVICE OF PROCESS***. Except as otherwise set forth in Section 10.13 or elsewhere in this Agreement, any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought in the courts of the State of Florida, Dade County , or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of Florida. Each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

**11.6** ***FURTHER ASSURANCES; INFORMATION.***

(a) The parties agree (i) to furnish upon request to each other such further information, (ii) to execute and deliver to each other such other documents, and (iii) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

(b) From and after the Closing, Seller and its Representatives will be allowed, upon reasonable request, to inspect and copy at their expense the business records and accounts of the Company. Buyer agrees with Seller that the Company shall not destroy or abandon any business records or accounts relating to the Business except upon thirty (30) days' advance written notice to Seller for a period of five (5) years thereafter. If Seller requests the surrender of such records or accounts, then the Company shall surrender, at Seller's expense, such records or accounts so required rather than proceeding with such destruction.



(c) From and after the Closing, Buyer, the Acquired Companies and their Representatives will be allowed upon reasonable request to inspect and copy at their expense the records of Seller and its Related Persons relating to the Acquired Companies and the Business through the Closing Date that are in the possession or control of Seller or any of its Related Persons and are not transferred to the Acquired Companies, including all financial records and tax returns relating to the Business. Seller agrees not to destroy or abandon any such records for a period of five (5) years following the Closing.(d) If at any time within three (3) years after the date of this Agreement, Buyer or any of its Related Persons proposes to register under the Securities Act of 1933, as amended, any securities in connection with any registered offering thereof and in connection therewith the Securities and Exchange Commission ("SEC") makes any comments or requests any information with respect to accounting information presented in the registration statement pertaining to any period prior to the Closing Date, then Seller will cooperate fully in responding promptly to such comments or questions, and will use its reasonable best efforts to cause Seller's Accountants to respond to comments on the relevant financial statements or to provide such information as the SEC requests in order to cause the SEC to declare effective such registration statement, at the expense of Buyer or its designated Related Persons, as the case may be. In addition, Seller will provide to any underwriter relating to financial information pertaining to any period prior to the Closing Date as required by Legal Requirements or applicable regulations or guidance of the accounting profession.

**11.8** ***PREVAILENCE***. The Parties expressly agree that in case of discrepancy this Agreement shall prevail on all agreements entered into to give effect to the restructuring and transfer of the Business into the Acquired Companies (hereinafter referred to as the "Implementing Agreement(s)"),in particular the French law contribution agreement entered into between LGL France and Heatcraft France SAS dated as of May 24, 2002, (for the purposes of this Article, the "Contribution Agreement"); as a consequence, for the avoidance of doubt, any discrepancy between this Agreement and the Contribution Agreement shall be settled by exclusive reference and construction of this Agreement. Furthermore, the Seller hereby commits to cause its Subsidiaries, in particular LGL France, to waive any claims it may have from time to time against Heatcraft France SAS under the Contribution Agreement, or should such claims be held by a third party, to hold Heatcraft France SAS harmless on any amounts it could incur thereunder, further to the provisions of the Contribution Agreement, these claims being exclusively dealt with under this Agreement. In the event provision(s) of the Agreement is (are) unenforceable, the Parties shall meet in good faith and do their best efforts to find alternatives which comply with the relevant laws and match as closely as possible the economic and financial intention reflected in this Agreement.

**11.9** ***WAIVER***. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right



arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party, (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

**11.10** ***ENTIRE AGREEMENT AND MODIFICATION***. This Agreement supersedes all prior agreements between the parties with respect to its subject matter (including without limitation the Memorandum of Agreement between Outokumpu Oyj and Seller dated on or about April 9, 2002) and constitutes (along with the Schedules and documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

**11.11** ***ASSIGNMENTS,SUCCESSORS AND NO THIRD-PARTY RIGHTS***. Neither party may assign any of its rights under this Agreement without the prior consent of the other parties, except that Buyer or Seller may assign any of its rights under this Agreement to any Subsidiary of Buyer or Seller. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns.

**11.12** ***SEVERABILITY***. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**11.13** ***SECTION HEADINGS, CONSTRUCTION***. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All references to "Schedule" or "Schedules" refer to the corresponding Schedule or Schedules attached to and made a part of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

**11.14** ***TIME OF ESSENCE***. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.



---

**11.15** ***GOVERNING LAW***. This Agreement is governed by the laws of the State of New York without regard to conflicts of laws principles.

**11.16** ***COUNTERPARTS***. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[SIGNATURES APPEAR ON NEXT PAGE]



---

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Seller:
LGL HOLLAND B.V.

By: /s/ Carl E. Edwards, Jr.
Name: Carl E. Edwards, Jr.
Title: Director

Guarantor:
LGL EUROPE HOLDING CO.

By: /s/ Carl E. Edwards, Jr.
Name: Carl E. Edwards, Jr.
Title: Secretary

Buyer:
OUTOKUMPU COPPER PRODUCTS OY

By: /s/ Kalevi Nikkilä
Name:
Title:

**AMENDMENT TO SHARE PURCHASE AGREEMENT**

THIS AMENDMENT (the "Agreement") is made as of August 26, 2002 by and among OUTOKUMPU COPPER PRODUCTS OY, a Finnish company ("Buyer") and LGL Holland B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands and having its official seat (statutaire zetel) in Amsterdam, The Netherlands and its registered office at Watergoorweg 87, 3861MA Nijkerk, The Netherlands and registered with the commercial register under 32069974 ("Seller") and LGL Europe Holdings Co. (the "Guarantor").

Buyer, Seller and the Guarantor, intending to be legally bound and in consideration of the mutual promises herein contained, agree as follows:

1. Reference is made to a Share Purchase Agreement dated as of July 18, 2002 by and among Buyer, Seller and the Guarantor (the "Purchase Agreement"). Any specially capitalized terms not otherwise defined in this Agreement shall have the same meaning as set forth in the Purchase Agreement. Buyer, Seller and the Guarantor desire to amend the Purchase Agreement as set forth in this Agreement.

2. As used in this Agreement, the following terms shall have the defined meanings provided in this Section 2:

(i) "Prague Flood Damage" shall mean the damage to the property, equipment, improvements and other assets used in the Business and located at the facility of the Business located in Prague Czech Republic (the "Prague Facility") caused by the August 2002 flood in Prague.

(ii) "Prague Facility Costs" shall mean all costs and expenses of any kind whatsoever necessary to repair and restore the Prague Facility to the condition it was in prior to the August 2002 flood in Prague, including but not limited to the repair or replacement of all equipment, fixtures, plant and improvements at the Prague Facility.

(iii) "Full Production" shall mean the time when the Prague Facility has shipped or is capable of shipping product manufactured from all of its production lines that has been qualified by the Company and, to the extent required, by the customer(s) for such product.

(iv) "Business Interruption Losses" shall mean all losses incurred by the Acquired Company in the Czech Republic) due to the suspension of the Prague operations of the Business resulting from the Prague Flood Damage and the resumption of the Business

---

thereafter, determined in accordance with the terms and conditions of Exhibit A attached hereto and made a part hereof.

(v) "Employment Directive" shall mean joint instructions from the Buyer and Seller, and/or the Board of the Company, to the Managing Director of the Prague Facility to retain only those employees of the Prague Facility until Full Production occurs that (i) are necessary to carry out the Restoration Plan (as defined below) or (ii) those employees for whom, if they were to be laid off, there would be an unreasonable risk that they would obtain other employment and be lost to the Business (collectively, "Necessary Employees").

Article 1 of the Purchase Agreement is hereby amended to add the foregoing defined terms.

3. Buyer acknowledges Seller's disclosure that the Prague Facility has been seriously damaged by a flood which has occurred in August 2002 and is continuing on the date of this Agreement. Buyer acknowledges and agrees (a) that (i) the Prague Flood Damage has been disclosed to Buyer pursuant to Section 5.5 of the Purchase Agreement and (ii) as a result of the Prague Flood Damage certain of the representations and warranties of Seller contained in the Purchase Agreement, including but not limited to those contained in Sections 3.7, 3.9, 3.12 and 3.16 thereof, are no longer true and correct; and (b) that, subject to the execution and delivery of this Agreement by Seller and the Guarantor and in consideration thereof, Buyer waives any right it may have under Section 9.1(b) of the Purchase Agreement (or otherwise) to terminate the Purchase Agreement as a result of such disclosures or the Prague Flood Damage.

4. Section 10.3 of the Purchase Agreement is hereby amended to read in its entirety as follows:

"**10.3 INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLER - LOSSES.**

(a) Seller shall indemnify and hold harmless the Buyer Indemnified Persons, for losses based on EBIT, if any, incurred by the Company during the period commencing on the Closing Date and ending on the later of (i) 31 December 2002 or (ii) the date which is two months after the date on which Full Production occurs ("Relevant Period") up to an aggregate amount of one million US Dollars ($ 1,000,000) . The Seller and the Buyer shall procure that as soon as possible after the approval of the audited financial statements of the Company and the verification of any losses, if any, incurred by the Company on a consolidated basis during the Relevant Period (or, if the Relevant Period extends after 31 December 2002, then as soon as possible after the relevant consolidated monthly internal statements have been prepared), the



---

Company shall issue to each of the Seller and the Buyer the smallest possible number of the kind of shares in the Company each of the Seller and Buyer already holds that preserves the share proportions existing at that time. The amount to be paid up on the shares issued shall equal the amount of the losses incurred by the Company on a consolidated basis during the Relevant Period, with a maximum of one million US Dollars (US$ 1,000,000) and the Seller undertakes that it shall pay to the Company the amounts of the contribution on the shares issued thus payable by the Buyer and the Seller. Upon such payment by the Seller on behalf of the Buyer, the Seller is discharged for its indemnification obligations as mentioned above. The audited financial statements of the Company with respect to the fiscal year 2002 (and any monthly statements thereafter) will be prepared and audited consistent with the preparation and audit of the Financial Statements. However, notwithstanding the foregoing, the parties agree that the Seller shall not be responsible for indemnifying or holding harmless the Buyer Indemnified Persons for any losses incurred during the Relevant Period which arise out of any material decision after the Closing by the Company which is not foreseen in the Base Business Plan or which has not been agreed to by the Seller or the majority of its representatives appointed to the Board of the Company. For clarification purposes, the Prague Flood Damage and any action or decision in respect thereof shall not limit Seller's obligations under this Section 10.3(a) but, to the extent any losses otherwise indemnifiable under this Section 10.3(a) are due to Prague Facility Costs and/or Business Interruption Losses paid or reimbursed by Seller under Section 10.3(b) or 10.3(c), Seller shall not be required to indemnify the Buyer Indemnified Persons under this Section 10.3(a).

Notwithstanding the foregoing, the Seller shall indemnify, without limitation, and hold harmless the Buyer Indemnified Persons from and against any loss, liability, damage, cost and expenses whatsoever incurred outside the operation of the Business, in particular in relation to the formation and operation of SCI Groupe Brancher or its conversion into a French Société par Actions Simplifiée and arising from or in connection with any event which is not directly connected with or attributable to the Heatcraft activity and the operation of the factory of Cremieu (France).

(b) Seller agrees to indemnify and hold harmless the Acquired Company in the Czech Republic from and against, and to



---

pay or reimburse the Acquired Company in the Czech Republic for, all Prague Facility Costs except to the extent provided for in this Paragraph (b) and Paragraph (d) of this Section 10.3. In that regard, the management of the Company and of the USJVCo shall prepare a plan for restoration of the Prague Facility, as soon as practicable after Closing, which shall specify all material action steps that would result in Prague Facility Costs being incurred (the "Restoration Plan"). The Restoration Plan shall be submitted to Seller for its review and Seller shall have 10 Business Days to complete its review and to indicate in writing to Buyer any Prague Facility Costs as to which it disputes either the amount or necessity thereof ("Disputed Restoration Items"). Notwithstanding any identification of Disputed Restoration Items, the Managing Director of the Company shall have the authority to authorize the expenditure of Prague Facility Costs (and any borrowing necessary in connection therewith) provided that Seller shall have the continuing right to dispute later its responsibility for any Disputed Restoration Costs pursuant to Paragraph (d) of this Section 10.3. Seller shall also have the right to designate a representative to be present during, and to monitor, the restoration of the Prague Facility. The Company shall provide Seller and Buyer with detailed evidence of all Prague Facility Costs as they are incurred.

(c) Seller shall indemnify and hold harmless the Acquired Company in the Czech Republic from and against, and to pay or reimburse the Acquired Company in the Czech Republic for all Business Interruption Losses, if any, incurred during the Period of Restoration, as defined in Exhibit A (the "Period of Restoration") as herein provided. The Seller and the Buyer shall procure that, as soon as possible after the Period of Restoration and after the amount of the Business Interruption Losses have been mutually agreed upon or finally determined pursuant to Paragraph (d) of this Section 10.3, the Company shall issue to each of the Seller and the Buyer the smallest possible number of the kind of shares in

the Company each of the Seller and Buyer already holds that preserves the share proportions existing at that time. The amount to be paid up on the shares issued shall equal the amount of the Business Interruption Losses incurred by the Company during the Period of Restoration (as herein determined), and the Seller undertakes that it shall pay to the Company the amounts of the contribution on the shares issued thus payable by the Buyer and the Seller. Upon such payment by the Seller on behalf of the Buyer, the Seller is discharged for its indemnification obligations as provided for in this Section 10.3(c).



(d) In addition to specifying all material Prague Facility Costs, the Restoration Plan, as amended from time to time, shall provide an overall plan designed to restore the Prague Facility and the related operations of the Business back to their normal level of production and business activity with all reasonable speed, taking into consideration any reasonable input from Seller and, in connection otherwise, Buyer and the Company shall use their reasonable commercial efforts to mitigate any Business Interruption Losses. Buyer and Seller also agree that they shall jointly give or cause the Board to give the Employment Directive, to the Managing Director of the Prague Facility. If the Seller shall have notified Buyer in writing of any Disputed Restoration Items or if the Seller and Buyer cannot agree on the amount of the Business Interruption Losses, any such disagreement will constitute a Dispute (as defined in the Purchase Agreement) and shall be resolved in accordance with Section 10.15 of the Purchase Agreement unless Seller and Buyer agree in writing upon a different procedure for resolving the Dispute. Any dispute resolution process implemented hereunder shall take into account any generally applicable insurance industry standards for business interruption loss claims; provided, however, that to the extent this Agreement (including Exhibit A) expressly provides that any items of loss or expense are to be included as part of the Business Interruption Losses, it shall take precedence over any such standard that conflicts with this Agreement. The amount of any Disputed Restoration Items that are finally determined as not being Prague Facility Costs for which Seller is 100% responsible under Paragraph (b) of this Section 10.3 shall be treated as a capital expenditure of the Company, for which Buyer and Seller shall be required to contribute to the Company a proportionate amount (based on their ownership percentage of the shares of the Company).

(e) Seller agrees that, during the Period of Restoration, it will loan the Company funds sufficient to provide the working capital and other funds necessary to operate the Acquired Company in the Czech Republic and to carry out the restoration of the Prague Facility. The loans shall be on the terms provided for in the Shareholders Agreement.



(f) Section 10.3 as amended by this Agreement shall supersede any conflicting provisions of the Shareholders Agreement (as defined in the Purchase Agreement)."

5. For clarification purposes, any claim by Buyer for indemnification under the foregoing provisions of Section 10.3(b) and (c), as added to the Purchase Agreement by this Agreement, shall be net of any insurance proceeds paid to any of the Acquired Companies as a result of the Prague Flood Damage, including but not limited to any insurance proceeds paid to an Acquired Company to cover Prague Facility Costs or to cover losses from Business Interruption Losses. Buyer and Seller each agrees, and agrees to cause the Acquired Companies, before and after the Closing to the extent reasonably requested by any interested party, to provide timely notice of claims to any applicable insurance carrier and to cooperate in connection with making appropriate insurance claims based on the Prague Flood Damage.

6. Section 2.2(e) of the Purchase Agreement is hereby amended to provide that the physical inventory that is to be taken at the Prague Facility of the Acquired Companies will be taken as soon as practicable after the Closing Date and on the date when the physical inventory will be taken in connection with complying with the procedures under the insurance policies covering the Prague Facility that may be necessary or advisable in order to verify the amount of, and to make a claim thereunder with respect to, any damaged Inventory due to the Prague Flood Damage.

7. Section 1 of the Purchase Agreement is hereby amended to change the definition of "Effective Time" to provide that it means, with respect to each of the Acquired Companies 12:00:01 A.M. (local time for that Acquired Company) on August 26, 2002 (and not 11:59:59 P.M. on the Closing Date).

8. This Agreement shall supersede any and all terms, conditions and provisions of any lease agreement for the Prague Facility between any Acquired Company and Seller or any Related Persons of Seller that is inconsistent herewith (or that requires any Acquired Company to incur additional costs on account of, or relating to, the Prague Facility Costs or the Prague Food Damage).

9. Section 2.2(e) of the Purchase Agreement and the definition of "Business" in Section 1 of the Purchase Agreement are hereby amended to provide:

(i) that the Assets shall not include any manufacturing equipment from Lennox's Australia facility (i.e., no Kirby Equipment) and, accordingly, no Schedule A shall be provided by Seller nor attached to the Purchase Agreement;

(ii) The Purchase Price shall be reduced by $55,000.

After the Closing, the Seller agrees to discuss with the Company and Buyer at a mutually agreeable time the possible purchase by the Company of any idle heat transfer-related equipment located at Seller's Australia facility that Seller's Australian facility may desire to sell, provided that the terms of any such transaction shall be arm's length and neither party shall be obligated, pursuant to the Purchase Agreement or otherwise, to agree to the purchase or sell any such equipment in Australia.

10. Buyer acknowledges that certain of the JV Transactions contemplated by the Shareholders Agreement and in particular (i) certain of the formal actions described on Attachment E relating to the share ownership transfers of the Acquired Companies in Italy, the Czech Republic and France and (ii) the transfer of the software and licenses used in the Business (the "Software and Licenses") as contemplated by Section 6.1 of the Purchase Agreement, have not been completed in all respects. Without limiting the obligations of the Seller under Sections 6.1 or 11.6 of the Purchase Agreement, Seller agrees to take, or cause to be taken, all actions as soon as practicable after Closing at its expense that are necessary or advisable to complete all of such JV Transactions. To the extent this undertaking refers to the Software and Licenses. Seller further agrees (A) to provide, or cause its Related Persons to provide, the Acquired Companies with continued use of the Software and Licenses without charge (and to indemnify the Acquired Companies against any infringement claim) until such time as they have been provided and (B) to cause the Software and Licenses to be assigned or otherwise provided to the Acquired Companies as contemplated by Section 6.1 of the Purchase Agreement as soon as practicable after Closing.

11. Seller and Buyer agree that the last two pages of the Schedules to the Purchase Agreement originally delivered to Buyer have been deleted and are no longer a part of the Purchase Agreement.

12. Except as provided for in this Agreement, all of the provisions of the Purchase Agreement shall remain in full force and effect.

**[SIGNATURES APPEAR ON NEXT PAGE]**



IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Seller:
LGL HOLLAND B.V.

By:_____
Name:
Title:

By:_____
Name:
Title:

Guarantor:
LGL EUROPE HOLDING CO.

By:_____
Name:
Title:

Buyer:
OUTOKUMPU COPPER PRODUCTS OY

By:_____
Name:
Title:

**AMENDMENT NO. 2 TO SHARE PURCHASE AGREEMENT**

THIS AMENDMENT No. 2 (the "Agreement") is made as of August 26, 2002 by and among OUTOKUMPU COPPER PRODUCTS OY, a Finnish company ("Buyer") and LGL Holland B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands and having its official seat (statutaire zetel) in Amsterdam, The Netherlands and its registered office at Watergoorweg 87, 3861MA Nijkerk, The Netherlands and registered with the commercial register under 32069974 ("Seller") and LGL Europe Holdings Co. (the "Guarantor").

Buyer, Seller and the Guarantor, intending to be legally bound and in consideration of the mutual promises herein contained, agree as follows:

1. Reference is made to a Share Purchase Agreement dated as of July 18, 2002 by and among Buyer, Seller and the Guarantor, as amended (the "Purchase Agreement"). Any specially capitalized terms not otherwise defined in this Agreement shall have the same meaning as set forth in the Purchase Agreement. Buyer, Seller and the Guarantor desire to amend the Purchase Agreement as set forth in this Agreement.

2. Buyer acknowledges that certain of the JV Transactions contemplated by the Shareholders Agreement and in particular (i) certain of the formal actions described on Attachment E relating to the share ownership transfers of the Acquired Companies in Italy, the Czech Republic and France as contemplated by Section 6.1 of the Purchase Agreement, have not been completed in all respects. Without limiting the obligations of the Seller under Sections 6.1 or 11.6 of the Purchase Agreement, Seller agrees to take, or cause to be taken, all actions at its expense that are necessary or advisable to complete all of such JV Transactions.

3. Where the Seller has not completed a JV Transaction prior to Closing, until the respective JV Transaction with respect to an Acquired Company has been completed, the Seller agrees:

(a) that the respective Acquired Company shall be operated and managed in a manner in all respects consistent with the management, governance, funding and related provisions of the Shareholders Agreement as though such JV Transaction had been completed ("Shareholder Agreement Principles") and otherwise in the Ordinary Course of Business;

(b) to manage such Acquired Company in cooperation with the Buyer and in accordance with the Shareholder Agreement Principles; and

(c) to agree with the Buyer and act on the Buyer's instructions with respect to (i) the naming of any managers, executives, board members or legal representatives of the respective Acquired Company, and (ii) any votes of such company's shareholders or members, as the case may be, all consistent with the Shareholder Agreement Principles.

4. Notwithstanding, and in addition to, any other rights that the Buyer may have against the Seller as a result of the Seller's failure to consummate any of the

---

JV Transactions, the Seller shall indemnify and hold harmless the Buyer, from and against any loss, liability, damage, cost and expenses (including legal costs and expenses) whatsoever incurred resulting from, arising out of, relating to or caused by the failure of any JV Transaction to be consummated as contemplated in the Purchase Agreement and Shareholders Agreement.

The foregoing indemnification provisions are in addition to, and not in derogation of, any statutory, equitable, or common law remedy the Buyer may have for breach of representation, warranty, or covenant.

5. Section 2.2 of the Purchase Agreement is hereby amended to provide that $1,500,000 of the Preliminary Purchase Price (the "Withhold Amount") shall not be paid at Closing and shall be withheld by Buyer until (i) the Share Purchase Agreement between LGL Holland B.V. and Outokumpu Heatcraft B.V. evidencing the transfer of the shares of the Acquired Company in the Czech Republic (Heatcraft Prague, s.r.o) to Outokumpu Heatcraft B.V. has been delivered to Heatcraft Prague, s.r.o. and (ii) the Commercial Court's decision registering the transfer of the ownership interest enters into legal force (in Czech *nabude právní moci*) (the "Czech Share Transfer"). The Withhold amount will bear interest at a per annum rate equal to the Three Month London Interbank Offered Rates ("LIBOR") for U.S. Dollars from the Effective Date plus eighty (80) basis points. Buyer shall pay the Withhold Amount plus accrued interest to Seller within two Business Days after receipt from Seller of evidence reasonably satisfactory to Buyer of the completion of the Czech Share Transfer.

6. Except as provided for in this Agreement, all of the provisions of the Purchase Agreement shall remain in full force and effect.

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

Seller:
LGL HOLLAND B.V.

By: _____
Name:
Title:

By:_____
Name:
Title:

Guarantor:
LGL EUROPE HOLDING CO.

By:_____
Name:
Title:

Buyer:
OUTOKUMPU COPPER PRODUCTS OY

By:_____
Name:
Title:

JOINT VENTURE AND MEMBERS' AGREEMENT

THIS AGREEMENT is made on July 18, 2002, between LENNOX INTERNATIONAL, INC., a Delaware corporation ("LII"); OUTOKUMPU COPPER PRODUCTS OY a Finnish limited company ("OCP"); OUTOKUMPU COPPER HOLDINGS, INC., a Delaware corporation and a wholly-owned subsidiary of OCP ("OCHI"); and HEATCRAFT HEAT TRANSFER LLC (to be re-named OUTOKUMPU HEATCRAFT USA LLC), a Delaware limited liability company (the "Company").

RECITALS

WHEREAS, LII, OCP and OCHI wish to establish a mutually beneficial long term business association based on mutual understanding, cooperation and exchange of information, with LII and OCHI becoming Members (as defined below) in the Company to carry on the Business (as defined below); and

WHEREAS, the Members have agreed to enter into this Agreement for the purposes of recording the terms and conditions on which they will subscribe for interests in and provide funding for the Company, regulating their relationship with each other so long as they are Members in the Company and regulating, as between themselves, certain aspects of the affairs of the Company;

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the parties agree as follows:

ARTICLE 1
INTERPRETATION

Section 1.1 The following defined terms used in this Agreement have the respective meanings specified below.

(a) Affiliate. "Affiliate" means, when used with respect to a particular Person, (i) any Person directly or indirectly controlling, controlled by or under common control with, that Person, (ii) a Person owning or controlling fifty percent (50%) or more of the outstanding voting securities of that Person and (iii) any officer, director, member, manager, partner or employee of that Person.

(b) Agreed Form. "Agreed Form" means, in relation to any document, the form of that document which has been agreed upon by the parties hereto and initialed for the purpose of identification by LII's Attorneys and OCHI's Attorneys with such changes as the Members may agree upon in writing before the Purchase Closing.

(c) Agreement. "Agreement" means this Agreement, together with the Exhibits and Schedules hereto, as amended from time to time in accordance herewith.

(d) Bankruptcy. "Bankruptcy" of a Person means (a) the Person's filing of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under the laws or regulations of any Governmental Body, including but not limited to Title 11 of the United States Code or any other federal or state insolvency law, (b) the making by a Person of any assignment for the benefit of its creditors or (c) the expiration of 90 days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for the assets of a Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of a Person's debts under any other federal or state insolvency law, provided that the same has not been vacated, set aside or stayed within such 90-day period or immediately upon a Person's filing an answer consenting to or acquiescing in any such petition.

(e) Base Business Plan. "Base Business Plan" means the initial business plan of the Company attached as Attachment A.

(f) Board. "Board" means the board of Representatives of the Company as constituted from time to time pursuant to the LLC Agreement.

(g) Bona fide third party. "Bona fide third party" means a Person which is completely independent from the Company and each Member by reference to equity ownership, management control, strategic alliance or other relationship.

(h) Business. "Business" means, subject to clause (iv) below:

(i) LII's heat transfer business in North America (including its manufacturing operations in Juarez in Mexico), France, Italy, the Czech Republic and Asia Pacific, which includes) its original equipment manufacturing ("OEM") heat transfer division located in Grenada, Mississippi, its commercial coil heat transfer operation located in Grenada, Mississippi, its Livernois operations in Dearborn, Michigan, its heat transfer operations located in Cremieu, France and its heat transfer operations located in Prague, the Czech Republic; and its heat transfer operations in Torreglia, Italy. The Business includes all plant, property, equipment and working capital presently used or useable in the designated facilities; those licenses, patent rights, trademarks and trade names used in the Business (including Heatcraft), know-how, and other commercial or proprietary information associated and/or necessary to conduct the Business as presently conducted and foreseen, including all agreements with trade representatives, agents, distributors engaged in marketing activities related to the Business, with products currently manufactured by the Business; and the real estate (including all rights to leaseholds) wherein the Business conducts its manufacturing, distribution or administrative functions in the designated facilities (collectively "Assets").

(ii) LII's companies that own and operate the Assets are: Heatcraft Inc. (only the heat transfer operations); Heatcraft Heat Transfer Inc.; Heatcraft Advanced Technologies Inc.; LGL France S.A. (only the heat transfer operations located at Cremieu, France and SCI Groupe Brancher); Heatcraft Prague (formerly known as Friga-Coil) s.r.o.; Heatcraft Italia S.R.L; and Livernois Engineering Co. or their successors as contemplated by the Share Purchase Agreement and European Share Purchase Agreement.

(iii) With respect to Asia Pacific, (A) the Assets include certain manufacturing equipment located at LII's Australian facility as contemplated by the European Share Purchase Agreement and (B) with respect to the Singapore and Shanghai offices, the Company will have the right to hire those employees of those offices who have been primarily involved in the heat transfer business.

(iv) "Business" does not include (A) the heat transfer operations which are integrated into LII's other businesses, including its HVAC/R operations in North America, Europe, Australia, Mexico, South America and other locations consisting of the following companies: Lennox Industries Inc.; Armstrong Air Conditioning Inc.; Advanced Distributor Products LLC; Excel Comfort Systems Inc.; Allied Air Enterprises Inc.; Heatcraft Refrigeration Products; and Heatcraft Australia Pty Ltd. (all of the heat transfer operations except as specified above), (B) LII's interest in Frigus-Bohn S.A. de C.V. or (C) LII's interest in its joint venture in Brazil, Heatcraft do Brasil Ltda.

(i) Business Day. "Business Day" means a day (other than a Saturday or Sunday) on which banks in both New York, New York (USA) and Helsinki,Finland are open for general business.

(j) Class A Member. "Class A Member" means OCHI and any permitted assignee of OCHI.

(k) Class B Member. "Class B Member" means LII and any permitted assignee of LII.

(l) Closing Date. "Closing Date" is defined in Section 5.1.

(m) Copper Tube Supply Purchase Agreement - OCP/Company. "Copper Tube Supply Purchase Agreement - OCP/Company" means an agreement under which OCP or its Related Persons will supply copper tubing to the Company and EU JVCo, in the form attached hereto as Attachment B.

(n) Copper Tube Supply Purchase Agreement - OCP/LII. "Copper Tube Supply Purchase Agreement - OCP/LII" means an agreement under which OCP or its Related Persons will supply copper tubing to LII and its Related Persons, in the form attached hereto as Attachment C.

(o) European Share Purchase Agreement. "European Share Purchase Agreement" means a share purchase agreement pursuant to which OCP (or its Related Persons) will acquire 55% of the interest in all of the shares or other equity interests of Outokumpu Heatcraft B.V.

(p) Fiscal Year. “Fiscal Year” means the calendar year.

(q) GAAP. “GAAP” means generally accepted accounting principles as in effect in the United States of America from time to time.

(r) Governmental Body. “Governmental Body” means any (i) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign, or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, commission or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

(s) HSR Act. “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or any successor law, and regulations and rules issued pursuant to the HSR Act or any successor law.

(t) JV Transactions. “JV Transactions” means the following transactions and agreements between the parties and their Affiliates:

(i) the Share Purchase Agreement, and the completion of the transactions provided for therein and in Part 1 of Attachment E;
(ii) the Tech JV Transactions;
(iii) the Non-US Transactions;
(iv) the Shared Services Agreement;
(v) the Product Supply Agreement;
(vi) the Copper Tube Supply Purchase Agreement - OCP/LII;
(vii) the Copper Tube Supply Purchase Agreement - OCP/Company; and
(viii) a license agreement between the Company as licensor and LII as licensee regarding the HEATCRAFT mark and also covering a license by the Company to LII of one patent.

(u) Joint Technology Development Agreement. “Joint Technology Development Agreement” means an agreement among OCP (or its Related Persons), LII, the Company and Tech LLC relating to development activities for heat transfer products, processes and technologies, in the form attached hereto as Attachment F.



(v) LLC Agreement. “LLC Agreement” means the Restated Limited Liability Company Agreement of the Company to be entered into by the Members on the Closing Date, in the form attached as Attachment G.

(w) LII's Attorneys. “LII’s Attorneys” means Carl E. Edwards, Jr., Esq.

(x) Members. “Members” means LII and OCHI and each Person who or which may hereafter become a member of the Company.

(y) Membership Interests. “Membership Interests” means a Member’s aggregate rights in the Company, including the Member’s (i) right to share in the profits and losses of, and the right to receive distributions and allocations from, the Company and (ii) right to vote in all matters coming before the Company.

(z) Mexican Joint Venture Agreements. “Mexican Joint Venture Agreements” means (i) a letter agreement dated on or about March 1, 2002 between Heatcraft, Inc. and Corporacion Frigus - Therme S.A. de C.V. entitled “Agreement for Marketing Strategy for the Joint Venture”, Frigus Bohn S.A. de C.V. and (ii) a letter agreement dated on or about March 1, 2002 between Heatcraft, Inc. and Frigus-Bohn S.A. de C.V. entitled “Letter of Agreement.”

(aa) Non-US Transactions. “Non-US Transactions” means:

(i) the completion of the pre-closing actions by LII and its Affiliates described in Part 2 of Attachment E;

(ii) the formation of Outokumpu Heatcraft B.V. (“EU JVCo”) and the execution and delivery of the Shareholders Agreement and the European Share Purchase Agreement by and between LGL Holland B.V. and OCP with respect to EU JVCo and the completion of transactions provided for therein; and

(iii) the assignment of the Mexican Joint Venture Agreements to the Company;

(iv) the execution and delivery of an agreement between Heatcraft Australia Pty. Ltd. and the EUJVCo (or its Affiliate) providing for certain marketing and supply arrangements relative to Australia and New Zealand (in substantially the form attached hereto as Attachment Q (the “Asia Pacific Agreement”)); and

(v) the execution and delivery of an agreement between Heatcraft do Brasil Ltda. and the Company (or its Affiliate) providing for certain marketing and supply arrangements relative to South and Central America (in substantially the form attached hereto as Attachment Q-1 (the “South America Agreement”)).



(bb) OCHI Interests. “OCHI Interests” means the Membership Interests of the Company to be purchased by OCHI from LII pursuant to the Share Purchase Agreement.

(cc) OCHI’s Attorneys. “OCHI’s Attorneys” means Hodgson Russ LLP.

(dd) Organizational Documents. “Organizational Documents” means in the case of the Company, its Certificate of Formation and the LLC Agreement, as amended from time to time, and in the case of any other Person (i) the articles or certificate of incorporation and the bylaws of a corporation; (ii) the partnership agreement and any statement of partnership of a general partnership; (iii) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (iv) the certificate of formation and limited liability company agreement or operating agreement of a limited liability company; (v) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person and (vi) any amendment to any of the foregoing.

(ee) Person. “Person” means any individual, corporation, partnership, limited liability company, partnership, joint venture, unincorporated association, trust, Governmental Body or other entity.

(ff) Product Supply Agreement. “Product Supply Agreement” means an agreement under which the Company, the EU JVCo and their Affiliates will supply products to LII and its Affiliates, in the form attached hereto as Attachment H.

(gg) Purchase Closing. “Purchase Closing” means the date of the consummation of the transfer of the OCHI Interests to OCHI in accordance with the Share Purchase Agreement.

(hh) Shared Services Agreement. “Shared Services Agreement” means an agreement between the Company and LII in the form attached hereto as Attachment I pursuant to which LII and/or its Related Persons shall provide certain transition services to the Company, EU JVCo and the other Acquired Companies.

(ii) Share Purchase Agreement. “Share Purchase Agreement” means the Share Purchase Agreement entered into by LII, OCP, OCHI and the Company on the date of this Agreement providing for the sale of the OCHI Interests by LII to OCHI.

(jj) Shareholders' Agreement. “Shareholders’ Agreement” means the Shareholders' Agreement relating to the operation of EU JV Co.

(kk) Tech JV Transactions. “Tech JV Transactions” means the execution and delivery of (i) the Joint Venture and Members’ Agreement between LII and OCHI relating to Advanced Heat Transfer LLC, a Delaware limited liability company (“Tech LLC”), (ii) the Limited Liability Company Agreement for Tech LLC between LII and OCHI (Attachment J) and (iii)

the Joint Technology Development Agreement, and the completion of all of the transactions provided for in those agreements.



(ll) Transfer. "Transfer" means, when used as a noun, any gift, sale, hypothecation, pledge, assignment, attachment or other transfer and, when used as a verb, to give, sell, hypothecate, pledge, assign, attach or otherwise transfer.

Section 1.2 Accounting Terms. Accounting terms used in this Agreement and not otherwise defined herein have the meanings ascribed thereto under GAAP.

Section 1.3 Gender and Number. Unless the context clearly indicates to the contrary, words singular or plural in number will be deemed to include the other, and pronouns having a neuter, masculine or feminine gender will be deemed to include and refer to any and all genders. Whenever the terms "herein," "hereunder" or words of like import are used in this Agreement, the intended reference is to the entire Agreement and not to the clause, sentence, section or subsection in which that word appears. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

Section 1.4 Headings. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Article" or "Section" refer to the corresponding Article or Section of this Agreement. All references to "Attachment" refer to the corresponding Attachment attached to and made a part of this Agreement.

Section 1.5 Drafting. This Agreement represents the culmination of extensive and arms length negotiations among the parties. No party will be deemed the drafter of this Agreement, and this Agreement will not be construed for or against any party by reason of a particular party being deemed the drafter.

Section 1.6 Dollars. All references in this Agreement to "Dollars" or "$" means and refers to United States dollars.

## ARTICLE 2
## CONDITIONS PRECEDENT

Section 2.1 Conditions. Subject to Section 2.4, the obligations of the parties under this Agreement are subject to satisfaction of the following conditions:

(a) Subscription. LII shall have (i) subscribed for one hundred percent (100%) of the Membership Interests of the Company, and (ii) paid to the Company the cash sum of One Hundred Dollars ($100) and contributed the assets and property provided for in the LLC Agreement to the capital of the Company. Upon the Company's receipt of such consideration, the Company shall have issued one hundred percent (100%) of its Membership Interests credited as fully paid to LII and entered LII's name in the register of Members as the holder of those Membership Interests.

(b) Approvals. LII and OCHI shall have filed all necessary notices with, and shall have obtained on terms and conditions satisfactory to LII and OCHI all necessary approvals or consents from, any lender, lessor or other Person and any Governmental Body that LII or



OCHI may deem necessary in connection with the transactions contemplated by this Agreement and the JV Transactions, including under the HSR Act, Council Regulation (EEC) No. 4064/89 or similar laws within Finland, the Czech Republic, France and Italy.

(c) LII and Heatcraft Inc. LII shall have caused the transfer to the Company or EU JVCo, or a 100% subsidiary thereof, of all assets, rights and licenses relating to the Business and owned or used by Heatcraft Inc. and any other Affiliate of LII, including taking the actions and steps set forth on Attachment E.

(d) JV Transactions. LII and OCHI shall have completed the transactions provided for in the Share Purchase Agreement, OCHI shall have acquired the OCHI Interests from LII thereunder, and all of the other JV Transactions shall have been completed.

(e) LLC Agreement. LII and OCHI shall have executed and delivered the LLC Agreement and the other Organization Documents shall be in Agreed Form.

(f) Litigation. There shall be no pending or threatened litigation of a material nature regarding the Business, its assets, the Company, this Agreement or the agreements contemplated by the JV Transactions.

(g) No Material Adverse Change. There shall not have occurred any change in the assets, operations and/or the financial conditions or prospects of the Business or the Company which constitutes a Material Adverse Change, as defined in the Share Purchase Agreement.

Section 2.2 Waiver. Each Member may waive all or any of the conditions set forth in Section 2.1 in whole or in part at any time by notice in writing to the other Member, provided that both parties must waive each condition in order for the waiver to be effective.

Section 2.3 Best Efforts; Target Closing Date.

(a) The parties shall use their reasonable best efforts to ensure the conditions set forth in Section 2.1 and in the Share Purchase Agreement are satisfied on or before September 30, 2002 (the "Target Date"), as such date may be extended by mutual written agreement of the parties or pursuant to Paragraph (b) of this Section 2.3.

(b) If any Governmental Body with jurisdiction over the enforcement of any law or regulation intended to prohibit or regulate mergers, restraints of trade or monopolization, including the HSR Act ("Competition Laws"), requests additional information relating to the JV Transactions or the parties and/or if any waiting period has not expired or any clearance or approval under any such Competition Law has not been satisfied or obtained by the Target Date, the Target Date will automatically be extended for such period of time as may be reasonably necessary for the parties to have complied with the Competition Laws and all such requests for information thereunder to the extent applicable to the JV Transactions, but in no event shall the Target Date be extended pursuant to this Paragraph (b) beyond December 31, 2002.



Section 2.4 No Liability. If the conditions in Section 2.1 are not fulfilled or waived on or before the Target Date, as extended pursuant to Section 2.3, and this Agreement is terminated as provided for in Section 13.2, none of the parties will have any rights or obligations under this Agreement (so that no party will have any claim against the others for costs, damages, compensation or otherwise) except those rights or obligations in respect of any previous breach of this Agreement.

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of LII. LII hereby represents and warrants to the Company, OCP and OCHI that:

(a) Authority. LII is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. LII has full power and authority under its Organizational Documents to execute, deliver and perform this Agreement and to consummate the JV Transactions. The execution, delivery and performance by LII of this Agreement and the consummation by LII and/or its Affiliates of the JV Transactions have been duly authorized by all necessary action.

(b) Binding Obligation. This Agreement has been duly and validly executed and delivered by LII and constitutes the binding obligation of LII enforceable against LII in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles.

(c) No Violation. The execution, delivery and performance by LII of this Agreement and the consummation by LII and/or its Affiliates of the JV Transactions will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of law, statute, rule or regulation to which LII or any of its Affiliates is subject, (ii) violate any order, judgment, or

decree applicable to LII or any of its Affiliates or (iii) conflict with, or result in a breach or default under, any term or condition of its Organizational Documents of LII or its Affiliates or any agreement or other instrument to which LII is a party or by which any of them is bound.

Section 3.2 Representations and Warranties of the Company. The Company hereby represents and warrants to LII, OCP and OCHI that:

(a) Authority. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has full power and authority under its Organizational Documents to execute, deliver and perform this Agreement and to consummate the JV Transactions. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the JV Transactions have been duly authorized by all necessary action.



(b) Binding Obligation. This Agreement has been duly and validly executed and delivered by the Company and constitutes the binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles.

(c) No Violation. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the JV Transactions will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of law, statute, rule or regulation to which the Company is subject, (ii) violate any order, judgment or decree applicable to the Company or (iii) conflict with, or result in a breach or default under, any term or condition of its Organizational Documents or any agreement or other instrument to which the Company is a party or by which it is bound.

Section 3.3 Representations and Warranties of OCP and OCHI. OCP and OCHI each hereby represent and warrant to the Company and LII that:

(a) Authority. Each of OCP and OCHI is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Each of OCP and OCHI has full power and authority under its Organizational Document to execute, deliver and perform this Agreement and to consummate the JV Transactions. The execution, delivery and performance by OCP and OCHI and/or their Affiliates of this Agreement and the consummation of the JV Transactions have been duly authorized by all necessary action.

(b) Binding Obligation. This Agreement has been duly and validly executed and delivered by OCP and OCHI and constitutes the binding obligation thereof enforceable against OCP and OCHI in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles.

(c) No Violation. The execution, delivery and performance by OCP and OCHI of this Agreement and the consummation by OCP, OCHI and/or their Affiliates of the JV Transactions will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of law, statute, rule or regulation to which OCP or OCHI or any of their Affiliates is subject, (ii) violate any order, judgment or decree applicable to OCP, OCHI or any of their Affiliates or (iii) conflict with, or result in a breach or default under, any term or condition of their respective Organizational Documents or any agreement or other instrument to which OCP, OCHI or any of their Affiliates is a party or by which any of them is bound.

## ARTICLE 4
## BUSINESS OF THE COMPANY

Section 4.1 Conduct of Business. Except as otherwise required by law or by this Agreement, the Business and the proceedings of the Company will be conducted in such a way as



to maximize profit available for distribution to the Members to the extent consistent with good business practice.

Section 4.2 Member Dealings with the Company. The Company shall deal with the Members and their Affiliates on an arm's length basis. The Members shall endeavor to ensure that any existing or potential conflicts of interest are brought to the attention of the Company at the earliest opportunity so that they can be dealt with in accordance with this Agreement and the LLC Agreement. The Members acknowledge and agree that the JV Transactions and any actions arising thereunder are, or for purposes of this Agreement will be deemed to be, arm's length.

Section 4.3 Continuing Obligations. The parties agree that, for so long as LII and OCHI are Members, the parties shall cause compliance with the obligations set forth in Attachment L.

Section 4.4 Conflicting Documents. The Members agree that, if any provisions of the Organizational Documents of the Company at any time conflict with any provisions of this Agreement, the provisions of this Agreement will prevail and the Members shall exercise all powers and rights available to them to cause the amendment of the Company's Organizational Documents to the extent necessary to permit the Company and its affairs to be regulated as provided in this Agreement.

## ARTICLE 5
## CLOSING DATE

Section 5.1 Closing Date. The Closing Date will be the date three Business Days after the satisfaction or waiver of the conditions in Section 2.1(b) at the offices of LII, Richardson, Texas, or at such other date and time as the parties may agree.

Section 5.2 Closing. On or immediately prior to the Closing Date:

(a) LII's Voting. LII shall vote its Membership Interests and take all other action in the Agreed Form to effect the following actions:

(i) the Certificate of Formation of the Company dated December 20, 2000 shall not have been amended except to change the name as contemplated hereby; and

(ii) the LLC Agreement shall be adopted.

(b) Closing Documents. Subject to satisfaction of all of the conditions set forth in Section 2.1, LII and OCHI shall, and shall cause their Affiliates to, execute and deliver all instruments, agreements, certificates and other documents, and take all other actions necessary or appropriate, to complete the JV Transactions including the transactions contemplated by this Agreement and the Share Purchase Agreement. Upon OCHI's payment of the consideration set forth in the Share Purchase Agreement, LII shall transfer to OCHI a fifty-five percent (55%) Membership Interest in the Company and the Company shall issue this Membership Interest



credited as fully paid to OCHI and enter OCHI's name in the register of Members of the Company as the holder of this Membership Interest.

(c) Members' Meeting. A meeting of the Members shall be held, at which it shall be resolved that:

(i) the Representatives be appointed in accordance with the LLC Agreement, as follows: The initial Class A Representatives and Class B Representatives will be as specified in the LLC Agreement;

(ii) the Chair, the President (CEO), Chief Financial Officer, General Manager for North American Operations and Managing Director for European Operations of the Company be appointed in accordance with the LLC Agreement, as follows: the Chair by OCHI; President (CEO) by OCHI; Chief Financial Officer by OCHI; General Manager for North American Operations by LII; and Managing Director for European Operations by LII.

(iii) PriceWaterhouseCoopers LLC be appointed as auditors of the Company;

(iv) the Base Business Plan be adopted; and

(v) agreements for financing lines of credit to meet anticipated cash requirements set out in the Base Business Plan be entered into or authorized.

Section 5.3 Receipt. The receipt of any party's attorney for any sum or document to be paid or delivered to that party will discharge the obligor's obligation to pay or deliver it to that party.

Section 5.4 No Partnership. Nothing in this Agreement will be deemed to constitute a partnership between any of the parties nor constitute any party the agent of any other party for any purpose.

Section 5.5 No Obligation. No party will be obliged to complete any of the transactions or do any of the things referred to in this Article unless all other transactions and things are completed in accordance with this Article.

ARTICLE 6
RESERVED MATTERS

The Members agree that, except as expressly provided for in the Base Business Plan, the Company shall not take any of the actions listed in (a) Attachment M without the approval of both the Class A Member and the Class B Member (the "Major Decisions") and (b) Attachment N without the approval of a majority of the Representatives present at a meeting of the Board.



ARTICLE 7
FUNDING

Section 7.1 Funding Needs.

(a) Bank Loans. The Members shall (i) use all reasonable efforts to arrange banking facilities at the most favorable commercial rates then available for any borrowing required by, or advisable in connection with, the Base Business Plan and (ii) cause the Company to grant a security interest in its assets in connection with such financing.

(b) Member Loans and Guaranties. In lieu of bank or other institutional financing, the Members may agree, but shall not be required, to lend funds to the Company (and/or the EU JVCo) on terms to be mutually agreed upon. No Member will be obligated to guaranty any bank or other indebtedness of the Company or the EU JVCo without its prior written consent. Notwithstanding the foregoing, if either Member does not make any additional capital contribution required by a Capital Call Notice (as defined in and delivered in accordance with the LCC Agreement), the other Member may elect, in lieu of making all or some of its own and the non-contributing Member's additional capital contributions pursuant to such Capital Call Notice, to loan some or all of the amount of the additional capital contributions required under such Capital Call Notice to the Company at an interest rate per year equal to one year USD interest rate (without margin) as indicated by Reuters Libor O1 Screen (British Bankers Association) plus the margin of three percent (3%).

Section 7.2 Capital Call. In the event that the Board or the Members determine (subject to the provisions of Article 6) to further finance the Company by way of an increase in the capital of the Company, the Board or the Members, as the case may be, shall request that the Members contribute the additional capital in accordance with the LLC Agreement.

ARTICLE 8
DIVIDEND POLICY

Section 8.1 Distributions.

(a) Tax Distributions. With respect to each Fiscal Year, the Company and the EU JVCo shall make distributions to each Member on a quarterly basis out of funds legally available for distribution in an amount equal to the product of (A) an amount equal to the Taxable Income (as hereinafter defined) of the Company allocated to such Member under the LLC Agreement), multiplied by (B) the highest marginal corporate income tax rate which may be imposed under the Code, and, in addition, an amount similarly determined for state taxes using an assumed effective tax rate of five percent (5%) ("Tax Distributions").

(b) After-Tax Income. The Board will determine with respect to each Fiscal Year the After-Tax Income (as hereinafter defined) of the Company and the EU JVCo and, unless (i) the Base Business Plan requires the expenditure of available funds or (ii) the Company or the EU JVCo is legally prohibited from doing so, the Company and the EU JVCo shall make a



distribution to the Members of an aggregate amount equal to thirty percent (30%) of the After-Tax Income for such Fiscal Year.

(c) For purposes hereof, (i) "After-Tax Income" means in respect of any Fiscal Year the Taxable Income (as hereinafter defined) of the Company and/or the EU JVCo reduced by the amount of the aggregate Tax Distributions with respect to that Fiscal Year; and (ii) "Taxable Income" for any Fiscal Year or other period means the Company's and the EU JVCo's taxable income for such Fiscal Year or period determined in accordance with applicable law including, with respect to the Company, Section 703(a) of the Code included for this purpose all items of income, gain, loss or deduction required to be stated separately by Section 703(a)(1) of the Code.

Section 8.2 Dividends by Subsidiaries. To the extent that the Company or the EU JVCo is restricted from paying a dividend under Section 8.1, but a subsidiary of the Company or the EU JVCo has available distributable reserves, the Company and the EU JVCo shall take all reasonable steps to maximize profits available for distribution by the Company and the EU JVCo including causing the payment of dividends by a subsidiary to enable the Company and the EU JVCo to pay the dividends referred to in Section 8.1.

Section 8.3 Timing. The Company and the EU JVCo each shall, to the extent permitted by law, pay dividends within 30 days after the dates of the annual Board meetings at which their audited financial statements for the preceding Fiscal Year are to be finalized.

Section 8.4 Determination of Profits Available. In deciding whether in respect of any Fiscal Year the Company and/or the EU JVCo has profits available for distribution, the Company shall ask its auditors to report whether any such profits are available and, if so, the amount of those profits. In giving this report, the Company's auditors shall act as experts and not as arbitrators and their determination, in the absence of manifest error, will be final and binding on the parties. The Company and the EU JVCo shall bear costs of the auditors incurred under this Section.

ARTICLE 9
PROTECTIVE COVENANTS

Section 9.1 Certain Competition Matters.

(a) Each of the Members covenants, except as provided for in this Section 9.1, that for so long as it or any of its Affiliates remains a member of the Company and for a period of four (4) years thereafter (the "Restricted Period"), it shall not and shall ensure that none of its Affiliates shall, either directly or indirectly, through an agent or otherwise:

(i) engage in any business operating anywhere in the world which is competitive with the Business;



(ii) induce or attempt to induce any supplier or customer of the Company or its Affiliates to terminate its business relationships with the Company or its subsidiaries; or

(iii) induce, or attempt to induce, any director, officer or key employee of the Company to leave the employment of the Company or its Affiliates.

(b) For clarification purposes, the Members agree that (i) the sale to any Person by OCP or any of its Affiliates of copper tube, including "ACR tube" and chiller tube, will not constitute a violation by the Class A Member of Section 9.1(a) and (ii) the sale to any Person by LII or any of its Affiliates of heating, ventilating, air conditioning and refrigeration ("HVAC/R") products will not constitute a violation by the Class B Member of Section 9.1(a).

(c) For clarification purposes, the Members agree that LII can continue to own its interests in the Mexican joint venture consisting of its ownership of 50% of Frigus-Bohn S.A. de C.V. ("Mex-JV"), and its joint venture company in Brazil, Heatcraft do Brasil Ltda. ("Brazil-JV") subject to subsections (d), (e), (f) and (g) below; Heatcraft Australia Pty Ltd. can continue to manufacture and sell heat transfer products in Australia and New Zealand; and LII can continue to manufacture heat transfer surfaces for internal consumption in its HVAC/R products.

(d) LII's ownership of its interest in the Mex-JV will not be considered to be a violation of this Section 9.1 provided that LII conducts its activities as a partner in Mex-JV as follows:

(i) LII agrees to conduct its activities, including voting of its shares in Mex-JV, making any management decisions or taking any other action in Mex-JV which it has the power to take in a way that will not violate the terms of the Mexican Joint Venture Agreements, the Share Purchase Agreement or this Agreement and to take no action which will have an adverse impact on the Company.

(ii) The Company agrees not to knowingly take any actions that would cause LII to violate the Mexican Joint Venture Agreements or its other joint venture agreement relating to Mex-JV.

(iii) With respect to any and all actions of Mex-JV that affect the Business of the Company, the Class B Member agrees to allow the Company to participate in any discussions relative thereto and represent the Company's interests in such actions.

(e) Brazil-JV's activities involving the manufacture, sale and distribution of heat transfer surfaces in South and Central America will not be considered to be a violation of this Section 9.1 provided that it is in compliance with the South America Agreement.

(f) The heat transfer activities of Heatcraft Australia Pty Ltd. within Australia and New Zealand involving the manufacture, sale and distribution of heat transfer surfaces within



Australia and New Zealand will not be considered to be a violation of this Section 9.1 provided that it is in compliance with the Asia Pacific Agreement.

(g) The obligations restricting the Company in subsections (c) through (f) above will terminate when LII is no longer a member of the Company. The obligations restricting LII, Heatcraft Australia Pty Ltd., and Brazil-JV and Affiliates in subsections (c), (e) and (f) above will terminate when LII is no longer a member of the Company but those in subsection (d) for both LII and the Company will continue for three (3) years after such termination.

(h) With respect to (i) any company that the Class B member proposes to acquire or acquires after Closing that includes a heat transfer business or (ii) any company that the Company proposes to acquire or acquires after Closing that includes any HVAC/R business ("After Acquired Company") during the Restricted Period: (A) the other party shall have exclusive negotiation rights to purchase the assets of such After Acquired Company that competes with the Business or the HVAC/R business of the Class B member, as applicable ("Overlapping Business"), but (B) if such other party does not acquire such Overlapping Business of the After Acquired Company pursuant to such negotiations, then the Class B Member or the Company (with the Class B Member not voting), as the case may be, may proceed to complete such acquisition subject to the following conditions: (x) if the Class B member is the acquiring party of an Overlapping Business, it shall not have the right to use the Heatcraft name or mark with respect to the Overlapping Business, but may use it in its refrigeration business; and (y) the acquiring party shall sell the products of such Overlapping Business through the other party (the Class B Member if it is HVAC/R and the Company if it is heat transfer products) which shall have exclusive distribution rights during the Restricted Period on commercially reasonable terms to be negotiated in good faith.

(i) So long as the Class B Member is a Member of the Company, the Members and the Company agree to review and discuss from time to time after Closing whether the Company should acquire the heat transfer business of Mex-JV and Brazil-JV.

(j) So long as LII is a Member of the Company, the Company will not engage in the design, manufacture or sale of equipment and accessory end use products in the HVAC/R industry.

Section 9.2 Confidential Information. Each party covenants that it and its Affiliates shall:

(a) not (directly or indirectly, through an agent or otherwise) use, copy or disclose to any other Person any information of a trade secret, proprietary or confidential nature relating to the business or affairs of any other party or its Affiliates;

(b) not (directly or indirectly, through an agent or otherwise) use or allow to be used any trade name used by the Company or its subsidiaries or any other name intended or likely to be confused with such a trade name; and



(c) use all reasonable efforts to ensure that any information of a trade secret, proprietary or confidential nature relating to any other party or its Affiliates will be treated as confidential and will not be disclosed to any other Person.

Section 9.3 Exceptions. Section 9.2 does not apply to information which:

(a) is now or hereafter becomes in the public domain other than as a result of a disclosure in breach of this Agreement;

(b) becomes available to a party on a non-confidential basis from a source other than a party;

(c) is developed by a party independently of information received from a party; or

(d) is ordered to be disclosed by a court of competent jurisdiction or otherwise required to be disclosed by law.

Section 9.4 Prior Knowledge of LII. It is expressly acknowledged and agreed by LII that in connection with its ownership and operation of the Business prior to the Closing, LII and its Affiliates had special and extensive access and knowledge of the Business, and that this Article applies to all such knowledge which predates this Agreement; provided, however, that LII reserves the right to use all such information and any information derived therefrom in its HVAC/R businesses so long as such use does not violate the provisions of Section 9.1.

Section 9.5 Reasonableness. Each party acknowledges that the provisions of this Article are no more extensive than is reasonable to protect the other parties.

Section 9.6 Equitable Relief. Each of the Members hereby agrees that its failure to comply with any provision of this Article 9 will cause the other Member and the Company irreparable harm and that the other Member and the Company will be entitled to equitable relief including specific performance, an injunction, a restraining order or other equitable relief in order to enforce any provision of this Article 9, which right will be in addition, to, and not in lieu of, any other remedy to which such Member and the Company may be entitled under applicable law (including monetary damages).

Section 9.7 Representatives. A Member will not be in breach of this Article by virtue of any Representative passing to the Member which appointed him or her any information he or she receives as a Representative, or as a director of any subsidiary of the Company, but nothing contained in this Agreement will require such a disclosure where the Representative's fiduciary duty to the Company or to any such subsidiary would be breached as a result.



## ARTICLE 10
## TRANSFER OF MEMBERSHIP INTERESTS - GENERAL

Section 10.1 General Restrictions on Transfer. No Member shall transfer any of its Membership Interest except as otherwise specifically set forth in this Agreement and in accordance with the LLC Agreement.

Section 10.2 Permitted Transfers. Each Member has the right to assign its Membership Interest to an Affiliate of such Member provided that (i) the assigning Member and such Affiliate comply with the terms and conditions of Section 9.1(b) of the LLC Agreement and (ii) the assigning Member shall remain contingently liable for its Affiliate's performance under this Agreement.

Section 10.3 Definitions. The following defined terms used in this Article 10 and in Articles 11 and 12 have the meanings specified in this Section 10.3.

(a) "Option Exercise Period" means the period commencing on January 1, 2004 and ending December 31, 2007.

(b) "Option Price" means the price for all of the Shares of the Class B Member (including its entire Membership Interest) determined in accordance with the formula and procedure set forth on Attachment O.

(c) "Option" means the call option granted to the Class A Member under Section 11.2.

(d) "Proposed Effective Date" means (and may only mean) each December 31 during the Option Exercise Period next succeeding the date of the Call Option Notice (as defined in Section 11.1).

(e) "Shares" means (i) the Membership Interests of a Member in the Company together with (ii) the shares and other equity interests that such Member or its Affiliate owns in EU JVCo (the "EU JV Shares")..

Section 10.4 Transfer Closings.

(a) Completion of any sale and purchase of a Member's Shares ("Transfer Closing") pursuant to Article 11 shall take place at the offices of the Company at 10:00 a.m. on the date which is the third Business Day after the later of (i) the Proposed Effective Date or (ii) if applicable, the date of final determination of the Option Price in accordance with Attachment O except that the completion of the purchase and sale of the EU JV Shares shall take place in accordance with applicable law in The Netherlands.

(b) At the Transfer Closing, the selling Member shall procure the delivery to the purchasing Member of:



(i) a duly executed and, if applicable, duly stamped assignment or assignments or notarial deed, as applicable, in respect of the Shares in favor of the purchasing Member (or such Person or Persons as the purchasing Member may direct) and any certificate(s) representing the Shares; and

(ii) such other documents as may be reasonable necessary to enable the purchasing Member or its nominee(s) to obtain a good title to all of the Shares being sold, free and clear of all liens, charges, security interests and other encumbrances of any kind.

(c) Against delivery of the documents referred to in Section 10.4(b) above, the purchasing Member shall pay the purchase price to the selling Member at the Transfer Closing by wire transfer of immediately available funds.

Section 10.5 Name, Logos and Trademarks. In the event that any Member transfers its Membership Interests for any reason, the parties agree that the name, logos and trademarks of the Company will be amended to remove any reference to the transferring Member; provided, however, that, for clarification purposes, the Class B Member acknowledges that the Company will not be required to remove "HEATCRAFT" from its name, logos or trademarks under any circumstances and shall continue to have the right to use the other trademarks owned or used by the Company in the same manner as permitted prior to any such transfer.

## ARTICLE 11
## CALL OPTION

Section 11.1 Call Option.

(a) Subject to all of the terms and conditions of this Agreement, the Class B Member grants to the Class A Member the option and right to purchase all of the Shares of the Class B Member (including its entire Membership Interest) at the Option Price. Such Option may be exercised by written notice to the Class B Member delivered during the Option Exercise Period and not less than nine (9) months prior to the Proposed Effective Date for the completion of the purchase and sale of the Class B Member's Shares (the "Call Option Notice").

(b) Within 30 days after receipt of the Call Option Notice, the parties shall meet to discuss a mutually agreed upon schedule to determine the Option Price (in accordance with Attachment O).

Section 11.2 Miscellaneous Call Option Matters.

(a) The Option may only be exercised in respect of all, and for not less than all of the Class B Member's Shares (including its entire Membership Interest); and exercise of the Option will oblige the Class B Member to sell, and the Class A Member to purchase, all of the Class B Member's Shares.



(b) The Class B Member's Shares shall be sold free and clear of all liens, charges, security interests and other encumbrances of any kind and together with all rights attached to the Shares at the date of service of the Call Option Notice.

(c) Until such time as a Call Option Notice is served, the Class B Member or the holder of any of its Shares (as the case may be) will be entitled to exercise all voting and other rights attached to its Membership Interest and the EU JV Shares, as applicable, and will be entitled to receive and retain all distributions in respect thereof in the event that the receipt date for distributions and/or dividends is prior to the Closing Date.

(d) The completion of the exercise of the Call Option shall be subject to making all necessary filings with, and obtaining any required Consents from, all Persons and Governmental Bodies having jurisdiction over such transaction, including under the HSR Act. Between the date of the Call Option Notice and the completion of the exercise of the Call Option, each of the Members will cooperate with respect to all filings that they are required by Legal Requirements to make in connection with the completion of the Call Option, provided that this Agreement will not require any Member to dispose of or make any change in any portion of its business or the business of the Acquired Companies or to incur any other burden to obtain a governmental authorization.

(e) If the Class A Member does not exercise the Call Option during the Option Exercise Period or if all consents or approvals required from Governmental Bodies to complete the exercise of the Call Option shall not have been obtained within twelve (12) months after the Call Option Notice is served, the provisions of Article 12 will be triggered.

## ARTICLE 12
## COMPANY SALE; RIGHT OF FIRST REFUSAL

Section 12.1 Sale Notice. At any time after the expiration of the Option Exercise Period, either the Class A Member or the Class B Member (the "Electing Member") may send a notice (the "Sale Notice") to the other Member and the Company indicating the Electing Member's intent to commence a process leading to the sale of all of the Shares of the Company and EUJVCo. If the Sale Period expires as provided below, neither party may give another Sale Notice for 24 months after such expiration.

Section 12.2 Sale Procedures.

(a) If a Sale Notice is sent, the Board shall within 60 days thereafter retain an investment banking firm to solicit offers from Bona fide third parties to acquire all of the Shares of the Company and EU JVCo. For purposes of this Section 12.2, the term "Sale Period" means the one year period after a Sale Notice is delivered by an Electing Member, which shall be extended for a reasonable period to the extent reasonably recommended by the investment banking firm but in any event for not more than three (3) months.



(b) The Members shall cooperate in all respects with the investment banking firm selected hereunder in connection with its due diligence and services to the Board. In connection therewith, the Company and Members will not be required to enter into a LOI (as defined below) unless it includes a proposed firm price or firm total consideration that is acceptable to both Members. For purposes hereof, the term "LOI" means a letter of intent, memorandum of understanding or similar preliminary agreement that requires the Company and the Members to negotiate exclusively with a Bona fide third party. If one or more offers to purchase all of the Shares is received from a Bona fide third party(s) during the Sale Period ("Third Party Offers"), the Members shall review any and all such Third Party Offers with such investment banking firm and seek its opinion as to the fairness of such Third Party Offers and the value of the Company. If either Member desires to accept any such Third Party Offer, the Members agree that, subject to Paragraph (c) below, they both shall be required to consummate the sale of all of their Shares pursuant to the Third Party Offer.

(c) No Member shall be obligated under this Section 12.2 to sell its Shares pursuant to any Third Party Offer that does not include (i) the release of all guaranties, if any, by such Member of any indebtedness or other obligations of the Company and of the EU JVCo and (ii) representations and warranties and indemnification provisions that are reasonable and customary for transactions of this type. In addition, if the Class B Member is the Member that desires to accept a Third Party Offer, the Class A Member shall have the option and right to purchase the Class B Member's Shares for a consideration equal to what the Class B Member would have received in connection with the completion and closing of the sale of its Shares pursuant to the Third Party Offer under the following circumstances: (A) the Third Party was a result of an auction process managed by the investment banking firm and no LOI was required or (B) if an LOI was required in connection with the receipt of a Third Party Offer, and the total consideration that the Class A Member will receive in connection with the completion of the Third Party Offer is not equal to or greater than 90% of the consideration provided for in the LOI. The ROFR Option shall be exercised by written notice to the Class B Member within twenty (20) Business Days after the later of (x) the Class B Member notifies the Class A Member that it desires to accept a Third Party Offer or (y) the conditions set forth in clauses (i) and (ii) of this Section 12.2(c) have been satisfied.

(d) For purposes of subsection (c) above, if the purchase price included in a Third Party Offer includes any non-cash consideration, the Class A Member will have the right to substitute cash in an amount equal to the fair market value of such non-cash consideration. If any part of the non-cash consideration consists of registered securities, the fair market value of such securities will be deemed to be the average of their closing sale prices as reported on the applicable national securities exchange or quotation system on which such securities are listed, quoted or admitted to trading for the 20 trading days immediately preceding the date which is two Business Days prior to the day on which the Class A Member notifies the Class B Member that it is exercising the ROFR Option. The fair market value of any other non-cash consideration will be determined by the investment banking firm selected pursuant to Section 12.2, and any such determination will be final and binding on the Members. The Company shall pay the fees of the investment banking firm in making such determination.



## ARTICLE 13
## TERM

Section 13.1 Effective Date. This Agreement commences on the date hereof.

Section 13.2 Termination. This Agreement will be terminated by either Member by written notice to the other Member if the Purchase Closing has not occurred by the Target Date (as extended pursuant to Section 2.3 or otherwise by mutual written agreement). If the Purchase Closing occurs, this Agreement will terminate on the earlier to occur of (a) the termination of the Company or (b) there remaining only a Class A Member but not Class B Member, or vice versa.

Section 13.3 Survival. The provisions of this Agreement that are by their terms intended to survive, will continue to apply to a Member notwithstanding that it has ceased to own any Membership Interest. Section 13.2 will not affect any of the rights or liabilities of any parties in connection with any breach of this Agreement which may have occurred before that Member ceased to own any Membership Interest.

## ARTICLE 14
## DISPUTES

Section 14.1 ADR Procedures. All claims, disputes and matters in controversy arising out of, or related to this Agreement, or the breach thereof ("Disputes"), shall be settled in accordance with the procedures set forth in this Article and in Attachment P (the "ADR Procedures").

Section 14.2 Meetings. The Members shall use reasonable efforts to settle any Disputes but, in the absence of agreement, the remaining provisions of this Article will apply. Such efforts will include (a) at least two meetings of the Board or senior representatives of the Members and (b) a meeting, telephone or video conference between the respective chief executive officers of the Members. If the dispute has not been settled within 60 days after either Member gives written notice of a Dispute, then either party may trigger the ADR Procedures.

## ARTICLE 15
## ANNOUNCEMENTS

Section 15.1 Press Releases. OCP and LII each issued a press release on April 22, 2002. Unless required by legal requirements of any Governmental Body ("Legal Requirements"), additional public announcements or similar publicity with respect to this Agreement or the JV Transactions will be issued prior to the Closing Date, if at all, only at such time and in such manner as the Members mutually determine.

Section 15.2 Public Communications. With respect to public communications on the Closing Date or otherwise with respect to the Closing, the Members shall consult in good faith regarding appropriate press releases and, unless required by Legal Requirements the form and content of, any press release, public announcement or similar publicity relating to the Closing, the Company and the parties shall be mutually determined.



## ARTICLE 16
## GENERAL PROVISIONS

Section 16.1 Expenses.

(a) Except as otherwise expressly provided in this Agreement or the Share Purchase Agreement, each party will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel, accountants and investment bankers.

(b) In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of that party arising from a breach of this Agreement by another party.

Section 16.2 Confidentiality. Between the date of this Agreement and the Closing Date, the parties shall maintain in confidence, and will cause their respective directors, officers, employees, agents, and advisors to maintain in confidence, and not use to the detriment of another party, any trade secret, confidential or proprietary information obtained from another party in connection with this Agreement or the transactions contemplated hereby, unless (a) that information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of that party, (b) the use of that information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated hereby or (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings.

Section 16.3 Notices.

(a) Method. Unless otherwise provided in this Agreement, any notice, consent, waiver or other communication to be given hereunder must be in writing and (i) delivered personally (to be effective when so delivered), (ii) mailed by registered or certified mail, return receipt requested (to be effective four days after the date it is mailed), (iii) sent by Federal Express or other overnight courier service (to be effective when received by the addressee) or (iv) sent by facsimile transmission (to be effective upon receipt by the sender of electronic confirmation of the delivery of the facsimile provided that a copy is delivered in accordance with clause (a), (b) or (c)), to the following addresses and telecopy numbers (or to such other addresses or telecopy numbers which any party designates in writing to the other parties):

If to the Company:

Outokumpu Heatcraft USA LLC
[ADDRESS]
_____
Attention: President
Facsimile No.: [TO BE PROVIDED]



If to the Class B Member:

Lennox International, Inc.
P.O. Box 799900
Dallas, Texas 75379-9900
Attention: General Counsel
Facsimile No.: 972-497-5268

If to OCP or the Class A Member:

Outokumpu Copper Holdings Inc
c/o Outokumpu Oyj
Riihitontuntie 7 D
PO Box 280
FIN-02201 Espoo, Finland
Attention: Corporate General Counsel
Facsimile No.: 011-358-9-421-2428

and

Hodgson Russ LLP
1800 One M&T Plaza, Suite 2000
Buffalo, New York 14203
Attention: Robert B. Fleming, Jr., Esq.
Christine A. Bonaguide, Esq.
Facsimile No.: 716-849-0349

(b) Computation of Time. In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is not a Business Day, in which event the period will run until the end of the next day which is a Business Day.

Section 16.4 Jurisdiction; Service of Process. Except as otherwise provided for in Article 14 and Attachment P, any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought in the courts of the State of Florida, Dade County, or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of Florida. Each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.



Section 16.5 Further Assurances. The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as any other party may reasonably request for the purpose of carrying out the intent of this Agreement. Without limiting the foregoing, the Members agree that they shall cause the convening of all meetings, the giving of all waivers and consents and the adoption of all resolutions, and shall otherwise exercise all powers and rights available to them, in order to give effect to the provisions of this Agreement.

Section 16.6 Entire Agreement. This Agreement constitutes the entire agreement among parties with respect to the subject matter hereof (including without limitation the Memorandum of Agreement between LII and Outokumpu Oyj dated on or about April 9, 2002) and supercedes any prior agreement or understanding matter among the parties with respect to the subject matter hereof.

Section 16.7 Amendment: Waiver. Except as provided otherwise herein, this Agreement may not be amended nor may any rights hereunder be waived except by an instrument in writing signed by the party sought to be charged with such amendment or waiver. The rights and remedies of the parties are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law except as set forth in this Agreement, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

Section 16.8 Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

Section 16.9 Binding Effect. Except as provided for in Section 10.2, neither party may assign any of its rights under this Agreement without the prior consent of the other parties. Subject to the preceding sentence, this Agreement is binding upon and inures to the benefit of the parties and their respective legal representatives, heirs, successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties hereto.

Section 16.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective, as to such jurisdiction, to the extent of such

prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 16.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 16.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same agreement.

Section 16.13 Specific Performance. Each party agrees that remedies at law may be inadequate to protect the other party from and against any actual or threatened breach of this Agreement by such part or any of its representatives. Without prejudice to the rights and remedies otherwise available to it (including monetary relief), each party agrees that any other party may seek equitable relief in favor of the other party by way of specific performance or otherwise without proof of actual damages, if that party or any of its Representatives breaches or threatens to breach any of the provisions of this Agreement.



IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the date first above written.

LENNOX INTERNATIONAL, INC.

By: /s/ R. E. Schjerven
Name: Robert E. Schjerven
Title: Chief Executive Officer

OUTOKUMPU COPPER PRODUCTS OY

By: /s/ Kalevi Nikkilä
Name:
Title:

OUTOKUMPU COPPER HOLDINGS, INC.

By: /s/ Kalevi Nikkilä

Name:
Title:

HEATCRAFT HEAT TRANSFER LLC
(To be renamed OUTOKUMPU HEATCRAFT USA LLC)

By: /s/ Carl E. Edwards, Jr.
Name: Carl E. Edwards, Jr.
Title: Secretary

SHAREHOLDERS AGREEMENT

THIS AGREEMENT is made on July 18, 2002, between LGL HOLLAND B.V. ("LGL"); OUTOKUMPU COPPER PRODUCTS OY a Finnish limited company ("OCP"); OUTOKUMPU HEATCRAFT B.V.

RECITALS

WHEREAS, LGL and OCP and Company (as defined below) wish to establish a mutually beneficial long term business association based on mutual understanding, cooperation and exchange of information, with LGL and OCP becoming Shareholders (as defined below) in OUTOKUMPU HEATCRAFT B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) to be incorporated by LGL under the laws of The Netherlands and having its official seat (*statutaire zetel*) in Amsterdam, The Netherlands (the "Company") to carry on the Business (as defined below); and

WHEREAS, the Shareholders have agreed to enter into this Agreement for the purposes of recording the terms and conditions on which they will subscribe for shares in and provide funding for the Company, regulating their relationship with each other so long as they are Shareholders in the Company and regulating, as between themselves, certain aspects of the affairs of the Company;

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the parties agree as follows:

ARTICLE 1
INTERPRETATION

Section 1.1 The following defined terms used in this Agreement have the respective meanings specified below.

(a) Affiliate. "Affiliate" means, when used with respect to a particular Person, (a) any Person directly or indirectly controlling, controlled by or under common control with, that Person, (b) a Person owning or controlling fifty percent (50%) or more of the outstanding voting securities of that Person and (c) any officer, director, shareholder, manager, partner or employee of that Person.

(b) Agreed Form. "Agreed Form" means, in relation to any document, the form of that document which has been agreed upon by the parties hereto and initialed for the purpose of identification by LGL's Attorneys and OCP's Attorneys with such changes as the Shareholders may agree upon in writing before the Purchase Closing.

(c) Agreement. "Agreement" means this Agreement, together with the Exhibits and Schedules hereto, as amended from time to time in accordance herewith.

(d) Articles of Association. "Articles of Association" mean the articles of association of the Company contained in its deed of incorporation, in the form attached hereto as Attachment G.

(e) A Shares. "A Shares" means all issued class A shares in the Company.

(f) Bankruptcy. "Bankruptcy" of a Person means (a) the Person's filing of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under the laws or regulations of any Governmental Body, including but not limited to Title 11 of the United States Code or any other federal or state insolvency law, and *faillissement* (bankruptcy) or *surséance van betaling* (suspension of payments) in accordance with the Dutch bankruptcy code (b) the making by a Person of any assignment for the benefit of its creditors or (c) the expiration of 90 days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for the assets of a Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of a Person's debts under any other federal or state insolvency law, provided that the same has not been vacated, set aside or stayed within such 90-day period or immediately upon a Person's filing an answer consenting to or acquiescing in any such petition.

(g) Base Business Plan. "Base Business Plan" means the initial business plan of the Company attached as Attachment A.

(h) Board. "Board" means the managing board of the Company as constituted from time to time.

(i) Bona fide third party. "Bona fide third party" means a Person which is completely independent from the Company and each Shareholder by reference to equity ownership, management control, strategic alliance or other relationship.

(j) B Shares. "B Shares" means all issued class B shares in the Company.

(k) Business. "Business" means, subject to clause (iv) below:

(i) Lennox International, Inc.'s (LII) heat transfer business in North America (including its manufacturing operations in Juarez in Mexico), France, Italy, the Czech Republic and Asia Pacific, which includes its original equipment manufacturing ("OEM") heat transfer division located in Grenada, Mississippi, its commercial coil heat transfer operation located in Grenada, Mississippi, its Livernois operations in Dearborn, Michigan, its heat transfer operations located in Cremieu, France and its heat transfer operations located in Prague, the Czech Republic; its heat transfer operations in Torreglia, Italy; and its offices in Singapore and Shanghai. The Business includes all plant, property, equipment and working capital presently used or useable in the designated facilities; those licenses, patent rights, trademarks and trade names used in the Business (including Heatcraft), know-how, and other commercial or



proprietary information associated and/or necessary to conduct the Business as presently conducted and foreseen, including all agreements with trade representatives, agents, distributors engaged in marketing activities related to the Business, with products currently manufactured by the Business; and the real estate (including all rights to leaseholds) wherein the Business conducts its manufacturing, distribution or administrative functions in the designated facilities (collectively "Assets").

(ii) LII's companies that own and operate the Assets are: Heatcraft Inc. (only the heat transfer operations); Heatcraft Heat Transfer Inc.; Heatcraft Advanced Technologies Inc.; LGL France S.A. (only the heat transfer operations located at Cremieu, France and Heatcraft France S.A.S (formerly known as SCI Groupe Brancher); Heatcraft Prague (formerly known as Friga-Coil) s.r.o.; Heatcraft Italia S.R.L; and Livernois Engineering Co.

(iii) With respect to Asia Pacific, (A) the Assets are to are to include certain manufacturing equipment located at LII's Australian facility as provided for in the European Share Purchase Agreement and (B) with respect to the Singapore and Shanghai offices, the Company will have the right to hire those employees of those offices who have been primarily involved in the heat transfer business.

(iv) "Business" does not include (A) the heat transfer operations which are integrated into LII's other businesses, which include its HVAC/R operations in North America, Europe, Australia, Mexico, South America and other locations consisting of the following companies: Lennox Industries Inc.; Armstrong Air Conditioning Inc.; Advanced Distributor Products LLC; Excel Comfort Systems Inc.; Allied Air Enterprises Inc.; Heatcraft Refrigeration Products; and Heatcraft Australia Pty Ltd. (all of the heat transfer operations except as specified above) or (B) LII's interest in Frigus-Bohn S.A. de C.V. or (C) LII's interest in joint venture in Brazil, Heatcraft do Brasil Ltda.

(l) Business Day. "Business Day" means a day (other than a Saturday or Sunday) on which banks in New York, New York (USA) and Helsinki, Finland are open for general business.

(m) Class A Shareholder. "Class A Shareholder" means OCP and any permitted assignee of OCP.

(n) Class B Shareholder. "Class B Shareholder" means LGL and any permitted assignee of LGL.

(o) Closing Date. "Closing Date" is defined in Section 4.1.

(p) Copper Tube Supply Purchase Agreement - OCP/Company. “Copper Tube Supply Purchase Agreement - OCP/Company” means an agreement under which OCP or its Related Persons will supply copper tubing to the Company and US JVCo.



(q) Copper Tube Supply Purchase Agreement - OCP/LGL. “Copper Tube Supply Purchase Agreement - OCP/LGL” means an agreement under which OCP or its Related Persons will supply copper tubing to LGL and its Related Persons.

(r) Depreciation. “Depreciation” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the fair market value of assets contributed to the Company differs from its adjusted basis for income tax purposes at the date of contribution, Depreciation will be an amount which bears the same ratio to that beginning fair market value as the income tax depreciation, amortization or other cost recovery deduction for that Fiscal Year or other period bears to that beginning adjusted tax basis.

(s) European Share Purchase Agreement. “European Share Purchase Agreement” means a share purchase agreement of even date herewith pursuant to which OCP (or its Related Persons) will acquire 55% of the interest in all of the shares or other equity interests of the Company.

(t) Fiscal Year. “Fiscal Year” means the calendar year.

(u) GAAP. “GAAP” means generally accepted accounting principles as in effect in the United States of America from time to time.

(v) Governmental Body. “Governmental Body” means any (i) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign, or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, commission or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

(w) Joint Venture and Member’s Agreement. “Joint Venture and Member’s Agreement” means the Joint Venture and Member’s Agreement relating to the operation of US JVCo.

(x) JV Transactions. “JV Transactions” means the following transactions and agreements between the parties and their Affiliates:

(i) the European Share Purchase Agreement, and the completion of the transactions provided for therein and in Part 1 of Attachment E;

(ii) the Tech JV Transactions;

(iii) the US Transactions;

(iv) the Shared Services Agreement;



(v) the Product Supply Agreement;

(vi) the Copper Tube Supply Purchase Agreement - OCP/LGL;

(vii) the Copper Tube Supply Purchase Agreement - OCP/Company; and

(viii) a license agreement between Outokumpu Heatcraft LLC as licensor and Heatcraft Inc. as licensee regarding the HEATCRAFT mark and also covering a license by the Company to LII of one patent.

(y) Joint Technology Development Agreement. “Joint Technology Development Agreement” means an agreement among OCP (or its Related Persons), LII, the Company and Tech LLC relating to development activities for heat transfer products, processes and technologies.

(z) LGL’s Attorneys. “LGL’s Attorneys” means Carl E. Edwards, Jr., Esq.

(aa) OCP’s Attorneys. “OCP’s Attorneys” means Hodgson Russ LLP.

(bb) OCP Shares. “OCP Shares” means the Shares in the Company to be purchased by OCP from LGL pursuant to the European Share Purchase Agreement.

(cc) Organizational Documents. “Organizational Documents” means in the case of the Company, its Articles of Association and shareholders register, as amended from time to time, and in the case of any other Person (i) the articles or certificate or deed of incorporation, shareholders register and the bylaws of a corporation; (ii) the partnership agreement and any statement of partnership of a general partnership; (iii) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (iv) the certificate or deed of formation and limited liability company agreement, articles of association or operating agreement, shareholders register of a limited liability company; (v) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person and (vi) any amendment to any of the foregoing.

(dd) Person. “Person” means any individual, corporation, partnership, limited liability company, partnership, joint venture, unincorporated association, trust, Governmental Body or other entity.

(ee) Product Supply Agreement. “Product Supply Agreement” means an agreement under which the Company and US JVCo will supply products to LII and its Related Persons.

(ff) Purchase Closing. “Purchase Closing” means the date of the consummation of the transfer of the OCP Shares to OCP in accordance with the European Share Purchase Agreement.



(gg) Shares. “Shares” means the A Shares and the B Shares.

(hh) Shareholders. “Shareholders” means LGL and OCP and each Person who or which may hereafter become a shareholder of the Company.

(ii) Shareholder’s Interest.“ Shareholder’s Interests” means a Shareholder’s aggregate rights in the Company, including the Shareholder’s (i) right to share in the profits and losses of, and the right to receive distributions and allocations from, the Company and (ii) right to vote in all matters coming before the Company.

(jj) Shared Services Agreement.“ Shared Services Agreement” means an agreement between the Company, Outokumpu Heatcraft LLC and LII pursuant to which LII and/or its Related Persons shall provide certain transition services to the Company, US JVCo and the other Acquired Companies.

(kk) Share Percentage.“ Share Percentage” means, as to a Shareholder, the percentage shareholding in the outstanding share capital of the Company, as amended from time to time.

(ll) Tech JV. “Tech J” means the joint venture constituted by the Tech JV Transactions.

(mm) Tech JV Transactions." Tech JV Transactions" means the execution and delivery of (i) the Joint Venture and Members' Agreement between LII and OCP relating to Advanced Heat Transfer LLC, LLC, a Delaware limited liability company ("Tech LLC"), (ii) the Limited Liability Company Agreement for Tech LLC between LII and OCP and (iii) the Joint Technology Development Agreement, and the completion of all of the transactions provided for in those agreements.

(nn) Transfer. "Transfer" means, when used as a noun, any gift, sale, hypothecation, pledge, assignment, attachment or other transfer and, when used as a verb, to give, sell, hypothecate, pledge, assign, attach or otherwise transfer.

(oo) US Transactions. "US Transactions" means:

(i) the completion of the pre-closing actions by LII and its Affiliates described in US Share Purchase Agreement;

(ii) the formation of Outokumpu Heatcraft USA LLC ("US JVCo") and the execution and delivery of the Joint Venture and Members' Agreement and the US Share Purchase Agreement by and between LII and OCP with respect to US JVCo and the completion of transactions provided for therein.

Section 1.2 Accounting Terms. Accounting terms used in this Agreement and not otherwise defined herein have the meanings ascribed thereto under GAAP.



Section 1.3 Gender and Number. Unless the context clearly indicates to the contrary, words singular or plural in number will be deemed to include the other, and pronouns having a neuter, masculine or feminine gender will be deemed to include and refer to any and all genders. Whenever the terms "herein," "hereunder" or words of like import are used in this Agreement, the intended reference is to the entire Agreement and not to the clause, sentence, section or subsection in which that word appears. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

Section 1.4 Headings. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Article" or "Section" refer to the corresponding Article or Section of this Agreement. All references to "Attachment" refer to the corresponding Attachment attached to and made a part of this Agreement.

Section 1.5 Drafting. This Agreement represents the culmination of extensive and arms length negotiations among the parties. No party will be deemed the drafter of this Agreement, and this Agreement will not be construed for or against any party by reason of a particular party being deemed the drafter.

Section 1.6 Dollars. All references in this Agreement to "Dollars" or "$" means and refers to United States dollars.

## ARTICLE 2
## CONDITIONS PRECEDENT

Section 2.1 Conditions. Subject to Section 2.4, the obligations of the parties under this Agreement are subject to satisfaction of the following conditions precedent (*opschortende voorwaarden*):

(a) Incorporation and Subscription. LGL shall have arranged for the incorporation of the Company by July 26, 2002 in a manner satisfactory to OCP and (i) subscribed for one hundred percent (100%) of the Shares in the Company in consideration for the contribution of the assets and property as contemplated by this Agreement. The Company shall have issued A Shares and B Shares, of which the A Shares shall constitute and represent fifty-five percent (55%) of the aggregate share capital of the Company, and the B Shares shall constitute and represent forty-five (45%) of the aggregate share capital of the Company, each credited as fully paid up to LGL and entered LGL's name in the register of Shareholders as the holder of those Shares.

(b) Approvals. LGL and OCP shall have filed all necessary notices with, and shall have obtained on terms and conditions satisfactory to LGL and OCP all necessary approvals or consents from, any lender, lessor or other Person and any Governmental Body that LGL or OCP may deem necessary in connection with the transactions contemplated by this Agreement and the JV Transactions, including under the Council Regulation (EEC) No. 4064/89 or similar laws within Finland, the Czech Republic, France and Italy.



(c) Transfer of Business. LGL shall have caused the transfer to the Company or US JVCo, or a 100% subsidiary thereof, of all assets, rights and licenses relating to the Business and owned or used by LGL and any other Affiliate of LGL, including taking the actions and steps set forth on Attachment E.

(d) JV Transactions. LGL and OCP shall have completed the transactions provided for in the European Share Purchase Agreement, OCP shall have acquired the OCP Shares from LGL thereunder, and all of the other JV Transactions shall have been completed.

(e) Litigation. There shall be no pending or threatened litigation of a material nature regarding the Business, the Company or its assets, this Agreement or the agreements contemplated by the JV Transactions.

(f) No Material Adverse Change. There shall not have occurred any change in the assets, operations and/or the financial conditions or prospects of the Business or the Company which constitutes a Material Adverse Change, as defined in the European Share Purchase Agreement.

Section 2.2 Waiver. Each Shareholder may waive all or any of the conditions set forth in Section 2.1 in whole or in part at any time by notice in writing to the other Shareholder, provided that both parties must waive each condition in order for the waiver to be effective.

Section 2.3 Best Efforts; Target Closing Date.

(a) The parties shall use their reasonable best efforts to ensure the conditions set forth in Section 2.1 and in the European Share Purchase Agreement are satisfied on or before September 30, 2002 (the "Target Date"), as such date may be extended by mutual written agreement of the parties or pursuant to Paragraph (b) of this Section 2.3.

(b) If any Governmental Body with jurisdiction over the enforcement of any law or regulation intended to prohibit or regulate mergers, restraints of trade or monopolization, including the Council Regulation (EEC) No. 4064/89 or similar laws within Finland, the Czech Republic, France and Italy ("Competition Laws"), requests additional information relating to the JV Transactions or the parties and/or if any waiting period has not expired or any clearance or approval under any such Competition Law has not been satisfied or obtained by the Target Date, the Target Date will automatically be extended for such period of time as may be reasonably necessary for the parties to have complied with the Competition Laws and all such requests for information thereunder to the extent applicable to the JV Transactions, but in no event shall the Target Date be extended pursuant to this Paragraph (b) beyond December 31, 2002.

Section 2.4 No Liability. If the conditions in Section 2.1 are not fulfilled or waived on or before the Target Date, as extended pursuant to Section 2.3, and this Agreement is terminated as provided for in Section 15.2, none of the parties will have any rights or obligations under this Agreement (so that no party will have any claim against the others for costs, damages,



compensation or otherwise) except those rights or obligations in respect of any previous breach of this Agreement.

## ARTICLE 3
## REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of LGL . LGL hereby represents and warrants to Company and OCP that:

(a) Authority. LGL is a corporation duly organized, validly existing and in good standing under the laws of the Netherlands. LGL has full power and authority under its Organizational Documents to execute, deliver and perform this Agreement and to consummate the JV Transactions. The execution, delivery and performance by LGL of this Agreement and the consummation by LGL and/or its Affiliates of the JV Transactions have been duly authorized by all necessary action.

(b) Binding Obligation. This Agreement has been duly and validly executed and delivered by LGL and constitutes the binding obligation of LGL enforceable against LGL in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and overruling principles of reasonableness and fairness (*redelijkheid en billijkheid*).

(c) No Violation. The execution, delivery and performance by LGL of this Agreement and the consummation by LGL and/or its Affiliates of the JV Transactions will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of law, statute, rule or regulation to which LGL or any of its Affiliates is subject, (ii) violate any order, judgment, or decree applicable to LGL or any of its Affiliates or (iii) conflict with, or result in a breach or default under, any term or condition of its Organizational Documents of LGL or its Affiliates or any agreement or other instrument to which LGL is a party or by which any of them is bound.

Section 3.2 Representations and Warranties of the Company. LGL shall procure that the Company shall as soon as possible after its incorporation represent and warrant to LGL, OCP and OCI that:

(a) Authority. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the Netherlands. The Company has full power and authority under its Organizational Documents to execute, deliver and perform this Agreement and to consummate the JV Transactions. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the JV Transactions have been duly authorized by all necessary action.

(b) Binding Obligation. This Agreement has been duly and validly executed and delivered by the Company and constitutes the binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability may be limited by



bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles.

(c) No Violation. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the JV Transactions will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of law, statute, rule or regulation to which the Company is subject, (ii) violate any order, judgment or decree applicable to the Company or (iii) conflict with, or result in a breach or default under, any term or condition of its Organizational Documents or any agreement or other instrument to which the Company is a party or by which it is bound.

Section 3.3 Representations and Warranties of OCP. OCP hereby represents and warrants to LGL that:

(a) Authority. OCP is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. OCP has full power and authority under its Organizational Document to execute, deliver and perform this Agreement and to consummate the JV Transactions. The execution, delivery and performance by OCP and/or its Affiliates of this Agreement and the consummation of the JV Transactions have been duly authorized by all necessary action.

(b) Binding Obligation. This Agreement has been duly and validly executed and delivered by OCP and constitutes the binding obligation thereof enforceable against OCP in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and overruling principles of reasonableness and fairness (*redelijkheid en billijkheid*).

(c) No Violation. The execution, delivery and performance by OCP of this Agreement and the consummation by OCP and/or its Affiliates of the JV Transactions will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of law, statute, rule or regulation to which OCP or any of its Affiliates is subject, (ii) violate any order, judgment or decree applicable to OCP or any of its Affiliates or (iii) conflict with, or result in a breach or default under, any term or condition of its Organizational Documents or any agreement or other instrument to which OCP or any of its Affiliates is a party or by which any of them is bound.

## ARTICLE 4
## CLOSING DATE

Section 4.1 Closing Date. The Closing Date will be the date three Business Days after the satisfaction or waiver of the conditions in Section 2.1 at the offices of Clifford Chance, Amsterdam, The Netherlands, or at such other date and time as the parties may agree.

Section 4.2 Closing. On or immediately prior to the Closing Date:



(a) LGL's Voting. LGL shall use its voting rights on the Shares and take all other action in the Agreed Form to ensure that the Articles of Association shall not have been amended after incorporation of the Company; and

(b) [Reserved].

(c) Closing Documents. Subject to satisfaction of all of the conditions set forth in Section 2.1, LGL and OCP shall, and shall cause their Affiliates to, execute and deliver all instruments, agreements, certificates and other documents, and take all other actions necessary or appropriate, to complete the JV Transactions including the transactions contemplated by this Agreement and the European Share Purchase Agreement. Upon execution of the European Share Purchase Agreement and OCP's payment of the consideration set forth in the European Share Purchase Agreement, the notarial deed of transfer pursuant to which all A Shares are transferred to OCP shall be executed and the Company shall enter OCP's name in the register of Shareholders of the Company as the holder of all A Shares.

(d) Shareholders' Meeting. A meeting of the Shareholders shall be held, at which it shall be:

(i) resolved that the following persons are appointed as A Directors (as defined below) in accordance with the Articles of Association: Kalevi Nikkila, Hannu Wahlroos, Jyrki Vesaluoma and Geoffrey Palmer..

(ii) procured that all members of the Board execute the Board Regulations (as defined below).

(iii) procured that the President (CEO), Chief Financial Officer and Managing Director for European Operations of the Company be appointed, as follows: President (CEO) as nominated by OCP; Chief Financial Officer as nominated by OCP; and Managing Director for European Operations as nominated by LGL.

(iv) approve of and procure that PricewaterhouseCoopers LLC be appointed as auditors of the Company;

(v) approve of and procure that the Base Business Plan be adopted; and

(vi) approve of and procure that agreements for financing lines of credit to meet anticipated cash requirements set out in the Base Business Plan be entered into.

Section 4.3 Receipt. The receipt of any party's attorney for any sum or document to be paid or delivered to that party will discharge the obligor's obligation to pay or deliver it to that party.



Section 4.4 No Partnership. Nothing in this Agreement will be deemed to constitute a partnership between any of the parties nor constitute any party the agent of any other party for any purpose.

Section 4.5 No Obligation. No party will be obliged to complete any of the transactions or do any of the things referred to in this Article unless all other transactions and things are completed in accordance with this Article.

## ARTICLE 5
## BUSINESS OF THE COMPANY

Section 5.1 Conduct of Business. Except as otherwise required by law or by this Agreement, the Shareholders agree to procure that the Business and the proceedings of the Company will be conducted in such a way as to maximize profit available for distribution to the Shareholders to the extent consistent with good business practice.

Section 5.2 Shareholder Dealings with the Company. The Shareholders shall procure that the Company shall deal with the Shareholders and their Affiliates on an arm's length basis. The Shareholders shall endeavor to ensure that any existing or potential conflicts of interest are brought to the attention of the Company and the other Shareholder at the earliest opportunity so that they can be dealt with in accordance with this Agreement. The Shareholders acknowledge and agree that the JV Transactions and any actions arising thereunder are, or for purposes of this Agreement will be deemed to be at arm's length.

Section 5.3 Continuing Obligations. The parties agree that, for so long as LGL and OCP are Shareholders, the parties shall cause compliance with the obligations set forth in Attachment L.

Section 5.4 Conflicting Documents. The Shareholders agree that, if any provisions of the Organizational Documents of the Company at any time conflict with any provisions of this Agreement, they will endeavour to accomplish as close as possible the intentions of the parties and the Shareholders shall exercise all powers and rights available to them to cause the amendment of the Company's Organizational Documents to the extent necessary and permitted by law to permit the Company and its affairs to be regulated as provided in this Agreement.

## ARTICLE 6
## MEETINGS OF THE SHAREHOLDERS

Section 6.1 Meetings. In addition as required by law, the parties shall procure that meetings of Shareholders, for any purpose, will be called by the Board upon receipt of a request in writing signed by Shareholders whose Share Percentages aggregate ten percent (10%) or more. This request must state the purpose or purposes of the proposed meeting and the business to be transacted. These meetings will be held at the statutory address or the principal office of the Company or at such other locations as the Board may indicate in its notice. Notice of any such meeting must be delivered to all Shareholders in the manner prescribed in Article 18 within ten

---

days after receipt of the request and not fewer than 15 days nor more than 60 days before the date of the meeting. The notice must state the place, date, hour and purpose or purposes of the meeting. At each meeting of Shareholders, the Shareholders present or represented by proxy shall adopt such rules for the conduct of the meeting as they deem appropriate. The Company will bear expenses of any such meeting, including the cost of providing notice thereof.

Section 6.2 Written Consents. Whenever Shareholders are required or permitted to take any action by vote, this action may be taken without a meeting provided that all Shareholders vote in writing in favour of the proposal.

## ARTICLE 7
## MANAGEMENT

Section 7.1 Nominations by Shareholders

(a) Board ("*bestuur*"). Except as otherwise provided in this Agreement, the Shareholders agree that the business, affairs and properties of the Company will be managed by the Board which will at all times be comprised of seven (7) members, with four (4) individual members appointed at the nomination by the Class A Shareholder (the "Class A Directors", "*A directeur*") and three (3) individual members appointed by the Class B Shareholder (the "Class B Directors", "*B directeur*"). The Class A Shareholder undertakes to vote in favour of the first candidate on the list of nominations made by the Class B Shareholder and the Class B Shareholder undertakes to vote in favour of the first candidate on the list of nominations made by the Class A Shareholder. For purposes of this Agreement, the term "entire Board" means seven (7) members of the Board (without taking into account any vacancies or absences).

(b) The Shareholders agree and procure that Board resolutions relating to any of the actions listed in (i) Schedule 7.1(b)(i) require prior written approval of both the Class A Shareholder and the Class B Shareholder (the "Major Decisions") and (ii) Schedule 7.1(b)(ii) require the approval of a majority of the votes of the entire Board and at which that action is taken or by written consent of the entire Board to the extent permitted by applicable law.

Section 7.2 Appointment, Tenure and Voting of Board.

(a) Appointment. Until changed in accordance with this Agreement, the Shareholders shall procure that the Board will consist of the following individuals:

| | |
|---|---|
| Class A Directors: | Kalevi Nikkila |
| | Hannu Wahlroos |
| | Jyrki Vesaluoma |
| | Geoffrey Palmer |
| Class B Directors: | Robert McDonough |
| | Richard Smith |
| | Linda Goodspeed |



---

(b) Vacancies. Upon the death, disability, resignation or removal of a Class A Director, the Class A Shareholder shall prepare a list of at least two candidates for nomination for appointment to the general meeting of Shareholders as member of the Board to fill the vacancy or shall vote to reduce the size of the Board. Upon the death, disability, resignation or removal of a Class B Director, the Class B Shareholder shall prepare a list of at least two candidates for nomination for appointment to the general meeting of Shareholders as members of the Board to fill the vacancy or shall vote to reduce the size of the Board. Article 7.1 (a) shall apply *mutatis mutandis*.

(c) Salaries. The Shareholders agree that the members of the Board will not receive salaries or other compensation from the Company for serving in their capacities as members of the Board.

Section 7.3 Officers.

(a) President. The Board shall appoint a President pursuant to a nomination by the Class A Shareholder. The President shall perform the day to day operations of the Company and shall perform all such other duties as are properly required of him or her by the Board. The President shall have powers of attorney to represent the Company (i), individually, for all transactions that do not exceed Euro 1,000,000 and (ii), jointly with the Chief Financial Officer or any Class A Director, for any other transactions. Such powers of attorney shall be filed with the Dutch Chamber of Commerce. Without limiting the foregoing as a matter of internal corporate authority, the President shall have the authority to approve and authorize capital expenditure that are provided for in the Base Business Plan and the Annual Budget. If the Class B Shareholder loses confidence for any reason in the President, the Class B Shareholder may request the Class A Shareholder the President's dismissal at any time. The Class A Shareholder shall forthwith comply with such request and the Shareholders shall cause their directors to vote in favor of such dimissal. Once the Class B Shareholder has required such removal, that Shareholder may not thereafter require the removal of the individual proposed by it to fill such office for a period of 12 months

(b) Chief Financial Officer. The Board shall appoint a Chief Financial Officer pursuant to the nomination by the Class A Shareholder and he or she shall have the care and custody of all the moneys and securities of the Company. He or she shall cause to be entered in books of the Company to be kept for that purpose full and accurate accounts of all moneys received by him or her and paid by him or her on account of the Company. He or she shall make and sign such reports, statements and instruments as may be required of him or her by the Board or of any state, country or other jurisdiction in which the Company transacts business, and shall perform such other duties as usually pertain to his or her office or as are properly required of him or her by the Board. If the Class B Shareholder loses confidence for any reason in the Chief Financial Officer, that Shareholder may request the Class A Shareholder dismissal of the Chief Financial Officer

at any time. The Class A Shareholder shall co-operate with such request and the Shareholders shall cause their directors to vote in favor of such dimissal. Once the Class B Shareholder has required such removal, that Shareholder may not thereafter require the removal of the individual proposed by it to fill such office for a period of 12 months.



(c) General Manager for European Operations. The Board shall appoint a General Manager for European Operations pursuant to the nomination by the Class B Shareholder and he or she have the powers and duties of immediate supervision and management of the Company's European operations which usually pertain to his or her office and shall perform all other duties as are properly required of him or her by the Board. If the Class B Shareholder loses confidence for any reason in the General Manager for European Operations, that Shareholder may request the Class B Shareholder the dismissal of the General Manager at any time. The Class B Shareholders shall co-operate with any such request and the Shareholders shall cause their directors to vote in favor of such dismissal. Once the Class A Shareholder has required such removal, that Shareholder may not thereafter require the removal of the individual proposed by it to fill such office for a period of 12 months.

(d) Compensation. The compensation of the President, the Chief Financial Officer and the General Manager for European Operations will be determined by the Board.

(e) Generally. The Board shall from time to time appoint such additional officers as the Board may determine and each of these additional officers will have such authority and perform such duties as the Board may from time to time prescribe and will serve until his or her successor is duly appointed, or until his or her earlier death, resignation or removal. Notwithstanding anything to the contrary contained herein, no officer of the Company will have any power or authority outside the normal day-to-day business of the Company to bind the Company by any contract or engagement or to pledge its credit or to render it liable in connection with any transaction unless expressly authorized to do so by the Board.

(f) Subsidiaries. The elections of the managing boards and chief executive officers of each of the Company's subsidiaries must be approved by an absolute majority of the appointed members of the Board.

Section 7.4 Representative Standard of Care; Liability to Shareholders. The members of the Board, the President, the Chief Financial Officer and the General Manager for European operations shall perform their managerial duties in good faith and with such care as an ordinarily prudent person in a like position would use under similar circumstances. No member of the Board will be deemed to guarantee, in any way, profit for Shareholders from the operations of the Company. No member of the Board will be liable to the Company or to any Shareholder for any loss or damage sustained by the Company or any Shareholder, unless the loss or damage is the result of fraud, deceit, gross negligence, willful misconduct or a wrongful taking by a member of the Board or as provided by law. To the extent that, any Affiliate of a member of the Board has duties and liabilities relating thereto to the Company or the Shareholders, that member of the Board acting under this Agreement or otherwise will not be liable to the Company or to any Shareholder for his or her good faith reliance on the provisions of this Agreement.

Section 7.5 No Management and Control. Except as expressly provided in this Agreement or by law, no Shareholder shall take part in or interfere in any manner with the control, conduct or operation of the Company or have any right or authority to act for or bind the Company or to vote on matters relating to the Company.



Section 7.6 Other Activities. Except as otherwise set forth in this Agreement, any Shareholder or its Affiliates may engage in or possess an interest in other business ventures of any nature or description, independently or with others, whether presently existing or hereafter created. Except as otherwise set forth in this Agreement, neither the Company nor any Shareholder or its Affiliates will have any rights in or to any such independent ventures or the income or profits derived therefrom.

Section 7.7 Transactions with Affiliates. Any services performed for the Company by any Shareholder or Affiliates of any Shareholder must be services that the Board reasonably believes to be, at the time of requesting such services, in the best interests of the Company, and the rate of compensation to be paid for any such services must be reasonable as compared to the amount paid for similar services under similar circumstances.

Section 7.8 Continuing Obligations. For so long as LGL and OCP are Shareholders, they shall cause compliance with the obligations set forth in Attachment L.

## ARTICLE 8
## OPERATING COSTS AND EXPENSES

Section 8.1 Operating Costs. The parties agree that the Company shall pay or cause to be paid all costs and expenses of the Company incurred in pursuing and conducting, or otherwise related to, the business of the Company.

Section 8.2 Reimbursement. The parties shall procure that the Company shall reimburse the Shareholders and members of the Board of the Company for any out-of-pocket costs and expenses reasonably incurred by them in pursuing and conducting, or otherwise related to, the business of the Company.

## ARTICLE 9
## FUNDING AND CAPITAL CONTRIBUTIONS

Section 9.1 Funding Needs.

(a) Bank Loans. The Shareholders shall (i) use all reasonable efforts to arrange banking facilities at the most favorable commercial rates then available for the borrowing required by subsection 10.1(a) and (ii) cause the Company to grant a security interest in its assets in connection with such financing, if required.

(b) Shareholder Loans and Guaranties. In lieu of bank or other institutional financing, the Shareholders may agree, but shall not be required, to lend funds to the Company (and/or the US JVCo) on terms to be mutually agreed upon. No Shareholder will be obligated to guaranty any bank or other indebtedness of the Company or the US JVCo. Notwithstanding the foregoing, if the Class B Shareholder does not make any additional capital contribution required by a Capital Call Notice (as defined in and delivered in accordance with the provisions below), OCP may elect, in lieu of making all or some of its own and LGL's additional capital contributions pursuant to such Capital Call Notice to loan some or all of the amount of the



additional capital contributions required under such Capital Call Notice to the Company at an interest rate per year equal to one year USD interest rate (without margin) as indicated by Reuters Libor O1 Screen (British Bankers Association) plus the margin of three percent (3%).

Section 9.2 Capital Call.

(a) In the event that the Board or the Shareholders determine to further finance the Company by way of an increase in the share capital of the Company, the Board or the Shareholders, as the case may be, shall request that the Shareholders contribute the additional capital in accordance with the following provisions:

(i) the Board shall request by written notice (the "Capital Call Notice") that the Shareholders make additional capital contributions to the Company pursuant to this Article 10 by subscribing for additional Shares from the class of Shares such Shareholder already holds in consideration for which each Shareholder shall contribute its share of the total amount of capital contributions requested in the Capital Call Notice determined by multiplying that total by its Share Percentage.

(ii) Each Capital Call Notice must include a reasonably detailed statement of the proposed uses of the capital contributions and a date (which date may be no earlier than the fifteenth Business Day following each Shareholder's receipt of the Capital Call Notice) before on which the share issue will take place.

(b) Delinquent and Contributing Shareholders. If a Shareholder (the "Delinquent Shareholder") does not subscribe for its Shares and contribute its capital contribution, by the date specified in the Capital Call Notice, all or any portion of the capital contribution the Delinquent Shareholder is required to make, as provided in this Article, the other Shareholder (the "Contributing Shareholder"), may contribute the portion of the Delinquent Shareholder's capital contribution that is in default with the following results:

(i) the sum so advanced will constitute a capital contribution from the Contributing Shareholder to the Company; and

(ii) the Company shall issue to the Contributing Shareholder that number of additional Shares of the class of Shares he already holds equal to the number of Shares the Company would have issued to the Defaulting Shareholder if the Defaulting Shareholder would have contributed its capital contribution.

ARTICLE 10
DIVIDEND POLICY

Section 10.1 Distributions. Dividends. Unless (i) the Base Business Plan requires the expenditure of available funds or (ii) the Company or the US JVCo is legally prohibited from doing so, the Shareholders shall procure that the Company and the US JVCo shall make a distribution to the Shareholders of an aggregate amount equal to thirty percent (30%) of the funds available for distribution for each Fiscal Year.



Section 10.2 Dividends by Subsidiaries. To the extent that the Company is restricted from paying a dividend under Section 10.1, but a subsidiary of the Company has available distributable reserves, the Shareholders shall procure that the Company shall take all reasonable steps to maximize profits available for distribution by the Company including causing the payment of dividends by a subsidiary to enable the Company to pay the dividends referred to in Section 10.1.

Section 10.3 Timing. The Shareholders shall procure that the Company shall, to the extent permitted by law, pay dividends within 30 days after the dates of the annual meeting of Shareholders at which its audited financial statements for the preceding Fiscal Year and the dividend distributions are approved.

Section 10.4 Determination of Profits Available. In deciding whether in respect of any Fiscal Year the Company has profits available for distribution, the Shareholders shall procure that the Company shall ask its auditors to report whether any such profits are available and, if so, the amount of those profits. In giving this report, the Company's auditors shall act as experts and not as arbitrators and their determination, in the absence of manifest error, will be final and binding on the parties. The Shareholders agree that the Company and the US JVCo shall bear costs of the auditors incurred under this Section.

Section 10.5 Distributions in Kind. In the event that the Board determines that a portion of the Company's assets should be distributed in kind to the Shareholders, the Shareholder shall procure that the Board shall determine the fair market value of such assets as of a date reasonably close to the date of distribution.

Section 10.6 Offset. The Shareholders agree between them and for the benefit of the Company that the Company may offset all amounts owing to the Company by a Shareholder against any distribution to be made to that Shareholder.

ARTICLE 11
PROTECTIVE COVENANTS

Section 11.1 Certain Competition Matters.

(a) Each of the Shareholders covenants, except as provided for in this Section 13.1, that for so long as it or any of its Affiliates remains a Shareholder of the Company and for a period of four (4 ) years thereafter (the "Restricted Period"), it shall not and shall ensure that none of its Affiliates shall, either directly or indirectly, through an agent or otherwise:

(i) engage in any business operating anywhere in the world which is competitive or likely to be competitive with the Business;

(ii) induce or attempt to induce any supplier or customer of the Company or its Affiliates to terminate its business relationships with the Company or its subsidiaries; or



(iii) induce, or attempt to induce, any director, officer or key employee of the Company to leave the employment of the Company or its Affiliates.

(b) For clarification purposes, the Shareholders agree that the sale to any Person by OCP or any of its Affiliates of copper tube, including "ACR tube" and chiller tube, will not constitute a violation by OCP of this Section 11.1(a) and (ii) the sale to any Person by LII or any of its Affiliates of heating, ventilating, air conditioning and refrigeration ("HVAC/R") products will not constitute a violation by the Class B Shareholder of Section 11.1(a).

(i) LII agrees to conduct its activities, including voting of its shares in Mex-JV, making any management decisions or taking any other action in Mex-JV which it has the power to take in a way that will not violate the terms of the Mexican Joint Venture Agreements, the Share Purchase Agreement or this Agreement and to take no action which will have an adverse impact on the Company.

(c) For clarification purposes, the Members agree that LII can continue to own its interests in the Mexican joint venture consisting of its ownership of 50% of Frigus-Bohn S.A. de C.V. ("Mex-JV"), and its joint venture company in Brazil, Heatcraft do Brasil Ltda ("Brazil-JV") subject to subsections (d), (e), (f) and (g) below; Heatcraft Australia Pty Ltd. can continue to manufacture and sell heat transfer products in Australia and New Zealand; and LII can continue to manufacture heat transfer surfaces for use in its HVAC/R products.

(d) The heat transfer activities of Heatcraft Australia Pty Ltd. within Australia and New Zealand involving the manufacture, sale and distribution of heat transfer surfaces within Australia and New Zealand will not be considered to be a violation of this Section 11.1 provided that it is in compliance with the Asia Pacific Agreement.

(e) The obligations restricting LGL and Heatcraft Australia Pty Ltd. and Affiliates in subsections (c) and (d) above will terminate when LGL is no longer a member of the Company but those in subsection (d) for both LGL and the Company will continue for three (3) years after such termination.

(f) With respect to (i) any company that LGL proposes to acquire or acquires after Closing that includes a heat transfer business or (ii) any company that the Company proposes to acquire or acquires after Closing that includes any HVAC/R business ("After Acquired Company") during the Restricted Period: (A) the other party shall have exclusive negotiation rights to purchase the assets of such After Acquired Company that competes with the Business or the HVAC/R business of LGL, as applicable ("Overlapping Business"), but (B) if such other party does not acquire such Overlapping Business of the After Acquired Company pursuant to such negotiations, then LGL or the Company (with LGL not voting), as the case may be, may proceed to complete such acquisition subject to the following conditions: (x) if LGL is the acquiring party of an Overlapping Business, it shall not have the right to use the Heatcraft name or mark with respect to the Overlapping Business, but may use it in its refrigeration business; and (y) the acquiring party shall sell the products of such Overlapping Business through the other party (LGL if it is HVAC/R and the Company if it is heat transfer products) which shall



have exclusive distribution rights during the Restricted Period on commercially reasonable terms to be negotiated in good faith.

(g) So long as LGL is a Shareholder of the Company, the Company will not engage in the design, manufacture or sale of equipment and accessory end use products in the HVAC/R industry.

Section 11.2 Confidential Information. Each party covenants that it and its Affiliates shall:

(a) not (directly or indirectly, through an agent or otherwise) use, copy or disclose to any other Person any information of a trade secret, proprietary or confidential nature relating to the business or affairs of any other party or its Affiliates;

(b) not (directly or indirectly, through an agent or otherwise) use or allow to be used any trade name used by the Company or its subsidiaries or any other name intended or likely to be confused with such a trade name; and

(c) use all reasonable efforts to ensure that any information of a trade secret, proprietary or confidential nature relating to any other party or its Affiliates will be treated as confidential and will not be disclosed to any other Person.

Section 11.3 Exceptions. Section 11.2 does not apply to information which:

(a) is now or hereafter becomes in the public domain other than as a result of a disclosure in breach of this Agreement;

(b) becomes available to a party on a non-confidential basis from a source other than a party;

(c) is developed by a party independently of information received from a party; or

(d) is ordered to be disclosed by a court of competent jurisdiction or otherwise required to be disclosed by law.

Section 11.4 Prior Knowledge of LGL. It is expressly acknowledged and agreed by LGL that in connection with its ownership and operation of the Business prior to the Closing, LGL and its Affiliates had special and extensive access and knowledge of the Business, and that this Article applies to all such knowledge which predates this Agreement; provided, however, that LGL reserves the right to use all such information and any information derived therefrom in its HVAC/R businesses so long as such use does not violate the provisions of Section 13.1.

Section 11.5 Reasonableness. Each party acknowledges that the provisions of this Article are no more extensive than is reasonable to protect the other parties.



Section 11.6 Representatives. A Shareholder will not be in breach of this Article by virtue of any member of the Board passing to the Shareholder which nominated him or her for appointment any information he or she receives as a member of the Board, or as a director of any subsidiary of the Company, but nothing contained in this Agreement will require such a disclosure where the member of the Board's duty to the Company or to any such subsidiary would be breached as a result.

Section 11.7 Equitable Relief. Each of the Members hereby agrees that its failure to comply with any provision of this Article 11 will cause the other Member and the Company irreparable harm and that the other Member and the Company will be entitled to equitable relief including specific performance, an injunction, a restraining order or other equitable relief in order to enforce any provision of this Article 11, which right will be in addition, to, and not in lieu of, any other remedy to which such Member and the Company may be entitled under applicable law (including monetary damages).

## ARTICLE 12
## TRANSFER OF SHARES - GENERAL

Section 12.1 Share Percentages. LGL shall transfer fifty-five percent (55%) of the outstanding Shares to OCP. The Share Percentages of the Shareholders will be as set forth on Schedule 12.1.

Section 12.2 General Restrictions on Transfer. No Shareholder shall transfer any of its Shares except as otherwise specifically set forth in this Agreement and in accordance with the Articles of Association.

Section 12.3 Permitted Transfers. Each Shareholder has the right to transfer its Shares to an Affiliate of such Shareholder provided that:

(a) the transferring Shareholder shall remain jointly and severally (*hoofdelijk aansprakelijk*) liable for its Affiliate's performance under this Agreement; and

(b) the transferror, the transferree and the non-transferring Shareholders shall consent in writing, in form and substance satisfactory to the non-transferring Shareholders, that the transferee shall be bound by the terms of this Agreement as if he, she or it were the assignor;

(c) the transfer shall not violate or cause the Company to violate any applicable law or governmental rule or regulation or cause the Company to be subject to any reporting requirements of any applicable securities law; and

(d) if requested by the Board, an opinion from counsel to the transferree (which counsel and opinion must be satisfactory to counsel for the Company) must be furnished to the Company stating that, in the opinion of that counsel, the transfer would not violate or cause the Company to violate any applicable law or governmental rule or regulation or cause the Company to be subject to any reporting requirements of any applicable securities law.



Section 12.4 Transfer Closings.

(a) Completion of any sale and purchase of a Shareholder's Interest ("Transfer Closing") pursuant to Article 12 shall take place at the offices of Clifford Chance on the date which is the third Business Day after the Proposed Effective Date of such Transfer as provided by the applicable agreement and law.

(b) At the Transfer Closing, the selling Shareholder shall procure the delivery to the purchasing Shareholder of:

(i) a duly executed and, if applicable, notarial deed of transfer of Shares and/or duly stamped assignment or assignments in respect of the Interests in favor of the purchasing Shareholder (or such Person or Persons as the purchasing Shareholder may direct) and any certificate(s) representing the Interests; and

(ii) such other documents as may be reasonably necessary to enable the purchasing Shareholder or its nominee(s) to obtain a good title to all of the Interests being sold, free and clear of all liens, charges, security interests and other encumbrances of any kind.

(c) Against delivery of the documents referred to in Section 12.4(b) above, the purchasing Shareholder shall pay the purchase price to the selling Shareholder at the Transfer Closing by wire transfer of immediately available funds.

Section 12.5 Name, Logos and Trademarks. In the event that any Shareholder transfers its Interests for any reason, the parties agree that the name, logos and trademarks of the Company will be amended to remove any reference to the transferring Shareholder; provided, however, that, for clarification purposes, LGL acknowledges that the Company will not be required to remove "HEATCRAFT" from its name, logos or trademarks under any circumstances and shall continue to have the right to use the other trademarks owned or used by the Company in the same manner as permitted prior to any such transfer.

Section 12.6 Expenses. Each transferring Shareholder agrees to pay, prior the transfer of its Interests, all reasonable expenses, including attorneys' fees, incurred by the Company in connection with the transfer.

Section 12.7 Transferree's Rights. A Permitted Transferee of any Interest will be entitled to vote and to receive distributions of cash or other property from the Company and to receive allocations of the income, gains, credits, deductions, Profits and Losses of the Company attributable to that Interest after the effective date of the transfer.



## ARTICLE 13
## CALL OPTION

Section 13.1 Call Option.

(a) Subject to all of the terms and conditions of this Agreement, LGL grants to OCP the option and right to purchase all of the Shares of LGL at the Option Price and during the Option Exercise Period, both terms bearing the meaning as defined in the Joint Venture and Members' Agreement (the "Option"). Such Option may be exercised by written notice to LGL in accordance with the terms and conditions which are specified in the applicable provisions of the Joint Venture and Members' Agreement with respect to US JV Co.

(b) Closing of the transactions upon the Option exercised under this Agreement and the transactions provided for with respect to the Call Option as provided for in the Joint Venture and Members' Agreement shall always be made simultaneously with respect to both transactions.

Section 13.2 Miscellaneous Call Option Matters.

(a) The Option may only be exercised in respect of all, and for not less than all of LGL's Shares; and exercise of the Option will oblige LGL to sell, and OCP to purchase, all of LGL's Shares.

(b) LGL's Shares shall be sold free and clear of all liens, charges, security interests and other encumbrances of any kind and together with all rights attached or accruing to the Shares at the date of service of the notice exercising the Option.

(c) Until completion of the transfer of the Shares, LGL or the holder of any of its Shares (as the case may be) will be entitled to exercise all voting and other rights attached to its Shares and will be entitled to receive and retain all distributions in respect thereof in the event that the receipt date for distributions and/or dividends is prior to the Closing Date.

(d) If OCP does not exercise the Option during the Option Exercise Period, the provisions of Article 14 will be triggered.

ARTICLE 14
COMPANY SALE; RIGHT OF FIRST REFUSAL

Section 14.1 Sale Notice. At any time after the expiration of the Option Exercise Period, either OCP or LGL (the "Electing Shareholder") may send a notice (the "Sale Notice") to the other Shareholder and the Company indicating the Electing Shareholder's intent to commence a process leading to the sale of all of the Shares. If the Sale Period (as defined below) expires as provided below, neither party may give another Sale Notice for 24 months after such expiration.

Section 14.2 Sale Procedures.

(a) If a Sale Notice is sent, the Board shall within 60 days thereafter retain an investment banking firm to solicit offers from bona fide third parties to acquire all of the Shares .. For purposes of this Section 14.2, the term "Sale Period" means the one year period after a Sale Notice is delivered by an Electing Shareholder, which shall be extended for a reasonable period to the extent recommended by the investment banking firm.

(b) The Shareholders shall cooperate in all respects with the investment banking firm selected hereunder in connection with its due diligence and services to the Board. In connection therewith, the Company and Shareholders will not be required to enter into a LOI (as defined below) unless it includes a proposed firm price or firm total consideration that is acceptable to both Shareholders. If one or more offers to purchase all of the Shares is received from a bona fide third party(s) during the Sale Period ("Third Party Offers"), the Shareholders shall review any and all such Third Party Offers with such investment banking firm and seek its opinion as to the fairness of such Third Party Offers and the value of the Company. If either Shareholder desires to accept any such Third Party Offer, the Shareholders agree that, subject to paragraph (c) below, they shall be required to consummate the sale of all of their Shares pursuant to the Third Party Offer.

(c) No Shareholder shall be obligated under this Section 14.2 to sell its Shares pursuant to any Third Party Offer that does not include (i) the release of all guaranties, if any, by such Shareholder of any indebtedness or other obligations of the Company and of the US JVCo and (ii) representations and warranties and indemnification provisions that are reasonable and customary for transactions of this type. In addition, if LGL is the Shareholder that desires to accept a Third Party Offer, OCP shall have the option and right to purchase LGL's Shares for a consideration equal to what LGL would have received in connection with the completion and closing of the sale of its Shares pursuant to the Third Party Offer under the following circumstances: (A) the Third Party was a result of an auction process managed by the investment banking firm and no LOI was required or (B) if an LOI was required in connection with the receipt of a Third Party Offer, and the total consideration that LGL will receive in connection with the completion of the Third Party Offer is not equal to or greater than 90% of the consideration provided for in the LOI. For purposes hereof, the term "LOI" means a letter of intent, memorandum of understanding or similar preliminary agreement that requires the Company and the Shareholders to negotiate exclusively with a bona fide third party.

Section 14.3 For purposes of subsection (c) above, if the purchase price included in a Third Party Offer includes any non-cash consideration, the party exercising its option will have the right to substitute cash in an amount equal to the fair market value of such non-cash consideration. If any part of the non-cash consideration consists of registered securities, the fair market value of such securities will be deemed to be the average of their closing sale prices as reported on the applicable national securities exchange or quotation system on which such securities are listed, quoted or admitted to trading for the 20 trading days immediately preceding the date which is two Business Days prior to the day on which the Class A Shareholder notifies the Class B Shareholder that it is exercising the ROFR Option. The fair market value of any other non-cash consideration will be determined by the investment banking firm selected pursuant to Section 14.2, and any such



determination will be final and binding on the Shareholders. The Company shall pay the fees of the investment banking firm in making such determination.

ARTICLE 15
TERM

Section 15.1 Effective Date. This Agreement commences on the date hereof.

Section 15.2 Termination. This Agreement will be terminated by either Shareholder by written notice to the other Shareholder if the Purchase Closing has not occurred by the Target Date (as extended pursuant to Section 2.3 or otherwise by mutual written agreement). If the Purchase Closing occurs, this Agreement will terminate on the earlier to occur of (a) the liquidation of the Company or (b) there remaining only one Shareholder.

Section 15.3 Survival. The provisions of this Agreement that are by their terms intended to survive, will continue to apply to a Shareholder notwithstanding that it has ceased to own any Shares. Section 15.2 will not affect any of the rights or liabilities of any parties in connection with any breach of this Agreement which may have occurred before that Shareholder ceased to own any Shares.

ARTICLE 16
DISPUTES

Section 16.1 ADR Procedures. All claims, disputes and matters in controversy arising out of, or related to this Agreement, or the breach thereof ("Disputes"), shall be settled in accordance with the procedures set forth in this Article and in Attachment P (the "ADR Procedures").

Section 16.2 Meetings. The Shareholders shall use reasonable efforts to settle any Disputes but, in the absence of agreement, the remaining provisions of this Article will apply. Such efforts will include (a) at least two meetings of the Board or senior representatives of the ultimate Shareholders and (b) a meeting, telephone or video conference between the respective chief executive officers of the Shareholders. If the dispute has not been settled within 60 days after either Shareholder gives written notice of a Dispute, then either party may trigger the ADR Procedures.

ARTICLE 17
ANNOUNCEMENTS

Section 17.1 Press Releases. OCP and LGL each issued a press release on April 22, 2002. Unless required by legal requirements of any Governmental Body ("Legal Requirements"), additional public announcements or similar publicity with respect to this Agreement or the JV Transactions will be issued prior to the Closing Date, if at all, only at such time and in such manner as the Shareholders mutually determine.

Section 17.2 Public Communications. With respect to public communications on the Closing Date or otherwise with respect to the Closing, the Shareholders shall consult in good faith regarding appropriate press releases and, unless required by Legal Requirements the form and content of, any press release, public announcement or similar publicity relating to the Closing, the Company and the parties shall be mutually determined.

## ARTICLE 18
## GENERAL PROVISIONS

Section 18.1 Expenses.

(a) Except as otherwise expressly provided in this Agreement or the European Share Purchase Agreement, each party will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel, accountants and investment bankers.

(b) In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of that party arising from a breach of this Agreement by another party.

Section 18.2 Confidentiality. Between the date of this Agreement and the Closing Date, the parties shall maintain in confidence, and will cause their respective directors, officers, employees, agents, and advisors to maintain in confidence, and not use to the detriment of another party, any trade secret, confidential or proprietary information obtained from another party in connection with this Agreement or the transactions contemplated hereby, unless (a) that information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of that party, (b) the use of that information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated hereby or (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings.

Section 18.3 Notices.

(a) Method. Unless otherwise provided in this Agreement, any notice, consent, waiver or other communication to be given hereunder must be in writing and (i) delivered personally (to be effective when so delivered), (ii) mailed by registered or certified mail, return receipt requested (to be effective four days after the date it is mailed), (iii) sent by Federal Express or other overnight courier service (to be effective when received by the addressee) or (iv) sent by facsimile transmission (to be effective upon receipt by the sender of electronic confirmation of the delivery of the facsimile provided that a copy is delivered in accordance with clause (a), (b) or (c)), to the following addresses and telecopy numbers (or to such other addresses or telecopy numbers which any party designates in writing to the other parties):



If to the Company:

Outokumpu Heatcraft B.V.
[ADDRESS TO BE PROVIDED]
Attention: CEO

with a copy to:

Outokumpu Copper Products Oy
c/o Outokumpu Oyj
Riihitontuntie 7 D
P.O. Box 280
FIN-02200 Espoo
Attention: Corporate General Counsel
Facsimile No.: + 358 9 421 2428

If to LGL:

LGL HOLLAND B.V.

c/o Lennox International, Inc.
2140 Lake Park Blvd
Richardson, Texas 75080-2254
Attention: General Counsel
Facsimile No.: 972-497-5268

If to OCP:

Outokumpu Copper Products OY
c/o Outokumpu Oyj
Riihitontuntie 7 D
PO Box 280
FIN-02201 Espoo, Finland
Attention: Corporate General Counsel
Facsimile No.: 011-358-9-421-2428]

with a copy to:



Hodgson Russ LLP
1800 One M&T Plaza, Suite 2000
Buffalo, New York 14203
Attention: Robert B. Fleming, Jr., Esq.
Christine A. Bonaguide, Esq.
Facsimile No.: 716-849-0349

(b) Computation of Time. In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is not a Business Day, in which event the period will run until the end of the next day which is a Business Day.

Section 18.4 Jurisdiction; Service of Process. Except as otherwise provided for in Article 21 and Attachment P, any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought in the courts of Amsterdam, The Netherlands, subject to appeal and appeal in the second instance (*cassatie*). Each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

Section 18.5 Further Assurances. The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as any other party may reasonably request for the purpose of carrying out the intent of this Agreement. Without limiting the foregoing, the Shareholders agree that they shall cause the convening of all meetings, the giving of all waivers and consents and the adoption of all resolutions, and shall otherwise exercise all powers and rights available to them, in order to give effect to the provisions of this Agreement.

Section 18.6 Entire Agreement. This Agreement constitutes the entire agreement among parties with respect to the subject matter hereof (including the Memorandum of Agreement between LGL and Outokumpu Oyj dated on or about April 9, 2002) and supercedes any prior agreement or understanding matter among the parties with respect to the subject matter hereof.

Section 18.7 Amendment: Waiver. Except as provided otherwise herein, this Agreement may not be amended nor may any rights hereunder be waived except by an instrument in writing signed by the party sought to be charged with such amendment or waiver. The rights and remedies of the parties are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law except as set forth in this Agreement, (a) no



claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

Section 18.8 Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the The Netherlands.

Section 18.9 Binding Effect. Except as provided for in Section 12, neither party may assign any of its rights under this Agreement without the prior consent of the other parties. Subject to the preceding sentence, this Agreement is binding upon and inures to the benefit of the parties and their respective legal representatives, heirs, successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties hereto.

Section 18.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective, as to such jurisdiction, to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 18.11 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 18.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same agreement.



IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the date first above written.

LGL HOLLAND B.V.

By: /s/ Carl E. Edwards, Jr.
Name: Carl E. Edwards, Jr.
Title: Director A

By: _____
Name: Charles E. Donnelly, Jr.
Title: Director B

OUTOKUMPU COPPER PRODUCTS OY

By: /s/ Kalevi Nikkilä
Name:
Title:

**SHARED SERVICES AGREEMENT**

This **SHARED SERVICES AGREEMENT ("Agreement")** made as of August 30, 2002 is entered into by and between **Lennox International Inc.** (**"Lennox"**) having its principal place of business located at 2140 Lake Park Blvd., Richardson, TX 75080, and **Outokumpu Heatcraft USA** LLC having its principal place of business located at Memphis and **Outokumpu Heatcraft B.V.** having its principal place of business in Amsterdam (referred to as "JV"), pursuant to the following Recitals and Clauses:

**W I T N E S S E T H:**

**WHEREAS**, Lennox is organized pursuant to the laws of Delaware and has all the necessary authorizations, corporate or otherwise, to enter into this Agreement;

**WHEREAS**, JV is a limited liability company organized pursuant to the laws of Delaware and has all the necessary authorizations, corporate or otherwise, to enter into this Agreement;

**WHEREAS**, pursuant to a Share Purchase Agreement (**"U.S. Purchase Agreement"**), dated as of July 18, 2002, entered into by and among Lennox, Outokumpu Copper Products Oy ("**OCP"**) and Outokumpu Copper Holdings, Inc. ("**Holdings"**) and pursuant to a Share Purchase Agreement (**"European Purchase Agreement"**), dated as of July 18, 2002, entered into by and among OCP and LGL Holland B.V. ( OCP together with its subsidiaries being hereafter referred to as "**Outokumpu**"), the Parties thereto have agreed for Outokumpu to acquire fifty-five percent (55%) of the heat transfer business of Lennox, as more fully described in the Purchase Agreements (the "**Lennox Heat Transfer Business**") in the form of joint venture companies in the United States, Europe and Asia (the **"JV Business"**);

**WHEREAS**, prior to the Effective Date, Lennox, using its corporate resources and resources from the Subsidiaries, provided certain services in support of the operation of the Lennox Heat Transfer Business;

**WHEREAS**, the Parties have agreed that after the Effective Date, Lennox will provide, or will solicit the Subsidiaries to provide, the Lennox Shared Services to support the activities of the JV Business under the terms of this Agreement;

**WHEREAS**, prior to the Effective Date, the Lennox Heat Transfer Business provided certain services in support of the operation of ADP; and

**WHEREAS**, the Parties have agreed that after the Effective Date, JV will provide the JV Shared Services to support the activities of ADP under the terms of this Agreement.

---

**NOW THEREFORE**, in consideration of the mutual covenants and undertakings of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, accepted and agreed to, Lennox and JV hereby agree as follows:

**CLAUSES**

**1. DEFINITIONS.**

**1.1.** For purposes of this Agreement, the following terms shall have the meaning ascribed to them, as follows:

**(a)** **ADP**: means Advanced Distributor Products LLC, a Delaware limited liability company and an indirect, wholly-owned subsidiary of Lennox.

**(b)** **Agreement**: shall have the meaning set forth in the Preamble.

**(c)** **Default Notice**: shall have the meaning set forth in Clause 11.

**(d)** **Effective Date**: shall mean the effective date of the Purchase Agreement which shall be the Closing Date as specified in the U.S. Purchase Agreement and the European Purchase Agreement.

**(e)** **JV**: shall have the meaning set forth in the Preamble.

**(f)** **JV Business**: shall have the meaning set forth in the Recitals.

**(g)** **JV Shared Services**: shall mean the services listed on Exhibit A, attached hereto, and any other services as may be agreed to by the Parties, and which may be required by ADP in connection with its operations in the United States. The services and fees described on Exhibit A are initial operating estimates prepared by the parties as of the Effective Date and will provide the basis for operations after the Effective Date. As soon as practical, but in no event after three (3) months from the Effective Date, the parties will have completed a thorough review of the scope of services being provided and the fees being charged therefore. The parties agree that, unless otherwise provided in this Agreement, any adjustments required to the scope of services shall be made at that time but any changes to the fees being charged will be retroactive to the Effective Date.

**(h)** **JV Shared Services Fees**: shall have the meaning set forth in Clause 5.1.

**(i)** **Lennox**: shall have the meaning set forth in the Preamble.

**(j)** **Lennox Heat Transfer Business**: shall have the meaning set forth in the Recitals.

---

**(k)** **Lennox Shared Services**: shall mean the services listed on Exhibit B, attached hereto, and any other services as may be agreed to by the Parties, and which may be required by JV in connection with its operations in the United States, Europe and Asia and/or at such other business locations of JV as may be agreed to by the Parties. The services and fees described on Exhibit B are initial operating estimates prepared by the parties as of the Effective Date and will provide the basis for operations after the Effective Date. As soon as practical, but in no event after three (3) months from the Effective Date, the parties will have completed a thorough review of the scope of services being provided and the fees being charged therefore. The parties agree that, unless otherwise provided in this Agreement, any adjustments required to the scope of services shall be made at that time but any changes to the fees being charged will be retroactive to the Effective Date.

**(l)** **Lennox Shared Services Fees**: shall have the meaning set forth in Clause 4.1.

**(m)** **Losses**: shall the have the meaning set forth in Clause 10.1.

**(n)** **Outokumpu**: shall have the meaning set forth in the Recitals.

**(o)** **Party**: means either Lennox or JV, as applicable.

**(p)** **Parties**: means both Lennox and JV.

**(q)** **Purchase Agreement**: shall have the meaning set forth in the Recitals.

**(r)** **Subsidiaries**: shall mean entities that are owned one hundred percent (100%) directly or indirectly by Lennox.

**(s)** **Term**: shall have the meaning set forth in Clause 8.

**2. LENNOX SHARED SERVICES**.

**2.1**. Lennox hereby agrees to render to JV, or cause the Subsidiaries to render to JV, the Lennox Shared Services through the personnel and employees of Lennox or the Subsidiaries. Lennox agrees to perform, or cause the Subsidiaries to perform, the Lennox Shared Services with the same degree of care, skill and diligence, and using the same operating procedures, as used in

performing similar services for Lennox's own benefit, consistent with past practice (where applicable).

---

**2.2**. Notwithstanding anything to the contrary set forth in this Agreement (including Exhibit B), the Parties agree that the Lennox Shared Services do not include any services that were previously provided by the Vice President of Finance or other group personnel of the Lennox Heat Transfer Business which were not transferred to the JV, all of which are to be provided by resources within the JV.

**2.3.** JV, at its sole option, may terminate the provision of all or any portion of the Lennox Shared Services at any time during the Term of this Agreement by providing Lennox with six (6) months prior written notice.

**2.4**. Prior to termination of this Agreement for whatever reason, JV shall ensure that it has adequate resources in place to eliminate the need for the Lennox Shared Services.

**2.5**. The Lennox Shared Services provided hereunder shall be provided by Lennox or the Subsidiaries without any warranty as to the sufficiency, quality or completeness or the suitability of such services for any purpose. ACCORDINGLY, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, LENNOX MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LENNOX SHARED SERVICES PROVIDED HEREIN INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**3. JV SHARED SERVICES**.

**3.1**. JV hereby agrees to render the JV Shared Services to ADP through JV's personnel and employees. JV agrees to perform the JV Shared Services with the same degree of care, skill and diligence and using the same operating procedures as would be used in performing similar services for JV's own benefit.

**3.2**. Lennox, at its sole option may terminate the provision of the JV Shared Services at any time during the Term of this Agreement by providing JV with six (6) months prior written notice.

**3.3**. Prior to termination of this Agreement for whatever reason, Lennox shall ensure that ADP has adequate resources in place to eliminate the need for the JV Shared Services.

**3.4**. The JV Shared Services provided hereunder shall be provided by the JV or the Subsidiaries without any warranty as to the sufficiency, quality or completeness or the suitability of such services for any purpose. ACCORDINGLY, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE JV MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE JV SHARED SERVICES PROVIDED HEREIN INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

---

**4. LENNOX SHARED SERVICES FEES**.

**4.1.** In consideration for the Lennox Shared Services, JV shall pay Lennox for services rendered and reimbursement of expenses incurred in rendering the Lennox Shared Services (the "**Lennox Shared Services Fees**"). The fees set forth on Exhibit B are the initial operating estimates of the annual Lennox Shared Services Fees which are subject to adjustment as contemplated by Sections 1.1(k) and 4.2 hereof. To the extent any part of the Lennox Shared Services Fees is based on an hourly, daily or monthly rate, such rates may be adjusted annually on January 1 of each year during the Term, and the Lennox Shared Services Fees shall be adjusted accordingly.

**4.2**. The Lennox Shared Services Fees shall be based on prices that JV could obtain from independent third parties for the Lennox Shared Services or the cost for providing such services internally by the JV. If JV requests a change to the Lennox Shared Services Fees based on a lower price offered by an independent third party or lower internal cost, and an agreement cannot be reached with Lennox on a modified price, JV may terminate that service immediately, at its sole discretion, but must pay any Lennox Shared Services Fees for such services that were rendered prior to termination.

**4.3**. Lennox shall provide JV with a monthly invoice setting forth the Lennox Shared Services provided and the corresponding Lennox Shared Services Fees due thereunder. Payment shall be due within ten (10) days after receipt of invoice.

**4.4**. Lennox Shared Services Fees due hereunder shall be paid by JV to Lennox in United States Dollars unless otherwise agreed to in writing by the Parties. JV shall make payment by depositing the amounts due in the bank account(s) designated in writing by Lennox.

**4.5**. Upon request, Lennox shall prepare records accurately showing all costs incurred in connection with providing the Lennox Shared Services under this Agreement. Such records shall be open to inspection by representatives or agents of JV at reasonable times and after reasonable advance notice, for the purpose of verifying the accuracy of the payments made hereunder.

**5. JV SHARED SERVICES FEES**.

**5.1**. In consideration for the JV Shared Services, Lennox or ADP shall pay JV for services rendered and reimbursement of expenses incurred in rendering the JV Shared Services (the "**JV Shared Services Fees**"). The initial annual estimate of the JV Shared Services Fees is set forth on Exhibit A which are subject to adjustment as contemplated by Sections 1.1(g) and 5.2 hereof. To the extent any part of the JV Shared Services Fees is based on an hourly, daily or monthly rate, such rates may be adjusted annually on January 1of each year during the Term, and the JV Shared Services Fees shall be adjusted accordingly.

---

**5.2.** The JV Shared Services Fees shall be based on prices that ADP could obtain from independent third parties for the JV Shared Services. If Lennox requests a change to the JV Shared Services Fees based on a lower price offered by an independent third party, and an agreement cannot be reached with JV on a modified price, Lennox or ADP may terminate that service immediately, at its sole discretion, but must pay any JV Shared Services Fees for such services that were rendered prior to termination.

**5.3.** JV shall provide Lennox or ADP with a monthly invoice setting forth the JV Shared Services provided and the corresponding JV Shared Services Fees due thereunder. Payment shall be due within ten (10) days after receipt of invoice.

**5.4**. Fees due hereunder shall be paid by Lennox or ADP to JV in United States Dollars unless otherwise agreed to in writing by the Parties. Lennox or ADP shall make payment by depositing the amount due in the bank account(s) designated in writing by JV.

**5.5** Upon request, JV shall prepare records accurately showing all costs incurred in connection with providing the JV Shared Services under this Agreement. Such records shall be open to inspection by representatives or agents of Lennox or ADP at reasonable times and after reasonable advance notice, for the purpose of verifying the accuracy of the payments made hereunder.

**6. CHANGES TO EXHIBIT A AND EXHIBIT B**. Lennox agrees to provide or cause to be provided as part of the Lennox Shared Services, any service inadvertently omitted from Exhibit B to the extent such service was provided by Lennox or the Subsidiaries to the Lennox Heat Transfer Business prior to the Effective Date unless otherwise specifically excluded hereunder, and subject to a corresponding adjustment to the Lennox Shared Services Fees. JV agrees to provide any service to ADP as part of the JV Shared Services that was inadvertently omitted from Exhibit A, to the extent such service was provided by the Lennox Heat Transfer Business to ADP prior to the Effective Date, unless otherwise specifically excluded hereunder, and subject to a corresponding adjustment to the JV Shared Services Fees. In addition, during the Term of this Agreement, JV or Lennox (on behalf of ADP) may require additional support services not specified in this Agreement. JV or Lennox agrees to provide such additional support services as may reasonably be requested by the other Party during the Term of this Agreement; provided, that terms and fees for such additional support services are mutually agreed to between the Parties. To the extent that the Lennox Shared Services, the Lennox Shared Services Fee, the JV Shared Services, or the JV Shared Services Fees are modified, said modification shall be made by revising Exhibit A or Exhibit B, as applicable, and causing such revised Exhibit to be duly signed by the legal representatives of the Parties and setting forth the effective date of the modification.

---

**7. APPROVAL/COMPLIANCE**.

**7.1.** Lennox shall obtain or cause the Subsidiaries to obtain, any and all permits and approvals that are required or necessary in connection with rendering the Lennox Shared Services and shall perform or cause the Lennox Shared Services to be performed, in compliance with any and all applicable laws, regulations and rules.

**7.2.** JV shall obtain any and all permits and approvals that are required or necessary in connection with rendering the JV Shared Services and shall perform the JV Shared Services in compliance with any and all applicable laws, regulations and rules.

**8.** **TERM**. This Agreement shall commence as of the Date and shall continue for at least thirty-six (36) months, unless otherwise stated herein or it is terminated as provided in Clause Eleven below or renewed as provided in this Clause Eight (the "**Term**"). This Agreement is renewable on monthly basis, by written agreement between the Parties, and any period of renewal shall be included as part of the Term.

**9.** **LABOR RELATIONS**.

**9.1**. Lennox shall be solely responsible and liable for any labor obligations under the applicable provisions of labor laws regarding any employees and/or workers it or the Subsidiaries may contract, directly or indirectly, to render the Lennox Shared Services. JV shall be solely responsible and liable for any labor obligations under the applicable provisions of labor laws regarding any employees and/or workers it may contract, directly or indirectly, to render the JV Shared Services.

**9.2**. Lennox shall pay or reimburse JV for any payment or liability incurred by JV, in relation to any labor obligation derived of or as a consequence of this Agreement with respect to the employees of Lennox or the Subsidiaries. JV shall pay or reimburse Lennox and ADP for any payment or liability incurred by Lennox or ADP, in relation to any labor obligation derived of or as a consequence of this Agreement with respect to the employees of JV.

**10.** **INDEMNIFICATION; LIMITATIONS OF LIABILITY** .

**10.1.** With respect to any claims, losses, damages, liabilities or expenses (including reasonable attorneys' fees) ("Losses") incurred by JV, Lennox will indemnify and hold JV harmless from and against any Losses arising out of the acts or omissions of Lennox, or in connection with Lennox's performance under this Agreement. With respect to any Losses incurred by Lennox or ADP, JV will indemnify and hold Lennox and ADP harmless from and against any Losses arising out of the acts or omissions of JV, or in connection with JV's performance under this Agreement.

**10.2.** Except as provided for in Section 10.1, neither Party shall be liable to the other for any consequential, special, incidental, exemplary or punitive damages.

---

**10.3.** Except as provided for in Section 10.1, JV's sole liability to Lennox and its employees in connection with the Lennox Shared Services is limited to the payment of invoices for actual Lennox Shared Services rendered. Except as provided for in Section 10.1, Lennox's sole liability to JV and its employees in connection with the JV Shared Services is limited to the payment of invoices for actual JV Shared Services rendered.

**11.** **TERMINATION**. This Agreement may be terminated at any time (i) by the mutual consent of the Parties in writing, or (ii) pursuant to a written notice ("**Default Notice**") by JV or Lennox to the other, given no less than thirty (30) calendar days in advance of the desired date of termination, in the event that:

**(a)** either Party hereto defaults in its performance of any material obligations hereunder and fails to remedy such default within the term of the Default Notice; and/or

**(b)** either Party hereto commences bankruptcy or liquidation proceedings, becomes insolvent, ceases or threatens to cease to carry on business or loses control over a substantial part of its assets whether through the appointment of a receiver or otherwise.

**12.** **GOVERNING LAW; FORUM**. This Agreement shall be construed, enforced and executed pursuant to the laws of the state of New York. For anything pertaining to the interpretation, execution and/or enforcement of this Agreement, the Parties irrevocably submit themselves to the exclusive jurisdiction of the federal district courts within the state of Delaware, and hereby waive any claim constituting such courts as an inconvenient forum. All Disputes shall be settled in accordance with the procedures set forth in this Section 12 and in Exhibit C hereto.

**13.** **MISCELLANEOUS PROVISIONS.**

**13.1.** **Notices; Addresses**. All notices required hereunder shall be in writing and shall be effective as set forth herein. Such notices shall be delivered personally or sent by facsimile or via specialized courier, to the addresses and facsimile numbers set forth below by the Parties, unless notice of change of address and/or facsimile number is given in writing by a Party in accordance with the foregoing to the other Party, in which case any notices shall be sent to such new addresses and/or facsimile numbers.

**Lennox:**

Lennox International Inc.
2140 Lake Park Blvd.
Richardson, TX 75080
Telephone: 972-497-5000
Facsimile: 972-497-6660
Att'n: Chief Legal Officer

---

**JV: [to be provided at signing]**

Telephone:
Facsimile:
Att'n:

**13.2. Acts Of God; Force Majeure**. In the event that lawful performance of this Agreement or any part hereof, by either Party hereto, shall be deemed impossible to fulfill by or as a consequence of any law or any act of any government having jurisdiction over such Party, such Party shall not be considered in default hereunder by reason of any failure to perform occasioned thereby. Any delay in the performance of any other obligations of either Party hereunder shall be excused if, and to the extent, caused by occurrences beyond such Party's reasonable control, including Acts of God or force majeure, such as governmental orders or restrictions, war, warlike conditions, hostilities, sanctions, mobilization, blockade, embargoes, strikes or other major labor troubles or any other cause or causes that cannot be reasonably controlled by either Party.

**13.3. Entire Agreement**. This Agreement sets forth the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement and supersedes and cancels any previous understanding or agreement between the Parties relating to the Lennox Shared Services or the JV Shared Services.

**13.4. Relationship**. Lennox and the Subsidiaries are independent contractors providing Lennox Shared Services to JV, and JV is an independent contractor providing JV Shared Services to ADP. This Agreement does not create an employee/employer relationship between the Parties, nor is the intent that an agency, partnership, distribution, or representation be formed by this Agreement. Neither Party shall have the right, power or authority to make representations or warranties nor to contract debts or other obligations in the name of or on behalf of the other Party except to the extent authorized by this Agreement or by the other Party.

**13.5. Waiver**. Any waiver by JV or Lennox of a breach of any term or condition of this Agreement shall not be considered as a waiver of any subsequent breach of any term or condition hereof.

**13.6. Subcontracting or Assignment**. Neither Party shall subcontract or assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of each Party and their respective legal representatives, successors and permitted assigns, if any.

**13.7. Severability**. Should any provision of this Agreement be held to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be affected thereby.

---

**13.8. Modifications or Amendments**. No modifications or amendments of this Agreement will be effective unless made in writing and signed by both Parties.

**13.9. Headings and Captions**. The headings and captions of the various Clauses of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto being fully cognizant of the terms and conditions hereof have caused this Agreement to be executed by their legal representatives as of the date first above written in the places indicated in each case.

---

**Lennox:**
**Lennox International Inc.**
By: /s/ Carl E. Edwards, Jr.
Name: Carl E. Edwards, Jr.
Title: EVP

**JV:**
**Outokumpu Heatcraft USA LLC**
By: /s/ Kalevi Nikkilä
Name:_____
Title: _____

**Outokumpu Heatcraft B.V.**
By: /s/ Kalevi Nikkilä
Name:_____
Title:_____

**JOINT TECHNOLOGY DEVELOPMENT AGREEMENT**

**THIS JOINT TECHNOLOGY DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into this 30th day of August, 2002, by and among the following:

**Lennox International, Inc**., having its principal place of business at 2140 Lake Park Blvd., Richardson, TX 75080-2254 ("Lennox");

**Outokumpu Oyj**, a Finnish company, having its principal place of business at Riihitontuntie 7 A, P.O. Box 144, FIN-02201 Espoo, Finland ("Outokumpu");

A World-wide Heat Transfer Joint Venture consisting of: **Outokumpu Heatcraft USA LLC**., a Delaware limited liability company ("Heat-Transfer-US"), and **Outokumpu Heatcraft B.V.**, a Dutch company ("Heat-Transfer-Europe"), and collectively the "Heat-Transfer-JV"; and

**Advanced Heat Transfer LLC.**, a Delaware limited liability company ("HTX Tech JV").

This Agreement is entered into under the following circumstances:

A. Outokumpu and Lennox have created and jointly own the HTX Tech JV for the purpose of conducting the development of technology to provide advanced heat transfer solutions to the Heat-Transfer-JV and to the members of HTX Tech JV (Outokumpu and Lennox), and to be the worldwide authority and technology leader in the heat transfer industry, all for the purpose of providing technology to be used for the development of improved engineering technology, product technology and manufacturing processes for the development of products for commercial application that conform to the Strategic Application Area (as hereinafter defined) ("Products") and as provided for in the Strategic Filter attached hereto as **Exhibit "A"** (the "Strategic Filter") with the intention that the activities of the HTX Tech JV benefit Outokumpu, Lennox and the Heat-Transfer-JV equally;

B. Lennox, Outokumpu, Heat-Transfer-JV and HTX Tech JV desire to work together to jointly develop new and unique technology to be used in heat transfer components for products that conform to the Strategic Application Area, as well as improved engineering technology, product technology and manufacturing processes related thereto ("Technology"); and

C. The parties also desire to provide for the ownership and licensing of the technology related to the Projects (as hereinafter defined) and to establish the ownership of the Technology that is developed in the course of completing the conduct of the Projects.

NOW, THEREFORE, in consideration of these premises and the mutual covenants contained herein, the parties hereto, intending to be legally bound, agree as follows:

1. Obligations of the Parties.

A. The purpose of this Agreement is to set forth the mutual obligations of the parties with respect to the conduct of the development activities for the development of Products and to provide

---

for the ownership and licensing of Technology. The parties acknowledge that it is only possible to describe the general process by which Technology may be developed, and that the parties shall confer the authority for the management and oversight of these activities to the Board of Directors of the HTX Tech JV (the "Board") in order to achieve the objectives hereof. The parties agree that they shall be obligated, subject to all of the terms and conditions of this Agreement, to proceed with reasonable efforts in good faith to fulfill the purposes hereof. The parties further agree that the development activity will be principally carried out in the form of separate projects, each submitted, selected and conducted under the terms of this Agreement (the "Projects"). Pursuant to this Agreement, the parties agree to:

i. commit necessary available resources, work together and share technology, equipment and other resources, in order to develop new and unique technology within the Strategic Application Area. The parties agree that any resources within the said area, which are requested by the HTX Tech JV, will be provided, if reasonably available with accommodation to the needs of the contributing organization. If there is a dispute regarding the availability of the resources, the parties will negotiate in good faith to resolve such dispute and if they fail, the dispute will be referred to the Chief Executive Officers of the parties for resolution. The parties will be reasonably compensated for any resources made available to the HTX Tech JV pursuant to this Paragraph i in accordance with the terms of the applicable Project Agreement or, if there is not an applicable Project Agreement, pursuant to the terms of a separate written agreement.

ii. make available for review and to license, if requested, the use of any Intellectual Property (as hereinafter defined) of the party to the HTX Tech JV that has possible application within the Strategic Application Area, unless such contributing party deems such Intellectual Property to give it a strategic competitive advantage that would be lost by the licenses contemplated by this Agreement in which case such party may, acting reasonably, refuse to make such Intellectual Property available under this Agreement. The initial license of such Intellectual Property for development purposes and any subsequent license thereof for commercialization purposes shall be in accordance with Section 8 of this Agreement.

iii. appoint members to the Board as specified in the Restated LLC and Members Agreement to serve. It being further understood and agreed that the members of the Board will be selected with consideration of their training, experience and other attributes so as to be those individuals best qualified to serve in this capacity. It is further agreed that the members of the Board will undertake their actions in this capacity so as to advance the strategic objectives of the HTX Tech JV as specified above, but with due regard to the interests of the party which appointed them.

iv. subject to any contractual obligations any party may have towards any third party, submit to the HTX Tech JV any development project which it proposes to undertake that falls within the Strategic Application Area, provided however, and to the extent possible under any agreements with above referred third parties, each party will submit projects under such agreement to the HTX Tech JV pursuant to this Agreement.

---

B. In order to administer the development activities under this Agreement, the Board is designated to make the decisions and to exercise the authority granted herein to determine programs and strategies to expedite the conduct of the Projects hereunder. The Board will take the following actions to consider and approve projects for the HTX Tech JV:

i. The Board will adopt a set of strategic criteria which will guide the activities of the HTX Tech JV, the initial form of which is the Strategic Filter attached hereto as **Exhibit "A"**. The Strategic Filter specifies the threshold product and/or service field(s) of use to which the research and development activities of any Project must relate (the "Strategic Application Area") before a proposed Project will be considered by the Board and the criteria that will be used to evaluate the relative merit of each project in order to guide the Board in its selection. The Strategic Application Area will also be used to determine when the parties must submit such Projects to the HTX Tech JV for its consideration (as provided above). The Strategic Filter will be reviewed at least annually and modified as necessary.

ii. The Board shall approve and prioritize selected Projects based on the application of the Strategic Filter on the following basis:

(a) Unanimous approval will be required for the determination of or changes to the Strategic Filter, selection and conduct of a project outside the Strategic Filter, and any Project involving a competitor of any party;

(b) The approval of 75% of the parties eligible to vote will be required for any Project with a budget in excess of 30% of the total available resources of the HTX Tech JV, or of any resource the limitation of which will adversely impact the HTX Tech JV, for the equivalent period or any Project that will result in Intellectual Property (as hereinafter defined) created by the Project being owned by a party other than a party to this Agreement; and

(c) The approval of a majority of the parties eligible to vote will be required for any other project considered by the Board.

iii. The Board will establish a schedule for meetings, at least semi-annually, for the review of Projects that are proposed, at the call of the Chairman of the Board. The Board will provide notice to any relevant party at least ninety (90) days in advance of the submission date for projects to be considered.

C. Each of the parties hereto shall devote and use reasonable efforts to develop the Technology necessary to refine existing Products and to produce new and unique Products as contemplated by this Agreement in an expeditious manner. Such efforts shall include, but are not limited to, the exchange of appropriate Confidential Information and other information and making available appropriate personnel and other resources of each party in accordance with Section 1.A.i. above.

D. Parties have agreed that Lennox, Heat-Transfer-JV and Outokumpu will share equally the Base Costs (as that term is defined in the Restated Limited Liability Company Agreement of the

---

HTX Tech JV) of the HTX Tech JV in accordance with Section 3.2 of the Restated Limited Liability Agreement of the HTX Tech JV.

2. Project Selection. Each Project shall be conducted in accordance with the provisions set forth in this Agreement. The submission and selection of Projects shall be as follows:

A. Decision Making Authority for Project Selection. In order to administer the development activities under this agreement, the Board is designated to make the decisions and to exercise the authority granted herein to determine programs and strategies to expedite the conduct of Projects.

B. The Basis for the Decision for Project Selection. The following shall provide the basis for the decision making process for the selection of Projects for the HTX Tech JV:

i. Any party may submit a proposal for review by the Board;
ii Each Project proposed for consideration shall be presented in the format established by the Board as may be amended from time to time;
iii Project Definition. Each Project submitted shall define the following:

(1) The objective of, and the program and budget for, the Project;
(2) The funding required, including any resources that are to be provided by a party and the cost and other relevant arrangements therefor;
(3) Any Intellectual Property required for the Project;
(4) The ownership proposed for any resulting Intellectual Property;
(5) The potential commercial application of Products or Technology, financial return and the timing of such application; and
(6) Any other items specified by the Board.

iv. The staff of the HTX Tech JV shall review and provide a recommendation to the Board with regard to all Projects submitted; and

C. Post-Selection Review. Upon the selection of Project, the Board shall establish milestones for each Project to assure that its objectives are achieved in a timely and cost effective manner. Thereafter, the Board shall periodically review the progress of the Project to determine whether the milestones are being achieved on the planned schedule, determine whether the Project is accomplishing and can accomplish its objective, conduct a cost benefit analysis on the Project and such other purposes as the Board may decide appropriate. The Board may modify the Project or terminate the Project as it determines to be appropriate with such modifications or termination being subject to the same basis of decision as the Project selection basis originally as described above in Section 2 B ii.

3. Conduct of Projects. Each Project shall be conducted in accordance with the provisions set forth in this Agreement. For each Project, however, the parties shall enter into a separate Project Agreement which shall set forth the particular aspects of the conduct of such Project, including but not limited to, a development schedule, project objectives, product specifications, target costs and dates, target sales volumes, allocation of development responsibilities, Project funding, the ownership of the Intellectual Property (as hereinafter defined) and any other issues specifically

---

related to the conduct of such Project ("Project Agreement"). The development work with respect to each Project shall be done in sequential phases, as much as reasonably possible, with Lennox, Outokumpu, Heat-Transfer-JV, HTX Tech JV and third parties, all participating in each of the development phases as more particularly described in the Project Agreement for each Project. The phases of execution will be established for each Project and may include such activities as are specified on **"Exhibit B"** attached hereto. It is contemplated that a number of Projects shall be conducted and be in different stages of development at all times. For each Project, the parties shall each appoint a project leader who will be responsible for coordinating the joint efforts of the parties, for monitoring the progress of the development phases, and for communications between the parties.

4. Time of the Essence. The parties acknowledge that maintaining the development dates set forth in each Project Agreement is essential. The parties shall immediately advise one another in the event of circumstances, which might lead to changes in the anticipated completion dates. If changes in the schedule become necessary, they shall only be adopted after agreement of the parties to such new dates.

5. Confidentiality of Information. Lennox, Outokumpu, Heat-Transfer-JV, HTX Tech JV and any third parties acknowledge and agree that, from time to time, each party (as used herein, the "disclosing party") will disclose to the other parties (each a "receiving party") Confidential Information (as hereinafter defined) of the disclosing party that requires protection. Each party agrees that (a) it will not disclose any such Confidential Information that it receives from a disclosing party and will afford such Confidential Information at least the same protections as it affords its own information of that type to any third party or (b) it will not use such Confidential Information except in furtherance of the purposes of the HTX Tech JV or except as expressly permitted by Section 8 hereof or any License (as hereinafter defined) granted thereunder. As used herein, "Confidential Information" means any information which is identified by the disclosing party as being confidential, or any information, which by its nature would reasonably be afforded such protection, and each of the parties agrees (in its capacity as a receiving party hereunder) that, if it has any question as to whether a disclosing party considers information disclosed pursuant to this Agreement to be Confidential Information, it will consult with the disclosing party, whose position shall be determinative unless one of the exceptions listed below apply. The restrictions on disclosure and use of a disclosing party's Confidential Information will apply for the duration of this Agreement and for a period of ten (10) years thereafter but shall not apply to information that is or will become in the public domain through no fault of the receiving party, disclosed by the disclosing party without requirement of confidentiality to others or that can be demonstrated to have been known to the receiving party prior to its receipt. In addition, the parties agree that each will execute any necessary confidentiality agreements reasonably requested by any party or determined to be necessary for any Project, with each Project Agreement setting forth the extent to which any party's Confidential Information shall be utilized in the Project and the terms of such use. Except as specifically set forth herein, the terms and conditions of any such confidentiality agreement shall have the same force and effect as if fully rewritten herein; however, at a minimum, the terms of this provision shall apply to all Projects created hereunder. During the term of this Agreement, all information that any party provides to another party will be treated as confidential and in accordance with any applicable agreements unless the disclosing party eliminates or modifies such requirements in writing.

---

6. Technology Ownership.

A. "Background Intellectual Property" shall mean any and all right, title and interest in and to any and all technological innovations, discoveries, inventions, designs, formulae, know-how, trade secrets, tests, performance data, processes, production methods, improvements and all recorded material, whether written or not, whether stored in plain or in code form and whether patentable, copyrightable, or subject to trademark or not developed or acquired prior to the date hereof or developed or acquired independently of the Projects or cooperation under this Agreement and which relate to the Strategic Application Area.

B. "Foreground Intellectual Property" shall mean any and all right, title and interest in and to any and all technological innovations, discoveries, inventions, designs, formulae, know-how, trade secrets, tests, performance data, processes, production methods, improvements and all recorded material, whether written or not, whether stored in plain or in code form and whether patentable, copyrightable, or subject to trademark or not, conceived by employees, agents or consultants of any party, either solely or jointly, and resulting from Projects or work performed in accordance with this Agreement.

C. Background Intellectual Property and Foreground Intellectual Property are sometimes referred to herein together as the "Intellectual Property"

D. Any Foreground Intellectual Property developed in the course of a Project shall be owned as provided for in the Project Agreement covering such Project.

E. Any Foreground Intellectual Property (i) that is developed by employees of HTX Tech JV, or individuals seconded to HTX Tech JV by one of the parties, but not in the course of a Project, or (ii) that otherwise is conceived jointly by employees, agents or consultants of any two of Lennox, Outokumpu and Heat-Transfer-JV provided that, from and after the date that Lennox is no longer a member of Heat-Transfer JV, it must have been conceived jointly by employees of Lennox and either Outokumpu or Heat-Transfer JV (collectively the "Joint Intellectual Property") shall be owned by HTX Tech JV (subject to any license agreement covering any Background Intellectual Property). HTX Tech JV shall have the right to patent or otherwise assert, register, establish and/or maintain all rights with respect to the Joint Intellectual Property, including but not limited to the right to protect such Joint Intellectual Property through an appropriate trade secret program ("IPR Rights") and shall pay all expenses incurred as a result thereof. The Board of the HTX Tech JV shall make the determination by majority vote as to whether or not it will assert any IPR Rights in Joint Intellectual Property. In the event that HTX Tech JV does not assert its IPR Rights to the Joint Intellectual Property by written notice to Outokumpu, Lennox and Heat-Transfer-JV within sixty (60) days after the later of (i) HTX Tech JV becomes aware of such Joint Intellectual Property, or (ii) the first meeting of the Board after such Joint Intellectual Property has been identified and disclosed to the Board, then the Joint Intellectual Property shall be jointly owned by Outokumpu, Lennox and the Heat Transfer JV. If any of Outokumpu, Lennox and the Heat-Transfer-JV desires to patent any such Joint Intellectual Property not claimed or asserted by HTX Tech JV ("Electing Party" or "Electing Parties"), they shall notify the Board of the HTX Tech JV and priority shall be given to the Electing Party whose representatives on the Board voted for

---

asserting the HTX Tech JV's IPR Rights (or, if there is more than one such party, by mutual agreement). The Electing Party so chosen shall prosecute at its own initial cost and expense such patent applications covering the Joint Intellectual Property as it determines in its sole discretion, after consultation with the other parties. Each other party which has not notified the Electing Party that it will not use the Joint Intellectual Property (with respect to which the HTX Tech JV has not asserted IPR Rights) shall pay, or reimburse the Electing Party for, its proportionate share of all costs of applying for, obtaining and maintaining any patents thereon and shall have a license to use such Joint Intellectual Property so long as it complies with such payment obligations.

F. Each party shall have the license rights to the Background Intellectual Property and Foreground Intellectual Property as set forth in Section 8 below.

7. Patents and Copyright Indemnity.

A. Lennox agrees to defend or settle, at its sole expense, any suits brought against Outokumpu, HTX Tech JV, HTX Tech JV and/or Heat-Transfer-JV based upon a claim that Intellectual Property owned by Lennox included in the Joint Product developed, produced, and sold hereunder infringes a U.S. or foreign patent or copyright and to pay costs and damages finally awarded in any such suit. Lennox agrees to indemnify Outokumpu, HTX Tech JV and/or Heat-Transfer-JV for any actual damages resulting from a suit alleging infringement of any such patent or copyright by the Intellectual Property owned by Lennox included in the Joint Product, subject to the limits of liability set forth in Section 11 hereof. Such indemnification shall be contingent upon Outokumpu, HTX Tech JV and Heat-Transfer-JV notifying Lennox promptly upon receipt of notice or information of a suit alleging such infringement. The foregoing indemnity does not apply to (1) to any application which does not include Intellectual Property owned by Lennox, (2) infringements or alleged infringements as a direct result of modifications, adaptations or changes made by Outokumpu, HTX Tech JV and Heat-Transfer-JV or a third party to the Intellectual Property owned by Lennox or use of such modifications, adaptations or changes in conjunction with the Intellectual Property owned by Lennox, and (3) any settlements of a suit or proceeding made without Lennox's written consent.

B. The foregoing states the entire liability of Lennox for patent and copyright infringement with respect to Intellectual Property owned by Lennox. IN NO EVENT SHALL LENNOX BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS OR COPYRIGHTS.

C. Outokumpu agree to defend or settle, at their collective expense, any suits brought against Lennox, HTX Tech JV and Heat-Transfer-JV based upon a claim that either Intellectual Property owned by Outokumpu included in the Products developed, produced, and sold hereunder infringes a U.S. or foreign patent or copyright and to pay costs and damages finally awarded in any such suit. Outokumpu agrees to indemnify Lennox, HTX Tech JV and Heat-Transfer-JV for any actual damages resulting from a suit alleging infringement of any such patent or copyright by the Intellectual Property owned by Outokumpu included in the Joint Product, subject to the limits of liability set forth in Section 10 hereof. Such indemnification shall be contingent upon Lennox, HTX Tech JV and/or Heat-Transfer-JV notifying Outokumpu promptly upon receipt of notice or

---

information of a suit alleging such infringement. The foregoing indemnity does not apply to (1) to any application which does not include the Intellectual Property owned by Outokumpu, (2) infringements or alleged infringements as a direct result of modifications, adaptations or changes made by Lennox, HTX Tech JV and/or Heat-Transfer-JV or a third party to the Intellectual Property owned Outokumpu or use of such modifications, adaptations or changes in conjunction with the Intellectual Property owned Outokumpu, and (3) any settlements of a suit or proceeding made without Outokumpu's written consent.

D. The foregoing states the entire liability of Outokumpu for patent and copyright infringement with respect to Intellectual Property of Outokumpu. IN NO EVENT SHALL OUTOKUMPU BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS OR COPYRIGHTS.

E. Heat-Transfer-JV agrees to defend or settle, at its sole expense, any suits brought against Outokumpu, Lennox, and/or HTX Tech JV based upon a claim that Intellectual Property owned by Heat-Transfer-JV included in the Joint Product developed, produced, and sold hereunder infringes a U.S. or foreign patent or copyright and to pay costs and damages finally awarded in any such suit. Heat-Transfer-JV agrees to indemnify Outokumpu, HTX Tech JV and/or Lennox for any actual damages resulting from a suit alleging infringement of any such patent or copyright by the Intellectual Property owned by Heat-Transfer-JV included in the Joint Product, subject to the limits of liability set forth in Section 11 hereof. Such indemnification shall be contingent upon Outokumpu, HTX Tech JV and Lennox notifying Heat-Transfer-JV promptly upon receipt of notice or information of a suit alleging such infringement. The foregoing indemnity does not apply to (1) to any application which does not include Intellectual Property owned by Heat-Transfer-JV, (2) Intellectual Property owned by Heat-Transfer-JV with another product not furnished hereunder unless Lennox is an infringement or alleged infringement as a direct result of modifications, adaptations or changes made by Outokumpu, HTX Tech JV and Lennox or a third party to the Intellectual Property owned by Heat-Transfer-JV or use of such modifications, adaptations or changes in conjunction with the Intellectual Property owned by Heat-Transfer-JV, and (3) any settlements of a suit or proceeding made without Heat-Transfer-JV 's written consent.

F. The foregoing states the entire liability of Heat-Transfer-JV for patent and copyright infringement with respect to Intellectual Property owned by Heat-Transfer-JV. IN NO EVENT SHALL HEAT-TRANSFER JV BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS OR COPYRIGHTS.

G. HTX Tech JV agrees to defend or settle, at its sole expense, any suits brought against Outokumpu, Lennox and/or Heat-Transfer-JV based upon a claim that Intellectual Property owned by HTX Tech JV included in the Joint Product developed, produced, and sold hereunder infringes a U.S. or foreign patent or copyright and to pay costs and damages finally awarded in any such suit. Lennox agrees to indemnify Outokumpu, Lennox and/or Heat-Transfer-JV for any actual damages resulting from a suit alleging infringement of any such patent or copyright by the Intellectual Property owned by HTX Tech JV included in the Joint Product, subject to the limits of liability set forth in Section 11 hereof. Such indemnification shall be contingent upon Outokumpu, Lennox and Heat-Transfer-JV notifying

---

HTX Tech JV promptly upon receipt of notice or information of a suit alleging such infringement. The foregoing indemnity does not apply to (1) to any application which does not include Intellectual Property owned by HTX Tech JV, (2) infringements or alleged infringements as a direct result of modifications, adaptations or changes made by Outokumpu, Lennox and Heat-Transfer-JV or a third party to the Intellectual Property owned by HTX Tech JV or use of such modifications, adaptations or changes in conjunction with the Intellectual Property owned by HTX Tech JV, and (3) any settlements of a suit or proceeding made without HTX Tech JV 's written consent.

H. The foregoing states the entire liability of HTX Tech JV for patent and copyright infringement with respect to Intellectual Property owned by HTX Tech JV. IN NO EVENT SHALL HTX TECH JV BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS OR COPYRIGHTS.

8. Technology Licenses.

A. Unless otherwise provided in this Agreement, Outokumpu, Lennox and the Heat-Transfer-JV each hereby grants to HTX Tech JV, for so long as each of them are a party to this Agreement, a royalty free, worldwide, non-exclusive license to use any of its respective Background Intellectual Property for research and development purposes under the terms of the License described on **Exhibit "C**" ("License") to be entered into by any respective party in connection with a specific Project or as may be agreed otherwise under this Agreement. Such parties agree to disclose to the HTX Tech JV all such Background Intellectual Property under terms requiring appropriate confidentiality or other handling requirements.

B. In the event commercialization of the Foreground Intellectual Property of a party is dependent on access to or use of the Background Intellectual Property belonging to another party, then the latter mentioned party is obliged to grant to the commercializing party a non-exclusive worldwide license to such necessary Background Intellectual Property subject to reasonable royalty fees and restrictions, including without limitation appropriate Field of Use restrictions. The initial License issued under Section 8.A above will be amended to include these provisions.

C. Outokumpu, Lennox and the Heat-Transfer-JV each hereby agrees to grant to each of the other parties a further non-exclusive license for commercialization of any of the Foreground Intellectual Property owned by such party, provided that such other party (as the licensee) shall agree (a) if Section 8.F. applies, to the royalty fees provided for in Section 8.F (otherwise, where Section 8.F does not apply, any such license is royalty-free), and (b) that the licensor shall have exclusive commercial use of its Foreground Intellectual Property in its Field of Use (as defined below). The parties will also enter into a separate license comparable to the License issued under Section 8.A. in respect of the Background Intellectual Property necessary for the commercialization.

D. Lennox, Outokumpu and/or Heat-Transfer-JV shall each have a royalty-free, worldwide license for any Joint Intellectual Property owned by the HTX Tech JV, subject to the Field of Use restrictions set out in Sections 8.C and 8.E.

---

E. "Field of Use" means (a) in the case of Lennox, the production, sales and marketing of equipment in the field of heating, ventilation, air conditioning and refrigeration products ("HVACR"), (b) in the case of Heat-Transfer JV, the production, sales and marketing of heat transfer components in the field of HVACR and (c) in the case of Outokumpu, the production, sales and marketing of copper tubes.

F. The parties further agree that where one party has made a disproportionate contribution to the development of Foreground Intellectual Property (either by providing access to Background Intellectual Property or by Project funding) that party ("Granting Party") will be entitled to receive a royalty under any license granted pursuant to Section 8.C. above. Such royalty shall be calculated so as to provide the Granting Party with an amount that compensates it for its disproportionate contribution (plus an interest factor), and shall be limited thereby. The parties agree to negotiate in good faith with respect thereto. In the event the parties cannot reach agreement as to the terms of any royalty called for in this Section 8, or any other terms of a License or any amendment thereto, a qualified independent third party will be selected acceptable to the parties. That party shall review the positions of the parties and resolve any such disagreement, which resolution shall be binding on the parties.

9. Term and Termination of Agreement.

A. This Agreement shall commence as of the date first set forth above and shall continue until terminated as set forth herein.

B. Any party may terminate this Agreement or any Project Agreement hereunder with respect to another party hereto in the event that such other party breaches any term of this Agreement or any Project Agreement hereunder provided that such party shall fail to correct, or commence and diligently pursue corrective action, within ninety (90) days after notice of breach by the terminating party. The non-breaching party or parties shall also have the right thereafter to exercise any and all of its rights and remedies under law and equity as a result of the other party's breaches of any of the terms and conditions of this Agreement.

C. Any party may terminate this Agreement or any Project Agreement immediately with respect to any other party upon the entry of a decree or order for relief of such other party by a court of competent jurisdiction in any involuntary case involving said party under any bankruptcy, insolvency, or other similar law now or hereafter in effect or any other action which has the same effect with respect to that other party.

D. In the event a party terminates this Agreement as provided in Section 9.B. or 9.C., then (i) the terminating party or parties shall have the right to continue development of all Products or Technology then being developed by Lennox, Outokumpu or Heat-Transfer-JV pursuant to the provisions of this Agreement and any Project Agreements then in effect and (ii) in addition, for a period of two (2) years from the date of such termination, the terminated party shall not pursue, engage in or continue the conduct of any Projects which are specifically being developed pursuant to a Project Agreement then in effect. Nothing contained herein shall limit the terminated party's ability to pursue technology similar to the Project with other third parties.

---

E. In the event a party terminates a Project Agreement, other than as set forth in Sections 9.B. and 9.C., the non-terminating party or parties shall have the right to continue with the conduct of the Project which is the subject of such Project Agreement. In addition, for a period of two (2) years from the date of such termination, the terminating party shall not pursue, engage in or continue conduct of such Project.

F. In the event that the HTX Tech JV is dissolved or if one Member in the HTX Tech JV ceases to be a Member in the said company (but only with respect to such Member) this Joint Development Agreement shall terminate with immediate effect except for projects in process where the departing Member shall be bound to complete such projects under the terms of this Agreement and the applicable Project Agreement.

G. Notwithstanding the termination of this Agreement, all obligations set forth in Sections 5, 6, 7 and 8 of this Agreement shall survive the termination hereof. Upon the termination of this Agreement, each party shall return the materials, equipment, and other property belonging to another party or furnish evidence that such property has been destroyed; provided, however, that the non-terminating party as set forth in Section 10.D. and 10.E. may retain all documents necessary to continue conduct of the Project.

11. Outokumpu Limitation of Liability. Outokumpu shall in no event be liable to any other party or its customers for indirect, special, punitive, incidental or consequential damages whatsoever, including but not limited to, lost profits or revenues, loss of use of equipment, cost of capital and any additional expenses incurred in using existing facilities arising out of, by reason of or in any way connected with, accidents, occurrences, injuries or losses to any person or property, in any way due or resulting from in whole or in part its performance under this Agreement.

12. Lennox Limitation of Liability. Lennox shall in no event be liable to any other party or its customers for indirect, special, punitive, incidental or consequential damages whatsoever, including but not limited to, lost profits or revenues, loss of use of equipment, cost of capital and any additional expenses incurred in using existing facilities arising out of, by reason of or in any way connected with, accidents, occurrences, injuries or losses to any person or property, in any way due or resulting from in whole or in part its performance under this Agreement.

13. Heat-Transfer-JV Limitation of Liability. Heat-Transfer-JV shall in no event be liable to any other party or its customers for indirect, special, punitive, incidental or consequential damages whatsoever, including but not limited to, lost profits or revenues, loss of use of equipment, cost of capital and any additional expenses incurred in using existing facilities arising out of, by reason of or in any way connected with, accidents, occurrences, injuries or losses to any person or property, in any way due or resulting from in whole or in part its performance under this Agreement.

14. HTX Tech JV Limitation of Liability. HTX Tech JV shall in no event be liable to any other party or its customers for indirect, special, punitive, incidental or consequential damages whatsoever, including but not limited to, lost profits or revenues, loss of use of equipment, cost of capital and any additional expenses incurred in using existing facilities arising out of, by reason of

---

or in any way connected with, accidents, occurrences, injuries or losses to any person or property, in any way due or resulting from in whole or in part its performance under this Agreement.

15. Relationship. No party, by reason of this Agreement shall become the agent of any other for any purposes whatsoever. This Agreement shall not be deemed to create a partnership among or between the parties hereto nor shall this Agreement give any party the right or authorization to incur any liability whatsoever on behalf of another party.

16. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed by certified mail with postage prepaid as follows:

| | |
|---|---|
| If to Outokumpu: | Outokumpu Oyj<br>Riihitontuntie 7 A,<br>P.O. Box 144<br>fin-02201 Espoo, Finland<br>Attention: Corporate General Counsel |
| If Lennox to: | Lennox International, Inc.<br>2104 Lake Park Blvd.<br>Richardson, TX 75080-2254<br>Attn: General Counsel |
| If Heat-Transfer-US to: | Outokumpu Heatcraft USA LLC.<br>_____<br>_____<br>Attention: Vice President and General Manager |
| If Heat-Transfer-Europe to: | Outokumpu Heatcraft B.V.<br>Usine Delo Chaite<br>B.P. 38<br>38460 Cremieu, France<br>Attention: Managing Director |
| If HTX-Tech JV to: | Advanced Heat Transfer LLC.<br>_____<br>_____<br>Attention: Chief executive Officer |

17. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, provided that no party shall have the right to assign this Agreement without the prior written consent of the other parties, except to an affiliate of such party.

---

18. Governing Law. This Agreement and any Project Agreement shall be governed by and their provisions construed and enforced in accordance with the laws of the State of New York, without giving effect to its conflicts of laws principles. Any and all disputes arising out of or in connection with this Agreement shall be resolved in accordance with Section 14.7 of the Restated Limited Liability Company Agreement of the HTX Tech JV.

19. Amendments. This Agreement may be amended or modified only by a written instrument signed by all parties hereto.

20. Entire Agreement. This Agreement and any Confidentiality Agreements, Licenses and Project Agreements entered into hereunder contain the entire agreement between the parties with respect to the subject matter hereof and all prior discussions, negotiations, and agreements, whether oral or written, are merged herein. To the extent that the terms and conditions of this Agreement are inconsistent with the terms and conditions of any of the other agreement entered into hereunder, the terms of the respective Confidentiality Agreement, License or Project Agreement will control to the extent necessary to resolve such inconsistency.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first set forth above.

Lennox International Inc.

By: /s/ Carl E. Edwards, Jr.

Title: EVP

Outokumpu Oyj

By: /s/ Risto Virrankoski

Title: Deputy President and Deputy CEO

Outokumpu Heatcraft USA LLC.

By: /s/ Kalevi Nikkilä

Title: _____

Outokumpu Heatcraft B.V.

By: /s/ Kalevi Nikkilä

Title: _____

Advanced Heat Transfer LLC.

By: /s/ Carl E. Edwards, Jr.

Title: Secretary

Exhibit 12.1

LENNOX INTERNATIONAL INC. AND SUBSIDIARIES
COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES
(UNAUDITED)

| (In thousands, except ratio) | For the Nine Months Ended September 30, 2002 |
|---|---|
| EARNINGS AS DEFINED: | |
| Income (loss) before income taxes, cumulative effect of accounting change and minority interest | $ 85.101 |
| Fixed charges | 43,145 |
| Earnings as defined | $ 128,246 |
| FIXED CHARGES AS DEFINED: | |
| Interest expense | $ 26,615 |
| Amortization of deferred finance charges | 2,280 |
| Portion of rental expense representative of the interest factor | 14,250 |
| Fixed charges as defined | $ 43,145 |
| RATIO OF EARNINGS TO FIXED CHARGES | 2.97 |

**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 Lennox International Inc. (the "Company") on Form 10-Q for the period ending September 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert E. Schjerven, Chief Executive 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 to the best of my knowledge:

(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 result of operations of the Company.

Robert E. Schjerven
Chief Executive Officer
November 14, 2002

**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 Lennox International Inc. (the "Company") on Form 10-Q for the period ending September 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard A. Smith, 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 to the best of my knowledge:

(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 result of operations of the Company.

Richard A. Smith
Chief Financial Officer
November 14, 2002