

# PATENT PURCHASE AGREEMENT

This PATENT PURCHASE AGREEMENT (“*This Agreement*”) is entered into on XX XXXXX XXXX (“*Effective Date*”) by and between:

Tekcem,  
a French “société par actions simplifiée”, with an office at  
12 Chemin des Hauts de Clairefontaine,  
78580, Maule, France,  
hereinafter referred to as “*Seller*”,

and

XXXXXXXXXX,  
a XXXXXXXXXXXXXXXXXXXX, with an office at  
XX XXXXXXXX XXXX,  
XXXXXX, XXXXXXXX, XXXXXXXXXXXXXXXX,  
hereinafter referred to as “*Purchaser*”.

## IT IS HEREBY AGREED AS FOLLOWS:

### 1. BACKGROUND

- 1.1 Seller owns certain patents and patent applications listed in Exhibit A hereto.
- 1.2 Seller wishes to sell its right, title and interest in such patents and applications to Purchaser.
- 1.3 Purchaser wishes to purchase such patents and applications.
- 1.4 The French trademark XXXXXXXXXX owned by Tekcem, is not concerned by This Agreement.

### 2. DEFINITIONS

“*Patents*” shall mean those patents and patent applications listed in *Exhibit A* hereto, and all reissues, reexaminations, extensions, continuations, continuations in part, continuing prosecution applications, and divisions of such patents and applications; and foreign counterparts to any of the foregoing including without limitation utility models.

“*Assignment Agreements*” means the agreements assigning ownership of the Patents from the inventors and/or prior owners to Seller.

“*Closing Date*” means 15 days after the date on which Seller receives Purchaser’s payment of Section 6.1.

“*List of Prosecution Counsel*” means the names and addresses of prosecution counsel who prosecuted the Patents and who are currently handling the Patents.

**3. SALE AND PURCHASE OF INTELLECTUAL PROPERTY RIGHTS**

On the terms and subject to the conditions set forth in This Agreement, Seller agrees to sell its rights, titles and interests in the Patents to Purchaser, and Purchaser agrees to purchase them.

**4. PRICE**

Purchaser agrees to pay Seller the price of XXX XXXXXXXX XXXX XXXXXXXX U.S. Dollars (\$XXX,XXX.XX) using the installments defined in Sections 6.1.

**5. DELIVERIES**

- 5.1 Within 15 days of the Closing Date, Seller shall deliver or dispatch to Purchaser using one of the procedures defined in Section 10.8:
  - (a) an executed original of the “*Assignment of Patent Rights*” in Exhibit B hereto (“*Agreed Documents*”), and
  - (b) the Assignment Agreements, the List of Prosecution Counsel, and a copy of all documents owned or controlled by Seller relating to the Patents including, without limitation, all prosecution files for pending patent applications included in the Patents and its own files relating to the issued Patents, excluding the Agreed Documents, internal documents of Seller and documents concerning efforts of Seller to sell or license the Patents, where such efforts have not led to any sale or licensure, (“*Additional Documents*”).
- 5.2 Documents requested by Purchaser pursuant to Sections 8.1 and 8.2 shall be delivered within 60 days of the request, by mail or electronic mail.

**6. INSTALLMENTS**

- 6.1 Pursuant to Section 4, Purchaser shall pay Seller an installment of XXX XXXXXXXX XXXX XXXXXXXX U.S. Dollars (\$XXX,XXX.XX) within 60 days of the Effective Date.
- 6.2 In the event that a payment is not received by the Seller when due, Purchaser shall additionally pay compounded interest charges at a rate of 1.2% per month (or the maximum permitted by law if lower, or the minimum permitted by law if higher).
- 6.3 All payments under this Section 6 shall be made via wire transfer to the following account of Tekcem:

XX  
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
 XXXXXXXXXXXXXXX

## **7. TRANSFER OF PATENTS**

### Patent Assignment.

7.1 Seller hereby sells, assigns, transfers and conveys to Purchaser all rights, titles and interests it has in and to the Patents and all inventions and discoveries described therein, including without limitation, all rights of Seller under the Assignment Agreements, and all rights of Seller to collect royalties under the Patents.

### Cause of Action.

7.2 Seller hereby sells, assigns, transfers and conveys to Purchaser all rights, titles and interests it has in and to all causes of action and enforcement rights, whether currently pending, filed, or otherwise, for the Patents and all inventions and discoveries described therein, including without limitation all rights to pursue damages, injunctive relief and other remedies for past, current and future infringement of the Patents.

## **8. ADDITIONAL OBLIGATIONS OF SELLER**

### Further Cooperation.

8.1 At the reasonable request of Purchaser, Seller shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby, including without limitation execution, acknowledgment and recordation of other such papers, and using all commercially reasonable efforts to obtain the same from the respective inventors, as necessary or desirable for fully perfecting and conveying unto Purchaser the benefit of the transactions contemplated hereby. In addition, Seller shall execute upon the request of the Purchaser non-technical additional instruments, declarations and forms, as may be necessary under any relevant law or as may be required by any official or authority, to continue, secure, defend, register and otherwise give full effect to, and perfect the rights of the Purchaser under This Agreement.

### Consulting Services.

8.2 For a period of three (3) years from the Effective Date, Seller shall assist Purchaser with the prosecution of the Patents and any additional patents, by establishing technical documents and/or providing technical assistance ("**Consulting Services**"). Such services will be provided under the General Terms of Sales and the normal price schedule of Seller. However, the first 16 person-hours of such Consulting Services will be free.

### Maintenance Fees.

8.3 Seller shall pay any maintenance fees, annuities, and the like due on the Patents through the Closing Date.

## **9. REPRESENTATIONS AND WARRANTIES**

### Authority.

- 9.1 Seller hereby represents and warrants to Purchaser that he has the right and authority to enter into This Agreement and to carry out its obligations hereunder.

### Title.

- 9.2 Seller hereby represents and warrants to Purchaser that he has good and marketable title to the Patents, including without limitation all rights, titles, and interests, that the Patents are free and clear of all liens, mortgages, security interests or other encumbrances, and restrictions on transfer.

### Validity and Enforceability.

- 9.3 Seller hereby represents and warrants to Purchaser that none of the Patents has ever been found invalid or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding.

### Contest.

- 9.4 Seller hereby represents and warrants to Purchaser that there are no actions, suits, investigations, claims or proceedings threatened, pending or in progress relating in any way to the Patents.

### Existing Licenses and Restriction on Right.

- 9.5 Seller hereby represents and warrants to Purchaser that no rights or licenses have been granted under the Patents, and that Purchaser will not be subject to any covenant not to sue or similar restrictions on its enforcement or enjoyment of the Patents as a result of any prior actions or transactions of Seller related to the Patents.

### Fees and Conduct.

- 9.6 Seller hereby represents and warrants to Purchaser that all maintenance fees, annuities, and the like due on the applications listed in Exhibit A have been timely paid through the Effective Date, and that none of Seller or its representatives has engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate any of the applications listed in Exhibit A or hinder their enforcement, including but not limited to misrepresenting Seller's patent rights to a standard-setting organization. However, Seller hereby provides no warranty or representation concerning any application not listed in Exhibit A, even in the case where such application not listed in Exhibit A would be necessary to obtain a regional protection or national protection in a region or country designated by a Patent Cooperation Treaty application or a regional application listed in Exhibit A.

Enforcement.

- 9.7 Seller hereby represents and warrants to Purchaser that Seller is not aware of any actual or potential infringement of any of the Patents. Seller hereby represents and warrants to Purchaser that Seller has not put a third party on notice of actual or potential infringement of any of the Patents or considered enforcement action(s) with respect to any of the Patents.

Patent Office Proceedings.

- 9.8 Seller hereby represents and warrants to Purchaser that none of the Patents have been or are currently involved in any reexamination, reissue, interference proceeding, or any similar proceeding and that no such proceedings are pending or threatened.

Exceptions.

- 9.9 Seller provides no warranty of merchantability or fitness of the Patents for a particular purpose. Seller does not represent that the Patents will not infringe any patent or other proprietary right.

**10. MISCELLANEOUS**Limitation on Consequential Damages.

- 10.1 EXCEPT IN THE EVENT OF FRAUD, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS, OR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

Limitation of Liability.

- 10.2 EXCEPT IN THE EVENT OF FRAUD, PURCHASER'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE THE PAYMENT OF FUNDS AS REQUIRED PURSUANT TO SECTIONS 4 AND 6. EXCEPT IN THE EVENT OF FRAUD, SELLER'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY PURCHASER PURSUANT TO SECTIONS 4 AND 6. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

Compliance with Law.

- 10.3 Notwithstanding anything contained in This Agreement to the contrary, the obligations of the parties shall be subject to all laws, present and future, of any government having jurisdiction over the parties and this transaction, and to orders, regulations, directions or requests of any such government.

### Confidentiality.

10.4 The parties hereto shall keep the terms of This Agreement confidential and shall not now or hereafter divulge any of this information to any third party except: (a) as may be required by law; (b) with the prior written consent of the other party; (c) as may be required by legal process, including in confidence to legal and financial advisors in their capacity of advising a party in such matters; (d) during the course of litigation, so long as the disclosure of such terms and conditions are restricted in the same manner as is the confidential information of other litigating parties; or (e) in confidence to its legal counsel, accountants, banks and financing sources and their advisors solely in connection with complying with financial transactions; provided that, in (c) through (e) above, the disclosing party shall use all legitimate and legal means available to minimize the disclosure to third parties, including without limitation seeking a confidential treatment request or protective order whenever appropriate or available. However, the existence of This Agreement, the Effective Date, Exhibits A and B and the identities of the parties hereto are not confidential.

### Governing Law.

10.5 Any claim arising under or relating to This Agreement shall be governed by the law of France without regard to principles of conflict of laws.

### Jurisdiction.

10.6 Each party hereby agrees to jurisdiction and venue in the courts of Versailles, France for all disputes and litigation arising under or relating to This Agreement.

### Entire Agreement.

10.7 The terms and conditions of This Agreement, including its exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. The section headings contained in This Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of This Agreement. No oral explanation or oral information by either party hereto shall alter the meaning or interpretation of This Agreement. No amendments or modifications shall be effective unless in a writing signed by authorized representatives of both parties. These terms and conditions will prevail notwithstanding any different, conflicting or additional terms and conditions which may appear on any purchase order, acknowledgment or other writing not expressly incorporated into This Agreement. This Agreement may be executed in two (2) or more counterparts, all of which, taken together, shall be regarded as one and the same instrument. The following exhibits are attached hereto and incorporated herein: **Exhibit A** (entitled "Patents and patent applications to be Assigned") and **Exhibit B** (entitled "Assignment of Patent Rights").

Notices.

- 10.8 All notices required or permitted to be given hereunder shall be in writing, shall make reference to This Agreement, and shall be delivered by hand, or dispatched by prepaid air courier or by registered or certified airmail, postage prepaid, addressed as follows:

If to Seller

Tekcem  
12, Chemin des Hauts de Clairefontaine  
78580 Maule  
France  
Attn: the President

If to Purchaser

XXXXXXXXXX.  
XX XXXXXXX XXXXX  
XXXXXXXXXX XXXXXXX  
XXXXXXXXXX  
Attn: XXXXXXXXXXXXX

Such notices shall be deemed served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Either party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

Relationship of parties.

- 10.9 The parties hereto are independent entities. Neither party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in This Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between Seller and Purchaser.

Severability.

- 10.10 The terms and conditions stated herein are declared to be severable. If any paragraph, provision, or clause in This Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction in which This Agreement is being performed, the remainder of This Agreement shall be valid and enforceable and the parties shall use good faith to negotiate a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into This Agreement.

Waiver.

- 10.11 Failure by either party to enforce any term of This Agreement shall not be deemed a waiver of future enforcement of that or any other term in This Agreement.

Assignment.

- 10.12 The terms and conditions of This Agreement shall be binding upon Purchaser, its successors, assigns and other legal representatives, and upon Seller, its successor, assigns and other legal representatives.

In witness whereof, the parties have executed this Patent Purchase Agreement as of the Effective Date:

**Purchaser**

**Seller**

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

*Exhibit A*

**Patents and patent applications to be Assigned**

*Exhibit B*

**Assignment of Patent Rights**