

P93000010544

Tallahassee, Fl. 32301 425-5675  
City/State/Zip Phone #

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. I. Kela Company (Corporation Name) (Document #)
2. Merger (Corporation Name) (Document #)
3. \_\_\_\_\_ (Corporation Name) (Document #)
4. \_\_\_\_\_ (Corporation Name) (Document #)

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

00 JUL 21 PM 5:00

FILED

- ☐ Walk in ☐ Pick up time \_\_\_\_\_
- ☐ Mail out ☐ Will wait ☐ Photocopy

- ☒ Certified Copy
- ☐ Certificate of Status

NEW FILINGS

- ☐ Profit
- ☐ Not for Profit
- ☐ Limited Liability
- ☐ Domestication
- ☐ Other

OTHER FILINGS

- ☐ Annual Report
- ☐ Fictitious Name

AMENDMENTS

- ☐ Amendment
- ☐ Resignation of R.A., Officer/Director
- ☐ Change of Registered Agent
- ☐ Dissolution/Withdrawal
- ☒ Merger

REGISTRATION/QUALIFICATION

- ☐ Foreign
- ☐ Limited Partnership
- ☐ Reinstatement
- ☐ Trademark
- ☐ Other

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-07/24/00--01001--016  
\*\*\*\*\*78.75 \*\*\*\*\*78.75

Examiner's Initials

R02  
7/24/00

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

IKE HOLDINGS INC., a Florida corporation P00000052420

,

INTO

**I. KELA, COMPANY**, a Florida entity, P93000010544

File date: July 21, 2000

Corporate Specialist: Annette Ramsey

**ARTICLES OF MERGER**  
(Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

First: The name and jurisdiction of the surviving corporation is:

Name

Jurisdiction

I. Kela Company

Florida

Second: The name and jurisdiction of each merging corporation is:

Name

Jurisdiction

IKE Holdings Inc.

Florida

**Third:** The Plan of Merger is attached.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State

**Fifth:** Adoption of Merger by surviving corporation - The Plan of Merger was adopted by the shareholders of the surviving corporation on 7/17/00

**Sixth:** Adoption of Merger by mer in corporation(s) The Plan of Merger was adopted by the shareholders of the merging corporation(s) on 6/20/00

*(Attach additional sheets if necessary)*

FILED  
00 JUL 21 PM 5:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## **AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** (the "Agreement") is made as of this 13th day of July 2000, by and among Illinois Tool Works Inc., a Delaware corporation ("ITW"), IKE Holdings Inc. a Florida corporation (hereafter "ITW Sub"), I.Kela Company, a Florida corporation (the "Company," all references to the Company, unless the context requires otherwise, shall also include Etilab USA, LC ("EUL")), and the stockholders of the Company, Inge Kuschnitzky ("IK") and Peter W. Kuschnitzky ("PWK") and Ditmar Knotte ("DK") (collectively, the "Stockholders").

### **RECITALS:**

**WHEREAS**, the authorized capital of ITW Sub consists of 1,000 shares of common stock, \$1.00 par value, of which 500 shares are issued and outstanding and owned beneficially and of record by ITW (the "ITW Sub Shares");

**WHEREAS**, the authorized capital of ITW consists for the year ending December 31, 1999 of 350,300,000 shares of common stock, par value \$.01, of which at April 30, 2000, 301,536,666 shares were issued and outstanding and held of record by approximately 93,921 shareholders, and 300,000 shares of preferred stock, no par value, of which no shares are issued and outstanding;

**WHEREAS**, prior to the Closing (as hereinafter defined) ITW will sell or transfer to ITW Sub the number of shares of ITW common stock determined in accordance with the provisions of Section 1.2 (the "ITW Common Stock") to enable ITW Sub to exchange the same to the Stockholders in connection with the Merger (as hereinafter defined) as contemplated by this Agreement;

**WHEREAS**, the authorized capital stock of the Company and the number of shares

which are issued and outstanding (the "Company Common Stock") are as set forth in Section 5.5;

**WHEREAS**, ITW desires to acquire the Company's Common Stock pursuant to the Merger of ITW Sub and the Company in accordance with the terms and conditions hereinafter stated, in order to obtain full ownership interest in the Company and to cause the Stockholders to receive in exchange therefor the ITW Common Stock;

**WHEREAS**, on even date herewith, ITW desires to enter into an agreement with PWK and DK to acquire all of the shares of Etilab Heisprägetechnik GmbH (the "German Company") pursuant to a purchase agreement in substantially the form attached hereto as Exhibit AA (the "German Purchase Agreement");

**WHEREAS**, the respective boards of directors of ITW Sub and the Company have approved such merger of ITW Sub and the Company on such terms and conditions as are set forth herein;

**WHEREAS**, ITW, the Stockholders and the Company desire to make certain representations, warranties and agreements in connection with the transactions contemplated herein (the "Merger") and also wish to set forth various conditions precedent to the Merger; and

**WHEREAS**, for federal income tax purposes, it is intended by the Stockholders that the Merger shall qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code").

**NOW, THEREFORE**, in consideration of the mutual representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **SECTION 1. THE MERGER**

1.1 **The Merger.** As of the Closing Date and subject to the terms and conditions of this Agreement, the Company, ITW and ITW Sub shall duly execute and deliver Articles of Merger in the form attached hereto as Exhibit A (the "Articles of Merger"). In accordance with the terms of this Agreement and the Articles of Merger, ITW Sub will be merged into the Company (hereinafter sometimes called the "Surviving Corporation") in accordance with the Florida Business Corporation Act as applicable to the ITW Sub and the Company (the "Merger"). At the date and time of filing of the Articles of Merger with the Secretary of State of Florida, when the Merger shall have become effective under and as provided in such law (such time being herein called the "Effective Time"), the separate corporate existence of ITW Sub shall cease and the Surviving Corporation shall continue to exist by virtue of and shall be governed by the laws of the State of Florida and shall have all of the rights, privileges, immunities and powers and shall be subject to all of the duties and liabilities granted or imposed by the Florida Business Corporation Act. The Surviving Corporation shall possess all the rights, privileges, immunities, powers and franchises, of a public as well as of a private nature, of the Company and ITW Sub and all of the property, real, personal and mixed, of a public as well as a private nature, and all debts due on whatever account, including subscriptions to shares, all choses in action and all and every other interest of, or belonging to or due to, the Company or ITW Sub shall be deemed to be transferred to and vested in the Surviving Corporation without further act or deed; the title to any real estate or interest therein vested in the Company or ITW Sub shall not revert or be in any way impaired by the Merger. The Surviving Corporation shall be responsible and liable for all the liabilities and obligations of the Company and ITW Sub and any claim existing or action or proceeding pending by or against the Company or ITW Sub may be prosecuted to judgment as if the Merger had not taken place, or the Surviving Corporation may be substituted in its place; neither the rights of creditors nor any liens upon the property of the Company or ITW Sub shall be impaired by the Merger, but such liens shall be limited to the property upon which there were liens immediately prior to the time of such Merger.

1.2 **Conversion of Shares.** At the Effective Time, pursuant to the Merger, each share of the Company Common Stock issued and outstanding at such time shall, automatically and

without any action on the part of the holders thereof, be converted into the number of shares of ITW Common Stock equal to the quotient of: (i) Four Million Eight Hundred Fifteen Thousand Dollars (\$4,815,000) divided by the number of shares of the Company Common Stock issued and outstanding immediately prior to the Effective Time, divided by (ii) the average of the respective closing prices (as reported on the New York Stock Exchange composite index) of the ITW Common Stock for each of the ten (10) consecutive trading days ending on and including the trading day which shall be the third (3) business day immediately preceding the Effective Time (the "Average Closing Price"); any fractional shares shall be rounded up to the next whole share of ITW Common Stock and no fractional shares or cash in lieu thereof shall be issued. At the Closing, pursuant to Section 1.4, certain shares of ITW Common Stock otherwise to be disbursed to the Stockholders shall be deposited with the Escrow Agent (as defined below), in lieu of distribution thereof to them and the Stockholders shall be entitled to participate in the Escrow Agreements as herein defined. If, between the date of this Agreement and the Effective Time, the outstanding shares of ITW Common Stock shall have been changed into a different number or class of shares by reason of any reclassification, recapitalization, stock split, stock dividend, combination or other similar change in ITW's capital structure, the foregoing per share exchange ratio shall be appropriately adjusted.

**1.3 Shares of ITW Sub.** At the Effective Time, each share of Common Stock of ITW Sub issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation.

**1.4 Surrendering Procedure.** Upon the Effective Time, each issued share of the Company Common Stock shall be automatically and without any further action, canceled and extinguished and each Stockholder shall cause the certificate which previously represented the outstanding Company Common Stock (or affidavits of loss in lieu thereof) to be surrendered to the Surviving Corporation or any agent designated by it. Upon such surrender, the Surviving Corporation, as agent for ITW, shall deliver, less an aggregate number of shares of ITW Common Stock equal in value to Eight Hundred Nineteen Thousand One Hundred Dollars

(\$819,100) (the "Escrowed Shares"), in substitution therefor certificates representing the number of shares of the ITW Common Stock into which the Company Common Stock has been converted as aforesaid with any fractional shares rounded up to the next whole share of ITW Common Stock (no fractional shares or cash in lieu thereof shall be issued). The value of the Escrowed Shares shall be calculated by reference to the Average Closing Price, and the Escrowed Shares shall be delivered by the Surviving Corporation to Bank One Trust Company, N.A. (the "Escrow Agent"), at the Closing. Pursuant to the terms of the Escrow Agreement substantially in the form of Exhibit B attached hereto (the "Escrow Agreement"), certificates representing the Escrowed Shares shall be deposited by the Escrow Agent into escrow accounts and thereafter distributed pursuant to the terms of the Escrow Agreement.

**1.5 Name and Certificate of Incorporation of Surviving Corporation.** The name of the Surviving Corporation shall remain I.Kela Company as of the Effective Time, and the Articles of Incorporation immediately prior to the Effective Time of the Surviving Corporation shall remain in effect until amended; provided, however, that the Articles of Incorporation of the Surviving Corporation shall be amended as set forth in the Certificate of Merger.

**1.6 By-Laws of Surviving Corporation.** From and after the Effective Time, the By-Laws of the Surviving Corporation immediately prior to the Effective Time shall remain the By-Laws of the Surviving Corporation until amended.

## **SECTION 2. PURCHASE PRICE ADJUSTMENT**

**2.1 Purchase Price Adjustment.** The Stockholders shall forfeit Escrowed Shares in an amount not in excess of the quotient determined by dividing Three Hundred Seventy Five Thousand Dollars (\$375,000) by the Average Closing Price ("Maximum Purchase Price Adjustment") within sixty (60) days after the end of 2001, if the following performance criteria are met: that the projected profits for the Company of One Million Two Hundred Forty-Three Thousand Dollars (\$1,243,000) for the year 2001 are not met or exceeded. Schedule 2.1 sets forth the basis of the calculations of such profits. If such profits do not equal at least 80% of these projected profits, the Maximum Purchase Price Adjustment will be made. If 100% or more



of the projected profits are achieved, there shall be no forfeiture of Escrowed Shares in connection with the Purchase Price Adjustment. If at least 80%, but less than 100% of the projected profits are achieved, the forfeited Escrowed Shares shall be that percentage of the Maximum Purchase Price Adjustment equal to 100% minus the percentage of projected profits achieved rounded down to the next whole percent (e.g., if the percentage of projected profits achieved is 91.6%, then the forfeited Escrowed Shares shall be 8% of the Maximum Purchase Price Adjustment). Provided that in order to enable Stockholders to have the opportunity to avoid such Purchase Price Adjustment, they shall have such responsibility and authority as is normally given to ITW General Managers to achieve their objectives in managing their businesses during the period through December 31, 2001, and in accordance with their employment contracts as set forth in Exhibit C hereto. Such Purchase Price Adjustment shall be deemed waived by ITW if: (a) the Group or any material part of the Group is sold, transferred or otherwise ceases to materially remain as currently structured; (b) any two of the stockholders are terminated without "cause" (as defined in the relevant employment agreement) or (c) ITW adds any material overhead expenses to the Group (except as contemplated by Schedule 2.1), without the written consent of the Stockholders.

**2.2 Net Worth Adjustment.** The parties, as promptly as practicable after the Closing, shall determine the net worth of the Company (excluding the real property acquired by the Company and the mortgage thereon) as of May 31, 2000. If such net worth is equal to or greater than Four Hundred Eighty-Five Thousand Dollars (\$485,000) (excluding the real property acquired by the Company and the mortgage thereon), no net worth adjustment shall be made. If such net worth is less than Four Hundred Eighty-Five Thousand Dollars (\$485,000), the provisions of Section 10 of this Agreement shall be applicable and such deficit shall be paid to ITW.

### **SECTION 3. THE CLOSING**

**3.1 Closing Date.** The closing of the Merger (the "Closing") shall take place at the offices of Holland & Knight, 400 North Ashley Drive, Suite 2300, Tampa, Florida 33602,

on or before July 31, 2000, or at such other time and place not later than July 31, 2000, as ITW and the Stockholders may mutually agree upon (the "Closing Date"). If the Closing has not occurred by July 31, 2000, either or both ITW and the Stockholders shall have the right at any time thereafter and prior to the Closing, to terminate all of the noticing party's obligations under all provisions of this Agreement, by delivery of written notice to the other parties hereto, provided, however, that the noticing party is not then in material breach of any terms or provisions of this Agreement.

**3.2 Directors and Officers of Surviving Corporation after Closing.** From and after the Effective Time, the directors and officers of the Surviving Corporation shall be those holding those offices with ITW Sub immediately prior to the Effective Time, to serve until their respective successors have been duly elected and qualified. The directors and officers of the Company shall tender their resignations effective as of the Effective Time.

**3.3 Certain Deliveries.**

(a) **Stockholders Deliveries.** At the Closing, the Stockholders shall deliver to ITW for cancellation and exchange for shares of ITW Common Stock as provided herein, certificates representing the aggregate of all of the issued and outstanding shares of the Company's Common Stock.

(b) **ITW Deliveries.** At the Closing, ITW shall deliver to the Stockholders: (i) the ITW Common Stock, minus the Escrowed Shares, as determined in accordance with the provisions of Section 1 of this Agreement; and (ii) ITW shall also deliver the Escrowed Shares to the Escrow Agent at the Closing.

**SECTION 4. PERSONAL REPRESENTATIONS AND WARRANTIES**

Each Stockholder jointly and severally warrants and represents to ITW as follows:

4.1 DK owns 76 shares of the Company's Common Stock, IK owns 158 shares of the Company's Common Stock, and PWK owns 266 shares of the Company's Common Stock. Collectively, the Stockholders are the sole legal and beneficial owner, free and clear of any lien claim or encumbrance of any kind, of all of the issued and outstanding shares of capital stock of the Company and each Stockholder has full right to enter into and fully perform his, her or its obligations under this Agreement.

4.2 Except as disclosed on Schedule 4.2, no options, rights, contracts, commitments or undertakings of any kind have been or will be granted by any Stockholder which relate to the purchase or sale of, or transfer of any interest in, any of the present or additional shares of the capital stock or other securities of the Company owned by such Stockholder as of the time of Closing.

4.3 Such Stockholder has full legal capacity to execute this Agreement, and approve the Merger and fully perform his, her or its obligations under this Agreement.

#### **SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE STOCKHOLDERS**

The Stockholders and the Company, represent and warrant to ITW and ITW Sub, all of which representations and warranties shall be true at and as of the Closing, that:

**5.1 Organization.** The Company is a corporation duly organized, validly existing and with active status under the laws of Florida, and has the corporate power to carry on its business as it is now being conducted. The Company is duly qualified as foreign corporation to do business, and is in good standing, in each jurisdiction where the failure to be so qualified would have a material adverse effect on the business of the Company.

**5.2 Subsidiaries and Affiliates.** The Company has no subsidiaries or other affiliated entities other than EUL and Etilab GmbH.

**5.3 Officers and Directors.** Schedule 5.3 sets forth the name and title of each officer and director of the Company.

**5.4 Articles of Incorporation and By-Laws.** True and complete copies of the Articles of Incorporation, including all amendments, and the current By-Laws of the Company were furnished to Purchaser.

**5.5 Capitalization of the Company.** The authorized capital stock of the Company consists of Five Hundred (500) shares of common stock of which Five Hundred (500) shares are currently issued and outstanding (the "Stock"). The Stock constitutes the only authorized and issued securities of the Company. The Company is the sole member of EUL. The Stock is duly authorized, validly issued, fully paid and non assessable. None of the Stock was issued in violation of preemptive rights of a shareholder of the Company. There are no outstanding subscriptions, options, warrants, calls, commitments or agreements to which the Company is a party or by which it is bound relating to the authorized or issued capital stock of the Company. The Stockholders have good title to the Stock free and clear of all liens, claims and encumbrances other than restrictions on transfer imposed by the Securities Act of 1933, as amended, and applicable state securities laws. The Stock has been issued in material compliance with all applicable Florida laws and, to the extent applicable, the Securities and Exchange Commission.

**5.6 No Defaults.** The execution and delivery of this Agreement and the consummation of the Transactions contemplated hereby will not (i) violate any provision of the Company's Articles of Incorporation, or By-Laws; (ii) violate any provision of, grant to any third party the right to terminate or result in the acceleration of any obligation under, any governmental license or other authorization, loan document, agreement, mortgage, lien, lease, instrument, order, arbitration award, judgment or decree to which the Company, or the Stockholders is a party or by which any of them are bound; (iii) violate any law applicable to the Company; or (iv) affect the Company's qualification to carry on its business.

**5.7 Corporate Power.** The Company has the requisite corporate power and authority to enter into this Agreement and to carry out the obligations hereunder. The execution and delivery of this Agreement, and the consummation of the Merger contemplated hereby has been duly authorized by Company's, board of directors, and, no other corporate proceedings on the part of Company are necessary to authorize this Agreement and the consummation of the Merger contemplated hereby. This Agreement has been duly executed and delivered by Company and constitutes a valid and binding obligation of Company, enforceable against Company in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, or other similar laws, rules and regulations affecting the rights of creditors generally, by any generally applicable rule of law, and by general principles of equity including, but not limited to, any principle governing: (i) the availability of specific performance, injunctive relief and other equitable remedies; or (ii) the availability of any equitable defense. Company is not subject to or obligated under any charter or by-law provision or under any material contract, license, franchise or permit, or subject to any order or decree, which would be breached or violated by Company executing and carrying out this Agreement. Other than authorizations, consents, approvals and filings required under the Florida Business Corporation Act and the New York and Chicago Stock Exchanges no authorization, consent or approval of, or filing with, any public body or authority is necessary for the consummation of the Merger contemplated by this Agreement.

**5.8 Financial Statements.** Attached hereto as Schedule 5.8 are true and complete copies of financial statements of the Company consisting of: balance sheets and income statements for the last two fiscal years ended December 31, 1999 and 1998 (collectively the "Financial Statements"). The Financial Statements have been compiled in accordance with generally accepted accounting principles consistently applied (except as set forth in Schedule 5.8) throughout the periods indicated. The Financial Statements (including any related notes) fairly present the financial position of the Company, and the results of its operations as of the dates and for the periods indicated. Adequate reserves have been provided and set up in the books of account of the Company for any contract, order or commitment performed at a loss.

**5.9 Tax Liabilities.** Except as set forth on Schedule 5.9 or as otherwise provided for in Section 7.5, the Company has filed or will file all federal, state, county, local and foreign income, excise, property, sales and other tax returns which are required to be filed for tax periods ending prior to or on the Closing Date and has paid or will pay all taxes or assessments which become due, whether pursuant to such returns or otherwise, or are payable with respect to tax periods ending prior to, or on the Closing Date whether pursuant to such returns or otherwise. No agreements, waivers or other arrangements with any governmental agency providing for the assessment of any tax or deficiency is presently in effect or contemplated by the Company or the Stockholders, nor are there any actions, suits, proceedings or investigations or claims pending against the Company in respect of any tax or assessment, or any matters under discussion between the Company and any federal, state, local, foreign or other governmental authority relating to any taxes or assessments asserted by any such authority against the Company. Except as set forth in Schedule 5.9, copies of the federal, state and other tax returns of the Company filed for the fiscal years ended 1997, 1998, and 1999 have been delivered to ITW. Such returns and any returns to be filed by the Company with respect to any period ending on or prior to the Closing Date are accurate and complete in all material respects. Adequate reserves have been provided and set upon the Company's books of account with respect to the taxes.

**5.10 No Undisclosed Liabilities.** Except as set forth on Schedule 5.10, to the knowledge of the Stockholders, the Company has no material liability of any nature, whether absolute, contingent, accrued or otherwise, which is not shown or which is in excess of the amount reflected or reserved for on the December 31, 1999 Balance Sheet, other than liabilities referred to in this Agreement (including the Schedules hereto) or reasonably incurred in the ordinary course of its business after December 31, 1999.

**5.11 Changes in Condition.** Except as specifically set forth on Schedule 5.11, there has not been since December 31, 1999.

**5.11.1** Any change in the assets, liabilities, properties, business, results of

operation or condition of the Company (financial or otherwise) which has been materially adverse;

5.11.2 Any change, destruction or loss (whether or not covered by insurance), adversely affecting in any material respects, the assets, business, properties, results of operation or condition of the Company (financial or otherwise);

5.11.3 Any change in the accounting methods or practices followed by the Company, or any change in depreciation, amortization or inventory valuation policies or rates theretofore used or adopted;

5.11.4 Any sale, lease, abandonment or other disposition by the Company, of any real property, or, other than in the ordinary course of business, of any machinery, equipment or other operating property, or any sale, assignment, transfer, license or other disposition by the Company of any patent, trademark, service mark, trade name, brand name, copyright (or pending application for any patent, trademark, service mark or copyright) invention, process, know-how, formula, pattern, design, trade secret or interest thereunder or other intangible asset;

5.11.5 Any declaration, setting aside or payment of any dividend or other distribution on or in respect of shares of the capital stock of the Company or any direct or indirect redemption, retirement, purchase or other acquisition by the Company of any such shares; or

5.11.6 Any other occurrence, event or condition which is: (i) not in the ordinary course of business of the Company; and (ii) specifically relating to the operations of the Company (as opposed to those relating to businesses generally or to other business enterprises engaged in lines of business in which the Company is engaged) which materially adversely affects the business, properties, results of operation or condition of the Company (financial or otherwise).

**5.12 Insurance.** The Company maintains insurance on its assets, business, personnel and properties in such amounts and covering such risks as set forth in Schedule 5.12. Schedule 5.12 lists all insurance policies (specifying the insurer, the amount and duration of the coverage, the type of insurance including, but not limited to whether each such policy is based on claims made or occurrence, premium allocation, the policy number and any pending claims thereunder) maintained by the Company on its assets, business, personnel and properties. The Company is not in default with respect to any provision contained in any such insurance policy, and has not failed to pay any premiums thereunder or to give any notice or present any claim thereunder in due and timely fashion. To the knowledge of the Stockholders, no occurrence involving the Company potentially giving rise to an insured claim exists for which notice to the insurer has not been given.

**5.13 Transaction Fees.** The Company has no liability or obligation for accounting, consulting, investment banking or legal, or other professional fees, expenses or charges (including, but not limited to, brokerage or finder's fees) in connection with the negotiation, preparation, execution or performance of the Transaction contemplated hereby, and the Company has not made any payment on account of any such liability or obligation.

**5.14 Trademarks and Patents.** Schedule 5.14 sets forth a list of (i) all United States and foreign registered patents, trademarks, copyrights and applications therefor and all common law trade names and trademarks owned or licensed by or to the Company except for those licenses generally available at retail, including licenses for software programs which are used in the ordinary course of business of the Company (collectively, "Intellectual Property"). Except as set forth on Schedule 5.14, the Company owns (or possesses adequate licenses or other rights to use) all trademarks, trade names, patents, copyrights, inventions, formulas, software programs and processes necessary to the conduct of its business as currently conducted. The Company is not in default under any license agreement, the rights under which are material to the operation of the Company's businesses. No licenses or agreements transferring rights under patents or trademarks to or from the Company exist except as set forth on Schedule 5.14. Except as set forth on Schedule 5.14, the Company has complied with and is in compliance in all material



respects with all applicable registered user laws or regulations applicable to the Intellectual Property. No employee of the Company has disclosed or made available to any third party any trade secrets of the Company under circumstances constituting a breach of confidentiality. Except as set forth on Schedule 5.14, no notice has been received that the manufacture and sale of the Company's products infringe an issued United States or foreign patent, trademark, or copyright of any third party nor improperly or without a necessary license used any trade secrets of any third party nor are any claims, charges or lawsuits pending or threatened with respect thereto, there is no such infringement which could have a material adverse effect on the business of the Company.

**5.15 Contracts, Loans and Leases.** Schedule 5.15 sets forth a specific list of each of the written contracts, agreements and commitments including but not limited to loans, leases, agency, distributor, license, representative, loan, debenture, mortgage and other agreements (other than those of a type disclosed in another schedule hereto) to which the Company is a party or by which it is in any way bound including all amendments and supplements thereto and modifications thereof except:

(i) Each contract, agreement or commitment made in the ordinary course of business in respect of the sale of products or the performance of services, or for the lease or purchase of inventories, equipment, raw materials, supplies, services, or utilities which contains price, payment and other terms which the Company's management reasonably believes is customary and normal for business enterprises engaged in lines of business in which the Company is engaged (as opposed to those relating specifically to the operations of the Company) and which:

(a) Involves payment or receipts by the Company of less than \$10,000; or

(b) Is terminable by the Company at any time upon notice of 90 days or less and without cause; or

(c) Is to be fully performed within six months from the date of this Agreement.

(ii) Each non-competition or secrecy agreement routinely obtained by the Company from its employees and secrecy agreements executed for the benefit of customers and suppliers in the ordinary course of business of the Company.

Except as specifically set forth on Schedule 5.15 or other schedules delivered pursuant to this Agreement, all of said contracts, agreements, commitments and undertakings constitute legal, valid and binding obligations of the Company, and to the knowledge of the Stockholders, the other parties thereto (subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting enforcement of creditors' rights and to general principles of equity) and are in full force and effect, according to its terms subject to the changes caused by partial or complete performance prior to Closing. Except as set forth on Schedule 5.15, there has been no material default by the Company or to the knowledge of the Stockholders, by any party thereto, nor has any event occurred which with the passage of time or giving of notice would constitute a material default by the Company thereunder. Copies of all of such documents (other than those contemplated by (i) or (ii) above) have been or will be made available by the Company to ITW as of the Closing and are or will be true and complete and include all amendments, supplements or modifications thereto as of the Closing. No material purchase commitment of the Company is in excess of its ordinary business requirements or at a price materially in excess of market price at the date hereof.

**5.16 Claims.** Except as set forth on Schedule 5.16, there is (i) no suit, action or claim delivered to the Company; (ii) no announced investigation or inquiry by any administrative agency or governmental body; and (iii) no legal, administrative or arbitration proceeding pending or overtly threatened against the Company or any of its properties, assets or business or to which the Company is a party, including product liability, workers' compensation and unemployment compensation claims. Except as specifically set forth in Schedule 5.16, there is no outstanding order, writ, injunction or decree of any court, administrative agency or governmental body or arbitration tribunal, issued in a proceeding to which the Company was a party or of which the

Company otherwise has knowledge, against the Company or any of the capital stock, properties, assets or business of the Company. Except as provided in Schedule 5.16, the Company has not received or suffered any claim(s) in the past five (5) years which individually exceed Ten Thousand Dollars (\$10,000.00) involving (i) personal injuries or property damage which were caused or alleged to have been caused by the products of the Company; or (ii) product defects or warranty non-conformities.

**5.17 Company and Affiliate Employee Benefit Plans.** Set forth on Schedule 5.17 is a list of all employee benefit plans as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), to which (i) the Company contributes or is a party or is bound or under which it may have liability and (ii) any employees of the Company (or their beneficiaries) are eligible to participate or entitled to a benefit including, but not limited to, all pension, profit sharing, bonus, disability, welfare or group insurance, deferred compensation, stock option, paid vacation and all other presently effective employee benefit plans, agreements or commitments, written or oral of the Company (the "Company Benefit Plans"). No Company or Benefit Plan is a "defined benefit pension plan" as defined in Section 3(35) of ERISA subject to Title IV of ERISA, and no Company Benefit Plan is subject to the minimum funding standards of Section 302 of ERISA. A copy of each Company Benefit Plan, as amended, together with audited financial statements, if any, and Form 5500, if required, for the most recent fiscal year of each such Plan and a copy of each Internal Revenue Service determination letter with respect to any plan, has been provided to ITW. Each Company Benefit Plan, if applicable, is qualified under Section 401(a) of the Code and each related trust is exempt from taxation pursuant to Section 501 of such Code. Each Company Benefit Plan is operated in compliance in all material respects with the provisions of ERISA and has complied in all material respects with the reporting and disclosure requirements of applicable federal and state laws and regulations. There are no actions, suits, or claims (other than routine claims for benefits) pending or threatened which could give rise to any such actions, suits or claims against any Company Benefit Plan or the assets thereof.

**5.18 Minute Book and Stock Ledger.** The minute books of the Company contain

complete minutes of all annual, special and other meetings of Board of Directors and shareholders of the Company and any consents in lieu thereof for the period commencing with its creation and the signatures therein are the true signatures of the persons purporting to have signed them. The stock ledger of the Company is complete and all material documentary stamp taxes, if any, required in connection with the issuance and transfer of the Stock have been paid.

**5.19 Machinery and Equipment.** Except as set forth on Schedule 5.19, the machinery and equipment regularly being used by the Company in its business are (i) adequate to operate the business of the Company as currently conducted; (ii) in good working order and repair (reasonable wear and tear and machinery temporarily out-of-service for ordinary course maintenance excepted), (iii) in material conformity with all applicable ordinances, regulations and other laws and, except as set forth on Schedule 5.19, either owned by the Company, free and clear of all liens or encumbrances whatsoever or are leased under valid leases which will not be affected by the consummation of the Transactions contemplated by this Agreement.

**5.20 Title of Property.** Except as set forth on Schedule 5.20, the Company has good and marketable title to all of their assets including the assets reflected on the Balance Sheet and all assets acquired by the Company after the date of the Balance Sheet except to the extent that such assets have thereafter been disposed of for fair value in the ordinary course of business subject to no liens, mortgages, conditional sales agreement, pledges, encumbrances or charges of any kind, including leasehold interests, except (i) liens for property taxes not yet due and payable or being contested by appropriate proceedings; (ii) minor imperfections in title, which are not substantial in amount, do not materially detract from the value of the property for the use to which it is currently put or impair operations of the Company, (iii) assets leased under valid leases listed on Schedule 5.15.

**5.21 Inventory.** The inventory of supplies, raw materials, work-in-process and finished goods as reflected in the Financial Statements are valued (net of applicable reserves) on a basis consistent with generally accepted accounting principles. Subject to applicable reserves, such inventories are generally usable or merchantable in the ordinary course of business and of a

quality and quantity presently usable and saleable in the Company's business at customary prices as determined in accordance with generally accepted accounting principles. Except as set forth on Schedule 5.21, the Company maintains an adequate reserve, in accordance with GAAP as historically applied by the Company for all inventory which is not (i) of good and merchantable quality; (ii) substantially of a quality and condition usable, leasable or saleable in the ordinary course of its business; or (iii) subject to write down or write off for being slow moving, obsolete or otherwise.

**5.22 Accounts Receivable.** Except as set forth on Schedule 5.22, the accounts receivable as specifically set forth on the Financial Statements arose from bona fide transactions in the ordinary course of the Company's business and shall be good and collectible within six (6) months of the Closing Date. To the extent such receivables (other than intercompany receivables) have not been collected within six (6) months there shall be allowed an Indemnified Loss Claim (defined herein) to the extent the uncollected receivables are in excess of any reserve provided therefor on the Closing Date Statement (such reserve to be consistent with historical practices of the Company).

**5.23 Bank Accounts and Powers.** Set forth on Schedule 5.23 is (i) a list of accounts, currently effective banking resolutions, safe deposit boxes and current receivable collection boxes maintained by the Company at any bank or other financial institution and the names of the persons currently authorized to effect transactions in such accounts pursuant to such resolutions or with access to such accounts and boxes; and (ii) the names of all persons, firms, associations, corporations or business organizations holding general or special powers of attorney from the Company and a brief description of the terms thereof.

**5.24 Real Property.** The Company owns the real property upon which the business is operating. The Company has no real estate leases.

**5.25 Environmental Matters.** Except as set forth on Schedule 5.25:

(i) The Company holds all material permits, licenses, variances, exemptions, and approvals from governmental authorities and has made all notifications, reports and applications to governmental authorities which are legally required under the laws or regulations governing the environment or Hazardous Substance (as defined in any applicable state or federal statute or regulation) for the operation of the business or the ownership of the properties and assets of the Company (collectively "Permits"); the Company has complied, in all respects, with the terms of all unexpired Permits; Schedule 4.25 lists all unexpired Permits currently held or applied for by the Company; and the business of the Company has not been and is not being conducted in violation of any applicable law, ordinance, rule, regulation or other legal requirement regarding the environment or Hazardous Substance.

(ii) The Company has not filed or made any notifications to any governmental authority under Section 103(a) or 103(c) of the Comprehensive Environmental Compensation and Liability Act of 1986, reporting any release or past or present treatment, storage or disposal of a Hazardous Substance and has not been and is not burying, dumping, leaking, spilling, disposing or discharging (including underground injection and tank failures) from any of its manufacturing operations any Hazardous Substance in, on or upon premises owned or leased by the Company which has resulted in contamination in excess of applicable state remediation standards, or any of the other comparable state or federal laws, statutes, regulations and standards.

(iii) There are no pending or overtly threatened claims against the Company under any federal, state or local law or the common law relating to human health, safety or the environment.

(iv) To the Knowledge of the Stockholders, there are no environmental liabilities arising out of third party claims or the Company's operations, occupancy or use of any owned or leased real property.

**5.26 Accuracy of Information.** To the Knowledge of the Stockholders, none of the

warranties and representations of the Stockholders included in this Agreement and the schedules required under the terms of this Agreement to be furnished by the Stockholders to ITW, or any of its authorized representatives on or prior to the Closing pursuant to this Agreement is or will on and as of the Closing Date be, false or misleading or make an omission as to any material fact required to be stated in order to make any of the statements therein not misleading.

**SECTION 6. REPRESENTATIONS AND WARRANTIES OF ITW AND ITW**

**SUB.** ITW and the ITW Sub represent and warrant to the Company, and the Stockholders, that:

**6.1 Organization.** Each of ITW and ITW Sub, is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and the State of Florida and ITW has the corporate power to carry on its business as it is now being conducted.

**6.2 No Defaults.** The execution and delivery of this Agreement and the consummation of the Merger and Sale contemplated hereby will not violate any provision of law of ITW's or ITW Sub's certificate or articles of incorporation or by-laws, or any provision of, or result in the acceleration of any obligation under, any governmental license or other authorization, agreement, mortgage, lien, lease, instrument, order, arbitration award, judgment or decree to which ITW or ITW Sub is a party or by which it is bound.

**6.3 Corporate Power.** Each of ITW and ITW Sub has the requisite corporate power and authority to enter into this Agreement and to carry out the obligations hereunder. The execution and delivery of this Agreement, and the consummation of the Merger contemplated hereby has been duly authorized by ITW's, and ITW Sub's board of directors, and, no other corporate proceedings on the part of ITW or ITW Sub are necessary to authorize this Agreement and the consummation of the Merger contemplated hereby. This Agreement has been duly executed and delivered by ITW and constitutes a valid and binding obligation of ITW, enforceable against ITW in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, or other similar laws, rules and regulations affecting the rights of creditors generally, by any generally applicable rule of law, and by general principles of

equity including, but not limited to, any principle governing: (i) the availability of specific performance, injunctive relief and other equitable remedies; or (ii) the availability of any equitable defense. ITW is not subject to or obligated under any charter or by-law provision or under any material contract, license, franchise or permit, or subject to any order or decree, which would be breached or violated by ITW executing and carrying out this Agreement. Other than authorizations, consents, approvals and filings required under the Delaware General Corporation Law, the Florida Business Corporation Act and the New York and Chicago Stock Exchanges no authorization, consent or approval of, or filing with, any public body or authority is necessary for the consummation of the Merger contemplated by this Agreement.

**6.4 Accuracy of Information.** None of the information included in this Agreement and the Schedules or other documents furnished or to be furnished by ITW to the Company or the Stockholders pursuant to this Agreement or delivered to the Stockholders in connection with the solicitation of stockholders approval of the Merger, is or will on the Closing Date be, false or misleading or make an omission as to any material fact required to be stated in order to make any of the statements therein not misleading.

**6.5 Free Transferability, Etc.** The ITW Stock to be delivered to the Stockholders and Interest Holders pursuant to this Agreement has been shelf registered under the Securities Act of 1933, as amended, and upon issuance will be fully paid and non-assessable, and subject to being listed for trading on the New York Stock Exchange and the Chicago Stock Exchange is fully tradable, and free of any restrictions whatever except for those imposed restrictions as set forth and or referred to in Sections 7.4. and 10. ITW shall use its best efforts to cause the ITW Stock to be listed on the New York Stock Exchange and the Chicago Stock Exchange on or before the Effective Time.

**6.6 SEC Filings.** ITW has filed all forms, statements, reports and documents required to be filed by it with the SEC since January 1, 1996. Set forth in Schedule 6.6 of this Agreement is a complete and accurate list of the 10-K and 8-K and 10-Q, proxy materials, and registration statements filed by ITW (excluding S-8's) with the Securities and Exchange



Commission ("SEC") since January 1, 1999 ("SEC Filings"). Copies of all such SEC Filings have been delivered to the Stockholders. Such SEC Filings: (i) are all reports and other filings required to be filed by ITW under the Securities Act of 1933, as amended ("Securities Act"), and Securities Exchange Act of 1934, as amended (the "Exchange Act") (collectively, the Securities Act and the Exchange Act are referred to as the "Securities Acts") since January 1, 1996; (ii) are in the form required by the Securities Act; (iii) contained the disclosures which were required to be contained therein under the Securities Acts when such documents were filed; and (iv) as of the date filed by ITW with the SEC contained no material misstatement of fact and did not, as of such dates omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. The financial statements of ITW included in the SEC Filings as amended, complied at the time of filing as to form in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved and fairly present the consolidated financial position of ITW and its consolidated subsidiaries as at the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended.

**6.7 Registration Statement.** ITW has furnished to the Stockholders a Prospectus, dated June 12, 1995 (the "Prospectus"), which is included as part of a Registration Statement on Form S-4 (Registration No. 33-60013) filed by ITW with, and declared effective by, the SEC (the "Registration Statement"), pursuant to which shares of ITW Common Stock issuable to the Stockholders in connection with the Merger have been registered under the Securities Act. The Registration Statement and the Prospectus comply as to form in all material respects with the applicable provisions of the Securities Act, the Exchange Act and the rules and regulations thereunder. ITW shall keep the Registration Statement effective under the Securities Act as long as is necessary to consummate the Merger. The Prospectus does not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. No amendment or supplement to the Proxy Statement/Prospectus will be made or has been made from the time when the Form S-4 has become effective, nor has any supplement

or amendment been filed, nor has there been the issuance of any stop order or the suspension of the qualification of the ITW Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Proxy Statement/Prospectus or the Form S-4 or comments thereon and responses thereto or requests by the SEC for additional information.

#### **6.8 Tax Representations.**

(i) Neither ITW nor any corporation related to ITW will, in connection with the Merger, (a) be under any obligation or will have entered into any agreement or understanding to redeem or repurchase any of the ITW Common Stock issued to the Stockholders in the Merger or to make any extraordinary distributions in respect of such ITW Common Stock or (b) have any plan or intention to reacquire any of the ITW Common Stock issued in the Merger. For purposes of this representation, it is recognized that a former Stockholder may sell ITW Common Stock to ITW or a person related to ITW pursuant to an open market stock repurchase plan of ITW, which plan existed prior to and was not created in connection with the Merger, and was not, is not and will not be targeted to the former Stockholders or otherwise modified in connection with or in response to the Merger and is not part of a plan or arrangement to cause payment of property other than ITW Common Stock to former Stockholders that acquire ITW Common Stock in the Merger. After the Merger, no dividends or distributions will be made to the former Stockholders by ITW other than regular, normal dividends or distributions made to all holders of ITW Common Stock.

(ii) For purposes of this representation letter, two corporations shall be treated as related to one another if immediately prior to or immediately after the Merger (a) the corporations are members of the same affiliated group (within the meaning of Section 1504 of the Code, but determined without regard to Section 1504(b) of the Code) or (b) one corporation owns 50% or more of the total combined voting power of all classes of stock of the other corporation that are entitled to vote or 50% or more of the total value of shares of all classes of stock of the other corporation (applying the attribution rules of Section 318 of the Code, as

modified pursuant to Section 304(c)(3)(B) of the Code).

(iii) ITW Sub was formed solely for the purposes of the Merger.

(iv) As of the Closing Date, the capital stock of ITW Sub will be directly owned 100% by ITW.

(v) As of the Closing Date, except for obligations or liabilities incurred in connection with its incorporation or organization and the transactions contemplated hereby, ITW Sub will not have incurred, directly or indirectly through any subsidiary or affiliate, (A) any obligations or liabilities or engaged in any business or activities of any type or kind whatsoever or (B) entered into any agreements or arrangements with any person or entity.

(vi) ITW has no present plan or intention, following the Merger, to sell, transfer or dispose of any of the capital stock of the Company or to cause the Company to issue additional shares of capital stock.

(vii) ITW has no present plan or intention, following the Merger, to: (A) liquidate the Company, (B) merge the Company with and into another corporation, (C) sell or otherwise dispose of any of the stock of the Company, (D) cause the Company to distribute to ITW or any of its subsidiaries any assets held by the Company or the proceeds of any borrowings incurred by the Company, or (E) cause the Company to sell or otherwise dispose of any of its assets, except for distributions or dispositions of such assets in the ordinary course of business, and except as permitted under Section 368(a)(2)(C) of the Code.

(viii) Following the Merger, ITW intends to cause the Company to continue its "historic business" or to use a significant portion of its "historic business assets" in a business (as such terms are defined in Treasury regulations section 1.368-1(d)).

(ix) ITW will not take any position on any federal, state or local

income or franchise tax return, or take any other tax reporting position, that is inconsistent with the treatment of the Merger as a "reorganization" within the meaning of Section 368(a) of the Code unless otherwise required by a "determination" (as defined in section 1313(a)(1) of the Code) or by applicable state or local tax law (and then only to the extent required by such applicable state or local tax law).

**6.9 Separate Operations.** Until at least January 1, 2002, ITW shall cause the Group to be operated as a separate operating group and to maintain separate financial records adequate to make all calculations required by this Agreement or it shall waive its right to the Purchase Price Adjustment.

## **SECTION 7. ADDITIONAL AGREEMENTS**

**7.1 Access and Information.** After the Closing, the parties shall retain all material books, records, documents, instruments, accounts, correspondence, writings, evidences of title and other papers relating to the Company in their possession (the "Books and Records") for the period of time set forth in their respective records retention policies as in effect on the Closing Date, but in no event less than three (3) years. For a reasonable period of time after the Closing Date, the parties will allow each other reasonable access to such Books and Records for legitimate business reasons, such as the preparation of tax returns or the defense of litigation. Copies of such Books and Records shall be made at the cost of the requesting party. The requesting party shall not use, and will hold in confidence, all confidential information identified as such by, and obtained from, the disclosing party, and any of its officers, agents, representatives or employees; provided, however, that information shall not be deemed to be confidential information where such information was in the public domain, was in fact known to the requesting party prior to disclosure by the disclosing party, its officers, agents, representatives or employees, or becomes known to the requesting party from or through a third party not under an obligation of confidentiality to the disclosing party.

**7.2 Expenses.** Whether or not the Transaction is consummated, all costs and

expenses incurred in connection with this Agreement and the Transaction contemplated hereby shall be paid by the party incurring such expense.

**7.3 Publicity.** At all times throughout including prior to and after the Closing, each party shall promptly advise and cooperate with and, obtain the consent of the other prior to issuing, or permitting any of its subsidiaries, directors, officers, employees or agents, to issue any press release or other public announcement with respect to this Agreement or the Transaction except as and to the extent that any such party shall be so obligated by law, in which event the other parties shall be advised and the parties will use their best efforts to cause a mutually agreeable release or announcement to be issued.

**7.4 Affiliates; Rule 145.** Each of the Stockholders may be deemed to be "Affiliates" (within the meaning of Rule 145 under the Securities Act) and agrees not to transfer (except as may be specifically required by court order), sell, exchange, pledge (except in connection with a bona fide loan transaction, provided that any pledgee agrees not to transfer, sell, exchange, pledge or otherwise dispose or encumber the ITW Shares prior to the Expiration Date) or otherwise dispose of or encumber the ITW Shares at any time prior to the Expiration Date; and thereafter agrees to dispose of its shares only in conformity with Rule 145. As used herein, the term "Expiration Date" shall mean the date ITW shall have publicly released a report including the combined financial results of ITW and the Company and the Affiliate for a period of at least 30 days of combined operations of ITW and the Company and the Affiliate. From and after the Effective Time, ITW will file all reports required to be filed by it pursuant to the Exchange Act, referred to in paragraph (c)(1) of Rule 144 under the Securities Act. ITW will cooperate with the Stockholders and take such further actions as any Stockholder may reasonably request (including without limitation making such representations as any such holder may reasonably request and causing the removal of any restrictive legends placed on the certificates representing ITW Shares issued in the Merger and Sale), all to the extent required from time to time to enable such Stockholder to sell such shares without registration under the Securities Act and, as applicable, within the limitation of Rule 145 thereunder and subject to any applicable restrictions affecting pooling treatment, or as otherwise agreed to by stockholders who were officers and directors.

## **7.5 Tax Matters.**

(i) The Stockholders shall prepare or cause to be prepared and file or cause to be filed all tax returns for the Company for all periods during which the Company was a subchapter S corporation and all income tax returns for any entities acquired by the Company prior to the Closing Date. ITW shall prepare or cause to be prepared and file or cause to be filed all other tax returns for the Company and any entities acquired by the Company for all periods ending on or prior to the Closing Date which are due to be filed after the Closing Date.

(ii) ITW, the Company, and the Stockholders shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of tax returns pursuant to this Section 7.5 and any audit, litigation or other proceeding with respect to taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and ITW and the Company making their employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

## **SECTION 8. CONDITIONS TO CLOSING**

**8.1 Conditions to ITW and ITW Subs's Obligations.** Notwithstanding any other provisions of this Agreement, the obligation of ITW and ITW Sub to effect the Merger shall be subject to the fulfillment of the following conditions any of which may be waived by ITW:

**8.1.1 Permits.** All permits, approvals and consents of any federal, state or other government or governmental authority necessary or appropriate for consummation of the Merger shall have been obtained;

**8.1.2 Prohibitions.** There shall not be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger by any federal or state government or governmental authority and there shall not be in effect an order entered by any federal or state court which, in the sole reasonable judgment of ITW, (i) makes the consummation of the Merger illegal; (ii) results in a material delay in the ability to consummate the Merger; or (iii) imposes material limitations on the ability of ITW and ITW Sub effectively to exercise full rights of ownership of the Stock or the Interests or of a material portion of the assets or business of the Company;

**8.1.3 Representations and Warranties.** The representations and warranties contained in Sections 4 and 5 shall be true on and as of the Closing Date as though made on and as of the Closing Date, except as otherwise contemplated by this Agreement; the Stockholders shall have or shall have caused the Company to duly perform and comply with all agreements, covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing;

**8.1.4 Consents.** Except as set forth on Schedule 8.1.4, any required consent to the Merger under any agreement, contract or license (other than such as may be required from any government or governmental authority), the withholding of which might have a material adverse effect on the condition (financial or otherwise), properties, assets, business, or results of operations or prospects of the Company shall have been obtained;

**8.1.5 Employment and Non-Compete Agreements.** ITW shall have received executed employment and non-compete agreements (in substantially the form attached hereto as Exhibit C) from IK, PWK and DK;

**8.1.6 Escrow Agreement.** ITW shall have received the executed Escrow Agreement in substantially the form attached hereto as Exhibit B;

**8.1.7 Resolutions.** ITW shall have received: (i) all resolutions and approvals of

the board of directors and Stockholders of the Company; (ii) the resignations of all directors and officers of the Company as referenced to in Section 3.2 ; and (iii) such other documents as are required so as to effect the Merger;

**8.1.8 German Purchase Agreement.** ITW shall have confirmed that the German Purchase Agreement has been executed and notarized by PWK and DK;

**8.1.9 Certificate of Status.** At the Closing, the Company shall have delivered to ITW a certificate of status with respect to the Company from the Secretary of State or similar official of each jurisdiction in which the Company is organized and each foreign jurisdiction in which it is qualified as of a date reasonably close to the Closing;

**8.1.10 Title Documents.** At the Closing the Company shall deliver to ITW documents regarding transfer to the Company of the membership interests in EUL and partnership interests in the partnership that holds real property in which the Company carries on its business;

**8.1.11 Evidence of Transfer of Assets and Liabilities of X-Ray Tube Business.** At the Closing the Company shall deliver to ITW documents evidencing the transfer to one or more Shareholders of the business of the Company in X-ray tubes; Schedule 8.1.11 attached hereto lists the assets and liabilities being transferred; and

**8.1.12 Filings.** On or before the date of the Closing, the parties hereto shall cause to be filed the Certificate of Merger and such other documents with the Secretary of the State of Florida as shall be necessary for the consummation and effectiveness of the Merger as contemplated hereby on and as of the Closing Date.

**8.2 Conditions To The Stockholders' Obligations.** Notwithstanding any other provisions of this Agreement, the obligation of the Stockholders to effect the Merger shall be subject to the fulfillment of the following conditions, any of which may be waived by the



Stockholders:

**8.2.1 Permits.** All permits, approvals and consents of any federal, state or other government or governmental authority necessary or appropriate for consummation of the Merger shall have been obtained;

**8.2.2 Prohibitions.** There shall not be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger by any federal or state government or governmental authority and there shall not be in effect an order entered by any federal or state court which, in the sole reasonable judgment of the Stockholders: (i) makes the consummation of the Merger illegal; (ii) results in a material delay in the ability of the Stockholders to consummate the Merger; or (iii) imposes material limitations on the ability of the Stockholders effectively to transfer full rights of ownership of the Stock or of a material portion of the assets or business of the Company to ITW;

**8.2.3 Representations and Warranties.** The representations and warranties of ITW contained in Section 6 shall be true in all material respects as of the Closing Date as though made on and as of the Closing Date, except as otherwise contemplated by this Agreement; ITW shall have duly performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing Date;

**8.2.4 Consents.** Except as set forth on Schedule 8.2.4, any required consent to the Merger under any agreement, contract or license (other than such as may be required from any government or governmental authority), the withholding of which might have a material adverse effect on the condition (financial or otherwise), properties, assets, business, or results of operations of the Company, shall have been obtained;

**8.2.5 Escrow Agreement.** The Stockholders shall have received the executed Escrow Agreement in substantially the form attached hereto as Exhibit B;

**8.2.6 Employment and Non-Compete Agreements.** The Stockholders shall each have received executed employment and non-compete agreements (in substantially the form attached hereto as Exhibit C) from ITW Sub and Etilab GmbH;

**8.2.7 Resolutions.** The Stockholders shall have received: (i) all resolutions and approvals of the Board of Directors of ITW and of the stockholders and Board of Directors of ITW Sub; (ii) and such other documents as are required so as to effect the Merger;

**8.2.8**

**Intentionally Left Blank;**

**8.2.9 Registration Statement Effective.** The Registration Statement shall remain effective at the Effective Time, and no stop order suspending effectiveness of the Registration statement shall have been issued, no action, suit, proceeding or investigation by the SEC to suspend the effectiveness thereof shall have been initiated and be continuing, and the shares of ITW Common Stock to be issued in connection with the Merger shall have been approved for listing, subject only to official notice of issuance, on the New York Stock Exchange; and

**8.2.10 Filings.** On or before the date of the Closing, the parties hereto shall cause to be filed the Certificate of Merger and such other documents with the Secretary of State of Florida as shall be necessary for the consummation and effectiveness of the Merger as contemplated hereby on and as of the Closing Date.

## **SECTION 9. CLOSING**

**9.1 Closing Date.** The closing of the Transaction hereunder (the "Closing"), shall take place at the offices of Holland & Knight, 400 North Ashley Drive, Suite 2300, Tampa, Florida, 33602, at 9 a.m. on or before July 31, 2000 or at such other time and place as ITW and the Stockholders may mutually agree upon.

**9.2 The Stockholder's Deliveries.** At the Closing, the Stockholders shall deliver to ITW (each executed instrument to be in such form and substance reasonably satisfactory to ITW):

- (i) certificates representing the Stock, duly endorsed in blank (or with a stock power duly endorsed in blank attached), in proper form for transfer;
- (ii) the documents set forth in Sections 8.1.4, 8.1.5, 8.1.6, 8.1.7, 8.1.9 and 8.1.10; and
- (iii) any other documents reasonably necessary to consummate the Merger.
- (iv) pay-off statement from the financial institution holding the mortgage on the Company's real property.

**9.3 ITW and ITW Sub's Deliveries.** At the Closing, ITW and/or ITW Sub shall deliver to the Stockholders (each executed instrument to be in such form and substance reasonably acceptable to the Stockholders and Interest Holders):

- (i) the shares of ITW as set forth above in Section 1; and
- (ii) the documents set forth in Sections 8.2.4, 8.2.5, 8.2.6 and 8.2.7; and
- (iii) any other documents reasonably necessary to consummate the Merger.

## **SECTION 10. INDEMNIFICATION AND ESCROW**

**10.1** Following consummation of the Merger, the Stockholders agree that, notwithstanding the Closing, and regardless of any investigation made by or on behalf of ITW or

any information ITW may have in respect thereof, the Stockholders will indemnify and save and hold ITW and the Company harmless from and against any cost, expense, damage, liability, loss or deficiency (excepting only incidental or consequential damages) suffered or incurred by ITW or the Company arising out of or resulting from, and will pay ITW or the Company on demand the full amount (except as set forth below) of any sum which ITW or the Company may be obligated to pay or shall reasonably have paid in respect of:

**10.1.1** Any inaccuracy in any representation or the breach of any warranty made by the Stockholders, in or pursuant to this Agreement and particularly under Sections 4 and 5;

**10.1.2** Any failure of the Stockholders duly to perform or observe any term provision, covenant, agreement or condition in this Agreement required on the part of the Stockholders to be performed or observed prior to, at or after the Closing (except that the Stockholders shall not be liable for any failure of the Company to perform or observe any covenant after the Closing).

**10.2** This indemnity shall not apply to any claim under Section 10.1 above until the aggregate of all such claims which have become final totals Fifty Thousand Dollars (\$50,000) in which event the Stockholders shall be liable for such aggregate to the extent it exceeds Fifty Thousand Dollars (\$50,000) (the "Basket"). An amount for which ITW is entitled to receive indemnification under this Agreement, after giving effect to the foregoing deductible is an "Indemnified Loss."

**10.3 Disputes.** In the event of a dispute between the parties, the parties shall follow the procedure set forth in Section 14 hereof. All covenants, agreements, representations and warranties made by ITW or the Stockholders in or pursuant to this Agreement shall survive the Closing and remain effective for the term provided in Section 11.

**10.4 Indemnification of the Stockholders.** Stockholders shall not be liable for claims to the extent they arise from the conduct of the business of the Company after the Closing.

including without limitation, claims with respect to product liability and environmental matters.

**10.5 Escrow.** To secure their obligations under this Section 10, the Stockholders will, as provided in the Escrow Agreement at the Closing, deposit the Escrowed Shares into an escrow account with Bank One Trust Company N.A., as Escrow Agent. In the event of an Indemnified Loss, the Indemnified Party shall first seek to make a recovery from the Escrowed Shares, which shall be valued as described in the Escrow Agreement.

## **SECTION 11. LIMITATION ON INDEMNIFICATION**

**11.1 Term.** ITW's right to indemnification under Section 10.1 shall apply (i) with respect to the matters covered by Sections 10.1.1 only to those matters written notice of which shall have been delivered by hand or by mail by ITW to the Stockholders not later than two (2) years from the Closing Date.

**11.2 Extension for Certain Claims.** If prior to the expiration of any of said periods set forth in Section 11.1 above, ITW gives Stockholders notice identifying any Indemnified Loss, setting forth in reasonable detail facts and circumstances showing that ITW and Company have suffered or incurred or may suffer or incur such Indemnified Loss, then the indemnity contained in Section 10 above shall survive with respect to such covenant, agreement, representation or warranty until the Stockholders have indemnified and saved and held Indemnified Party harmless therefrom or such matter is otherwise resolved.

### **11.3 Insurance.**

(a) Anything in this Agreement to the contrary notwithstanding, any Indemnified Loss owing from Stockholders under the provisions of Article 10 above shall be reduced to the extent to which the Indemnified Party actually receives any proceeds of any insurance policy that are paid with respect to the matter or occurrence (or would have been received if ITW had continued the Company's insurance coverage as it existed on the Closing

and claims had been appropriately submitted under such coverage) that gave rise to the claim for indemnification under Article 10. Submission to insurance of any insurable claim otherwise giving rise to indemnification under Section 10 shall be a condition precedent to seeking indemnification under this Agreement.

(b) Each party to this Agreement covenants and agrees that all insurance policies maintained by it, him or her shall contain waiver of subrogation provisions with respect to the other parties to this Agreement.

**11.4 Cap.** The Stockholder's collective liability under this Agreement, except for fraud, shall be limited to \$1.5 million. ITW shall attempt to collect an equal amount from each Stockholder. If ITW after its good faith best efforts fails to collect from a Stockholder an amount determined to be due from a Stockholder, ITW may proceed against the other Stockholders for such amounts, subject to the above cap.

## **SECTION 12. AMENDMENTS AND WAIVER.**

**12.1 Amendment.** This Agreement and the Schedules hereto may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

**12.2 Waiver.** No consent or waiver, express or implied, by any party to or of any breach or default by any other party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same of any other obligations hereunder. Failure on the part of any party to complain of any breach, act or failure to act by any other party or to declare such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Except as otherwise provided in this Agreement each party's election of any remedy available to it shall not be deemed to waive or limit its rights to seek any other remedy available to it under this Agreement, at law or in equity.

### **SECTION 13. COOPERATION**

Each party (the "indemnitee") will give prompt written notice to the other (the "indemnitor") of any claim which it discovers or of which it receives notice after the Closing and which might give rise to a claim against the Indemnitor under Section 10 or otherwise under this Agreement in the case of a Stockholder, stating the nature, basis and amount thereof. The failure to give such notice shall not relieve the Indemnitor of any of its indemnification obligations contained herein, except where the failure to give such Notice actually and materially prejudices the rights of the Indemnitor. The Indemnitee shall have the right to be represented, at their own expense, by advisory counsel and accountants, in case of any claim by a third party, any suit or claim by any governmental body, or any legal, administrative or arbitration proceeding, with respect to which the Indemnitor may have liability under the provisions of Section 10. The Indemnitee shall make available to the Indemnitor and its attorneys and accountants, at all reasonable times during normal business hours, all books and records within the Indemnitee's possession or control relating to such suit, claim or proceeding, and the Indemnitee will render to the Indemnitor such assistance as may reasonably be required in order to insure proper and adequate defense of any such suit, claim or proceeding. In the event of a claim by a third party against the Indemnitee, the Indemnitor shall defend such claim or action at the Indemnitor's expense. If the Indemnitor shall desire to effect a compromise or settlement of any such suit, claim or proceeding pursuant to an offer of compromise or settlement by the claimant or plaintiff and the Indemnitee shall refuse to consent to such compromise or settlement then the Indemnitor's liability under Section 10, with respect to such suit, claim or proceeding shall be limited to the amount so offered in compromise or settlement; if the Indemnitor desires to effect a compromise or settlement where no offer has been made by the claimant or plaintiff the Indemnitor's liability shall be limited to an amount determined by agreement between the Indemnitor and the Indemnitee.

ITW shall make available to the Stockholders, their attorneys and accountants at all times during normal business hours, all books and records of the Company which are reasonably required by the Stockholders, in the event the Stockholders are the subject of any suit, claim by

any governmental agency, or legal or administrative proceeding involving his relationship to the Company prior to the Closing.

#### **SECTION 14. DISPUTE RESOLUTION**

Any dispute arising out of or relating to this Agreement, including, but not limited to, claims for indemnification pursuant to Section 10 shall be resolved in accordance with the procedures specified in this Section 14, which shall be sole and exclusive procedures for the resolution of any such disputes.

##### **14.1 Negotiation Between Executives.**

(i) The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between the Stockholders and executives of ITW. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent the ITW and of any other person who will accompany the party. Within 30 days after delivery of the disputing party's notice, the Stockholders and ITW's executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored.

(ii) If the matter has not been resolved by these persons within 60 days of the disputing party's notice, or if the parties fail to meet within 30 days, either party may initiate mediation as provided hereinafter.

(iii) All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence



and any applicable state rules of evidence.

**14.2 Mediation.** If the dispute has not been resolved by negotiation as provided herein, the parties shall endeavor to settle the dispute by mediation under the then current Center for Public Resources (“CPR”) Model Procedure for Mediation of Business Disputes and shall be held in Atlanta, Georgia. The neutral third party will be selected from the CPR Panels of Neutrals, with the assistance of CPR, unless the parties agree otherwise.

**14.3 Litigation.** If the dispute has not been resolved by non-binding means as provided herein within 90 days of the initiation of such procedure, either party may initiate litigation (upon 30 days written notice to the other party); provided, however, that if one party has requested the other to participate in a non-binding procedure and the other has failed to participate, the requesting party may initiate litigation before expiration of the above period.

**14.4 Provisional Remedies.** The procedures specified in this Section shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party, without prejudice to the above procedures, may file a complaint (for statute of limitations or venue reasons) or to seek preliminary injunction or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action the parties will continue to participate in good faith in the procedures specified in this Section.

**14.5 Tolling Statute of Limitations.** All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section are pending. The parties will take such action, if any required to effectuate such tolling.

**14.6 Performance to Continue.** Each party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

**14.7 Consent to Jurisdiction.** DK hereby irrevocably consents to the personal jurisdiction of the courts of the United States and of the states of Illinois and Florida relating to any dispute arising out of or related to this Agreement. DK further agrees that for all purposes any legal process delivered in compliance with Section 15.1 of this Agreement shall be adequate and appropriate.

## **SECTION 15. GENERAL PROVISIONS**

**15.1 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given when delivered in person or by private courier, or three (3) days after being deposited in the United States Express Mail Service, registered or certified, return receipt requested, with postage prepaid and addressed to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Purchaser:

Illinois Tool Works Inc.  
3600 West Lake Avenue  
Glenview, IL 60025  
Attention: Senior Vice President and  
General Counsel

If to any of the Stockholders:

Mrs. Inge Kuschnitzky  
Mr. Peter Kuschnitzky  
4405 Independence Court  
Sarasota, FL 34243  
Tel: 941 355 6498  
Fax: 941 355 1391

Mr. Ditmar Knot

With a copy to:

Holland & Knight  
400 North Ashley Drive  
Suite 2300  
Tampa, FL 33602  
Attn: Robert J. Grammig  
Tel: 813 227 8500  
Fax: 813 229 0134

**15.2 Miscellaneous.** This Agreement (including the Schedules, exhibits, documents and instruments referred to herein or therein) (i) constitutes the entire agreement/and supersedes all other prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof; (ii) shall not be assigned or transferred by operation of law or otherwise; and (iii) shall be governed in all respects, including validity, interpretation and effect, by the internal laws of the State of Illinois. This Agreement may be executed in two or more counterparts which together shall constitute a single agreement.

**15.3 Schedules and Exhibits.** The Schedules referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The specification of any dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in any Schedules hereto is not intended to imply that such amounts, or higher or lower amounts, or the items so included or other items, are or are not material, and neither party shall use the fact of the setting of such amounts or the inclusion of any such item in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement.

**15.4 Third Party Beneficiaries.** This Agreement is not intended to and does not create any rights, claims, remedies or benefits accruing to any person that is not a party hereto nor create or establish any third party beneficiary hereto.

**15.5 Interpretation.** The section headings contained in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement. All references to Section numbers refer to the Sections of this Agreement. The parties hereto acknowledge and agree that this Agreement was drafted jointly by both parties and its provision shall be given their fair meaning.

**15.6 Best Knowledge.** For purposes of this Agreement, any reference to "the knowledge of" or "the best knowledge of" a party hereto, when modifying any representation

and warranty, shall mean that such party has no knowledge that such representation and warranty is not true and correct to the same extent as provided in the applicable representation and warranty, and that:

(i) such party has made appropriate inquiry of its responsible employees as are generally expected in the course of running the business; and

(ii) nothing has come to Stockholder's attention in the ordinary course of his duties with the Company which would cause him, in the exercise of due diligence, to believe that such representation and warranty is not true and correct in all material respects.

**15.7 Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

**IN WITNESS WHEREOF,** The parties have caused this Agreement to be signed all as of the date first written above.

By: \_\_\_\_\_  
Inge Kuschnitzky

By: \_\_\_\_\_  
Peter W. Kuschnitzky

By: \_\_\_\_\_  
Ditmar Knot

Name of Corporation

Typed or Printed Name of Individual & Title

Stewart L. Woodard  
Vice President

Stewart S. Hudnut, Vice President & Secretary

Inge M. Kuschnitzky, President

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