

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TARONIS FUELS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 22-11121 (BLS)
)

) (Jointly Administered)
)

) **Re: Docket No. 214**
)

**ORDER (A) AUTHORIZING STALKING HORSE DESIGNATION, (B) APPROVING
STALKING HORSE BID PROTECTIONS, AND (C) GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of an Order (A) Authorizing Stalking Horse Designation, (B) Approving Stalking Horse Bid Protections, and (C) Granting Related Relief* [Docket No. 214] (the "Motion")² filed by the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"); and the Court having reviewed the Motion, the First Day Declaration [Docket No. 15], the Lisac Declaration; and the Court having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court on January 12, 2023 to consider certain of the relief requested in the Motion (the "Stalking Horse Hearing"); and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the

¹ The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor's federal tax identification number include: Taronis Fuels, Inc. (7454), MagneGas Welding Supply – West, LLC (6662), Taronis Sub III LLC (5826), MagneGas Welding Supply – South, LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors' service address in these chapter 11 cases is 24980 N. 83rd Avenue, Suite 100, Peoria, Arizona 85383.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or in the Bidding Procedures, as applicable.

Debtors, their estates, and their creditors, and the Debtors having demonstrated good, sufficient, and sound business justifications for the relief granted herein;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The predicates for the relief granted herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

B. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion, the Bid Procedures Order, the Stalking Horse Motion, and the proposed entry of this Stalking Horse Order was sufficient under the circumstances of the Chapter 11 Cases, and such notice complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, the Local Rules, and the Bid Procedures Order, as applicable. Accordingly, no other or further notice of the Motion, the Bidding Procedures Hearing, or this Bid Procedures Order need be provided.

D. The stalking horse bid of Airgas as reflected in the Stalking Horse APA attached hereto as **Exhibit 1**, represents the highest and otherwise best offer the Debtors have received to date to purchase the Purchased Assets (as defined in the Stalking Horse APA). The Stalking Horse APA provides the Debtors with the opportunity to sell the Debtors' Assets in a manner designed to preserve and maximize their value and provide a floor for a further marketing and auction process. Without the Stalking Horse APA, the Debtors are at a significant risk of realizing a lower price for their Assets. As such, the contributions of Airgas to the process have indisputably provided a substantial benefit to the Debtors, their estates, and the creditors in these Chapter 11

Cases. The Stalking Horse APA will enable the Debtors to minimize disruption to the Debtors' chapter 11 process and secure a fair and adequate floor for their Assets at the Auction (if any), and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors and all other parties in interest.

E. Airgas shall act as the Stalking Horse Bidder pursuant to the Stalking Horse APA, which bid shall be subject to higher and otherwise better offers in accordance with the Stalking Horse APA and the Bid Procedures Order. Pursuit of Airgas as the Stalking Horse Bidder and entry into the Stalking Horse APA is in the best interests of the Debtors and the Debtors' estates and their creditors, and reflects a sound exercise of the Debtors' business judgment.

F. Airgas is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identify of incorporators, directors, or controlling stakeholders exist between the Airgas and the Debtors. Airgas and its counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the negotiation of and entry into the Stalking Horse APA.

G. The Break-Up Fee and Expense Reimbursement, to the extent payable under the Stalking Horse APA, (a) provide a provide a substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (b)(x) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (y) shall be treated as an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a) and 503(b) of the Bankruptcy Code, (c) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder, and (d) are fair, reasonable, and appropriate, including in light of the size and nature of the transactions and the efforts that have been and will be expended by Airgas. Unless it is assured that the Bid

Protections will be available, Airgas is unwilling to remain obligated to consummate the Stalking Horse APA or otherwise be bound under the Stalking Horse APA, including, without limitation, the obligations to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures. The Bid Protections are a material inducement for, and condition of, the Airgas's execution of the Stalking Horse APA.

H. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. Airgas is approved as the Stalking Horse Bidder for the Debtors' Assets pursuant to the terms of the Stalking Horse APA.
3. The Debtors entry into the Stalking Horse APA is authorized and approved, and the Stalking Horse APA shall be subject to higher or better Qualified Bids, in accordance with the terms and procedures of the Bid Procedures Order.
4. The Debtors are authorized to perform any obligations under the Stalking Horse APA that are intended to be performed prior to entry of the order approving the Sale.
5. The Stalking Horse Bid Protections are approved in their entirety and shall be payable in accordance with, and subject to the terms of, the Stalking Horse APA, provided however, if the Bid Protections are to be paid to the Stalking Horse Bidder as a result of an Alternative Transaction that arises outside of the auction, the Stalking Horse Bidder will give the

United States Trustee fourteen (14) days' notice during which period an objection may be filed. If an objection is filed, the funds to pay the Bid Protections shall be held in escrow by the Debtors and will not be paid until further order from the Court.

6. The Stalking Horse Bid Protections (to the extent payable under the Stalking Horse APA) shall constitute an allowed administrative expense claim pursuant to sections 105(a) and 503(b)(1)(A) of the Bankruptcy Code in the Debtors' cases. The Debtors are hereby authorized and directed to pay the Stalking Horse Bid Protections, if and when due, in accordance with the terms of the Stalking Horse APA and this Order without further order of the Court. The Debtors' obligation to pay the Stalking Horse Bid Protections, if applicable, shall survive termination of the Stalking Horse APA, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation.

7. This Order shall be binding on the Debtors and their successors and assigns, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

8. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provision of the Bankruptcy Rules or Local Rules stating the contrary, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry, and any applicably stay of the effectiveness and enforceability of this Order is hereby waived.

9. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: January 13th, 2023
Wilmington, Delaware


BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

THIS IS A DRAFT AGREEMENT ONLY AND DELIVERY OR DISCUSSION OF THIS DRAFT AGREEMENT SHOULD NOT BE CONSTRUED AS AN OFFER OR COMMITMENT WITH RESPECT TO THE PROPOSED TRANSACTION TO WHICH THIS DRAFT AGREEMENT PERTAINS. NO PARTY TO THE PROPOSED TRANSACTION (AND NO PERSON OR ENTITY RELATED TO ANY SUCH PARTY) WILL BE UNDER ANY LEGAL OBLIGATION WITH RESPECT TO THE PROPOSED TRANSACTION EXCEPT AS SET FORTH BIDDING PROCEDURES ORDER ENTERED BY THE COURT UNLESS AND UNTIL THE DEFINITIVE AGREEMENT PROVIDING FOR THE TRANSACTION HAS BEEN EXECUTED AND DELIVERED BY ALL PARTIES THERETO.

ASSET PURCHASE AGREEMENT

BY AND AMONG

MAGNEGAS WELDING SUPPLY – SOUTH, LLC

TARONIS FUELS, INC.

AND

AIRGAS USA, LLC

DATED AS OF JANUARY 6, 2023

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the “**Agreement**”) is entered into as of January [●], 2023, by and among Airgas USA LLC, a Delaware limited liability company (“**Buyer**”), MagneGas Welding Supply – South, LLC, a Texas limited liability company (“**Seller**”), and Taronis Fuels, Inc., a Delaware corporation (“**Parent**”, and together with Seller, the “**Seller Parties**”). Buyer and Seller Parties may sometimes be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS:

A. On November 11, 2022, Parent, Seller and certain of their affiliates filed voluntary petitions for relief, Case No. 22-11121 (BLS) (the “**Bankruptcy Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

B. Upon the terms and conditions set forth in this Agreement and pursuant to Sections 363 and 365 of the Bankruptcy Code, Seller desires to sell, and Buyer desires to purchase, substantially all of the assets used or useful in the industrial gas and welding supply distribution business operated by Seller in Texas (the “**Business**”).

C. Buyer and Seller desire to consummate the transactions contemplated herein as promptly as practicable after the entry of the Sale Order by the Court.

D. Parent owns all of the issued and outstanding equity interests in Seller and will, directly or indirectly, derive economic benefit from the Closing (as defined herein) of the transactions contemplated herein.

In consideration of the foregoing recitals and the premises and the representations, warranties, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as set forth below:

ARTICLE I. DEFINED TERMS

Section 1.01 Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein have the meanings ascribed to them in Annex A, Annex B-1 or Annex B-2 hereto, and shall be applicable to the singular and the plural forms of such terms, except as otherwise specifically provided herein.

ARTICLE II. TRANSACTION

Section 2.01 Purchase and Sale of the Purchased Assets. In reliance upon the representations and warranties and subject to the terms and conditions set forth in this Agreement and the Sale Order, at the Closing, Buyer agrees to purchase and acquire from Seller, and Seller agrees to sell, grant, transfer, assign, convey and deliver to Buyer, for the consideration specified in this Article II, all of the respective rights, title and interests of Seller in and to all of the Purchased Assets owned or used by Seller in the Business, free and clear of all Liens other than Permitted Liens. Notwithstanding the foregoing, the Purchased Assets shall not include any of the Excluded Assets, including those Excluded Assets described on Schedule 2.01.

Section 2.03 Assumption of Liabilities.

- (a) At the Closing, Buyer shall assume and agree to pay, discharge or perform, as appropriate, when due only those Liabilities and obligations under the Assumed Contracts, including any Cure Costs (the “**Assumed Liabilities**”).
- (b) Notwithstanding Section 2.03 or any other provision of this Agreement, Buyer is not assuming under this Agreement or any other agreement or instrument entered into in connection herewith any Liability of any Seller Party that is not specifically identified as an Assumed Liability under Section 2.03 (each, an “**Excluded Liability**”), which for the avoidance of doubt shall include all accrued expenses and accounts payable of Seller arising out of the operation of the Business prior to the Closing other than Cure Costs (the “**Accounts Payable**”). The Excluded Liabilities are, and at all times shall remain, the obligation of Seller Parties. The Parties acknowledge and agree that disclosure of any obligation or Liability on any Schedule to this Agreement shall not create an Assumed Liability or other Liability of Buyer, except where such disclosed obligation or Liability has been expressly assumed by Buyer as an Assumed Liability in accordance with the provisions of Section 2.03 hereof. “**Assumed Liabilities**” shall in no event include the Excluded Liabilities or any Liability to the extent resulting from or arising out of the ownership, use, operation, removal or disposal of any Excluded Asset.

Section 2.04 Purchase Price. In consideration for the sale of the Purchased Assets to Buyer pursuant to Section 2.01, Buyer shall pay to Seller an aggregate purchase price of \$9,050,000.00 (the “**Purchase Price**”).

Section 2.05 Deposit; Delivery and Manner of Payment of Purchase Price.

- (a) On or before the deadline set forth in the Bidding Procedures Order, Buyer shall deposit with the Escrow Agent \$905,000.00 (the “**Deposit**”) pursuant to the terms of the Bidding Procedures Order. The Deposit shall be credited to the Purchase Price if the Closing occurs, or otherwise distributed pursuant to the Bidding Procedures Order or other order of the Court.
- (b) At the Closing, on the terms and subject to the conditions set forth in this Agreement, Buyer shall pay to Seller by wire transfer of immediately available funds to the bank account or accounts designated by Seller prior to the Closing, an aggregate amount equal to the Purchase Price, less the Deposit.

Section 2.06 Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place through an exchange of consideration and documents using wire transfers, overnight courier service, electronic mail and/or facsimile transmission at such a time as mutually agreed upon by the Parties following satisfaction or waiver of the conditions to the Closing set forth in Article VI hereof, or such other time, date and place that the Parties may agree (such date of the Closing to be referred to herein as the “**Closing Date**”), provided that the Closing shall be effective for Tax purposes as of 12:01 am eastern time on the Closing Date. Notwithstanding the foregoing, the Closing shall not occur unless and until the Court shall have entered the Sale Order, transferring the Purchased Assets free and clear of all Liens (except Permitted Liens) and including that Buyer is a good faith purchaser entitled to protections of 363 (m) and (n), on or prior to February 1, 2023, which shall include a waiver of the stay in Bankruptcy Rules 6004(h), 6006(d) and Local Rule 6004-1, and such Sale Order shall be a Final Order. The Closing must occur on or before February 10, 2023 or such later date as may be agreed to by Seller Parties in their sole discretion.

Section 2.07 Deliveries of Seller Parties at Closing. At the Closing, each Seller Party, as applicable, shall deliver, or cause to be delivered, to Buyer the deliverables set forth on Annex B-1.

Section 2.08 Deliveries of Buyer at Closing. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller and the other applicable Persons the deliverables set forth on Annex B-2.

Section 2.09 Allocation of Certain Items. With respect to certain expenses incurred in the operations of Seller, the following allocations shall be made between Seller Parties, on the one hand, and Buyer, on the other, to the extent applicable with respect to the Purchased Assets:

(a) Real and ad valorem property Taxes on the Purchased Assets shall be apportioned at the Closing based upon the amounts set forth in the current tax bills therefor and the number of days in the taxable period prior to the Closing Date and in the taxable period including and following the Closing Date; provided that Buyer shall not be responsible for any late fees or additional charges if Seller elected to pay such Taxes in installments; and

(b) Rents, utilities, water and sewer charges shall be apportioned based upon the number of days occurring prior to the Closing Date and including and following the Closing Date during the billing period for each such charge.

Appropriate cash payments by Buyer, on the one hand, or Seller Parties, on the other, as the case may be, shall be made hereunder from time to time as soon as reasonably practicable after the facts giving rise to the obligation for such payments are known in the amounts necessary to give effect to the allocations provided for in this Section 2.09.

Section 2.10 Purchase Price Allocation. The Purchase Price shall be allocated in accordance with Section 1060 of the Code on the basis of Closing Date financial statements and Purchased Asset counts conducted on or about the Closing Date, adjusted to reflect the actual results of operations of the Business through the Closing Date (the “**Purchase Price Allocation**”). For purposes of determining the Purchase Price Allocation, (i) Accounts Receivable (as defined herein) will be valued at their face amount, (ii) inventory will be valued at the lower of cost or market value, and (iii) Fixed Assets will be valued based on appraisals prepared by independent third parties or valued consistent with the valuation techniques and practices of Buyer. The parties agree to adopt and abide by the allocations provided for herein in all Tax filings, and agree to take no position inconsistent therewith.

Section 2.11 Non-Assignable Assets. Nothing in this Agreement shall be construed as an attempt by any Seller Party to assign to Buyer pursuant to this Agreement any contract, license or permit, franchise, claim, right, title or asset included in the Purchased Assets that is not assignable under the Bankruptcy Code without the consent or approval of any other Person, unless such consent or approval shall have been obtained (a “**Non-Assignable Asset**”). To the extent that any Required Consent in respect of a Non Assignable Asset shall not have been obtained on or before the Closing Date, Seller Parties shall (if requested by Buyer) use commercially reasonable efforts to obtain any such Required Consent, and Seller Parties shall cooperate with Buyer in any commercially reasonable arrangement to provide Buyer with the interest of such Party in the benefits under such Non Assignable Asset; provided that Buyer shall undertake to pay or satisfy the corresponding Liabilities under the terms of such Non Assignable Asset to the extent that Buyer would have been responsible therefor if such Required Consent had been obtained.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF SELLER PARTIES

Except as set forth in the Schedules to this Agreement, Seller represents and warrants to Buyer as follows:

Section 3.01 Binding Obligation; Authority.

(a) Assuming due authorization, execution, and delivery by Buyer to this Agreement and subject to the entry of the Sale Order, this Agreement constitutes the legal, valid, and binding obligation of each Seller Party.

(b) Subject to entry of the Sale Order, each Seller Party has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by each Seller Party of this Agreement, the performance by each Seller Party of its obligations hereunder, and the consummation by each Seller Party of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of each Seller Party.

Section 3.02 Organization; Power and Authority.

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the law of the Texas. Parent is a corporation duly organized and validly existing under the laws of the State of Delaware, with full corporate power and authority to conduct its business as now being conducted, including the ownership of Seller and, subject to entry of the Sale Order, has all requisite corporate power and authority to execute and perform this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby.

(b) Seller has all necessary limited liability company power and authority to carry on the Business as now conducted and to own or lease all of the properties and assets owned or leased by it. Subject to entry of the Sale Order, Seller has all requisite limited liability company power and authority to execute and perform this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby. Parent has full corporate power and authority to conduct its business as now being conducted, including the ownership of Seller and, subject to entry of the Sale Order, has all requisite corporate power and authority to execute and perform this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby.

(c) This Agreement and the transactions contemplated hereby have been duly authorized and approved by all requisite corporate action of each Seller Party, and this Agreement has been duly executed and delivered by each Seller Party and, subject to entry of the Sale Order, is the legal, valid and binding obligation of each Seller, enforceable in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency or similar laws of general application relating to or affecting the enforcement of creditors' rights and (ii) general principles of equity relating to the availability of equitable remedies. Subject to entry of the Sale Order, no other proceedings are necessary to authorize this Agreement and the transactions contemplated hereby, or the performance or compliance by each Seller Party with any of the terms, provisions or conditions hereof.

(d) Parent is the sole record and beneficial owner of all of the issued and outstanding equity of Seller, and no other Person owns any equity or ownership interests in Seller and no other Person has any right to become an owner of any stock or other equity interest of Seller. Seller does not own any equity or ownership interests in any person or any rights thereto.

Section 3.03 No Conflicts; Consents. The execution, delivery and performance by Seller Parties of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of any Seller Party; (b) result in a violation or breach of any provision of any law or governmental order applicable to any Seller

Party; or (c) result in a violation or breach of any provision of any contract to which any Seller Party is a party or by which any Seller Party may be bound or affected. Subject to the entry of the Sale Order, Seller is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority or other Person in order for Seller to sell and transfer the Purchased Assets to Buyer pursuant to this Agreement. The consents, approvals and notices set forth on Schedule 3.03 will be required prior to the Closing Date (the “**Required Consents**”).

Section 3.04 Assets.

(a) All material items of equipment, furniture, fixtures and other items of tangible personal property included in the Purchased Assets (“**Tangible Personal Property**”) are in good working order and operating condition and repair for the purposes for which they are used, reasonable wear and tear excepted.

(b) Seller Parties have good and valid title to, or a valid leasehold interest in, the Tangible Personal Property included in the Purchased Assets, free and clear of Liens except for Permitted Liens.

(c) Other than the vehicles that are not being acquired by Buyer and leases for Leased Real Property that are not being assumed by Buyer as part of the Purchased Assets, the Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. Other than the vehicles that are not being acquired by Buyer and leases for Leased Real Property that are not being assumed by Buyer as part of the Purchased Assets, none of the Excluded Assets are material to the Business.

(d) All of the Purchased Assets are in the possession of Seller or Seller’s customers and, if in the possession of Seller’s customers, are held pursuant to binding agreements obligating each such customer to return or reimburse Seller for such assets. All material customer disputes relating to Seller’s right to collect total monthly cylinder and tank rental and/or lease charges billed to Seller’s customers, net of reductions made by reason of customer disputes have been investigated by Seller and adjustments have been made within a reasonable time to the cylinder records. To the best of Seller’s knowledge, Schedule 3.04(d) contains a list of the cylinders and tanks by size and type owned by Seller, indicating whether each item is dock stock or located at a customer site, which list is true and correct in all respects, including any and all customer deposits on such cylinder and tanks.

(e) Seller Parties have provided Buyer a detailed inventory subledger for Seller Parties as of a date that is not more than five Business Days prior to the date hereof. All of the inventory is of a good and merchantable quality usable or saleable in the ordinary course of business, subject to reasonable reserves for unsalable, obsolete and damaged inventory and shrinkage, consistent with historical amounts. The inventory consists of raw materials, components, parts, work-in-process, finished goods, and packaging, which has been purchased or manufactured in the ordinary course of business consistent with reasonably anticipated requirements of the Business. None of the inventory has been consigned by any Seller Party (that is, delivered but not sold or sold with an unlimited right of return) to any Person. All gas and hardgoods inventories of Seller Parties are usable in the ordinary course of the Business, and are good and merchantable and readily saleable in the ordinary course of the Business.

Section 3.05 Accounts Receivable. All of Seller’s accounts receivable (“**Accounts Receivable**”) arose in the ordinary course of the Business, are good and collectable within 120 days after the Closing Date, and such Accounts Receivable are not subject to any counterclaims or setoffs. Seller Parties have provided Buyer a detailed Accounts Receivable aging report for Seller as of a date that is not more than five Business Days prior to the date hereof. No current customer of Seller has given notice (written or otherwise) that it intends to terminate or modify its relationship adversely with Seller.

Section 3.06 Real Estate.

(a) Schedule 3.06(a) contains a true and complete listing of all real property owned by Seller or an Affiliate and materially used in connection with the Business (the “**Ow ned Real Property**”). Seller has fee simple title to all Ow ned Real Property, if any, free and clear of any Liens, except for Permitted Liens.

(b) Schedule 3.06(b) contains a true and complete listing of all real property leased by Seller or an Affiliate and materially used in connection with the Business (the “**Leased Real Property**”) and a list of all leases for each Leased Real Property involving annual payments of at least \$10,000.

Section 3.07 Intellectual Property.

(a) Schedule 3.07(a) lists (i) all Intellectual Property Registrations and (ii) all Intellectual Property Agreements that are material to the conduct of the Business (excluding shrink-wrap, click-wrap, or other similar agreements for commercially available off-the-shelf software). Schedule 3.07(a) contains a true and correct list of all cylinder neck rings and markings used in the Business and Seller Parties have the full right to use such neck rings and markings in the ordinary course of the Business. Schedule 3.07(a) also includes a list of all telephone and facsimile numbers used at any location used in the Business.

(b) Seller owns or has the right to use all Intellectual Property Assets and the Intellectual Property licensed to Seller under the Intellectual Property Agreements.

Section 3.08 Financial Statements. Seller has provided Buyer with copies of Seller’s financial statements for the year ended December 31, 2021 and for the interim period ended November 3, 2022, which financial statements fairly present in all material respects the financial condition of Seller as of the respective dates thereof and the results of the operations of Seller for the periods indicated.

Section 3.09 Taxes.

(a) Other than Parent filing annual reports with, and paying its franchise taxes to, the Secretary of State of the State of Delaware, all Tax Returns required to be filed by any Seller Party with respect to the Business for Tax periods ending on or after December 31, 2018 and prior to the date of this Agreement (taking into account any valid extensions) have been filed and were true, correct and complete in all material respects when filed.

(b) Other than Parent filing annual reports with, and paying its franchise taxes to, the Secretary of State of the State of Delaware, the Taxes of each Seller Party with respect to the Business shown as due and payable on such Tax Returns have been paid.

(c) There are no liens for Taxes on any Purchased Assets.

(d) No audit, examination or other legal proceeding by a Tax Authority is currently pending against any Seller Party with respect to the Tax Returns.

(e) All Taxes which any Seller Party is obligated to withhold from amounts owing to any employee, creditor or third party have been paid.

Section 3.10 Contracts.

(a) Seller has provided to Buyer copies the following contracts relating to the Business or Purchased Assets (the “**Material Contracts**”):

(i) all contracts involving aggregate consideration in excess of \$10,000 or requiring performance by any party more than one year from the date hereof, which, in each case, cannot be cancelled without penalty or is not terminable on 90 days’ notice or less.

(ii) except for contracts relating to trade payables, all contracts relating to indebtedness of the Company, in each case having an outstanding principal amount in excess of \$10,000.

(b) Seller is not in material breach of, or material default under, any Material Contract, except to the extent such breach or default will be cured as a result of the payment of the applicable Cure Cost or which shall otherwise not prohibit the assumption and assignment of such Material Contract under the Bankruptcy Code.

(c) There are no renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to Seller Parties or material terms under any of the Material Contracts with any Person and no such Person has made written demand for such renegotiation. Except for defaults or breaches that will be cured as a result of the payment of the applicable Cure Cost or which shall otherwise not prohibit the assumption and assignment of such Material Contract under the Bankruptcy Code, no Seller Party has received any notice that any of the other parties to any Material Contract (i) is in material default thereunder, (ii) considers such Seller Party to be in material default thereunder or (iii) intends or plans to terminate or materially modify such Material Contract whether as a result of the transactions contemplated hereby or otherwise.

(d) Other than the Material Contracts, no Seller Party is a party to or bound by any other contract that is material to the operations of the Business or the Purchased Assets.

(e) Schedule 3.10(e) identifies those contracts designated by Buyer to be assigned to and assumed by Buyer (the “**Assumed Contracts**”), which schedule may be updated by Buyer from time to time up to and including the Closing Date to add or remove Assumed Contracts. Except as set forth on Schedule 3.10(e), each of the Assumed Contracts contains the entire agreement of the parties thereto, with respect to the subject matter thereof, is in full force and effect, and is valid and enforceable in accordance with its terms. Subject to entry of the Sale Order, all of the Assumed Contracts are assignable to Buyer without the consent or approval of other parties. For the avoidance of doubt, if any Governmental Authority requires Seller Parties and/or Buyer, in order to assign or novate any Assumed Contract to Buyer, to enter into any agreement with terms, conditions, recitals or stipulations that conflict with any provision of this Agreement, such agreement shall in no way amend, supplement or otherwise modify any provision of this Agreement and this Agreement shall control as between Seller Parties and Buyer.

Section 3.11 Compliance with Laws.

(a) Seller is in compliance with all laws that are applicable to the operation of the Business, except for such non-compliance that would not have a material and adverse effect on the Business.

(b) Seller holds all material licenses, permits, registrations, authorizations, qualifications and approvals (“**Licenses**”) necessary for the operation of the Business as currently conducted. Except as would not have a material and adverse effect on the Business, such Licenses are in full force and effect and no

action or proceeding has been instituted or threatened in writing with respect to the suspension, revocation, termination or expiration of such Licenses.

(c) There are no actions, suits, claims, or other legal proceedings pending or, threatened in writing against any Seller relating to the Business, except for actions, suits, claims, or other legal proceedings as would not have a material and adverse effect on the Business.

(d) Seller is not subject to any outstanding order, writ, injunction or decree of a governmental authority that has material and adverse effect on the Business.

(e) Seller has provided Buyer with a copy of each License.

Section 3.12 Employees.

(a) Seller Parties have provided to Buyer a complete and correct list of all the employees of Seller Parties employed in the Business as of the date set forth thereon and, for each employee, the title held, exempt or non-exempt status, salary or wage, date of hire, and bonuses and salary increases within the past year, but with the names of each employee redacted.

(b) Seller is in compliance with all applicable laws pertaining to employment and employment practices to the extent they relate to employees of the Business.

(c) Seller is not and has not been party to any collective bargaining agreement or other similar contract with any labor organization, union or association with respect to any of its employees related to the Business.

Section 3.13 Brokers. No broker, finder, financial advisor or investment banker is entitled to any broker's, finder's, financial advisor's or investment banker's fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller Parties for which Buyer may become liable.

Section 3.14 Fair Value. The Purchase Price and other consideration provided under this Agreement constitutes (a) fair market value for the Purchased Assets and (b) at least reasonably equivalent value (as that term is used in section 548 of title 11 of the United States Code and the Uniform Fraudulent Transfer Act, as applicable) for the Purchased Assets. No Seller Party is entering into this Agreement or undertaking the transactions contemplated by this Agreement for the purposes of hindering, delaying, or defrauding any person or entity to which such Seller Party is, or will become, indebted.

Section 3.15 Conditions Affecting Seller Parties. There are no conditions existing with respect to Seller Parties' markets, products, facilities, personnel or raw material supplies that would reasonably be expected to have a material and adverse effect on the Purchased Assets or the Business, other than such conditions as generally affect the industry as a whole. No representation or warranty or other statement made by Seller Parties in this Agreement, the Schedules, the Ancillary Documents or otherwise in connection with the transactions contemplated hereby contains any untrue statement of material fact or omits to state a material fact necessary to make such statements not misleading.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller Parties as follows:

Section 4.01 Binding Obligation; Authority.

(a) Assuming due authorization, execution, and delivery by the other Parties to this Agreement, this Agreement constitutes the legal, valid, and binding obligation of Buyer.

(b) Buyer has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder, and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer.

Section 4.02 Organization; Power and Authority.

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the law of the State of Delaware.

(b) Buyer has all necessary power and authority to carry on its business as now conducted, to own or lease all of the properties and assets owned or leased by it, and to consummate the transactions contemplated hereby.

Section 4.03 No Conflicts; Consents. The execution and delivery by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not: (a) result in a violation or breach of any provision of the organizational documents of Buyer; or (b) result in a violation or breach of any provision of any law or governmental order applicable to Buyer; except in the case of clause (b) where the violation or breach would not have a material and adverse effect on Buyer.

Section 4.04 Brokers. No broker, finder, financial advisor or investment banker is entitled to any broker's, finder's, financial advisor's or investment banker's fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer for which any Seller Party may become liable.

ARTICLE V. ADDITIONAL AGREEMENTS OF THE PARTIES

Section 5.01 Tax Matters.

(a) The Parties shall cooperate fully, as and to the extent reasonably requested by another Party, in connection with Tax matters arising after the Closing Date related to the Business or the Purchased Assets, including any audit, investigation, 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, investigation, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Seller Parties agree (i) to retain all Books and Records with respect to Tax matters pertinent to Seller relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (ii) to give Buyer reasonable written notice prior to transferring, destroying or discarding any such Books and Records and, if Buyer so requests, Buyer be permitted to take possession of such Books and Records

(b) All transfer, documentary, sales, use, stamp, registration, vehicle titling and registration and other Taxes and governmental charges, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions

contemplated by this Agreement, regardless of the Person against whom they are assessed, shall be paid by Buyer when due and in full.

(c) Seller Parties shall timely file or cause to be filed when due all applicable Tax Returns and pay all Taxes arising from the operation of Seller for the year ended December 31, 2021 and for the portion of the tax year which includes the Closing Date for which Buyer may be liable as a transferee of the Business, including payroll taxes, sales and use taxes and escheat or unclaimed property.

(d) The parties shall make all Tax filings consistent with the Purchase Price Allocation, including federal Form 8594.

Section 5.02 Name Change. Within 10 Business Days following the Closing Date, Seller shall change its corporate name to [●]. After the Closing, Seller shall not, directly or indirectly, use or do business, or allow any Affiliate to use or do business, or assist any third party in using or doing business, under the name “MagneGas Welding Supply – South, LLC”.

Section 5.03 Agreement to Cooperate. Following the Closing, Seller Parties and Buyer shall each deliver or cause to be delivered at such times and places as shall be reasonably requested such additional instruments as Buyer or Seller Parties may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement. Seller Parties will cooperate with Buyer after the Closing in furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings or disputes of any nature with respect to matters pertaining to all periods prior to the Closing.

Section 5.04 Confidentiality.

(a) Each Seller Party hereby acknowledges that all Confidential Information (as hereinafter defined) will be the property of Buyer following the Closing Date. For purposes of this Agreement, “**Confidential Information**” shall mean all information, “know how”, knowledge and data of each Seller Party related to Seller’s business (and any portion thereof), including the Business, as of the Closing Date, including any products, services, fees, pricing, designs, plans, strategies, analyses, forecasts, formulas, drawings, photographs, reports, records, software, other operating systems, applications, program listings, flow charts, manuals, documentation, data, databases, specifications, technology, inventions, new developments and methods, improvements, techniques, devices, products, methods, know-how, processes, procedures financial data, customer lists, contact persons, cost information, executive information, regulatory matters, personnel matters, accounting and business methods, trade secrets, and copyrightable works, in each case whether patentable or unpatentable and whether or not reduced to practice, and all similar and related information in whatever form; provided, however, that Confidential Information shall not include information that is generally known to the public other than as a result of disclosure in breach of this Agreement or any other agreement by which Seller Parties are bound. Each Seller Party acknowledges that the Confidential Information constitutes a valuable, special, and unique asset formerly used by a Seller. Each Seller Party further acknowledges that protection of such Confidential Information against unauthorized disclosure and use is of critical importance to Buyer in maintaining its competitive position. Each Seller Party will not, whether directly or indirectly, alone or in association with others, in the capacity as a partner, stockholder, member or other equity holder, or through or in connection with any other Person, and will cause their respective Affiliates to not, directly or indirectly, disclose or cause or permit to be disclosed, to any Person whatsoever, or utilize or cause or permit to be utilized, by any Person whatsoever, any Confidential Information (whether acquired prior to or subsequent to the execution of this Agreement) or otherwise at any time hereafter; provided, however, that the foregoing shall not prevent any Seller Party from disclosing or utilizing such Confidential Information as required by law or by a governmental or regulatory body, in which event such Seller Party, as applicable, shall notify Buyer and cooperate with Buyer in obtaining reasonable confidentiality protections in advance of such disclosure.

(b) In the event of an actual or threatened breach by Seller Party of any provision of this Section 5.04, each Seller Party acknowledges that any actual or threatened breach by any Seller Party of any provision of this Section 5.04 would give rise to irreparable harm to Buyer and its Affiliates, for which monetary damages would not be an adequate remedy, and Buyer and its Affiliates shall be entitled to injunctive or other appropriate equitable relief, enjoining, restraining and prohibiting such Person from violating this Section 5.04; provided, however, that nothing stated herein shall be construed as prohibiting or limiting Buyer or its Affiliates from pursuing such other remedies as may be available to it in or at equity, including the recovery of damages. Each Seller Party hereby waives any requirement on the part of Buyer or its Affiliates of proving actual damages or securing or posting any bond in connection with obtaining such injunctive or other equitable relief.

Section 5.05 Employee Matters.

- (a) Following Buyer's successful bid for the Purchased Assets, Buyer and/or its representatives may meet and otherwise communicate with employees of Seller, upon prior written notice to Seller Parties (in a manner so as not to interfere unreasonably with the normal business operations of Seller) in order to discuss the impact of the transactions contemplated by this Agreement and Buyer's intentions with respect to Seller's employees, and to interview and offer employment pursuant to the terms of this Section 5.05. Following Buyer's successful bid for the Purchased Assets, (i) Seller Parties shall promptly provide Buyer with an unredacted copy of the list of employees referred to in Section 3.12(a), (ii) Buyer shall be permitted to introduce itself to the employees of Seller at in-person or virtual meetings, and attend additional in-person or virtual meetings with employees of Seller following the initial meetings, in each case, in the presence of representatives of Seller at such locations and times as are mutually agreed by Buyer and Seller Parties (such agreement not to be unreasonably withheld, delayed or conditioned) and (iii) Buyer and Seller shall cooperate in good faith in developing and implementing an employee communication plan pursuant to which one or more written communications about Buyer, the transactions contemplated hereby and Buyer's plans or intentions with respect to the Purchased Assets will, from time to time, be distributed to employees and pursuant to which meetings of Buyer with employees of Seller may be scheduled.
- (b) Seller Parties shall pay any amounts due to its employees through the Closing Date on their regularly scheduled payday for accrued wages and benefits and any other claims or obligations related to the employment of such employees prior to Closing.
- (c) Seller Parties agree that they will comply with COBRA after the Closing Date with respect to all qualified beneficiaries who had a qualifying event as of or prior to the Closing Date, including any former employees of Seller Parties who are hired by Buyer, but who are entitled to elect COBRA coverage under Seller's Benefit Plans as may be required by applicable law. Seller Parties and Buyer agree that Buyer does not intend to be and is not a successor employer to Seller Parties for any purpose, and Buyer shall not assume any Benefit Plan or any obligations thereunder.
- (d) Seller Parties agree to use commercially reasonable efforts to assist Buyer to retain the employees of Seller Parties, including by giving Buyer reasonable access to discuss employment with such employees as described in Section 5.05(a) above. Prior to being hired by Buyer, employees of Seller Parties will be required to pass the standard drug test, background check and sign non-disclosure agreements, which are administered to all new employees of Buyer before they are offered employment by Buyer. All employees of Seller Parties hired by Buyer immediately following the Closing Date shall be eligible for participation in Buyer's standard employee benefits, including health and life insurance and 401(k) plans (subject to the amendment, modification or termination of any such plans).

Section 5.06 Accounts Receivable. During the 120-day period following the Closing Date, Buyer shall use its commercially reasonable efforts to collect all Accounts Receivable. All payments made by third parties shall be credited to the oldest outstanding invoice of Seller unless specifically designated by the third party as a payment for a different invoice. During 120-day period following the Closing Date, Seller will also permit Buyer and Buyer's employees to have access to and utilize Seller Parties' computer systems and software to permit Buyer to record sales, billing, customer and other operational data related to the Purchased Assets until Buyer has transferred all required data to its systems.

Section 5.07 Access to Computer Files and Employees. Upon Buyer's successful bid for the Purchased Assets, Seller shall immediately authorize Buyer to contact CU to commence obtaining data files needed for integration and to contact employees of Seller with respect to potential employment with Buyer.

Section 5.08 Cure Costs. Seller shall sell, transfer and assign, all Assumed Contracts to Buyer, and Buyer shall purchase and assume all Assumed Contracts from Seller, as of the Closing Date pursuant to sections 363 and 365 of the Bankruptcy Code and the Sale Order. In connection with debts incurred or the assignment and assumption of the Assumed Contracts, Buyer shall cure any monetary defaults of the debts incurred or under the Assumed Contracts by payment of the Cure Costs. Buyer shall be responsible for demonstrating and establishing adequate assurance of future performance before the Court with respect to the Assumed Contracts.

Section 5.09 Restrictive Covenants. For a period of five years from and after the date hereof, no Seller and none of their respective Affiliates shall, directly or indirectly, engage or participate in any manner anywhere within 150 miles of any of any Seller Party's current locations in any business that is competitive with the Business. The parties agree that, if any court of competent jurisdiction finally determines that a specified time period, a specified geographical area, a specified business limitation or any other relevant feature of this Section 5.09 is unreasonable, arbitrary, against public policy or otherwise unenforceable under the circumstances, then any such provision shall be revised by such court to a lesser period of time, geographical area, business limitation or other relevant feature, as the case may be, which is determined by such court to be as close to the original provision as possible and enforceable against the applicable party under the circumstances, and such provision shall be enforced accordingly. Seller Parties acknowledge and agree that (a) the covenants and agreements set forth in this Section 5.09 were a material inducement to Buyer to enter into this Agreement and to perform its obligations hereunder, (b) Buyer would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the parties hereto if Seller Parties or any of their respective Affiliates breached the provisions of this Section 5.09, (c) any breach of the provisions of this Section 5.09 by Seller Parties or their respective Affiliates would result in a significant loss of goodwill by Buyer, (d) the length of time, scope and geographic coverage of the covenants set forth in this Section 5.09 is reasonable given the benefits Seller is receiving hereunder, (e) Seller Parties are familiar with all the restrictive covenants contained in this Section 5.09 and are fully aware of their respective obligations hereunder, and (f) no Seller will challenge the reasonableness of the time, scope, geographic coverage or other provisions of this Section 5.09. Seller Parties further acknowledge and agree that irreparable injury will result to Buyer if Seller Parties or any of their respective Affiliates breach any of the terms of this Section 5.09, and that in the event of an actual or threatened breach by Seller Parties or any of their respective Affiliates of any of the provisions contained in this Section 5.09, Buyer will have no adequate remedy at law. Seller Parties accordingly agree that in the event of any actual or threatened breach by Seller Parties or any of their respective Affiliates of any of the provisions contained in this Section 5.09, Buyer shall be entitled to injunctive and other equitable relief. Nothing contained herein shall be construed as prohibiting Buyer from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages that it is able to prove. Seller Parties shall cause their respective Affiliates to comply with this Section 5.09, and shall be liable for any breach by any of their respective Affiliates of this Section 5.09.

Section 5.10 Conduct of Business Prior to Closing. From and after the date of this Agreement through the Closing, Seller Parties covenant and agree that, with respect to the Purchased Assets and Seller's operation of the Business:

- (a) the Business will be conducted only in the ordinary course, including normal commitments for the purchase of supplies and the sale of goods and services;
- (b) no material contract will be entered into by or on behalf of Seller Parties relating to the Purchased Assets or the Business;
- (c) Seller Parties will promptly notify Buyer if Seller Parties receive any notice (written or oral) from any material customer regarding or contemplating any adverse change in the customer's relationship with the Business, whether before or after the Closing Date;
- (d) Seller Parties will promptly notify Buyer if Seller Parties receive any notice (written or oral) that an employee is resigning as an employee of a Seller Party;
- (e) Seller Parties will not pay any bonuses or approve any salary or wage increases or any contributions to any Benefit Plan for any of the employees of Seller Parties or the Business other than in the ordinary course of the Business in amounts calculated on a basis consistent with past practices;
- (f) with respect to the Purchased Assets and the operation of the Business, Seller Parties will use commercially reasonable efforts to preserve Seller's business organization intact, to keep available the services of present employees and to preserve Seller's reputation and goodwill;
- (g) Seller Parties will not pay, loan, advance or distribute, any amounts to any director, officer or equity owner of any Seller Party, except for payments made in accordance with past practices (including distributions to equity owners of Seller in accordance with past practices) or as disclosed in this Agreement or a Schedule attached hereto;
- (h) Seller Parties will not enter into any agreement or arrangement with any director, officer or equity owner of Seller or any member of such Person's family with respect to the Purchased Assets or the Business, except as disclosed in this Agreement or a Schedule attached hereto;
- (i) no Seller Party will sell or lease any of its assets or properties, tangible or intangible (including the Purchased Assets) used in the operation of the Business, except in the ordinary course of the Business;
- (j) no Seller Party will agree to do any of the foregoing; and
- (k) Seller Parties will maintain the Purchased Assets in good condition and repair (normal wear and tear excepted) and insured under the insurance coverage in effect as of the date hereof.

Section 5.11 Submission for Court Approval.

- (a) Buyer and Seller Parties acknowledge that this Agreement and the transactions contemplated hereby are subject to approval by the Court and entry of the Sale Order. In the event of any discrepancy between this Agreement and the Sale Order, the Sale Order shall govern.
- (b) Seller Parties shall use commercially reasonable efforts to have the Court hold the Sale Hearing and enter the Sale Order as promptly as practicable.

- (c) From and after the date hereof, Seller Parties shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order. Buyer has not colluded in connection with its offer or negotiation of this Agreement. From and after the date hereof, Buyer shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order or consummation of the transactions contemplated hereby.
- (d) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller Parties to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Court for the purposes, among others, of demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code; provided, however, in no event shall Buyer or Seller Parties be required to agree to any amendment of this Agreement.
- (e) Seller Parties further covenant and agree that, after the entry of the Sale Order, the terms of any reorganization or liquidation plan Seller Parties submit to the Court, or any other court for confirmation or sanction, shall not be intended to (or reasonably likely to) supersede, abrogate, nullify or restrict the terms of this Agreement in any material respect, or prevent the consummation or performance of the transactions contemplated hereby.

ARTICLE VI. CONDITIONS PRECEDENT TO CLOSING

Section 6.01 Conditions Precedent to the Obligations of Buyer and Seller Parties. The obligations of Buyer and Seller Parties to consummate the Closing are subject to the satisfaction or waiver of the following conditions:

- (a) On the Closing Date, (i) no material Legal Requirement shall have been enacted, entered, issued, promulgated or enforced by any Governmental Authority that prohibits or substantially restrains any of the transactions contemplated by this Agreement or that substantially delays any material aspect of the transactions contemplated by this Agreement, and (ii) no action shall have been commenced by any Governmental Authority with jurisdiction over the Purchased Assets or any other Person before any Governmental Authority that seeks to restrain, materially and adversely alter or render unlawful the consummation any of the transactions contemplated by this Agreement or that would substantially delay any material aspect of the transactions contemplated by this Agreement; provided, however, that Buyer or Seller Parties, as the case may be, may not invoke the condition in this Section 8.01(a) if (i) Buyer or Seller Parties, as the case may be, shall have failed in any material respect to use its commercially reasonable efforts to oppose, contest, resolve, appeal, defend against or lift, as applicable, such Legal Requirement, or (ii) compliance with any such Legal Requirement described in Section 8.01(a) or the relief sought by the Governmental Authority in any such action described in Section 8.01(a) would not reasonably be expected to have a material adverse effect on Seller Parties or Buyer.
- (b) All permits and approvals, if any, required by applicable Legal Requirements to be obtained from any Governmental Authority to consummate the Closing shall have been obtained, except for those whose failure to be obtained will not result in a material adverse effect on the Purchased Assets, the Business or Buyer, as applicable.

Section 6.02 Conditions to Buyer’s Performance. Buyer’s obligations to purchase and pay the Purchase Price for the Purchased Assets are subject to the satisfaction or waiver of the following conditions:

- (a) The representations and warranties of Seller Parties contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date (as if made on the Closing Date), and Seller Parties shall have delivered to Buyer a certificate to such effect, dated as of the Closing Date and signed by an authorized representative of Seller Parties, which certificate shall be in form and substance reasonably satisfactory to Buyer.
- (b) All of the covenants of Seller Parties set forth herein and which were to be performed at or prior to the Closing Date (including the delivery of the items set forth on Annex B-1) shall have been duly performed in all material respects, and Seller Parties shall certify to such effect in the certificate provided for in Section 6.02(a) hereof.
- (c) The continued existence of sufficient Debtor-in-Possession financing to facilitate and close the transactions contemplated herein.
- (d) Buyer shall be reasonably satisfied with the Schedules.
- (e) There shall not have been instituted or threatened, in writing, on or before the Closing Date, any action before any Governmental Authority challenging the validity of this Agreement or seeking to prevent or materially delay the acquisition of the Purchased Assets or the Business as contemplated hereby.
- (f) There shall not have been any material adverse change in the assets, operations or financial condition of Seller Parties, or any event or series of events that could reasonably likely be expected to result in a material adverse change in the assets, operations or financial condition of Seller Parties of which Buyer becomes aware after January 6, 2023.
- (g) Seller Parties and other required parties shall have executed and delivered the Transition Services Agreement, the Bill of Sale, the Assignment and Assumption Agreement and the other instruments provided for herein, and such other documents, reasonably satisfactory to Buyer's counsel, as shall be necessary or appropriate to the transfer of the Purchased Assets and the Business to Buyer.
- (h) The Required Consents shall have been obtained.
- (i) The Court shall have entered the Sale Order, transferring the Purchased Assets free and clear of all Liens (except Permitted Liens) and including that Buyer is a good faith purchaser entitled to protections of Section 363 (m) and Section 363 (n) of the Bankruptcy Code, on or prior to February 1, 2023, which shall include a waiver of the stay in Bankruptcy Rules 6004(h), 6006(d) and Local Rule 6004-1, and such Sale Order shall be a Final Order.
- (j) The board of directors or similar governing body of Buyer shall have approved the transactions contemplated hereunder.

Section 6.03 Conditions to Seller Parties' Performance. Seller Parties' obligations pursuant to this Agreement are subject to satisfaction or waiver of the following conditions:

- (a) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date (as if made on the Closing Date), and Buyer shall have delivered to Seller Parties a certificate to such effect, dated as of the Closing Date and signed by its Chief Financial Officer or a Vice President, which certificate shall be in form and substance reasonably satisfactory to Seller Parties.

- (b) All of the covenants of Buyer set forth herein and which were to be performed at or prior to the Closing Date (including the delivery of the items set forth on Annex B-2) shall have been duly performed in all material respects and Buyer shall certify to such effect in the certificate provided for in Section 6.03(a) hereof.
- (c) There shall not have been instituted or threatened, in writing, on or before the Closing Date, any action or proceeding before any Governmental Authority challenging the validity of this Agreement or seeking to prevent or materially delay the acquisition of the Purchased Assets or the Business as contemplated hereby.
- (d) All other agreements, certificates and documents reasonably requested from Buyer by Seller Parties shall have been fully executed and delivered by Buyer along with such other documents reasonably satisfactory to Seller Parties or their counsel, as shall be necessary or appropriate to the transfer of the Purchased Assets and the Business to Buyer.

ARTICLE VII. TERMINATION

Section 7.01 Termination Prior to Closing. Notwithstanding anything in this Agreement to the contrary, this Agreement and the transactions contemplated by this Agreement may not be terminated prior to Closing, except as follows:

- (a) by mutual consent in writing of Buyer and Seller Parties;
- (b) by Seller Parties or Buyer at any time after February 10, 2023 (or such later date as shall be necessary to permit a party to fully exercise any cure rights it may have under this Section 7.01) (the “**Outside Date**”); provided, that the right to terminate this Agreement under this Section 7.01(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by such date;
- (c) automatically if Seller Parties enter into a definitive agreement that contemplates a transaction or series of related transactions, other than the transactions to be consummated under this Agreement, pursuant to which a material portion of the Purchased Assets will be acquired by, or transferred to, a third party, whether pursuant to an asset sale, merger, stock purchase, a chapter 11 plan or otherwise (any such transaction, an “**Alternative Transaction**”);
- (d) by Buyer, by giving written notice of such termination to Seller Parties, if the Sale Order has not been entered on or before February 1, 2023 (the “**Sale Order Outside Date**”) or if such Sale Order is subject to a stay or injunction on the Sale Order Outside Date;
- (e) by Buyer, if there is any material breach declared by the Debtor-in-Possession lender (which remains uncured and not waived or subject to forbearance by the Debtor-in-Possession lender) or termination of the Debtor-in-Possession financing;
- (f) by Buyer, if there is any material adverse change to the Business of which Buyer becomes aware after January 6, 2023;
- (g) by Buyer, if there is conversion of the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code;
- (h) by Buyer, if there is dismissal of the Bankruptcy Cases;

- (i) by Seller Parties or Buyer, if any Legal Requirement of a Governmental Authority of competent jurisdiction prohibits the consummation of the transactions contemplated by this Agreement, and such Legal Requirement has become final and non-appealable and was not entered at the request of the terminating party; provided, however, that Seller Parties or Buyer, as the case may be, may not invoke the condition in this Section 7.01(i) if (i) Seller Parties or Buyer, as the case may be, shall have failed to in any material respect to use its commercially reasonable efforts to oppose, contest, resolve, appeal, defend against or lift, as applicable, such Legal Requirement, or (ii) compliance with any such Legal Requirement described in Section 6.01(a) would not reasonably be expected to have a material adverse effect on Seller Parties or Buyer, as the case may be; or
- (j) by Buyer, if (i) there has been a breach by Seller Parties of any representation or warranty of Seller Parties contained in this Agreement which would reasonably be expected to have a material adverse effect on the Purchased Assets or the Business or to prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Buyer to Seller Parties, or (ii) there has been a breach by Seller Parties of any of the covenants or agreements of Seller Parties set forth in this Agreement which would reasonably be expected to have a material adverse effect on the Purchased Assets or the Business, or to prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Buyer to Seller Parties; or
- (k) by Seller Parties, if (i) there has been a breach by Buyer of any representation or warranty of Buyer contained in this Agreement which would reasonably be expected to have a material adverse effect on Buyer, or prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Seller Parties to Buyer or (ii) there has been a breach by Buyer of any of the covenants or agreements of Buyer set forth in this Agreement which would reasonably be expected to have a material adverse effect on Buyer, or to prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Seller Parties to Buyer.

Section 7.02 Effect of Termination. In the event that this Agreement shall be terminated pursuant to Section 7.01, all further obligations of the parties under this Agreement shall terminate without further liability of any party to another; provided, however, that the obligations of the parties contained in this Section 7.02 and Article VII and Article VIII shall survive any such termination. In addition to the foregoing, in the event Buyer fails to consummate the transactions contemplated by the terms of this Agreement for any reason not specifically provided herein, Seller Parties shall be entitled to seek and/or obtain all available legal and equitable remedies.

Section 7.03 Break-up Fee and Expense Reimbursement.

- (a) In consideration of Buyer's due diligence, good faith negotiations of and entering into this Agreement, and as reimbursement of Buyer's expenses incurred in connection with the transactions contemplated by this Agreement, Seller Parties shall pay to Buyer in accordance with Section 7.04 and Section 7.05, (i) a break-up fee in the amount of \$271,500 (the "**Break-up Fee**"), payable as provided in Section 7.04; and (ii) an amount not to exceed \$100,000, equal to Buyer's reasonably documented expenses incurred in connection with this Agreement and the transactions contemplated herein and therein, including Buyer's legal and accounting expenses, due diligence (including travel expenses), all work performed by or on behalf of Buyer to prepare the Purchased

Assets for transition to Buyer upon or soon after Closing, the prosecution of Court approval of Buyer as a good faith buyer under this Agreement and the acquisition of the Purchased Assets and the entry of the Sale Order (the “**Expense Reimbursement**”).

- (b) Seller Parties acknowledge and agree that (i) the payment of the Break-Up Fee and the Expense Reimbursement are integral parts of this Agreement, and (ii) in the absence of Seller Parties’ obligation to make these payments, Buyer would not have entered into this Agreement. To the extent that all amounts due in respect of the Break-Up Fee and the Expense Reimbursement pursuant to this Section 7.03 have actually been paid by Seller Parties to Buyer, Buyer shall not have any additional recourse against Seller Parties for any liabilities relating to or arising from this Agreement. Further, prior to the Closing in the event of any breach of this Agreement by Seller Parties, the sole and exclusive remedies of Buyer will be, if applicable, to (i) terminate this Agreement pursuant to Section 7.01, and (ii) receive, if applicable, any payments payable pursuant to this Section 7.03.

Section 7.04 Payment of Break-Up Fee. Buyer shall earn the Break-up Fee upon Seller Parties’ acceptance of a bid for an Alternative Transaction and shall be due and owing by Seller Parties pursuant to this Agreement, and paid after obtaining Court approval, which Seller Parties shall seek no later than Court approval of the Alternative Transaction, and will be paid from the proceeds received by Seller Parties from such Alternative Transaction.

Section 7.05 Payment of Expense Reimbursement. If Buyer becomes entitled to Expense Reimbursement, then the Expense Reimbursement shall be paid to Buyer by Seller Parties pursuant to this Agreement, and paid in accordance with and at the same time as the Break-Up Fee becomes due and payable.

Section 7.06 Payment of Deposit. Buyer’s Deposit shall be non-refundable and paid to Seller Parties in the event that this Agreement is terminated pursuant to Section 7.01(k). In the event that this Agreement is terminated pursuant to any other provision of Section 7.01, Buyer’s Deposit shall be refunded to Buyer.

ARTICLE VIII. RELEASE

Section 8.01 Release by Seller Parties. Effective upon the Closing, each Seller Party (on behalf of such party and such party’s heirs, successors, assigns and executors) hereby irrevocably and unconditionally waives, releases and discharges Buyer and Buyer’s Affiliates and their respective officers, directors, agents and representatives and the respective successors and permitted assigns (collectively, “**Buyer Releasees**”) of each from any and all Losses, Liabilities and obligations to such party of any kind or nature whatsoever, whether in such Person’s capacity as a party hereunder, as an equityholder, director, manager, officer or employee of any Seller Party or otherwise (including in respect of rights of contribution or indemnification and including any Avoidance Action) as to facts, conditions, transactions, events or circumstances prior to the Closing. No Seller Party shall seek to recover any amounts in connection therewith or thereunder from Buyer and/or any other Buyer Releasee (and/or any of their successor or assigns); provided, that this Section 8.01 shall not affect the rights of any Seller Party under (a) this Agreement, (b) the Asset Purchase Agreement dated as of August 3, 2022 by and among Buyer, Parent, MagneGas Welding Supply – Southeast, LLC and, solely for the purposes described in such agreement, MagneGas Welding Supply – West, LLC, or (c) the Asset Purchase Agreement dated as of December 6, 2022 by and among Buyer, Parent, MagneGas Welding Supply – West, LLC and MagneGas Real Estate Holdings, LLC. Each Seller Party represents to Buyer that such party has not assigned or transferred, or purported to assign or transfer, to any Person, all or any part of, or any interest in, any action against any

Seller Party, and notwithstanding anything to the contrary in this Agreement, no such assignment or transfer shall be permitted and any purported assignment or transfer shall be legally ineffective.

Section 8.02 Release by Buyer. Effective upon the Closing, Buyer (on behalf of itself and on behalf of the Buyer Releasees) hereby irrevocably and unconditionally waives, releases and discharges each Seller Party (and their successors and assigns) from any and all Losses, Liabilities and obligations to such party of any kind or nature whatsoever, whether in such Person's capacity as a party hereunder, as an equityholder, director, manager, officer or employee of Buyer or otherwise (including in respect of rights of contribution or indemnification) as to facts, conditions, transactions, events or circumstances prior to the Closing. None of Buyer nor any Buyer Releasee shall seek to recover any amounts in connection therewith or thereunder from any Seller Party (and/or any of their successor or assigns); provided, that this Section 8.02 shall not affect the rights of Buyer or any Buyer Releasee under (a) this Agreement, (b) the Asset Purchase Agreement dated as of August 3, 2022 by and among Buyer, Parent, MagneGas Welding Supply – Southeast, LLC and, solely for the purposes described in such agreement, MagneGas Welding Supply – West, LLC, (c) the Asset Purchase Agreement dated as of December 6, 2022 by and among Buyer, Parent, MagneGas Welding Supply – West, LLC and MagneGas Real Estate Holdings, LLC, or (d) the Purchase and Sale Agreement dated as of December 6, 2022 by and between Buyer and MagneGas Real Estate Holdings, LLC, providing for the purchase of the real property located at 1590 E. Kentucky Avenue, Woodland, CA 95776. Buyer represents to each Seller Party that it has not assigned or transferred, or purported to assign or transfer, to any Person, all or any part of, or any interest in, any action against Buyer and the other Buyer Releasees, and notwithstanding anything to the contrary in this Agreement, no such assignment or transfer shall be permitted and any purported assignment or transfer shall be legally ineffective.

ARTICLE IX. MISCELLANEOUS

Section 9.01 Notices. Any notice, request, instruction or other document to be given under this Agreement will be in writing and will be: (a) delivered personally; (b) sent by U.S. mail, postage prepaid, certified or registered mail, return receipt requested, (c) sent by reputable overnight courier, delivery charges prepaid; or (d) transmitted by electronic mail (and no "bounceback" or "automatic response" message is received). These notices will be sent to the following addresses and will be deemed given: (i) if delivered personally, at the time delivered; (ii) if sent by U.S. mail, 4 days after being deposited in the mail; (iii) if sent by reputable overnight courier, at the time delivered; or (iv) if transmitted by electronic mail during normal business hours, at the time when receipt is confirmed by the sender or sending account.

If to any of Seller Parties:
Taronis Fuels, Inc.
24980 N. 83rd Avenue
Peoria, AZ 85383
Attention: Jered Ruyle
Email: jeredruyle@magnegas.com

with a copy to (which shall not constitute notice):

Potter Anderson & Corroon LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware
Attention: Michael Whittaker
Email: mwhittaker@potteranderson.com

If to Buyer:
Airgas USA, LLC
259 N. Radnor-Chester Road
Ste. 1001
Radnor, PA 19087
Attention: Office of General Counsel

with a copy to (which shall not constitute notice):

Kleinbard LLC
Three Logan Square, 5th Floor
1717 Arch Street
Philadelphia, PA 19103
Attention: Mary Beth H. Gray
Email: mgray@kleinbard.com

or to another address as either Party may indicate by notice delivered to the other Party in accordance with the provisions of this Section 6.01.

Section 9.02 Public Announcement. Except with respect to any filings required in connection with the transactions contemplated hereunder, prior to Closing, neither Buyer nor Seller Parties will issue any press release or make any other public announcement relating to this Agreement or the transactions contemplated hereby without the prior written approval of the other party (which approval will not be unreasonably withheld, conditioned or delayed), unless required by applicable law or by any listing agreement with any national securities exchange. Prior to issuing any such press release or making any such other public announcement as required by applicable law or by any listing agreement with any national securities exchange and without the other party's prior written approval, the disclosing party will give the other party a copy of the proposed press release or other public announcement and a reasonable opportunity to comment on the same.

Section 9.03 Entire Agreement; Amendments. This Agreement, the other agreements referred to in this Agreement and the Schedules and exhibits referred to in this Agreement contain the entire understanding of the Parties with regard to the subject matter contained in this Agreement and supersede all prior written or oral agreements, understandings or letters of intent between the Parties. This Agreement may be amended, modified or supplemented only by a written agreement signed by each of the Parties.

Section 9.04 Successors and Assigns; No Beneficiaries. The rights of each Party under this Agreement are not assignable without the written consent of the other Parties. Notwithstanding the foregoing, Buyer may assign this Agreement and its rights hereunder, in whole or in part, to one or more of its Affiliates, to any purchaser of Buyer or any of its material assets and as security for the account of any lender providing financing (or any refinancing thereof) to Buyer or its Affiliates for the purpose of securing such financing (or any refinancing thereof). This Agreement is binding upon and inures to the benefit of the Parties and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon any Person other than the Parties and their respective successors and permitted assigns any right, remedy, or claim under or by reason of this Agreement.

Section 9.05 Expenses; Headings; Further Assurances; No Inferences; Specific Performance.

(a) Except as set forth in this Agreement, and whether or not the transactions contemplated by this Agreement are consummated, each Party shall be responsible for its own respective fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers or other representatives and consultants and appraisal fees, costs and expenses) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby, and the consummation of the transactions contemplated hereby and thereby.

(b) Article and section titles and headings in this Agreement have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. The exhibits and Schedules referred to in this Agreement will be construed with and as an integral part of this Agreement to the same extent as if they were set forth in the Agreement.

(c) From time to time, as and when requested by any Party and at such Party's expense, any other Party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement, including to make more fully effective the transfer of the Purchased Assets as contemplated herein.

(d) This Agreement has been mutually prepared, negotiated and drafted by the Parties. The Parties agree that the terms of this Agreement will be construed and interpreted against each Party in the same manner and that none of this Agreement's provisions will be construed or interpreted more strictly against one Party on the assumption that an instrument is to be construed more strictly against the Party that drafted the Agreement. The Parties agree that each Party is relying on counsel from its own attorneys, accountants and other advisors.

(e) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by Buyer or Seller Parties, as applicable, in accordance with their specific terms or were otherwise breached by Buyer or Seller Parties, as applicable. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party, and to enforce specifically the terms and provisions hereof against such party in any court having jurisdiction, this being in addition to any other remedy to which the parties hereto are entitled at law or in equity.

Section 9.06 Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, only pursuant to a writing signed by the Party or Parties entitled to the term's or provision's benefit. Any waiver will be validly and sufficiently authorized for purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of that Party. No waiver or any breach of this Agreement will be held to constitute a waiver of any other or subsequent breach.

Section 9.07 Partial Invalidity. Whenever possible, each provision of this Agreement will be construed in a manner as to be effective and valid under applicable law, but in case any provision contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, that provision will be ineffective only to the extent of that invalidity, illegality or unenforceability without invalidating the remainder of that provision or any other provisions in this Agreement, unless that construction would be unreasonable.

Section 9.08 Execution in Counterparts. This Agreement may be executed in any number of counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which shall be considered one and the same agreement, and shall become effective when each Party has received counterparts signed by each of the other Parties, it being understood and agreed that delivery of a signed counterpart signature page to this Agreement by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) intended to preserve the original graphic and pictorial appearance of a document shall constitute valid and sufficient delivery thereof and shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the

original signed version thereof delivered in person. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.

Section 9.09 Disclosure Schedules. The Schedules to this Agreement (each a “**Schedule**” and, collectively, the “**Schedules**”) shall be numbered and arranged to correspond to the sections of this Agreement, and the disclosures on any Schedule are to be taken as relating to the representations and warranties contained in the section of this Agreement that correspond to such Schedule; provided, in the event that a disclosure on a Schedule is readily apparent on the face of such disclosure that it is applicable to another Schedule, such disclosure shall be deemed to be disclosed on such other Schedule for purposes of this Agreement.

Section 9.10 Interpretation. In this Agreement, unless the context otherwise requires: (a) references to this Agreement are references to this Agreement and to the Schedules and exhibits hereto; (b) references to Articles and Sections are references to articles and sections of this Agreement; (c) references to any Party to this Agreement shall include references to its respective successors and permitted assigns; (d) references to the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, and references to any Article or Section are to an article or a section of this Agreement, as applicable, and references to any schedule or exhibit are to a schedule or exhibit to this Agreement, as applicable; (e) references to any document (including this Agreement) are references to that document as of the date hereof and as amended, consolidated, supplemented, novated or replaced by the parties hereto from time to time; (f) references to any law are references to that law as of the date hereof and the Closing Date, and all rules, regulations and guidance promulgated thereunder; (g) references to a judgment shall include references to any order, writ, injunction, decree, determination or award of any court or tribunal; (h) the word “including” and words of similar import shall mean “including, without limitation,” and any list of items that may follow such word shall not be deemed to represent a complete list of, or be limited to, the contents of the reference of the subject; (i) unless the context otherwise requires, “or” is not exclusive; (j) the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the Person or Persons may require; (k) time is of the essences in the performance of the Parties’ respective obligations under this Agreement; and (l) references to “\$” or “dollars” shall be to U.S. dollars and references to “days” shall be to calendar days.

Section 9.11 Governing Law; Venue. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any choice of law provisions that may direct the application of the laws of another jurisdiction. Any action or proceeding seeking to enforce any provision, or based on any right arising out of, or to interpret any provision of, this Agreement may be brought against any of the Parties in the state and federal courts located in the State of Delaware, and each of the Parties consents to the exclusive jurisdiction of such courts (and other the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

Section 9.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE INCLUDING THE CONSTITUTION OF THE U.S. OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO

ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on and as of the date first written above.

BUYER:

AIRGAS USA, LLC

By: _____
Frederic Bergeret
Chief Financial Officer

SELLER:

MAGNEGAS WELDING SUPPLY – SOUTH, LLC

By: _____
Timothy Turek
Chief Restructuring Officer

PARENT:

TARONIS FUELS, INC.

By: _____
Timothy Turek
Chief Restructuring Officer

Annex A

Defined Terms

“Accounts Payable” shall have the meaning given to it in Section 2.03(b).

“Accounts Receivable” shall have the meaning given to it in Section 3.05.

“Affiliate” means with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person.

“Agreement” shall have the meaning given to it in the Preamble to this Agreement.

“Alternative Transaction” shall have the meaning given to it in Section 7.01(c).

“Assignment and Assumption Agreement” means that certain Assignment and Assumption Agreement by and between Seller and Buyer, as applicable, in the form mutually agreed upon by the Parties and substantially in the form attached hereto as Exhibit B.

“Assumed Contracts” shall have the meaning given to it on Schedule 3.10(e).

“Assumed Liabilities” shall have the meaning given to it in Section 2.03(a).

“Avoidance Actions” means all causes of action for avoidance and/or recovery under Chapter 5 of the Bankruptcy Code, including any preferential transfer or fraudulent conveyance arising under Sections 547, 544, 548, 549 or 550 of the Bankruptcy Code or any state fraudulent conveyance or fraudulent transfer statute.

“Bankruptcy Cases” shall have the meaning given to it in the Recitals to this Agreement.

“Bankruptcy Code” shall have the meaning given to it in the Recitals to this Agreement.

“Benefit Plans” means, collectively, all “employee benefit plans” as defined in Section 3(3) of ERISA, all benefit plans as defined in Section 6039D of the Code, and all other bonus, commission, equity or equity based, incentive compensation, deferred compensation, profit sharing, stock option, severance, supplemental unemployment, layoff, savings, salary continuation, retirement, pension, health, life insurance, disability, group insurance, vacation, holiday, paid time off, sick leave, fringe benefit or welfare plan or employment, consulting, change of control, independent contractor, professional services, confidentiality or non-competition agreement or any other similar plan, agreement, policy or understanding (whether oral or written, qualified or non-qualified, and regardless of whether funded) which Seller or any Affiliate currently sponsors, or to which Seller or any Affiliate has any outstanding present or future obligations to contribute or other Liability, whether voluntary, contingent or otherwise.

“Bidding Procedures Order” means *Order (I)(A) Approving Bidding Procedures for the Sale of the Debtors’ Texas Assets, (B) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief* [Docket No. 134].

“Bill of Sale” means that certain Bill of Sale executed by Seller for the benefit of Buyer, respectively and substantially in the form attached hereto as Exhibit A.

“Books and Records” means all books and records owned by any Seller Party relating to the Business, except (a) documents relating to the ownership, formation and governance of any Seller Party, including stock records, corporate charter, operating agreement, and code of regulations, as amended, minutes and other records of director or manager and/or meetings of Seller Parties and Tax returns of Seller Parties; (b) materials owned by Seller Parties that do not pertain to the Business; (c) Seller Parties’ business plans, strategies and financial records that solely address or reflect activities outside the Business; (d) medical records of employees and former employees for which the written consent to the release of such records is not obtained; (e) records relating to the Excluded Assets; (f) all records relating to any action pending or threatened against Seller Parties and the facts and circumstances relevant thereto; (g) records containing the work product of any financial consultant or adviser or any legal counsel to Seller Parties or subject to the attorney-client privilege; (h) records of Seller Parties relating to the preparation for and negotiation of this Agreement and the performance by Seller Parties of their obligations hereunder; and (i) any other records that Seller Parties are legally obligated to retain (e.g., employment records) (clauses (a) through (i), the **“Retained Records”**).

“Break-up Fee” shall have the meaning given to it in Section 7.03(a).

“Business Day” means a day other than Saturday, Sunday, or any day on which the principal commercial banks located in Wilmington, Delaware are authorized or obligated to close under the federal Laws of the U.S.

“Buyer” shall have the meaning given to it in the Preamble to this Agreement.

“Buyer Releasees” shall have the meaning given to it in Section 8.01.

“CARES Act” means collectively, the Coronavirus Aid, Relief, and Economic Security Act of 2020, P.L. 116-136, as amended; the Consolidated Appropriations Act, 2021; the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, dated August 8, 2020; Internal Revenue Service Notice 2020-65; Internal Revenue Service Notice 2021-11; the Health and Economic Recovery Omnibus Emergency Solutions Act, in each case, including any related regulations, similar orders or declarations from any Governmental Authority promulgated thereunder.

“Cash and Cash Equivalents” means the cash and cash equivalents (including deposit accounts, marketable securities and short-term investments) of Seller, net of customer and other third party deposits, deferred revenue, any overdrafts and any outstanding checks, drafts, wire transfers or similar instruments which have not been applied against such cash and cash equivalent balances.

“Closing” shall have the meaning given to it in Section 2.06.

“Closing Date” shall have the meaning given to it in Section 2.06.

“Closing Indebtedness” means the Indebtedness of Seller as of immediately prior to the Closing.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Confidential Information” shall have the meaning given to it in Section 5.04.

“Container” shall have the meaning given to it in the definition of “Excluded Assets”.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, or as trustee, executor or otherwise.

“Court” shall have the meaning given to it in the Recitals to this Agreement.

“Cure Costs” means all cure costs that must be paid or otherwise incurred by Buyer as a result or pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Contracts as agreed by Seller, in consultation with Buyer, and applicable counterparties or as finally determined by the Court.

“Damages” means all claims, losses, damages, liabilities, Taxes, judgments, fines, fees, expenses, penalties, disbursements, settlements, awards, charges, obligations, costs and expenses (including court and settlement costs and any reasonable legal, attorneys’, consultants’, experts’ and other fees, costs and expenses and disbursements for investigation, assertion, arbitration or defense thereof and any attorneys’ fees and costs incurred in enforcing rights under this Agreement) in each case, of all kinds.

“Deposit” shall have the meaning given to it in Section 2.05(a).

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder.

“Escrow Agent” shall have the meaning given to it in the Bidding Procedures Order.

“Excluded Assets” means (i) all Cash and Cash Equivalents, (ii) all contracts, agreements and undertakings of any Seller Party (including all Benefit Plans and assets attributable thereto), other than the Assumed Contracts; (iii) the Retained Records; (iv) all insurance policies of any Seller Party and the rights thereunder; (v) all claims of any Seller Party or any of their Affiliates for refunds of Taxes and other governmental charges; (vi) the rights that accrue or will accrue to any Seller Party under this Agreement; (vii) all Avoidance Actions and recoveries thereunder; (viii) all cylinders, tanks, containers or other vessels (collectively, **“Containers”**) (A) containing gases or other substances the identity of which cannot be readily and accurately determined by a visual examination of the Container itself or from the Books and Records as of the Closing Date, (B) containing gases or other substances not sold in the ordinary course of the Business, (C) that are permanently out-of-service as of the Closing Date; (ix) any hardgoods inventory that has been reasonably determined by Buyer to be obsolete or unsaleable based on its condition or appearance, including those specific items described on Schedule 2.01; (ix) any assets of any Seller Party not related to the Business, including any of Seller Party’s interests in or rights with respect to equity interests of any Affiliates or third parties; and (xi) all assets of any Seller Party identified or listed on Schedule 2.01.

“Excluded Liability” shall have the meaning given to it in Section 2.03(b).

“Expense Reimbursement” shall have the meaning given to it in Section 7.03(a).

“Final Order” means an order of the Court or other court of competent jurisdiction: (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion or alter or amend judgment, motion for rehearing, motion for new trial, or any other proceeding challenging the findings, conclusions or relief granted by the Court has been timely filed or otherwise commenced or, if any of the foregoing has been timely filed or otherwise commenced, it has been disposed of by the Court or other court of competent jurisdiction in a manner that upholds and affirms the subject order in all material respects

without the possibility for further appeal or rehearing thereon; (b) as to which the time for instituting and/or filing an appeal, a notice of appeal, motion for rehearing, motion for new trial, or any other proceeding challenging the finds, conclusions, or relief granted by the Court or other court of competent jurisdiction shall have expired; and (c) as to which no stay is in effect; provided, however, that the filing or pendency of a motion under Federal Rule of Bankruptcy Procedure 9024 shall not cause an order not to be deemed a “Final Order” unless such motion shall be filed within fourteen (14) days of the entry of the order at issue.

“**Fixed Assets**” shall have the meaning given to it in the definition of “Purchased Assets”.

“**GAAP**” means U.S. generally accepted accounting principles in effect from time to time.

“**Governmental Authority**” means any nation, state or local government, or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or taxation, including any government authority, agency, department board, commission or instrumentality of the U.S., any State of the U.S. or any political subdivision thereof, and any tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization.

“**Indebtedness**” means, with respect to any Person as of any time or date, without duplication: (i) any Liabilities of such Person for borrowed money, whether short-term or long-term, and whether secured or unsecured, or with respect to deposits or advances of any kind; (ii) any Liabilities of such Person evidenced by bonds, notes or other similar instruments; (iii) any Liabilities of such Person issued or assumed as the deferred purchase price of property or services (including any seller notes, earnout obligations or similar contingent payment obligations (such amount to be the maximum amount)); (iv) any Liabilities of such Person upon which interest charges are customarily paid (other than trade payables incurred in the ordinary course of business); (v) any Liabilities in respect of letters of credit, whether drawn or undrawn; (vi) the outstanding amount of any commitment by which such Person assures a creditor against loss (including any reimbursement Liability with respect to performance bonds, customs bonds, surety bonds, bankers acceptances and fidelity bonds); (vii) any leases of such Person required or permitted to be treated as capitalized leases under GAAP; (viii) all interest rate protection agreements or currency swap transactions of such Person (valued on a market quotation basis), if any; (ix) any Liability secured by, contingent or otherwise, any Liens on the assets or property (whether real, personal, tangible or intangible) of such Person; (x) any Liabilities of such Person under an interest rate, foreign currency exchange, currency swap or other interest or exchange rate hedging transactions (valued at the termination value thereof); (xi) any Liabilities with respect to the factoring of accounts receivable; (xii) any Liabilities resulting from the resolution or settlement of any private or governmental claim, proceeding, action, suit, arbitration, mediation or judicial proceeding to which such Person is a party or otherwise subject; (xiii) any Liabilities of such Person under conditional sale or other title retention agreements relating to any assets or property (whether real, personal, tangible or intangible) purchased by such Person; (xiv) any off-balance sheet financing of a Person (excluding operating leases); (xv) any deferred rent; (xvi) any Liabilities of such Person for underfunded employee pension benefit plans and any unsatisfied Liability for “withdrawal liability” to a “multiemployer plan” as such terms are defined under ERISA; (xvii) any Liabilities for renewals, extensions, refunds, deferrals, restructurings, amendments and modifications of any such Indebtedness; (xviii) all unpaid Tax Liabilities of Seller (with respect to the Business) that accrue during a taxable period (or portion thereof) ending on or prior to the Closing Date but become due and payable after the Closing Date, including for the employer’s portion of payroll Taxes deferred in accordance with the CARES Act or any similar or corresponding provision of state or local law or under any memorandum or executive order of the U.S. President, including the CARES Act, regardless of when due and payable (which shall not be an amount less than zero); (xix) any cash overdrafts; (xx) any accrued interest, breakage or prepayment premiums or penalties or other costs or expenses related to any of the foregoing, including any prepayment premiums payable assuming all amounts owing under any of the foregoing are paid on the

Closing Date (whether or not actually paid); (xxi) all guarantees by such Person of Indebtedness or any of Liability of any other Person and any other Liabilities for which such Person is liable, directly or indirectly, as guarantor, surety or otherwise; (xxii) any accrued but unpaid revenue share, partner fees or other similar amounts payable to referral partners or other similar Persons; (xxiii) any deferred revenue received on or prior to the Closing Date; and (xxiv) any Accounts Payable.

“Intellectual Property” means any and all of the following arising pursuant to the laws of any jurisdiction throughout the world: (i) trademarks, service marks, trade names, and similar indicia of source of origin, all registrations and applications for registration thereof, and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights and all registrations and applications for registration thereof; (iii) trade secrets and know-how; (iv) patents and patent applications; (v) internet domain name registrations; and (vi) other intellectual property and related proprietary rights.

“Intellectual Property Agreements” means all licenses, sublicenses and other agreements by or through which other persons or entities grant Seller any exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used exclusively in the Business.

“Intellectual Property Assets” means all Intellectual Property that is owned by Seller and used in connection with the Business.

“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any governmental authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“Leased Real Property” shall have the meaning given to it in Section 3.06(b).

“Legal Requirement” means any judgment, decree, injunction, order, writ, ruling, law, ordinance, statute, rule, regulation, code or other requirement of all applicable Governmental Authorities.

“Liability” means any Indebtedness, liability or obligation of any nature whatsoever, whether accrued or unaccrued, absolute or contingent, direct or indirect, asserted or unasserted, known or unknown, perfected or unperfected, liquidated or unliquidated, secured or unsecured, or otherwise, and whether due or to become due.

“Licenses” shall have the meaning given to it in Section 3.11(b).

“Lien(s)” means any and all liens (statutory or otherwise, including “lien” as defined in Section 101(37) of the Bankruptcy Code, mechanics’, materialmens’ and other consensual and non-consensual liens and statutory liens), hypothecations, encumbrances, security interests, mortgages, debts, levies, indentures, pledges, restrictions (whether on voting, sale, transfer, disposition or otherwise), charges, instruments, preferences, priorities, security agreements, conditional sales agreements, title retention contracts, options, claims (including “claim” as defined in Section 101(5) of the Bankruptcy Code), judgments, offsets, rights of recovery, rights of pre-emption, rights of first refusal or other third party rights, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or Tax (including claims for any and all foreign, federal, state and local Taxes), decrees of any court or foreign or domestic governmental entity, orders of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any claim based on any theory that either Buyer is a successor or a continuation of the Debtors or the Debtors’ business), reclamation claims, obligations, liabilities, demands, and guaranties, whether known or

unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability.

“Material Contracts” shall have the meaning given to it in Section 3.10(a).

“Non-Assignable Asset” shall have the meaning given to it in Section 2.11.

“Outside Date” shall have the meaning given to it in Section 7.01(b).

“Owned Real Property” shall have the meaning given to it in Section 3.06(a).

“Parent” shall have the meaning given to it in the Preamble to this Agreement.

“Party(ies)” shall have the meaning given to it in the Preamble to this Agreement.

“Permitted Lien(s)” means (i) mechanic’s, materialmen’s, carriers’, repairers’ and other similar Liens arising or incurred in the ordinary course of business for amounts that are not yet delinquent or are being contested in good faith; (ii) liens for Taxes, assessments or other governmental charges not yet due and payable as of the date of this Agreement or which are being contested in good faith; (iii) Liens and restrictions on real property (including easements, covenants, rights of way, imperfections of title, boundary line disputes, overlaps, encroachments, rights of parties in possession, any supplemental taxes or assessments not shown by the public records, title to any portion of the premises lying within the right of way or boundary of any public road or private road and similar restrictions) and non-monetary Liens that would not have a material and adverse effect on the Business; (iv) purchase money Liens and Liens under capital lease arrangements; (v) Liens imposed or promulgated by laws with respect to real property and improvements, including zoning, building codes and other land use laws regulating the use or occupancy of real property or the activities conducted thereon which are imposed by any governmental authority having jurisdiction over such real property that would not have a material and adverse effect on the Business; (vi) matters that would be disclosed by an accurate survey or inspection of the real property; (vii) landlords’ or owner’s Liens and the rights of any lessor or owner and statutory liens; and (viii) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance, or other social security programs or to secure the performance of bids, statutory obligations, surety or other bonds, leases, contracts with governmental authorities and similar obligations.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, a Governmental Authority or any other form of entity.

“Purchased Assets” shall mean all assets, properties, and rights of every kind and description, real, personal, and mixed, tangible and intangible, wherever situated, used, useful, or held for use in the Business as of the Closing Date, other than the Excluded Assets, including the following, schedules of which have been provided by Seller Parties to Buyer:

- (i) all Accounts Receivable;

(ii) all inventory of Seller, including finished products and goods, raw materials, work in process, replacement and component parts, including inventory of Seller held at any third-party location and inventory previously purchased and in transit to Seller;

(iii) except for any items that are Excluded Assets, all machinery, equipment, tooling, parts and spare parts, vehicles (including parts and spare parts therefor), personal property, supplies, computer hardware, software, furniture, fixtures and furnishings of Seller as of the Closing Date (the “**Fixed Assets**”), together with any express or implied warranty by the manufacturers, Seller or lessors thereof or any component part thereof and all maintenance records and other documents related thereto;

(iv) all rights under any contracts and agreements listed on Schedule 3.10(e) (the “**Assumed Contracts**”);

(v) all Books and Records used in the Business, including information, files, records, data, employee files, plans, schematics, designs, drawings, blue prints, contracts and recorded information, customer, vendor and supplier lists, production records, accounting records, property records, mailing lists, customer pricing information, credit records, correspondence, office supplies, budgets, documents and records similar to the foregoing, and all other records and files with respect to the assets, properties and rights being transferred hereunder;

(vi) other than the Intellectual Property described on Schedule 2.01, all Intellectual Property owned or, to the extent assignable, used in the Business and the goodwill associated therewith;

(vii) all qualifications, registrations, filings, privileges, franchises, immunities, licenses and permits, authorizations and approvals of any Governmental Authority that are used by, or required for, the ownership and operation of the Business;

(viii) all rental and other security deposits, credits, prepayments, prepaid expenses, and deferred items (other than deferred Taxes), claims, deposits, refunds, claims for refunds and rights to offset in respect thereof, rights against third parties, causes of action, choses in action, rights of recovery, rights of set off, and rights of recoupment, rights to warranty claims, other prepaid items and all other intangible rights relating to the Business and/or the Purchased Assets;

(ix) Seller Parties’ right, title and interest in and to the Business, its goodwill, its corporate name and any other intangible asset owned by either Seller and used in the operation of the Business as of the Closing Date;

(x) all Permits required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets; and

(xi) all of Seller Parties’ rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets.

“**Purchase Price**” shall have the meaning given to it in Section 2.04.

“**Purchase Price Allocation**” shall have the meaning given to it in Section 2.10.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Required Consents**” shall have the meaning given to it in Section 3.03.

“Retained Records” shall have the meaning given to it in the definition of “Books and Records”.

“Sale Order” means an order of the Court, in form and substance acceptable to Buyer in its reasonable discretion and substantially in the form attached hereto as Exhibit D.

“Sale Order Outside Date” shall have the meaning given to it in Section 7.01(d).

“Schedules” shall have the meaning given to it in Section 9.09.

“Seller” shall have the meaning given to it in the Preamble to this Agreement.

“Seller Party(ies)” shall have the meaning given to it in the Preamble to this Agreement.

“Tax” or “Taxes” mean any federal, state, local or foreign, net or gross income, gross receipts, sales, use, ad valorem, transfer, franchise, license, withholding and other taxes, including any interest, penalties or additions with respect thereto.

“Tax Authority” means any government or subdivision, agency, commission or authority thereof that has jurisdiction over assessment, determination, collection or other imposition of Taxes.

“Tax Return” as used herein, means any return (including any information return), declaration, statement or report required to be supplied to a Tax Authority in connection with Taxes, including any amendments thereto.

“Transaction Documents” means this Agreement, the Assignment and Assumption Agreement, the Bill of Sale, the Transition Services Agreement, and all other agreements, documents and instruments to be executed and delivered hereunder.

“Transition Services Agreement” means that certain Transition Services Agreement by and between Buyer and Seller and substantially in the form attached hereto as Exhibit C.

“U.S.” means the United States of America.

Annex B-1

Closing Deliveries by Seller Parties

1. Asset Purchase Agreement. This Agreement, duly executed by Seller Parties.
2. Assignment and Assumption. The Assignment and Assumption Agreement, duly executed by Seller Parties.
3. Bill of Sale. The Bill of Sale, duly executed by Seller Parties for the benefit of Buyer, as applicable.
4. Titles. All original title documents related to any vehicles or other titled assets included in the Purchased Assets and listed on Schedule 3.04.
5. Required Consents. Reasonable evidence that Seller Parties have obtained the Required Consents.
6. Bring-Down Certificates. The certificates described in Section 6.02(a) and Section 6.02(b) hereof, duly executed by authorized officers of Seller Parties.
7. Officer's and Owner's Certificate. A certificate dated as of the Closing Date and executed by an authorized officer of each Seller Party certifying as to (i) true and complete copies of the resolutions of the board of directors and stockholders of Seller Parties authorizing the execution, delivery and performance by Seller Parties of this Agreement and the other agreements that each Seller Party is required to execute and deliver pursuant to the terms of this Agreement, (ii) true and complete copies of each Seller Party's organizational documents, (iii) the incumbency of the officer of each Seller Party executing this Agreement and any other agreement or instrument contemplated herein to which each Seller Party is a party, and (iv) a good standing certificate for each Seller Party from each jurisdiction in which each Seller Party is incorporated or qualified to conduct business.
8. W-9. An Internal Revenue Service Form W-9 properly executed and completed by each Seller Party.
9. Transition Services. A transition services agreement between Buyer and Seller (the "**Transition Services Agreement**"), duly executed by Seller.

Annex B-2

Closing Deliveries by Buyer

1. Purchase Price. The Purchase Price payable to Seller as provided in Section 2.04.
2. Asset Purchase Agreement. This Agreement, duly executed by Buyer.
3. Assignment and Assumption. The Assignment and Assumption Agreement, duly executed by Buyer.
4. Transition Services. The Transition Services Agreement, duly executed by Buyer.
5. Bring-Down Certificates. The certificates described in Section 6.03(a) and Section 6.03(b) hereof, duly executed by an authorized officer of Buyer.

EXHIBIT A

Bill of Sale

EXHIBIT B

Assignment and Assumption Agreement

EXHIBIT C

Transition Services Agreement

EXHIBIT D

Sale Order