ELT, INC.

and

N L INDUSTRIES, INC.

PURCHASE AGREEMENT

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PURCHASE AGREEMENT

THIS AGREEMENT, dated this 10th day of December, 1976, by and between ELT, INC., a Pennsylvania corporation with offices at 500 Central Avenue, Northfield, Illinois ("Buyer"), and N L INDUSTRIES, INC., a New Jersey corporation with offices at 1221 Avenue of the Americas, New York, New York, ("Seller"),

W I T N E S S E T H:

WHEREAS, among Seller's operations is its Dutch Boy Paints Division ("Dutch Boy"), which produces paints in various facilities in the United States and markets them throughout the world; and

WHEREAS, Seller desires to sell and Buyer desires to purchase the business and certain of the assets of Dutch Boy as a going business; and

WHEREAS, Seller wishes to be assured of a source of supply of titanium dioxide pigment after the Closing

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree with each other as follows:

1. Transfer of Assets. Seller shall, subject to the terms and conditions hereof, transfer, convey, assign,

sell and deliver to Buyer, on the Closing Date (as hereinafter defined) all of the business and assets of Seller's Dutch Boy paint business used in such business as presently conducted unless hereafter specifically excluded ("Purchased Assets"), including without limitation the following assets, as a going business:

(a) All of the inventories of Dutch Boy, including without limitation (i) all raw materials, work in process and finished goods which are listed in Exhibit 1 hereto, and (ii) all plant, office and store materials, packaging supplies, advertising, promotional and display materials, and repair and maintenance materials.

(b) All of the fixed assets owned by Seller and used in the operations of Dutch Boy, except those located at the Dutch Boy facilities at (i) Perth Amboy, Hightstown and West Caldwell, New Jersey, (ii) Philadelphia, Pennsylvania and (iii) Boston, Massachusetts, including without limitation all land, land improvements, buildings, building installations, cars, trucks, and other vehicles, machines, tools, fixtures, furniture, and equipment (the "Purchased Fixed Assets"), which are listed on Exhibit 2 hereto. Purchaser has investigated and examined the Purchased Fixed Assets to the extent necessary to satisfy itself as to their condition and agrees to purchase them on an "as-is", "where-is" basis, provided they are in substantially the same condition on the Closing Date as they are on the date of inspection, reasonable wear and tear excepted.

(c) All of Seller's and Dutch Boy's rights and privileges under Dutch Boy leases, all of which are listed on Exhibit 9-B hereto, subject to such consents as may be required for the assignment of those leases which are listed in Exhibit 17 hereto, which Seller agrees to use its best efforts to obtain. Seller shall not assign to Buyer and Buyer shall not assume any obligations under Dutch Boy materials purchase contracts or any Dutch Boy dealer, franchise, sales representative (if any) or distributor agreements which are not in the form of Exhibit 19-A, 19-B or 19-C hereto. At Buyer's request, Seller shall assign to Buyer at any time and from time to time such other Dutch Boy dealer, franchise, sales representative or distributor agreements as Buyer may specify in writing by August 31, 1977. At Seller's request Buyer shall use its best efforts consistent with its then existing materials purchase obligations to purchase materials covered by any Dutch Boy materials purchase agreements outstanding on the date hereof and listed in Exhibit 3 hereto which Seller in the exercise of its best efforts has not been able to terminate or utilize elsewhere in its organization.

(d) All copyrights and pa...

the Dutch Boy business except those described in Section 15 hereof.

(e) All trademarks utilizing as a portion, or the totality thereof, the words "Dutch Boy" or the figure of a Dutch Boy (except those trademarks listed in Exhibit 11-F which are being cancelled pursuant to Section 16(i) hereto), including without limitation those used by Seller in its operations other than Dutch Boy and all other trademarks used in the Dutch Boy paint business, including their registrations throughout the world, which are listed on Exhibit 11-C hereto, together with the good will connected with such use of and symbolized by the said trademarks subject to the provisions of Section 16 hereof. Dutch Boy trademarks registered in the Philippines and listed in Exhibit 11-E hereto shall not be assigned to Buyer, and as to them Seller retains ownership subject to the provisions of Section 16(f) below.

(f) All rights of Seller in and to the technology, know-how, formulae, processes, and similar information or data developed by or used in the Dutch Boy paint business, as to which Seller makes no representations or warranties.

2. Purchase Price. Buyer shall pay to Seller as the total purchase price for the Purchased Assets (the "Definitive Purchase Price") a sum equal to the net book value as of the Closing Date (as hereinafter defined) of those Purchased Assets which are referred to in Sections

1(a) and 1(b) above, determined in accordance with generally accepted accounting principles applied on a basis consistent with that of prior accounting periods, minus $125,000 in recognition of Buyer's assumption of full responsibility for the matters referred to in Section 4(a)(3) hereof.. In order that the purchase and sale may be consummated prior to the final determination of the net book value on the Closing Date of those Purchased Assets which are referred to in Sections 1(a) and 1(b) above, a preliminary purchase price (the "Preliminary Purchase Price") shall be determined. The Preliminary Purchase Price shall be equal to 90% of the net book value of the Purchased Assets referred to in Sections 1(a) and 1(b) above, determined as aforesaid, as of October 31, 1976, as set forth on the October 31, 1976 balance sheet of the Dutch Boy Division included in Exhibit 4 attached hereto, minus $125,000. The parties agree to allocate the Definitive Purchase Price to the Purchased Assets in the manner and amounts provided in Exhibit 18 hereof.

3. Payment.

(a) Buyer has opened and delivered to Seller an irrevocable $500,000 letter of credit in favor of Seller. At the Closing Seller shall be entitled to the proceeds of said letter of credit, which sum shall be credited towards the Preliminary Purchase Price to be paid by Buyer. If, as a result of any misrepresentation, breach of warranty, or failure of performance by Buyer, the Closing provided for herein does not take place, Seller shall have the right to receive the proceeds of said letter of credit in full satisfaction of all claims which Seller may have against Buyer, and Buyer shall forfeit all right thereto. If said Closing does not take place for any other reason not attributable to fault of the Buyer, said letter of credit, or the proceeds thereof, shall be returned to Buyer and Seller shall have no claims with respect thereto or otherwise.

(b) The Preliminary Purchase Price, less the sum paid pursuant to paragraph (a) of this Section 3, shall be paid by Buyer to Seller at the Closing by bank wire transfer of immediately available funds to Seller's account identified in writing to Buyer two (2) days prior to the Closing. If the full amount of the Preliminary Purchase Price is paid or transferred at the Closing, Seller shall return to Buyer the $500,000 letter of credit referred to in Section 3(a) above.

(c) Not later than fifteen (15) days after the Auditors have delivered their report pursuant to Section 17 hereof, the Definitive Purchase Price shall be determined on the basis of said report. The difference, if any, between the Preliminary Purchase Price and the Definitive Purchase Price shall be paid by Buyer to Seller or Seller to Buyer, as the case may be, within twenty-five (25) days after the delivery of said report.

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4. <u>Assumption of Certain Obligations and Liabilities.</u>

(a) At the Closing, Seller shall assign to Buyer and Buyer shall assume and agree to perform only such of the following obligations (i) as relate to the on-going business of Dutch Boy and (ii) which exist as of the close of business on the Closing Date or which arise thereafter in accordance with the terms of such obligations which exist as of the close of business on the Closing Date, but only to the extent such obligations were not to have been performed, fulfilled or discharged by Seller prior thereto and further provided that Seller is not in default thereunder at that time:

(1) All obligations under express or implied warranties with respect to the Dutch Boy products shipped by Dutch Boy, Buyer or any affiliate of Buyer beginning on the 61st day after the Closing Date.

(2) All other obligations of Seller under the leases listed in Exhibit 9-B hereto and the contracts listed in Exhibit 3 hereto where such leases and contracts have been validly assigned to and vested in Buyer.

(3) Full responsibility for compliance at Dutch Boy's Chicago and Los Angeles plants with requirements of the Federal Occupational Safety

and Health Act and of all federal and state laws and administrative regulations and rulings relating to environmental protection.

(4) All obligations of Seller which arise out of the conduct of the Dutch Boy paint business from and after the Closing Date under Seller's collective-bargaining agreements listed in Exhibit 6 hereto covering employees of Dutch Boy (except those agreements and obligations relating solely to the Dutch Boy facilities at Perth Amboy, Hightstown or West Caldwell, New Jersey, Philadelphia, Pennsylvania, or Boston Massachusetts), but only to the extent permitted by the terms of said agreements and obligations.

Seller hereby retains and agrees to pay and discharge all other liabilities, obligations and commitments of Dutch Boy, whether known, unknown, contingent or otherwise, and whether or not disclosed to Buyer or set forth in Dutch Boy's financial statements or books, and any and all claims, losses, damages, expenses, costs, obligations, liabilities and commitments which may arise or result from such liabilities, obligations or commitments, that are not specifically assigned to and assumed by Buyer under this Section 4(a). The immediately preceeding sentence notwithstanding, Buyer shall reimburse Seller for any payments made by Seller

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pursuant to the immediately preceeding sentence in respect of goods or services received by Buyer on or after the Closing Date, to the extent that the value thereof has not been included in the Definitive Purchase Price paid by Buyer pursuant to Sections 2 and 3(c) above.

(b) Buyer agrees to indemnify Seller against and hold it harmless from any and all liabilities and obligations which are (i) assumed by Buyer pursuant to Sections 4(a)(1) through (4) above or which are (ii) incurred by Buyer after the Closing Date in its operation of the Dutch Boy paint business, including, without limitation, all reasonable costs and expenses (including reasonable fees of counsel and accountants) incurred by Seller in connection with the defense or settlement of any such liabilities or obligations. Buyer shall have the exclusive right to defend against any such liabilities and obligations with counsel of its choice at no cost to Séller.

(c) Seller agrees to indemnify Buyer against and hold it harmless from and against all deficiencies, damages, losses, costs and expenses caused by or arising out of:

(i) any claims against Seller, Buyer or Dutch Boy for liabilities, commitments, obligations, disputes, unlawful acts, practices, conduct or relationships of Seller or Dutch Boy which arose during or relate to the period prior to the Closing, whether asserted prior to or after the Closing Date;

(ii) any and all liabilities and obligations of and claims, demands or causes of action against Seller or Buyer arising out of the transactions contemplated by this agreement which are not expressly included in the liabilities assumed by Buyer in accordance with Section 4(a) above other than liabilities or obligations of Buyer which arose prior to the Closing Date and which do not in any way relate to the transactions contemplated by this agreement;

(iii) the breach by Seller of any of its warranties and representations in this agreement or in any document, certificate or list delivered pursuant hereto;

(iv) any material misrepresentation of Seller in this agreement or any document, certificate or list delivered pursuant hereto; or

(v) the failure by Seller to perform any agreement or covenant to be performed by it under this agreement;

(vi) product liability or warranty claims in respect of Dutch Boy products which are either:

(A) shipped prior to the Closing, or

(B) included in the Purchases Assets and shipped within 60 days after the Closing;

and

(vii) any conduct, practices or activities of Seller or Dutch Boy prior to the Closing Date (other than the execution of this agreement or the performance hereof) which constitute either:

(A) unfair, unlawful or illegal competition,

(B) a restraint of trade,

(C) discriminatory pricing, or

(D) violations of any other applicable law, ordinance, regulation or code.

(viii) any and all actions, suits, proceedings, claims, demands, assessments, judgments, investigations or proceedings incident to or arising out of or connected with any of the above.

Such indemnification shall include, without limitation, payment by Seller to Buyer of all reasonable costs and expenses (including reasonable fees of counsel and accountants) incurred by Buyer in connection with the defense or settlement of any such liability or obligation. Seller shall have the right to defend against any such liabilities and obligations with counsel of its choice at no cost to Buyer.

(d) Each party shall assist the other in any defense undertaken by the other pursuant to paragraph (b) or (c) of this Section 4 by furnishing pertinent information, documents or evidence appropriate to such defense, provided its direct expenses in so doing are borne by such other party.

5. Closing. The Closing of the purchase and sale provided for herein (the "Closing") shall take place at Seller's offices, 1221 Avenue of the Americas, New York, New York at 10:00 a.m. on December 28, 1976, or at such other time, date, and place as the parties may agree upon in writing. The date of the Closing is referred to herein as the "Closing Date".

6. Instruments of Transfer and Delivery of Documents.

(a) Seller shall deliver or cause to be delivered to Buyer on the Closing Date:

(1) Full covenant and warranty deeds satisfactory in form to Buyer and effective to vest in Buyer good and marketable title to all real property included among the Purchased Assets, free and clear of all liens, charges, easements, rights of way and encumbrances except (A) those which do not (i) render title unmarketable, (ii) interfere with the conduct of Dutch Boy's business as it is now being conducted or (iii) require the expenditure of material sums of money in order to render any such title good and marketable and (B) the lien of current taxes not yet due and payable, but subject to such minor defects in title as are of a nature generally found in properties of similar character which do not in any material way affect the marketability of the same or interfere with the operations of Dutch Boy as now conducted on or with the Purchased Assets. Buyer may, at its own expense, procure whatever title insurance Buyer desires.

(2) Bills of sale, endorsements, assignments and other good and sufficient instruments of transfer, conveyance and assignment, in form reasonably satisfactory to Buyer, effective to vest in Buyer good and marketable title, free and

clear of all liens, charges and encumbrances, to the Purchased Assets other than real property.

(3) All of the sales contracts, supply contracts, purchase orders and commitments and other contracts and commitments assumed by Buyer hereunder; and all books, records, customer lists, credit information, dealer, franchise, sales representative, distributor or other service agreements and unexpired equipment warranties, product specifications, formulae, patents, patent applications, trademark files and dockets and all other data relating to the business of Dutch Boy not specifically excluded in this agreement, with good and sufficient assignments of all of the foregoing in form reasonably satisfactory to Buyer.

(b) This agreement shall not constitute an agreement to assign any lease, contract, commitment, sales order or purchase order listed on Exhibit 17 hereto if any attempted assignment thereof without the consent of the other party thereto would constitute a breach thereof or in any way impair the rights of Buyer thereunder.

(c) Without limiting any provisions hereof, Seller agrees that effective as of the Closing Date it will by appropriate instrument constitute and appoint Buyer the true and lawful attorney of Seller, with full power of substitution, in the name of Buyer or Seller, but for the benefit and at the expense of Buyer:

(1) To institute and prosecute all proceedings which Buyer may deem proper in order to assert or enforce any right or title of any kind in or to the Purchased Assets, to defend or compromise any and all actions, suits, or proceedings in respect of any of the Purchased Assets and to do all such acts and things in relation thereto as Buyer shall deem advisable; and

(2) To take all actions which Buyer may deem proper in order to provide for Buyer the benefits under any contracts, commitments, sales orders or purchase orders where any required consent of another party to the assignment thereof to Buyer pursuant to this agreement shall not have been obtained.

(d) From and after the Closing Date upon request of Buyer, Seller shall duly execute, acknowledge and deliver at no cost to Buyer such further deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required to convey to and vest in Buyer full right, title, and interest in all of the assets, property, and business of Dutch boy to be assigned, transferred, conveyed, sold and delivered hereunder.

(e) To the extent that any Purchased Assets to be transferred to Buyer hereunder are owned or controlled by any subsidiary or affiliate of Seller, Seller agrees to cause such subsidiary or affiliate to execute any and all documents necessary for such transfer to Buyer.

7. Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer:

(a) Organization; Corporate Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey and has all requisite corporate power and authority to own and operate its properties, to carry on its business, and to enter into and perform this agreement and the transactions contemplated hereby. All requisite corporate action on the part of Seller has been completed for the authorization of the execution and delivery of this agreement and the other transactions contemplated hereby and the performance of its obligations hereunder and thereunder. This agreement is, and such other transactions will be, valid and binding obligations of Seller, enforceable in accordance with their respective terms. The execution and delivery of this agreement by Seller and the consummation of the transactions contemplated hereby do not and will not violate the provisions of Seller's Articles of Incorporation or By-Laws or the provisions of any note of which Seller is the maker or of any indenture, agreement, or other instrument to which Seller is a party, except for such leases and contracts as may require the consent of the other party or parties thereto for assignment, as set forth on Exhibit 17, for which no such consent has been obtained.

(b) Title to Properties. Seller has, and at the Closing Buyer will acquire, good and marketable title to the Purchased Assets, free and clear of all liens, charges, and encumbrances, except (with respect to real property included in the Purchased Assets) for (A) those which do not (i) render title unmarketable, (ii) interfere with the conduct of Dutch Boy's business as it is now being conducted or (iii) require the expenditure of material sums of money in order to render any such title good and marketable and (B) liens for current taxes not yet due and payable, but subject to such minor defects in title as are of a nature generally found in properties of similar character which do not in any material way affect the marketability of the same or interfere with the operations of Dutch Boy now conducted on or with the Purchased Assets.

(c) Financial Statements. Attached hereto as Exhibit 4 are copies of (i) the unaudited balance sheet of Dutch Boy as of October 31, 1976, (ii) the unaudited balance sheet of Dutch Boy as of December 31, 1975, and (iii) the unaudited income statements of Dutch Boy for each of the last three full fiscal years and for the period between the close of the latest of such fiscal years and the date of the last balance sheet. All such financial statements have been prepared in accordance with those generally accepted accounting principles and policies considered applicable to

Dutch Boy as a division of Seller; which principles and policies were consistently followed by Dutch Boy throughout the periods indicated. The balance sheets referred to in this Section 7(c) fairly present the financial condition of Dutch Boy as of their respective dates, and the statements of income referred to in this Section 7(c) fairly present the results of the operations of Dutch Boy for the periods indicated and were prepared in accordance with the aforementioned accounting principles and policies consistently applied. The Dutch Boy (and similarly, all of Seller's divisional) financial statements do not include either the effects of the cost of corporate headquarters' operations, which provide certain executive, administrative, financial, marketing, legal, insurance and tax services, or the effects of allocations of interest on long-term debt, since it is not practical to identify the actual costs to the individual divisions for these services. In addition, federal income taxes, state income taxes and certain employee-benefit expenses and certain costs incurred (such as charges for utilization of corporate computer facilities and financial services and certain occupancy costs) are allocated on a corporation-wide basis, and the respective amounts charged to Dutch Boy do not necessarily represent the effects of these expenses incurred on a separate entity basis.

(d) Litigation. Except as set forth in Exhibit 7 hereto, there are no claims, accounts, suits proceedings or investigations pending or any basis therefor or any threat thereof against Seller or Dutch Boy which question the validity of this agreement, or any action taken or to be taken pursuant hereto or contemplated herein, or which relate to or might have a material adverse effect on the business of Dutch Boy or on the Purchased Assets, except for product complaints and collection matters in which the amount in controversy does not exceed $5,000.

(e) Seller's Labor Relations. Except as set forth in Exhibit 8 hereto, there is no pending or threatened dispute between Seller or Dutch Boy and any of the employees thereof which might materially and adversely affect the continuance of the operation or business of Dutch Boy or its financial condition. Except as set forth in said Exhibit, there are no negotiations in progress with any union, no payment due under any collective bargaining agreement, and to the best knowledge and belief of Seller there are no known threats of work stoppage or strikes against Dutch Boy.

(f) No Brokers. All negotiations relative to this agreement and the transactions contemplated hereby have been carried on by Seller directly with Buyer, without the intervention of any person as the result of any act of Seller (and, so far as is known to Seller, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission or other like payment.

(g) Disclosure. No representation or warranty of Seller contained in this agreement contains any untrue statement of a material fact or fails to state any material facts necessary in order to make such representation or warranty not misleading.

(h) Retained Patents. The patents listed in Exhibit 11-B hereto, which are being retained by Seller have application only to raw materials used in the manufacture of finished paint products.

(i) Real Property. Exhibit 9 hereto is a true, correct and complete list of all real property owned or leased by Seller and utilized in the operation of the Dutch Boy business (except for the Dutch Boy facilities at Perth Amboy and West Caldwell, New Jersey, Boston, Massachusetts and Philadelphia, Pennsylvania); and all plants and structures on such real property. Such plants and structures, and equipment therein, are not, except to the extent otherwise specified in said Exhibit, in violation of any applicable ordinances or regulations, or building, zoning or other laws. Seller or its Dutch Boy Division is the lessee under all leases of real property listed in said Exhibit. All such leases are valid, binding and in full force and effect, and there exists no event or condition which constitutes a default under any thereof or which, after notice or lapse of time, or both, would constitute such a default and except as otherwise specified in said Exhibit are assignable to Buyer. As soon as practicable, but in any event prior to the Closing Date, Seller shall furnish Buyer with reports from reputable title companies, which reports shall contain a true, correct and complete list and description of all easements and rights, including, without limitation, easements for power lines, water lines, roadways and other access, necessary to conduct the Dutch Boy business, and all other liens and encumbrances affecting the Dutch Boy properties.

(j) Purchased Fixed Assets. Exhibit 2 hereto contains a true, correct and complete list of all the Purchased Fixed Assets other than real property and improvements used by Seller in its Dutch Boy paint business. To the best of Seller's knowledge and belief none of such assets fail in any material way to meet any applicable governmental regulations and standards (other than OSHA or environmental obligations being assumed by Buyer under Section 4(a)(3) of this agreement).

(k) Dutch Boy Inventories. Exhibit 1 hereto is a correct and complete summary list and valuation of all inventories used by Seller as of October 31, 1976 in its Dutch Boy paint business and all of such inventories are usable and salable in the ordinary course of such business.

(l) Seller's Properties; Legality of Seller's Operations. No part of any real property listed in Exhibit 9 hereto has been condemned or otherwise taken by any public authority, nor does Seller know or have reasonable grounds to believe that any such condemnation or taking is threatened or contemplated. To the best of the knowledge and belief of Seller, none of such properties, and no part of Seller's Dutch Boy operations, is in violation of any agreement by which Seller is bound, any law, or any environmental, health, safety, zoning, wage, salary or price rule, regulation, order or other ordinance or code except as specifically set forth in Exhibit 9-C. Except as specifically set forth in Exhibit 9-C no notice from any environmental, health, safety, zoning, wage, salary or other authority or any other party has been served upon Seller claiming any violation of any such agreement, law, ordinance, code, regulation, or order, or requiring, or calling attention to the need for, any work, repairs, construction, alterations or installations on or in connection with any of such properties or in any operation or business practice which has not been complied with, except to the extent set forth in said Exhibit.

(m) Seller's Employment Contracts. Exhibit 10 hereto sets forth the name, position and annual compensation or compensation arrangement of all persons employed by

Seller in its Dutch Boy paint business, or serving it as agent, whose aggregate remuneration, whether salary, commission or otherwise, for the year ending December 31, 1976, is reasonably expected to exceed $15,000, a description of any pension, retirement, bonus, deferred compensation, stock purchase, profit-sharing, insurance or similar plan or arrangement covering any person employed by Seller in its Dutch Boy paint business; a description of any oral or written contract or agreement of, or with respect to employment with any person.

(n) Other Contracts and Commitments. There are no material contracts, understandings or agreements (other than dealer franchise agreements), oral or written, which have not been fully described in an Exhibit annexed hereto, which are binding on Seller or Dutch Boy and which pertain to or are in any way connected with the operations of, or property utilized by, Seller's Dutch Boy paint business.

(o) Copies of Seller's Dutch Boy Contracts; Absence of Default. Exhibits 3, 6, 9-B and 10 list all contracts, leases and undertakings of Seller's Dutch Boy paint business (but not dealer, franchise, sales representative or distributor agreements) in any way connected with such business. Correct and complete copies of all such contracts, leases and undertakings referred to herein or in

Exhibits hereto have been furnished to Buyer. No default exists under any such contract, lease or undertaking or under any dealer, franchise, sales representative or distributor agreement assumed by Buyer hereunder, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a default under any thereof except as stated in the Exhibits referring to such document. All Dutch Boy open sales orders, sales contracts, supply contracts, purchase orders and commitments were entered into in the ordinary course of business in arms-length transactions.

(p) Patents, Trademarks and Copyrights. Seller has, and at the Closing Buyer will acquire (except as provided in Sections 15 and 16 below and except for the trademarks in the Philippines listed in Exhibit 11-E hereto), good and marketable title to, and all right, title and interest in, free and clear of all liens, encumbrances and equities, the patents and patent applications and the trademarks and trademark registrations used by Seller in its Dutch Boy paint business or developed by Seller for use in its Dutch Boy paint business, and all other trademarks owned by Seller which utilize as a portion or the totality thereof the words "Dutch Boy" or the figure of a Dutch boy, true correct and complete lists of which are set forth in Exhibits 11-A and 11-C hereto. Such trademarks may now be used in connection

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with the manufacture, sale and distribution of Dutch Boy's products in the geographic territory in which Seller now distributes and sells such products. Seller does not know of any reason why such use may not be continued by Buyer in such territory after the Closing. Seller is not a party to and is not aware of any agreements, commitments or understandings of any kind which would in any way restrict the use of such patents and trademarks. To the best of Seller's knowledge, no copyrights and no other patents, trade names, trademarks or service marks are necessary to conduct Seller's Dutch Boy paint business as it is now being conducted or as now contemplated and given necessary approvals by the general manager of Seller's Dutch Boy division and Executive Committee approval, if required. Seller is not currently in receipt of any notice, and has no reason to believe, that its Dutch Boy paint operations are violating the rights of others in any trademark, trade name, service mark, copyright, patent, design or other intellectual property.

(q) Licenses. Seller currently has and will maintain in effect until the Closing Date such licenses, permits, and other authorizations, if any, from all Federal, state and local authorities as are necessary for the conduct of its Dutch Boy paint business as currently conducted by it, all of which are listed on Exhibit 12 hereto, and at the Closing all such licenses, permits and other authorizations will be transferred to Buyer to the extent permissible under the terms thereof and applicable laws and regulations.

(r) Seller's Taxes. Seller has filed all Federal, state and local tax and other returns and reports which were required to be filed by it in respect of its Dutch Boy paint business and the Purchased Assets. With respect to the Dutch Boy assets and business being purchased by Buyer hereunder Seller is not in default in the payment of any taxes that are due and payable or any assessments received in respect thereof. After the Closing Seller will file and be responsible for any Federal, state or local tax or other returns and reports (and shall pay in full any tax shown as due therein) which are required to be filed with respect to the operations, business, assets or properties of Dutch Boy and which relate to the period or periods prior to the Closing.

(s) Disasters. The Purchased Assets have not since October 31, 1976 been affected by any fire, explosion, accident, flood, storm, earthquake, embargo, act of God or of any public enemy or other casualty, whether or not insured, which has or will have in any way materially impaired the ability of Seller to carry on its Dutch Boy paint business as conducted on such date or which has or will have materially adversely affected the earnings or other benefits to be derived from the Purchased Assets.

8. <u>Representations and Warranties of Buyer</u>. Buyer makes the following representations and warranties to Seller:

(a) <u>Organization; Corporate Authority</u>. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Pennsylvania and has all requisite corporate power and authority to own and operate its properties, to carry on its business, and to enter into and perform this agreement and the transactions contemplated hereby. All requisite corporate action on the part of Buyer has been completed for the authorization of the execution and delivery of this agreement and the other transactions contemplated hereby and the performance of its obligations hereunder and thereunder. This agreement is, and such other transactions will be, valid and binding obligations of Buyer, enforceable in accordance with their respective terms. The execution and delivery of this agreement by Buyer and the consummation of the transactions contemplated hereby do not and will not violate the provisions of Buyer's Articles of Incorporation or By-Laws or the provisions of any note of which Buyer is the maker or of any indenture, agreement, or other instrument to which Buyer is a party, except as referred to in Section 10(j) below.

(b) <u>Litigation</u>. Except as set forth in

Exhibit 13 hereto, there is no claim, account, suit, proceeding or investigation pending, or any basis therefor or any threat thereof against Buyer which questions the validity of this agreement, or any action taken or to be taken pursuant hereto or in contemplation hereof.

(c) No Brokers. The negotiations relative to this agreement and the transactions contemplated hereby have been carried on by Buyer directly with Seller, without the intervention of any person as a result of any act of Buyer (and, so far as is known to Buyer, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission or other like payment.

(d) Disclosure. No representation or warranty of Buyer contained in this agreement contains any statement of a material fact necessary in order to make such representation or warranty not misleading at the time it is made.

9. Conditions Precedent to the Obligations of Seller. All obligations of Seller under this agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions:

(a) Legal and Other Proceedings. All legal and other proceedings in connection with the transactions contemplated hereby, and all documents and instruments incident to such transactions, shall be satisfactory in form and substance to Seller and its legal counsel.

(b) Misrepresentations. Seller shall not have discovered any material error, misstatement, or omission in the representations and warranties made by Buyer hereunder.

(c) Buyer's Representations True at Closing; Performance by Buyer. Buyer's representations and warranties contained in this agreement shall be deemed to have been made again at and as of the time of the Closing and shall then be true and correct in all material respects, except that each of those representations and warranties made as of a certain date shall be true in all material respects as of such date. Buyer shall have performed and complied with all agreements and conditions required by this agreement to be performed or complied with by it prior to or at the Closing.

(d) Corporate Authority Relative to this Agreement. The execution, delivery and performance of this agreement and the transactions contemplated hereby shall have been duly authorized and approved by all necessary and proper corporate action on the part of Buyer.

(e) Opinion of Counsel for Buyer. Seller shall have been furnished with an opinion of Wolfram &

Wolfram, P.C., counsel for Buyer, dated the Closing Date and addressed to Seller, in the form of Exhibit 14 hereto.

(f) Litigation Affecting Closing. At the Closing Date, no suit, action, or other proceeding shall be pending before any court or governmental agency in which it is sought to restrain or prohibit the consummation of the transactions contemplated by this agreement or to obtain damages or other relief in connection therewith.

(g) Documents Evidencing Corporate Action. Seller shall have received copies, certified by the Secretary or an Assistant Secretary of Buyer, of all documents evidencing corporate action taken by Buyer with regard to this agreement and the transactions contemplated herein, including but not limited to copies of the resolution of Buyer's Board of Directors that are necessary to authorize the execution, delivery, and performance of this agreement and the transactions contemplated hereby.

(h) Certificate of Incumbency. Seller shall have received a signature and incumbency certificate, certified by the Secretary or an Assistant Secretary of Buyer, certifying the incumbency, identity, and signature of the officers authorized to execute this agreement and the documents contemplated herein.

(i) Other Documents. Buyer shall deliver to

Seller such other documents incident to the transactions herein contemplated as Seller may reasonably request.

10. <u>Conditions Precedent to the Obligations of Buyer</u>. All obligations of Buyer under this agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions:

(a) <u>Legal and Other Proceedings</u>. All legal and other proceedings in connection with the transactions contemplated hereby, and all documents and instruments incident to such transactions, shall be satisfactory in form and substance to Buyer and its legal counsel.

(b) <u>Misrepresentations</u>. Buyer shall not have discovered any material error, misstatement, or omission in the representations and warranties made by Seller hereunder.

(c) <u>Seller's Representations True at Closing; Performance by Seller</u>. The representations and warranties of Seller contained in this agreement shall be deemed to have been made again at and as of the time of the Closing and shall then be true and correct in all material respects, except that each of those representations and warranties made as of a certain date shall be true in all material respects as of such date. Seller shall have performed and complied with all agreements and conditions required by this agreement to be performed or complied with by it prior to or on the Closing Date.

(d) Corporate Authority. The execution, delivery and performance of this agreement and the transactions contemplated hereby shall have been duly authorized and approved by all necessary and proper corporate action on the part of Seller.

(e) Opinion of Counsel for Seller. Buyer shall have been furnished with an opinion of Gray Castle, Esq., Vice President and General Counsel of Seller, dated the Closing Date and addressed to Buyer, in the form of Exhibit 15 hereto.

(f) Litigation Affecting Closing. At the Closing Date, no suit, action, or other proceeding shall be pending before any court or governmental agency in which it is sought to restrain or prohibit the consummation of the transactions contemplated by this agreement or to obtain damages or other relief in connection therewith.

(g) Documents Evidencing Corporate Action. Buyer shall have received copies, certified by the Secretary or an Assistant Secretary of Seller, of all documents evidencing corporate action taken by Seller with regard to this agreement and the transactions contemplated herein, including but not limited to copies of all resolutions of the Executive Committee of Seller's Board of Directors, that are necessary to authorize the execution, delivery, and performance of this agreement and the transactions contemplated hereby.

(h) Certificate of Incumbency. Buyer shall have received a signature and incumbency certificate, certified by the Secretary or an Assistant Secretary of Seller, certifying the incumbency, identity, and signature of the officers authorized to execute this agreement and the documents contemplated herein.

(i) Other Documents. Seller shall have delivered to Buyer such other documents incident to the transactions herein contemplated as Buyer may reasonably request, including without limitation, the list and description of real property liens and encumbrances provided for above.

(j) Bank Consents and Commitments. Buyer shall have received all necessary consents or waivers under its existing Loan agreements with Mellon Bank, N.A., Continental Illinois Bank and Trust Company of Chicago and Crocker National Bank in respect of this agreement and the transactions contemplated hereby and shall have entered into with any or all of such banks a loan agreement for the funds necessary to Buyer's consummation of such transactions.

(k) No Material Change In Business or Assets. There shall not have been any material adverse change in

Dutch Boy's business or the Purchased Assets since October 31, 1976 and none of the events referred to in Section 7(s) shall have occurred.

11. <u>Seller's Conduct of Business Prior to Closing</u>. From and after the date of this agreement and until the Closing Date, except with the prior written approval of Buyer or except as otherwise expressly provided by this agreement, Seller shall:

(a) not make any change in its Articles of Incorporation, or By-Laws, which may affect Seller's ability to carry out this agreement;

(b) not enter into any contract or commitment affecting Dutch Boy except in the ordinary course of Dutch Boy's business;

(c) not sell, assign, lease, mortgage, pledge or otherwise transfer or dispose of, or permit any lien or encumbrance to attach to, any tangible or intangible asset owned, or license, franchise or permit utilized by Dutch Boy except in the ordinary course of business of Dutch Boy;

(d) not merge or consolidate with or into any other corporation or entity if such merger or consolidation would affect Seller's ability to carry out this agreement;

(e) not effect any salary increase with respect to any employee of Dutch Boy, except for such increases as may be required by the union contracts listed in Exhibit 6 hereto;

(f) not incur any indebtedness or liability which may materially adversely affect Dutch Boy, other than renewals or extensions of existing indebtedness in the ordinary course of business;

(g) maintain the Purchased Fixed Assets of Dutch Boy in at least its present condition, except for normal wear and tear, and use its best efforts to (i) preserve the business organization of Dutch Boy intact, (ii) retain the services of the employees of Dutch Boy, and (iii) preserve its relationships with major suppliers and customers;

(h) maintain in full force and effect existing contracts, insurance and relationships which may affect Dutch Boy's business or the operation thereof; not commit any act or suffer to exist any condition which constitutes, or with the passage of time or giving of notice, or both, would constitute a default under any material contract of Dutch Boy, and notify Buyer of any default thereunder by any other party; and

(i) discharge when due all obligations affecting Dutch Boy.

12. <u>Access to Seller's Information</u>. From the date hereof to the Closing Date, Seller shall give Buyer's

representatives, including, without limitation its attorneys and accountants, full access, during regular business hours and upon reasonable notice, to all properties, books, records, financial statements, agreements and commitments relating to Dutch Boy. Seller shall furnish Buyer's representatives during such period with all information concerning the affairs of Dutch Boy as they may request; provided however, that except to the extent provided in the last sentence of Section 1(b) above the furnishing of such information to, or any investigation by, Buyer or its representatives will not affect Buyer's right to rely on the representations and warranties made by Seller in this agreement, and provided further, that Buyer shall hold in strict confidence all documents and information concerning Dutch Boy so furnished, and, if the purchase and sale contemplated by this agreement are not consummated, such confidence shall be maintained and all such documents shall be returned to Seller, except as required by order or process of any court or administrative agency.

13. Personnel Matters.

(a) Retention of Employees. Buyer shall offer to continue the employment of the current Dutch Boy employees (except Dutch Boy employees at Perth Amboy, West Caldwell, and Hightstown, New Jersey, Philadelphia, Pennsylvania and Boston, Massachusetts), at their current salaries. Employees covered by collective bargaining agreements shall have the employee benefits provided for in such agreements. Employees not so covered shall be included in benefit programs to be developed for them. In no event will Buyer be responsible for any employee benefits based on service before the Closing or as the result of any event occurring before the Closing. Pension benefits, if any, furnished by Buyer will only be earned for services after the Closing under the terms of the pension plan to be developed for the non-union continuing employees of Seller.

(b) <u>Severence Benefits for General Office and Eastern Region Employees of Dutch Boy Who Are Not Eligible for Early Retirement</u>. It is contemplated that Dutch Boy's plant at Perth Amboy, New Jersey and its General Office at West Caldwell, New Jersey will be closed down permanently after the Closing hereunder. It is therefore contemplated that some or all of the Dutch Boy employees at said locations, as well as the Dutch Boy General Office and Eastern Region employees located elsewhere, will not be retained by Buyer or Seller after the Closing hereunder. Seller shall be responsible for all costs involved in the Closing of said facilities and for the payment of all severance pay ("Severance Pay") and unused 1976 vacation entitlements to all current Dutch Boy employees at said locations and to all current Dutch Boy General Office and Eastern Region employees located elsewhere who are not eligible for early retirement and who are not retained by Buyer or Seller ("Nonretained Employees"). However, Buyer shall reimburse Seller for up to $213,500 of the aggregate Severance Pay, but not vacation entitlements, paid to Nonretained Employees. Said reimbursement shall be made by Buyer within thirty (30) days after receipt by Buyer of Seller's invoice itemizing all such payments made by Seller.

(c) Severance Benefits for General Office and Eastern Region Employees of Dutch Boy Who Are Eligible for Early Retirement. Dutch Boy General Office and Eastern Region employees listed in Exhibit 16 hereto ("Listed Employees") are entitled to elect early retirement under Seller's existing pension plan. Those Listed Employees who elect early retirement will be entitled to monthly pensions, group insurance benefits, and in some cases, pension supplements (collectively, "Early Retirement Benefits") from Seller. For all Listed Employees who (i) are not offered employment by Buyer and elect early retirement or (ii) are offered employment by Buyer and nevertheless elect early retirement within ninety (90) days after the Closing, Seller shall pay all Early Retirement Benefits and Buyer shall reimburse Seller for Seller's costs therefor except for costs related to Perth Amboy. Said reimbursement shall be made by Buyer within thirty (30) days after receipt by Buyer of Seller's quarterly invoice itemizing all such payments made by Seller during the previous calendar quarter. Buyer shall have no reimbursement obligations in connection with Listed Employees who choose to accept an offer of employment by Buyer and who remain with Buyer for ninety (90) days or more from the Closing Date. Buyer's reimbursement obligations under this paragraph (c) shall cease when each affected employee reaches his normal retirement date (the first day of the month nearest his sixty-fifth (65) birthday).

(d) Limitation on Reimbursement. In no event shall Buyer be obligated to reimburse Seller pursuant to paragraph (b) of this Section 13 more than an aggregate of $213,500. In no event shall Buyer be obligated to reimburse Seller pursuant to paragraph (c) of this Section 13 in any year more than the respective aggregate amount set forth below:

Year		Aggregate Amount	Year		Aggregate Amount
1977	=	115,799.60	1982	=	74,951.73
1978	=	115,799.60	1983	=	68,447.93
1979	=	100,798.40	1984	=	47,303.96
1980	=	96,741.30	1985	=	28,768.84
1981	=	86,045.99	1986	=	16,272.94

1987 and thereafter = zero

In no event shall Buyer reimburse Seller under paragraphs (b) or (c) of this Section 13 in respect of any Dutch Boy employee retained by Seller or employed by Buyer immediately after the Closing for ninety (90) days or more.

(e) Benefits to Dutch Boy Employees Under Seller's Pension Plan. Seller shall retain all of its pension obligations to Dutch Boy employees that have accrued as of the Closing Date and the pension fund assets in respect thereof. Each Dutch Boy employee as of the Closing Date, except those eligible for early retirement, shall be deemed, for purposes of Seller's pension plan, to be a terminated participant as of that date. Vested pension benefits accrued to each such employee as of the Closing Date shall be paid by Seller on a deferred basis pursuant to Seller's pension plan, beginning when such employee reaches sixty-five (65) years of age. Unvested pension benefits accrued to each such employee as of the Closing Date shall be paid by Seller on a deferred basis pursuant to Seller's pension plan, beginning when such employee reaches sixty-five (65) years of age, but only if the total of such employee's service with Seller and Buyer is sufficient at that time to qualify for vesting under the formula now provided in Seller's pension plan. For purposes of this paragraph (e) no early or disability retirement benefits will be paid from Seller's pension fund. Seller shall reimburse Buyer for any payments made by Buyer, and indemnify Buyer and hold it harmless as set forth in the last two sentences of Section 4(c) above, in respect of (i) any amounts payable by Seller or (ii) any claims against Buyer as a result of anything done or to be done by Seller under this Section 13(e).

(f) Offers of Employment by Seller. It is understood and agreed that Seller may make offers of employment to any or all of the following Dutch Boy employees:

Walter Schultz	General Manager
L. W. Beach	Division Controller
R. A. Bergfeld	Technical Director
G. F. Kryzkowski	Plant Manager, Perth Amboy
J. J. Kelly	Division Accounting Manager
V. J. Salerno	Manager, Product Development
B. A. Reed	Compensation & Benefits Administration
J. V. Patrick	Group Leader
M. J. Burns	Purchasing Manager

14. Assets at Perth Amboy. Buyer shall be responsible for the removal and delivery to other locations of the inventory located at Perth Amboy and Seller shall cooperate with Buyer in such removal.

15. Excluded Patents.

(a) Seller is not assigning to Buyer title to the patents listed in Exhibit 11-B hereto, all of which have application only to raw materials used in the manufacture of finished paint products. However, Seller hereby covenants that after the Closing Seller will not assert any patent listed in said Exhibit to prevent Buyer from (A) making or having such raw materials made for Buyer's own use (but not for resale), or (B) selling any finished paint or coating product incorporating such raw materials.

(b) Seller and Buyer shall negotiate in good faith to achieve either an assignment or an exclusive license of the rights to the "Dust Repellent Paint" development listed in Exhibit 11-B hereto to Buyer.

16. Trademark Licenses.

(a) Buyer shall grant Seller exclusive, royalty-free, irrevocable and non-assignable licenses, effective as of the Closing Date, permitting Seller to use the Dutch Boy trademarks identified under the applicable registrations listed in Exhibit 11-C hereto in the jurisdictions and in respect of the products listed in Exhibit 11-D hereto. The periods of permitted use and hence the dates of termination of such licenses shall be governed by the following general guidelines:

(i) It is the intention of Seller and it is understood by the parties hereto that Seller shall discontinue any and all use of the so licensed

Dutch Boy trademarks as soon as it is commercially feasible and reasonably practicable, in Seller's discretion, for Seller to do so.

(ii) Notwithstanding the general guideline set forth in (i) above, in no event shall the period of permitted use exceed (A) five (5) years from the Closing Date in respect of trademarks registered and/or used for Pigment and chemical products, and (B) ten (10) years from the Closing Date for metal and fabricated products.

(iii) Seller shall notify Buyer of the dates of its proposed termination of use of the so licensed trademarks as to each product and as to each jurisdiction listed in Exhibit 11-D hereto. Upon receipt by Buyer, any such notice shall constitute Seller's consent to the termination of the applicable license or licenses and/or the cancellation of any recordal thereof as of the noticed termination date.

(iv) Subject to the provisions of this Section 16(a) Seller may use any of the so licensed trademarks in conjunction with Seller's "NL" logo as long as such license subsists.

(b) Buyer and Seller will execute and record such individual licenses in the appropriate forms as required by laws of the given jurisdictions.

(c) Seller shall exert its best efforts to use

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the Dutch Boy trademarks so licensed to it in a manner aimed at avoiding confusion, deception or mistake of the purchasing public with respect to the source or origin or standards of quality of the goods bearing said trademarks.

(d) Buyer shall not bring any action against Seller concerning the trademark licenses provided for in Section 16(a) unless the cause of such action arises out of Seller's breach of agreement underlying such licenses.

(e) Buyer shall not assign any trademark covered by such license unless the assignee specifically assumes Buyer's obligations to Seller with respect to such trademark licenses.

(f) It is expressly understood that by retaining right, title and interest in and to the Dutch Boy trademark in the Philippines, pursuant to Section 1(e) hereof, Seller shall do everything in its power, including initiating all available legal actions, that is legal and necessary to confine use of such Philippine trademarks to the Philippines and to prevent use of such Philippine trademarks, without limitation, outside of the Philippines or on non-paint products. Seller hereby waives any and all rights or entitlement derived of any disposition providing otherwise. Seller further agrees to exercise its control of such trademarks in the Philippines consistent with its obligations hereunder.

(g) Seller may use its supply of stock certificates, debentures, stationery and other printed matter bearing the Dutch Boy mark existing on the date hereof until the same are exhausted. Seller shall remove the Dutch Boy mark from its plants and other facilities and its trucks and other vehicles at their respective next normal maintenance cycle.

(h) Upon termination of the permitted use in respect of the applicable products and jurisdictions Seller shall not use, register, attempt to register, or cause others to do so, any trademarks which, in Buyer's reasonable opinion, are similar to any trademarks assigned to Buyer pursuant to this agreement.

(i) Within a reasonable period after the Closing, but in no event more than 6 months thereafter, Seller shall cancel and cease the use of (except as specifically licensed to Seller pursuant to Section 16(a) above) the trademarks and trademark registrations and applications listed in Exhibit 11-F hereto.

17. Audit as of Closing Date. Buyer and Seller shall retain the firm of Coopers & Lybrand, Certified Public Accountants (the "Auditors") to conduct an examination and audit, as of the Closing Date, of the Purchased Assets and related books of account and records. Seller and Buyer shall each pay one-half (1/2) of the cost of such examination and audit. Inventory pricing and depreciation policies

in connection with the audit will be consistent with those policies utilized by Dutch Boy in prior periods. Following the completion of said examination and audit, the Auditors shall issue a certified report to the Seller and Buyer containing a list of the Purchased Assets and their net book values as of the Closing Date. Said report shall be unqualified as to the scope of examination and audit (except that such examination and audit shall be limited to the identification of the Purchased Assets and the determination of the net book values thereof) and shall contain the Auditors' opinion that such list of Purchased Assets presents fairly the net book values thereof as of the Closing Date, and that such list and values were prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal period. Said list of Purchased Assets and the net book values shown therein, certified by the Auditors pursuant to this Section 17, shall be the basis for determining the net book value of the Purchased Assets as of the Closing Date, and therefore the Definitive Purchase Price for purposes of Sections 2 and 3(c) of this agreement.

18. <u>Accounting Assistance; Accounts Receivable.</u>

(a) At Buyer's reasonable request, Seller shall provide, for the Dutch Boy operation of Buyer during the six-month period beginning on the Closing Date, the routine accounting, bookkeeping and accounts-receivable services currently being performed by Dutch Boy's headquarters' personnel for its own operations, including but not limited to use of Seller's computer (and related soft ware) as required to perform the above services. Buyer shall reimburse Seller for Seller's actual costs in so doing.

(b) The accounts receivable accrued in the business of Dutch Boy for products delivered prior to the Closing Date are not being assigned herewith. Seller agrees to use its best efforts so that such accounts receivable will be collected in a manner that will not involve Buyer and will not be detrimental to Dutch Boy's continuing relationships with its customers. Seller shall consult with Buyer prior to initiating any collection steps in respect of any such account which is delinquent. If payment for or on account of any such account receivable should be received by Buyer, Buyer shall promptly remit the entire amount of such payment to Seller at the address set forth in Section 27 hereof, unless Buyer has previously purchased such account from Seller.

19. <u>Supply of Titanium Dioxide Pigment and Other Materials</u>.

(a) In order that Buyer may be assured of a source of supply of standard grade titanium dioxide pigment ("Pigment") for Dutch Boy and for Buyer's other operations, the parties shall execute at the Closing an agreement pursuant to which Seller shall sell and deliver and Buyer shall purchase, receive and pay for a minimum of six thousand (6,000) short tons of Pigment per calendar year, plus such additional quantities thereof as Buyer may elect to purchase on reasonable advance written notice, provided that in no event shall Seller be obligated to sell more than twelve thousand (12,000) short tons of Pigment in any calendar year. The price for the first six thousand (6,000) short tons of Pigment delivered in any calendar year shall be the price in effect at time of order equal to Seller's list price therefor (f.o.b. Buyer's plants unless industry practice changes), provided that Seller may revise such list price downward at any time and from time to time, but may revise such price upwards only after ninety (90) days written notice of such upward revision to Buyer. The price for all Pigment delivered in any calendar year in excess of six thousand (6,000) short tons shall be equal to Seller's list price less one percent (1%), provided that Seller may revise such list price downwards at any time and from time to time, but may revise such price upwards only after one hundred eighty (180) days written notice of such revision to Buyer. Payment terms shall be net one hundred eighty (180) days with discount or allowance, provided that Buyer may elect, by written notice given not less than thirty (30) days prior to the expiration of such 180-day period, to extend the payment period for such order to three hundred sixty (360) days, if payment is guaranteed by an irrevocable bank letter of credit on terms reasonably satisfactory to Seller, which shall be delivered to Seller with such notice. Prior to the Closing Date Buyer and Seller shall negotiate in good faith the other terms and conditions of such agreement not set forth in this Section 19. The term of such agreement shall be five (5) calendar years beginning January 1, 1977, renewable for an additional period of five (5) calendar years by mutual agreement. Seller also agrees to use its best efforts to provide Buyer with supplies of lead oxide, rheological additives and specialty coating pigments, on terms to be agreed upon by the parties.

(b) If during the term of the agreement provided for in this Section 19, Seller sells Pigment to any other customer in total quantities in excess of 500 short tons per year on terms and conditions of price, credit terms, and price protection more favorable to any such other customer than the terms and conditions of the agreement provided for herein, Seller shall make su. more favorable terms available to Buyer, and Buyer at its option may accept such terms (but only if Buyer accepts all of such terms relating to price, credit terms and price protection) in respect of any or all Pigment orders it places thereafter until such terms and conditions afforded to such other customer are changed, expire or are terminated.

(c) At no time shall the open account indebtedness of Buyer that is not guaranteed by an irrevocable letter of credit as provided herein, exceed $5 million.

(d) If Buyer purchases from Seller nonstandard grade titanium dioxide pigment, such purchases shall reduce Buyer's obligations set forth in Section 19(a) above to purchase six thousand (6,000) short tons of Pigment in the year in which such purchases are made.

20. Insurance. Seller shall maintain such policies of insurance as it now carries on the premises and other properties of Dutch Boy until the close of business on the Closing Date. Thereafter, Buyer shall be responsible for procuring and maintaining such insurance as it deems appropriate, and Seller shall have no further responsibility for any insurance or risks relating to the assets or business sold hereunder. If any event occurs between the signing hereof and the Closing Date which destroys or partially destroys any of the Purchased Assets, Buyer shall have the option, if a Closing occurs, (A) to decline purchase of such destroyed or partially destroyed Purchased Assets and the value thereof shall not be included in the Definitive Purchase Price or (B) to pay the net book value of such destroyed or

partially destroyed Purchased Assets just prior to the date of destruction. In the event Buyer elects option (B), Seller shall make and dilegently prosecute a claim under its policies of insurance and pay the full proceeds thereof to Buyer.

21. Taxes. All applicable excise, sales, transfer, documentary, and other taxes, if any (except those measured by net income), that may be imposed upon or payable or collectible by Buyer or Seller in connection with the assets described in Section 1 hereof or the sale, assignments, transfers, and deliveries to be made by Seller hereunder shall be paid one-half by Seller and one-half by Buyer.

22. Bulk Sales Laws. Each of the parties hereby waives compliance by the other with the provisions of the Uniform Commercial Code-Bulk Transfers and any other law requiring the furnishing of notice of the transfers contemplated herein to creditors of Seller. Seller agrees to promptly and diligently pay and discharge, when due, all claims of, or amounts due to, creditors, which could be asserted against, or claimed to be due from, Buyer by reason of any such noncompliance. Seller shall indemnify Buyer against all claims, liens, expenses, damages, losses or costs, including without limitation attorneys' and accountants' fees, which may be asserted against Buyer, or which Buyer may sustain or incur, as a direct result of any such noncompliance.

23. Non-Competition. To insure that Buyer enjoys the benefits it expects to receive from the transactions contemplated by this agreement, and in consideration for the covenants, agreements and payments by Buyer provided for

herein, Seller agrees for itself and each of its subsidiaries that for a period of five years commencing on the Closing Date (or if this period shall be too long to be enforceable by law, then for such shorter period as shall be enforceable) it will not (i) directly or indirectly manufacture in the United States of America or elsewhere (except the Philippines) any finished paint products which compete with those offered by Dutch Boy on the Closing Date or (ii) take any action impairing or adversely affecting the business of Dutch Boy by intentionally causing the loss of any of the employees (except as specifically permitted in Section 13(f) above), suppliers or customers of Dutch Boy.

24. Certain Financial Reporting Requirements. In addition to its obligations under Section 30 below, Seller agrees to make available to Buyer such of its books and records and the books and records of Dutch Boy which are necessary in order to prepare the financial reports of Seller's Dutch Boy Paints Division which Buyer is required to include with its 8-K report to the Securities and Exchange Commission in connection with the acquisition of the assets referred to herein, or to prepare any financial statements required by the Commission in addition to, or in substitution for, said financial statements. Seller further agrees that it will use its best efforts to obtain the cooperation and services of Coopers & Lybrand, its auditors, in connec-

tion with, and for the purpose of obtaining the certification of such financial statements as may be required in connection with such report. It is understood and agreed that any and all charges and expenses incurred in connection with such certifications by the auditors shall be the sole obligation of Buyer without any obligation on the part of Seller.

25. Use of Seller's Trade Name on Packaging and Other Materials. For a period of one year beginning on the Closing Date, Buyer may use any of the Dutch Boy inventory, including without limitation labels, packaging materials and advertising and promotional materials purchased by Buyer under Section 1(a) above or covered by purchase obligations assumed by Buyer under this agreement which bears Seller's trade name, except that stationery bearing any trade name or trademark of Seller not assigned to Buyer under this agreement included in such inventories may be used for only three months after the Closing Date.

26. Apportionment of Rents, Etc. All rental payments under the leases listed in Exhibit 9-B hereto, applicable real property and personal property taxes, premiums on policies of insurance which are transferred to Buyer, and similar items, shall be prorated and apportioned as of the Closing Date.

27. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be either delivered personally or mailed, postage prepaid, by registered or certified mail, return receipt requested, to the parties at their addresses herein designated or at such other addresses as may be designated by them in writing by notice given in the manner provided herein, and shall be effective upon mailing thereof, whether or not delivery is accepted:

If to Seller:	NL Industries, Inc. 1221 Avenue of the Americas New York, New York 10020 Attention: Gray Castle, Vice-President and Secretary
py to:	Mr. Ilan Kaufthal NL Industries, Inc. 1221 Avenue of the Americas New York, New York 10020
ELT No Notice on K. E Abel	ELT, Inc. 500 Central Avenue Northfield, Illinois 60093 Attention: Mr. K. E. Abel, Treasurer
With a Copy to:	Wolfram & Wolfram, P.C. 200 Park Avenue New York, New York 10017

28. Best Efforts to Obtain Satisfaction of Conditions. Seller agrees to use its best efforts to obtain the satisfaction of the conditions specified in Section 10 hereof, and Buyer agrees to use its best efforts to obtain

the satisfaction of the conditions specified in Section 9 hereof.

29. <u>No Publicity, Advertisement</u>. Neither of the parties hereto shall, without the prior written consent of the other party and then only in a manner approved by such other party, publicize, advertise or announce to any third person the terms of this agreement, except that Seller may, without such consent, announce to its employees at any time after the execution hereof such terms and details hereof as Seller deems appropriate and except that Buyer may make such disclosure as may be required under stock exchange rules and securities laws applicable to Buyer and may make disclosure to its present and prospective lenders.

30. <u>Access to Books and Records; Reports and Returns</u>. For a period of six years beginning on the Closing Date, or such longer period as Seller may reasonably request, all books, records, and documents of Dutch Boy acquired by Buyer hereunder or retained by Seller shall be made available during regular business hours and on reasonable notice to the officers, attorneys, accountants and other authorized representatives of Seller or Buyer, as the case may be. Buyer and Seller each agree to furnish to the other, without charge, all assistance and information relating to Dutch Boy that is reasonably required by the other in connection with

waiver of any provision hereof shall be binding upon any party hereto unless it is in writing and executed by both of the parties hereto or, in the case of a waiver, by the party waiving compliance.

36. Waiver. The waiver by either party hereto of any breach, default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall not be deemed to extend to any prior or subsequent breach, default, misrepresentation, or breach of warranty or covenant hereunder and shall not affect in any way any rights arising by virtue of any such prior or subsequent occurrence.

37. Section Headings. The section headings, table of contents and list of exhibits, contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first above written.

N L INDUSTRIES, INC.

By Vincent R. McLean
Executive Vice President

ELT, INC.

By [signature]
President

NL 001431

RETURNED GOODS

No products may be returned for any reason without the express approval of the Division or Branch Office. On products so returned, the Manufacturer will issue credit to the Dealer on the basis of the original purchase price less fifteen per cent (15%) handling, provided, however, that the products are undamaged. In the [illegible] at the products are damaged, credit will be allowed on the basis of the true value thereof to the Manu- [illegible] urer. The Dealer will pay transportation costs on all products returned by it, provided, however, that if the return is caused by an error on the part of the Manufacturer, then, in that event, full credit, based on the original purchase price, plus transportation costs, will be allowed.

GOODS DAMAGED IN TRANSIT

n the event products are damaged in transit, prompt notice should be given by the Dealer to the Manufacturer's Division or Branch Office from which the purchase was made together with the following information:

1. A copy of the inspection or damage report containing all pertinent facts, made by the transportation company, signed by the inspector, setting forth the name of the company.
2. Invoice in triplicate, directed to the Manufacturer's Division or Branch Office setting forth actual loss suffered by the Dealer.
3. Complete information concerning the loss in question, with attached delivery freight bill.

GENERAL

1. Shortages or errors in billing must be reported within ten (10) days from receipt of shipment to secure adjustment.
2. The manufacture, sale, and delivery of the Manufacturer's products are contingent upon strikes, riots, fires, acts of God, labor troubles, or any other causes beyond its control; consequently, the Manufacturer reserves the right to cancel orders for undelivered products because of any of the above-mentioned causes.
3. Inasmuch as many features beyond the control of the Manufacturer are involved in the use and application of its products, such as, method of application, experience of workmen, climatic and surface conditions, the Manufacturer cannot and does not warrant or guarantee the performance of its products on any job.

TERMINATION

er party to this agreement, by written notice to the other, may at any time terminate this agreement.

TNESS WHEREOF, the parties hereto have caused these presents to be duly executed this 7 day of January 197[illegible]

NL INDUSTRIES, INC.

[illegible] Corp.
DEALER'S NAME

[illegible]
SIGNATURE

[illegible]
TITLE

New York Sales District
BRANCH

[illegible]
SIGNATURE

L. H. [illegible], Manager
TITLE

NLI 001432

Dutch Boy Inc.

To: J. D. Doering

From: M. J. Burns

Date: August 9, 1978

Subject: TIO2 Purchase Agreement With NL Industries

Recently you inquired concerning the progress that was being made on the above referenced agreement. In accordance with your request, I am forwarding this memo to you to summarize our efforts to reach an agreement. Let me emphasize that the agreement which I am striving for is one which will be mutually beneficial to both corporations and yet afford us the usual product warranties that I expect and I receive from other major suppliers of our key raw materials. Let me list in chronological sequence the events and negotiations that have taken place to date, and then I will briefly summarize the apparent roadblocks and hurdles which must be overcome to reach a final workable agreement:

1. In the spring of 1977 an agreement was submitted by NL's Sales to Mr. Phil Knitz without my knowledge. Mr. Knitz held this proposal and discussed it internally with the technical and purchasing personnel at Baltimore. When he thought the agreement was acceptable, he forwarded it to me for my signature in July.

2. In July of 1977 I contacted Sales Personnel from the Titanium Pigments Division of NL and asked them to visit my office. During his visit Mr. David Keller, Director of Marketing, indicated to me that he thought my objections primarily concerned the legal ramifications of the agreement, and not the basic buyer-seller duties. I told Mr. Keller that I would not sign the agreement until the entire agreement was one under which we could work for many years to come. Mr. Keller agreed and felt that it would be better

for me to discuss my objections with Mr. Fred Florsheimer of NL's Legal Department. He advised me that he would ask someone from the Legal Department to contact me.

3. During August 1977 I was contacted by Jeffrey Silver, Esq. who had been designated by Mr. Florsheimer to handle this matter. We discussed my objections and I promised to send my recommended changes directly to him.

4. In September 1977 I sent the attached letter which informed Mr. Silver of my objections to their proposed agreement.

5. Early in October Mr. Silver and I discussed this further on the phone and he felt they could not agree to my changes, but that they would agree to certain deletions and modifications. I compromised concerning the buyer's remedies and the limitation of liability although I did so reluctantly and still feel that these are key areas of concern in buying any major raw material.

6 The compromise which was not reached and which I felt very strongly about was that area covering warranties. I might point out that the warranty provision which I wanted to include in the sale agreement is the same one which is contained and was used by the Dutch Boy Paints Division of NL Industries in their purchase order. In October I received a revised agreement from NL which under paragraph 15 stated that the seller warranted that the material sold "conforms to the specifications as set forth in paragraph 2 hereof". Paragraph 2 referred to specifications which were going to include all of the grades of TIO2 that we currently buy from NL.

7. When I received the revised agreement, I felt that we had finally reached a workable solution and attached is a letter which I wrote on November 2, 1977, but never sent to Dave Keller since as I reviewed the agreement for the last time prior to signing, I was

surprised to read the note on the bottom of the data sheets which were supplied as the supposed specifications under the agreement. The note reads that the products discussed are "sold without warranty, expressed or implied and upon condition that purchasers shall make their own test to determine the suitability of such products for their particular purposes". I certainly expect the product sold to us to be warranted to be used for the particular purpose of manufacturing paints in accordance with our formulations and after technical discussions and agreement between our laboratory personnel and NL's personnel. Another problem which I discovered at this time was that there were 2 riders to this contract, and there was some question as to whether or not I had the most current riders as discussed with Phil Knitz. At this point I was disturbed that after lengthy discussions concerning all of the changes that I wanted to make, and after I had conceded on so many provisions, that the one area in which I felt we needed special protection, i.e. warranty of product, had now been almost unknowingly conceded by me. Needless to say, I was quite upset. Whether the contract language was knowingly contained in the data sheets, or whether this was merely an inadvertent change of everything we had discussed, I felt that I has spent an excessive amount of time to reach this agreement, and that the onus was on NL to come back to me to show their earnest intention to be fair. For your background information, the Dutch Boy Paint plants of NL Industries were accustomed to using material that had been rejected or in some cases, could not even be shipped to other paint industry customers of the Pigment Division. Of course, the Paint Division usually received some price concession; however, our Plant Quality Control personnel oftentimes felt that the material produced by the Pigment Division was inferior to competition's and many times, for example, when TIO2 took an excessive amount of time to disperse, there was added production costs in producing a batch of paint. Based on this experience, I felt that exacting specifications were needed to give a complete understanding to all parties.

8. Subsequently, I met with Mr. Keller and indicated that I felt that we would be able to sign the agreement after I had discussed some matters further with personnel in Baltimore. After this meeting, I forwarded to Harry Schwartz my comments concerning the data sheet which had been supplied as a specification. During this time, incidentally, we did have some minor quality problems (Note the December 7, 1977 letter from J. G. Trager). These occurrences only further emphasized the need for precise specifications, and a warranty that specifications would be met.

9. Our Technical Director in Baltimore and I discussed the best approach to reach an acceptable specification. Attached is a letter dated August 2, 1978 from NL's Jack Goldhammer which is in response to a meeting we had in which I gave Mr. Goldhammer a copy of a memo from Mr. Schwartz in which he felt that from a technical standpoint, the note on the bottom of the data sheet made a "mockery" of any reference to specifications.

Once standards are set, reference must be made in the agreement of sale to the method used to set the specifications for the product we will receive. We expect that included in these specifications will be areas such as dispersion characteristics which incidentally are not in the current data sheets. The quantity which we will purchase over the next five years of course is of primary concern to NL Industries. Since Titanium Pigments Division does not currently manufacture a slurry we can use, it appears that our purchases for 1978 will not reach the proposed contract quantities. Attached are reports which I received on July 24, 1978 from Jack Goldhammer which indicates that the first six months of 1978 we have purchased approximately 2400 tons compared to 6200 tons in 1977. Please note that Los Angeles is far below their usage in 1977 and 1976. Part of this is attributable to inventory reduction and part is the result of reduced sales. In 1976 the Dutch Boy Paints Division purchased approximately 5,000 tons of TIO2. When the agreement was drawn, I understand that NL expected to receive approximately 1,000 tons of business from Baltimore for their traffic paint production and continue at the same level with Dutch Boy Paint Division. Considering our maintenance shutdown at the end of 1978, coupled with our inventory reduction, I do not anticipate that we will reach the 4,000 ton mark in purchases from NL. The need to reevaluate the contract quantities is apparent since the quantities should be realistic and should not mislead NL in their planning and production scheduling. I hope the above gives you a comprehensive summary of the events over this past year, and assures you that our efforts are continuing as we come closer to arriving at a workable agreement which is fair to all parties.

Michael J. Burns

MJB:jw

Enclosures

the preparation and audit of tax returns and reports or documents to be filed with any regulatory agency or otherwise required by the other.

31. Parties in Interest; No Assignment. This agreement shall inure only to the benefit of and be binding upon the parties named herein and their respective successors and assigns, provided that any assignment of this agreement or of any rights or obligations hereunder by either party without the written consent of the other party shall be void.

32. Governing Law. This agreement shall be construed and governed in accordance with the laws of the State of New York.

33. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

34. Preamble and Exhibits. The preamble and Exhibits to this agreement are incorporated herein and made a part hereof as though fully set forth at length herein.

35. Entire Agreement. Except as otherwise specifically provided herein, this agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. No modification, amendment, or