

**SALES AGREEMENT**  
**Surplus Materials/Equipment**

**Title: Asset Sale**

SALES AGREEMENT, dated as of August \_\_, 2005, by and between Bristol-Myers Squibb Company, a Delaware corporation (hereinafter called "Seller"), and \_\_\_\_\_, a \_\_\_\_\_ corporation (hereinafter called "Buyer").

On the terms and subject to the conditions of this Agreement, Seller hereby sells and assigns to Buyer, and Buyer hereby purchases from Seller all of the Seller's right, title and interest in the assets set forth on Attachment A hereto (each a "Surplus Material" and, collectively, the "Surplus Materials"), for the purchase price set forth on Attachment A. Except with respect to Seller's warranty regarding title as set forth in Section 10 of this Agreement below, the Buyer acknowledges that, there are no representations or warranties by Seller of any kind, express or implied, with respect to the Surplus Materials, and that Buyer is purchasing the Surplus Materials "AS IS", "WHERE IS" and "WITH ALL FAULTS."

Terms of Payment: CERTIFIED FUNDS ONLY      Freight Acc't of: BUYER

**TAXES; BULK TRANSFER**

2. Any fees, charges, taxes or other payments required to be made to any governmental entity in connection with the transfer of the Surplus Materials pursuant to the terms of this Agreement shall be paid by Buyer. The price is exclusive of any such taxes, including state and/or local and use taxes, charges or other payments which Buyer will (at the request of Seller) remit directly to Seller in addition to the purchase price, unless Buyer furnishes a valid sales tax exemption certificate, herewith. Buyer shall cooperate with Seller in timely making and filing all filings, tax returns, reports and forms as may be required of Seller with respect to any taxes payable in connection with the transfer of the Surplus Materials.

Buyer hereby waives compliance by Seller with the provisions of any so-called "bulk transfer law" of any jurisdiction in connection with the sale of the Surplus Materials to Buyer.

**BUYER'S REPRESENTATIONS AND RESPONSIBILITY TO SELLER**

3. Buyer represents, warrants and covenants to the Seller, as follows:

(a) IT UNDERSTANDS THE NATURE AND CHARACTERISTICS OF EACH SURPLUS MATERIAL, IS AWARE THAT SURPLUS MATERIALS MAY BE, BEAR, OR CONTAIN HAZARDOUS MATERIALS AND IS FAMILIAR WITH ANY HEALTH, SAFETY, AND/OR ENVIRONMENTAL HAZARDS ARISING OUT OF OR RESULTING FROM THE POSSESSION, USE, STORAGE, TRANSPORTATION, MAINTENANCE, HANDLING, TREATMENT, AND DISPOSAL OF THE SURPLUS MATERIALS.

(b) IT IS ACCUSTOMED TO HANDLING ITEMS SIMILAR TO THE SURPLUS MATERIALS AND TO HANDLING MATERIALS BEARING OR CONTAINING HAZARDOUS MATERIALS AND THAT IT HAS THE NECESSARY EXPERTISE, EQUIPMENT, AND FACILITIES TO SAFELY AND LAWFULLY CONDUCT ALL OF BUYER'S ACTIVITIES INVOLVING THE SURPLUS MATERIALS, INCLUDING TRANSPORTATION, HANDLING, STORAGE, DISPOSAL, TREATMENT, SELLER'S HISTORIC USE AND ITS ANTICIPATED USE, AND WILL SO CONDUCT SUCH ACTIVITIES.

(c) IT HAS BEEN PROVIDED ACCESS TO, READ AND UNDERSTANDS ALL INFORMATION IT HAS BEEN PROVIDED REGARDING THE SURPLUS MATERIALS, INCLUDING WITHOUT LIMITATION ALL INFORMATION REGARDING THE SURPLUS MATERIALS REQUESTED BY IT.

IF ANY SURPLUS MATERIALS TO WHICH THIS AGREEMENT APPLIES ARE TO BE RELABELED BY IT, SUCH RELABEL SHALL INCLUDE, AS A MINIMUM, ALL THE SAFETY INFORMATION ON THE LABELS AS DELIVERED, AND BE LABELED IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, AND FEDERAL REGULATIONS.

(d) IT HAS INSPECTED, OR BEEN GRANTED SUFFICIENT OPPORTUNITY TO INSPECT AND HAS HAD COMPLETE ACCESS TO, ALL OF THE SURPLUS MATERIAL TO ITS SATISFACTION. REPRESENTATIVES OF BUYER HAVE HAD AN OPPORTUNITY TO MEET WITH EMPLOYEES OF SELLER TO DISCUSS THE SURPLUS MATERIALS.

(e) THE SURPLUS MATERIALS ARE BEING PURCHASED FOR COMMERCIAL USE ONLY AND WILL BE RESOLD TO OTHER ORGANIZATIONS FOR COMMERCIAL USE. THAT WITHSTANDING, SURPLUS MATERIALS WILL NOT BE RESOLD, DONATED OR OTHERWISE MADE AVAILABLE TO INDIVIDUALS FOR PERSONAL USE.

(f) IT SHALL WARN ALL PERSONS (INCLUDING BUT NOT LIMITED TO ITS EMPLOYEES, SUBCONTRACTORS, AND CUSTOMERS) WHO MAY BECOME EXPOSED TO ANY SURPLUS MATERIALS, OF THE HAZARDS ASSOCIATED THEREWITH (INCLUDING BUT NOT LIMITED TO ANY HAZARDS INDICATED IN THE DOCUMENTS REVIEWED BY AND/OR DELIVERED TO BUYER IN RELATION TO THIS AGREEMENT), AND TO TAKE ALL ACTION NECESSARY TO PROTECT SUCH PERSONS FROM SAID HAZARDS.

4. This Agreement shall constitute a binding agreement as and when signed by authorized representatives of the parties.

**5. DELIVERY**

(a) Within thirty (30) days of the date hereof, Buyer will prepare the Surplus Materials (at Seller's facility in Puerto Rico) so that they may be lawfully and safely shipped in accordance with any specifications relating to the applicable Surplus Material and in accordance with applicable law, and shall have the Surplus Materials so shipped, to a location designated by Buyer. All preparation and shipping costs and expenses shall be borne by Buyer and shall be in addition to the purchase price.

(b) In furtherance of the foregoing, the means of transportation as well as the particular time and quantity of the shipment (or each shipment if more than one shipment or appropriate) hereunder shall be mutually agreed upon reasonably in advance of such shipment, provided however that all shipments shall be completed within thirty (30) days of the date hereof, unless otherwise mutually agreed by the parties in writing.

(c) Risk of loss, including risk of property damage to the Surplus Materials, shall be borne solely by Buyer at the time of Surplus Material removal and thereafter. Buyer is solely responsible for procuring insurance to protect the Surplus Materials against any loss.

(d) Seller may, upon Buyer's request, but at Seller's option, arrange for transportation at Buyer's costs and expense. In the event Buyer has not prepared and shipped (or had shipped) the Surplus Materials within thirty (30) days of the date hereof, Seller may have the Surplus Materials prepared for shipment and shipped to Buyer. In such event, Buyer shall be responsible for all costs associated with such preparation and shipment. Alternatively, and in addition to all other remedies available under law, Seller shall be entitled to sell the Surplus Materials to a third party and Buyer shall be responsible for paying to Seller (i) the difference, if any, between the (lower) purchase price to the third party purchaser and the purchase price to Buyer hereunder, and (ii) all costs and expense associated with such resale to the third party.

6. **PAYMENT**- Payment in full for the purchase price (defined in greater detail on Attachment A) and any other costs or expense hereunder shall be made by Buyer to Seller upon execution of this Agreement by both parties and before delivery of the Surplus Materials hereunder, by cash, certified check, cashier's check, or other form acceptable to Seller, unless other arrangements agreed to by Seller in writing, are made by Buyer in advance.

7. **FAILURE TO PAY** - Seller reserves the right among other remedies, either to terminate this Agreement or to suspend further deliveries upon failure of Buyer to make any payment pursuant to this Agreement or any other agreement among the parties hereto.

8. **CLAIMS**- Buyer's receipt, or receipt by Buyer's carrier (whether arranged by Buyer or Seller), of Surplus Materials delivered hereunder shall be and unqualified acceptance of, and a waiver by Buyer of its rights to make any claim with respect to, the Surplus Materials. Buyer assumes all risks with respect to the Surplus Materials after the date hereof. No claim of any kind, whether or not as to the Surplus Materials delivered or for non-delivery of Surplus Materials, and whether or not based on negligence, shall be greater in amount than the price of the Surplus Materials. In no event shall Seller be liable for special, indirect, or consequential damages, whether or not caused by or resulting from the negligence of Seller.

9. **FORCE MAJEURE**- Neither Buyer nor Seller shall be liable for its failure to perform hereunder if said performance is made impractical due to any occurrence beyond its reasonable control, including act of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid, and any other similar or different occurrence. In no event shall Seller be obliged to purchase or manufacture/generate Surplus Materials or other materials in order to enable it to deliver the Surplus Materials to Buyer.

10. **WARRANTY; LIMITATIONS ON LIABILITY**- Seller warrants that it has good title, free from any and all liens and encumbrances, to the Surplus Materials. Buyer acknowledges that none of Seller, its affiliates or any other person has made any representation or warranty, expressed or implied, regarding the Surplus Materials, except as expressly set forth in this Section regarding title and none of Seller, its affiliates or any other person shall have or be subject to any liability to Buyer or any other person resulting from the sale of the Surplus Materials to Buyer, or Buyer's use of the Surplus Materials, or any such information, documents or material made available to Buyer in any form in expectation of, or in relation to, the transactions contemplated hereby. BUYER ALSO ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, THERE ARE NO REPRESENTATIONS OR WARRANTIES BY SELLER OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SURPLUS MATERIALS, AND THAT BUYER IS PURCHASING THE SURPLUS MATERIALS **"AS IS", "WHERE IS" AND "WITH ALL FAULTS."** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION WITH REGARD TO GOOD TITLE, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE, HOWSOEVER ARISING (WHETHER OR NOT SUCH LOSS OR DAMAGE WAS FORESEEN, DIRECT, FORESEEABLE, KNOWN OR OTHERWISE), INCLUDING LOSS OF ANTICIPATED PROFITS, LOSS OF ACTUAL PROFITS (DIRECT OR INDIRECT), LOSS OF ANTICIPATED SAVINGS AND LOSS OF BUSINESS.

11. **NON-WAIVER**- Failure of Seller to exercise any right under this Agreement upon one occasion shall not waive the right to exercise the same on another occasion.

12. **MISCELLANEOUS**- The validity, interpretation, and performance of this Agreement with respect to Surplus Materials delivered or to be delivered hereunder shall be governed by the law of the State of New Jersey. This Agreement contains all of the representations and agreements of the parties hereto pertaining to the subject matter hereof, and there are no oral understandings, representations, or warranties affecting it. This Agreement shall be binding upon and endure to the benefit of the respective successors and assigns of each of the parties hereto, but any assignment hereof by Buyer without prior written consent of Seller shall be void. No modifications of this Agreement or waiver of the terms or conditions hereof shall be binding upon Buyer or Seller unless approved in writing by an authorized representative, or shall be effected by the acknowledgment or acceptance of purchase order forms containing other or different terms or conditions whether or not signed by an authorized representative of Buyer or Seller. Neither course or performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain, or supplement any of the terms of this Agreement.

### 13. COMPLIANCE WITH LAWS

(a) All permits, licenses, and governmental approvals of whatever nature relating to the purchase, possession, transportation, storage, processing, maintenance, handling, labeling, use, and/or disposition of Surplus Materials to Buyer shall be obtained by Buyer, at its own expense, and Buyer hereby represents that it has obtained all such permits, licenses, and governmental approvals and will furnish copies of same to Seller upon request.

(b) Buyer shall comply with all laws and ordinances and all governmental orders, rules, and regulations relating in any way to its purchase, possession, transportation, storage, processing, maintenance, handling, labeling, use, and/or disposition of Surplus Materials: to the labor, equipment, and facilities used in connection therewith; and to the protection of the public health, safety, or environment with respect to its transportation, handling, use or disposition of Surplus Materials. Buyer shall indemnify and hold harmless Seller against all fines, penalties, assessments, damages and other liability of whatever nature arising out of or resulting from Buyer's failure to comply with the Paragraph 13.

14. **INDEMNITY** - Buyer shall indemnify and save harmless Seller, its employees and agents, from and against all claims, liabilities, losses, damages, fines, penalties, and expense of every character whatsoever (including but not limited to liability for pollution, environmental damage or restoration, nuisance, bodily injury, sickness and/or disease, including death and loss of or damage to property), which are caused by or arise out of or in connection with, the Surplus Materials, during Buyer's preparation of the Surplus Materials, after delivery to Buyer of the Surplus Materials at the place of delivery, in any case, whether such liability is based on contract, warranty, tort (including negligence and strict liability), statute or otherwise.

15. **CONFIDENTIALITY** - Each Party shall not, directly or indirectly, disclose, publish or use for the benefit of any third party or itself, any confidential or proprietary information of the other Party, without first having obtained the furnishing Party's written consent to such disclosure or use. Confidential information shall include know-how, scientific information, clinical data, efficacy and safety data, adverse event information, formulas, methods and processes, specifications, pricing information (including discounts, rebates and other price adjustments) and other terms and conditions of sales, customer information, business plans, and all other intellectual property.

Each of Buyer and Seller agrees that the terms of this Agreement and the related instruments shall not be disclosed or otherwise made available to the public and that copies of this Agreement and the related instruments shall not be publicly filed or otherwise made available to the public, except where such disclosure, availability or filing is required by applicable law and only to the extent required by such law. In such event, the parties agree to use commercially reasonable efforts to obtain “confidential treatment” of appropriate provisions of this Agreement and the related instruments with applicable governmental entities.

16. **COUNTERPARTS** - This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

17. **WAIVER OF JURY TRIAL** - Each party hereto hereby waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement or any related instrument. Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce that foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the related instruments, as applicable, by, among other things, the mutual waivers and certifications in this Section.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivery by its duly authorized representative as of the date and year first above written.

**BRISTOL-MYERS SQUIBB COMPANY**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

[BUYER]

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

ATTACHMENT B  
DESCRIPTION OF Surplus Materials; PURCHASE PRICE

[I. INSERT DESCRIPTION OF EACH SURPLUS MATERIAL]

[II. INSERT PURCHASE PRICE INFORMATION]