UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	
	)	Chapter 11
DATA COOLING TECHNOLOGIES LLC,	)	
et al.,[1]	)	Case Nos. 17-52170 and 17-52177
	)	(Jointly Administered)
Debtors.	)	
	)	Judge Koschik
	)	

MOTION OF DATA COOLING TECHNOLOGIES LLC FOR AN ORDER (A) AUTHORIZING THE SALE OF THE THERMOTECH ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (C) APPROVING EXPENSE REIMBURSEMENT; AND (D) GRANTING RELATED RELIEF

Data Cooling Technologies LLC, one of the above-captioned debtors and debtors in possession ("DCT"), hereby moves this Court (the "Motion"), pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order, the proposed form of which is attached as Exhibit A: (a) authorizing and approving DCT's entry into that certain Asset Purchase Agreement dated November 3, 2017, with Thermotech Enterprises, LLC (the "Buyer"), together with all related documents, agreements, exhibits, schedules, and addenda thereto (as may be amended, the "APA"), which is attached hereto as Exhibit B, pursuant to which DCT has agreed to sell substantially all of its assets used in the operation of its Thermotech Business (as defined below), free and clear of all liens, claims, encumbrances, and interests, to the Buyer; (b) authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases

[1] The Debtors and the last four digits of each of the Debtors' tax identification numbers following in parentheses are: Data Cooling Technologies LLC (3425); and Data Cooling Technologies Canada LLC (3172).

(the "Assigned Contracts"); (c) approving the proposed Expense Reimbursement (as defined below); and (d) granting related relief.

In support of this Motion, DCT respectfully states as follows:

Background

1. On September 8, 2017 (the "Petition Date"), DCT and Data Cooling Technologies Canada LLC (collectively, the "Debtors"), each filed a voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in possession of their property and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtors' chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of the chapter 11 cases, is set forth in detail in the Declaration of Gregory Gyllstrom in Support of Chapter 11 Petition and First Day Motions (the "Gyllstrom Declaration"), Docket No. 11, filed on the Petition Date and fully incorporated herein by reference.[2]

4. DCT is comprised of multiple divisions. At one of these divisions, located in Tampa, Florida, DCT manufactures and sells certain HVAC system and technology and heat wheels under the trade names Thermotech Enterprises, Thermotech Group, or ThermoWheel (together, the "Thermotech Business"). The heat wheels and other products manufactured as

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Gyllstrom Declaration.

party of the Thermotech Business are utilized in the manufacture of DCT's KyotoCooling™ units as well as in other customer applications.

5. Since the Petition Date, DCT, with the assistance of its professional advisors, has pursued a sale and marketing process for both the Thermotech Business on a standalone basis as well as a global purchase for substantially all of the Debtors' assets (including DCT's business in Streetsboro, Ohio). DCT and/or its advisors have discussed such prospects with multiple interested parties. In mid-September 2017, DCT and the Buyer had initial discussions regarding the Thermotech Business. Finally, in late October 2017, the Buyer issued an letter of intent for substantially all of the assets of the Thermotech Business excluding pre-closing account receivables (the "Thermotech Assets").

6. DCT, in its reasonable business judgment, believes that a private sale to the Buyer while the Thermotech Business remains operational is the best option under the circumstances. In this scenario, DCT will be able to preserve the Thermotech Business at a value greater than liquidation, continue to generate receivables, preserve jobs, and sell a going concern operation. Because the Buyer will continue to operate the Thermotech Business post-closing, DCT believes that the value and collectability of all pre-closing outstanding receivables (which are being left behind for the estate under the APA) will remain high. However, this process cannot be drawn out. Based on the ongoing capital needs of the Thermotech Business, DCT and the Buyer believe that a sale needs to close by November 30, 2017. This will ensure an uninterrupted production schedule which will help maintain the value of the accounts receivable.

7. DCT has had to idle its KyotoCooling™ operations, which has impacted the Thermotech Business. Absent an infusion of capital or a going concern buyer, DCT would have little choice other than to liquidate Thermotech Business on a piecemeal basis in the near future

at far lower value to the estate than what is provided under the APA. Simply put, if DCT is required to conduct a further 60 – 90 day sale process for the Thermotech Assets, it will not have the capital to sustain operations of the Thermotech Business through that period. Importantly, the Buyer is comprised of some current employees of DCT,[3] is familiar with the Thermotech Business, and is willing to move quickly to close a sale before DCT would have to make alternative arrangements to cease operations.

8. Therefore, DCT and its advisors have determined that the Buyer's offer to purchase the Thermotech Assets pursuant to the APA constitutes the highest and best offer at this time, and provides the best opportunity for DCT to realize the greatest return on the Thermotech Assets for the benefit of all of its stakeholders. Accordingly, after arms' length, good faith negotiations, DCT and the Buyer executed the APA that is conditioned on approval of the Court and includes the following material terms:[4]

a. Purchase Price. $347,603.00 in cash, payable at the closing of the transaction, plus the value of certain inventory purchases made by the Buyer after the execution of the APA for post-November production, in an amount not to exceed $130,000.

b. Deposit. $130,000 Sale Deposit, credited against the purchase price listed above at closing.

c. Purchased Assets. The assets of the Thermotech Business specifically listed on Schedule 1.2 to the APA (and as referred to herein as the Thermotech Assets).

d. Excluded Assets. All assets of DCT not specifically listed on 1.2 to the APA, which specifically excludes all accounts receivable of DCT (including those related to the Thermotech Business) that exist as of the closing of the transaction.

[3] Krister Eriksson and Jeff McKee, who are current employees of DCT at the Thermotech Business, are investors in Thermotech Enterprises, LLC, the proposed Buyer. Mr. Eriksson is also the developer of the Thermowheels associated with the Thermotech Business. Neither Mr. Eriksson nor Mr. McKee is an officer of DCT.

[4] Capitalized but undefined terms shall have the meanings ascribed to them in the APA. This following is intended to provide a summary of certain key terms of the APA. To the extent there is any conflict between the contents of this Motion and the APA, the APA shall control.

e. Assumed Liabilities. Only (i) the Assigned Contracts; (ii) current and future purchase orders relating to the Thermotech Business; and (iii) all outstanding warranties.

f. Private Sale. The transaction contemplated by the APA is a private sale, but subject to the rights of DCT pursuant to its fiduciary duties to consider higher and better offers for the Thermotech Assets or substantially all assets of DCT, including the Thermotech Assets. DCT shall have the right to provide appropriate due diligence to other potential purchasers prior to any hearing on this Motion.

g. Expense Reimbursement. Reimbursement of Thermotech's reasonable out-of-pocket transaction expenses related to Buyer's due diligence costs, legal, and other expenses related to the APA up to a maximum amount of $45,000, as evidenced in writing in reasonable detail and approved by the Court, in the event DCT accepts a higher offer.

9. DCT submits that the terms of the APA represent the highest and best offer for the Thermotech Assets, as the Buyer's offer is currently the only viable offer to purchase the Thermotech Assets under the circumstances. The proposed transaction will maximize the value of the Thermotech Assets for all interested parties and, once the sale closes, will allow DCT to move forward with the remainder of its bankruptcy case effectively and efficiently.

Relief Requested

10. DCT respectfully requests that the Court enter an order: (a) authorizing the sale of the Thermotech Assets to the Buyer pursuant to the APA, free and clear of all liens, claims, encumbrances or other interests pursuant to sections 363(b), (f) and (m) and 365 of the Bankruptcy Code, with such liens, claims, rights, interests and encumbrances to attach to the sale proceeds of the Thermotech Assets with the same validity, priority, extent and perfection as existed immediately prior to such sale; (b) approving the assumption and assignment of the Assigned Contracts under section 365 of the Bankruptcy Code; (c) approving the Expense Reimbursement; and (d) granting such other relief as may be necessary or appropriate.

Basis for Relief

11. In the exercise of its sound business judgment, DCT has determined that the sale of the Thermotech Assets to the Buyer, subject to the terms of the the APA, is in the best interest of DCT's stakeholders, and will enable DCT to maximize the value of its estate.

A. The Sale Was Negotiated in Good Faith and Made for Sound Business Reasons; the Purchase Price Is Fair and Reasonable

12. The Bankruptcy Code permits a debtor to sell all or substantially all of its assets outside the ordinary course of business and prior to confirmation of a chapter 11 plan. Section 363(b) of the Bankruptcy Code specifically authorizes asset sales outside the ordinary course of business. See 11 U.S.C. § 363(b)(1) ("[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate"). In approving the sale of assets outside the ordinary course of business and outside of a chapter 11 plan pursuant to section 363 of the Bankruptcy Code, courts, including those in the Sixth Circuit, have adopted the "sound business reason" test established by the Second Circuit in In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983); see also Stephens Industries, Inc. v. McClung, 789 F.2d 386, 391 (6th Cir. 1986); In re Nicole Energy Services, Inc., 385 B.R. 201, 230 (Bankr. S.D. Ohio 2008); In re Jillian's Entertainment Holdings, 327 B.R. 616, 617 (Bankr. W.D. Ky. 2005) (stating that the Lionel standard has been adopted by the vast majority of courts). Generally, courts examine four factors when determining whether a sale of a debtor's assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. See Lionel, 722 F.2d at 1071 (2d Cir. 1983) (setting forth the "sound business purpose" test).

13. A debtor's showing of a sound business purpose need not be unduly exhaustive; rather, a debtor is "simply required to justify the proposed disposition with sound business reasons." In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. Lionel, 722 F.2d at 1071 (2d Cir. 1983). In the instant case, the potential sale of the Thermotech Assets to the Buyer serves a sound business purpose. The sale is designed to preserve and enhance the value of the Thermotech Assets as a whole, and to ensure that the Assigned Contracts are assigned while they have their highest value and prior to any risk of a premature termination or forced liquidation of estate assets. A sale to the Buyer will also preserve enterprise value and will return a greater benefit to DCT's estate than any of the alternatives, including a sale to an unknown third party, or a piecemeal a liquidation of the Thermotech Assets. DCT believes that, absent a private sale pursuant to the APA that closes by November 30, 2017, it would likely have to shut down the Thermotech Business, which would materially reduce the value of the Thermotech Assets and hinder DCT's ability to collect outstanding receivables.

14. The incidental impact of DCT's bankruptcy to interested stakeholders will also be minimized by a sale. For example, the proposed sale under the APA will provide cash for the estate, certain executory contracts will be assumed, and substantially all of the individuals employed at the Thermotech Business will continue to maintain employment. Absent a sale, DCT would have to consider other options, none of which are as attractive to DCT's business or creditors.

15. The APA is the product of good faith and arm's length negotiations and are on commercially reasonable terms. The Buyer is not currently affiliated with the Thermotech

Business, although certain current employees are investors in the Buyer.[5] DCT and the Buyer, with the assistance of their professional advisors, negotiated the APA at arm's length. DCT has kept KeyBank, N.A. ("KeyBank") and the Official Committee of Unsecured Creditors (the "Committee") informed of its efforts concerning the sale of the Thermotech Assets. As noted above, DCT has also negotiated a provision in the APA that reserves its right to consider higher and better offers as part of its fiduciary duties as a debtor in possession; provided that any such offer be (i) non-contingent; (ii) made in cash; and (iii) submitted by no later than noon, November 17, 2017 prior to the hearing on this Motion as detailed in paragraph 39 below.

16. Finally, no prejudice will result to any parties in interest because the sale of the Thermotech Assets will be noticed in accordance with the notice provisions established by the Bankruptcy Rules. Such notice will: (a) afford all creditors and parties in interest with adequate and reasonable notice of the sale; (b) provide sufficient information regarding the sale of the Thermotech Assets and the time for filing objections to the sale; and (c) meet the requirements of the Bankruptcy Code, the Bankruptcy Rules and legal due process.

17. The fairness and reasonableness of the consideration ultimately to be paid by the Buyer is demonstrated by the efforts that DCT engaged in over the couple months to market the Thermotech Assets and obtain a feasible bid from the Buyer. Ultimately, the sale will inure to the benefit of DCT's estate and creditors, as it will further DCT's efforts to proceed through its chapter 11 case with a substantial benefit for all parties involved. Therefore, the sale of the Thermotech Assets represents the exercise of DCT's sound business judgment.

[5] As discussed above, Krister Eriksson and Jeff McKee are current employees of DCT at the Thermotech Business, are investors in Thermotech Enterprises, LLC, the proposed Buyer.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, and Interests

18. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting such a lien, claim, or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); see In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988) (section 363(f) written in disjunctive; court may approve sale "free and clear" provided at least one of the subsections is met).

19. Section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests." The term "any interest," as used in section 363(f), is not defined in the Bankruptcy Code. Folger Adam Security v. DeMatteis/MacGregor, JV, 209 F. 3d 252, 259 (3d Cir. 2000). In Folger Adam Security, the Third Circuit specifically addressed the scope of the term "any interest" and observed that, while some courts have "narrowly interpreted that phrase to mean only *in rem* interests in Property," the trend in modern cases is towards "a broader interpretation which includes other obligations that may flow from ownership of the Property." Id. at 258; see also In re White Motor Credit Corp., 75 B.R. 944 (Bankr. N.D. Ohio 1987) (holding that section 363(f) precluded tort claims against asset purchaser). As the Fourth Circuit determined in In re Leckie Smokeless Coal Co., 99 F. 3d 573, 581-582 (4th Cir. 1996), section 363(f) is not limited to *in rem* interests. Therefore, a debtor "could sell [its] assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute."

Leckie, 99 F. 3d at 581-582; see also In re Appalachia Fuels, LLC, 503 F.3d 538 (6th Cir. 2007) (approving a sale free and clear of "claims" arising as coal commission sales).

20. Moreover, section 363(f) of the Bankruptcy Code is drafted in the disjunctive. Consequently, satisfaction of any of the requirements enumerated therein will suffice to allow the sale of the Thermotech Assets free and clear of all liens and encumbrances, except with respect to any assumed liabilities or obligations related to the Assigned Contracts. See In re Gulf States Steel, Inc. of Alabama, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988). DCT submits that each lien or encumbrance that is not one of the assumed liabilities under the APA or is an Assigned Contract falls within at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such lien or encumbrance will be adequately protected by either being paid in full at the time of closing, or attaching to the proceeds of the sale, subject to any claims and defenses DCT may possess with respect thereto. DCT therefore requests authority to convey the Thermotech Assets to the Buyer, free and clear of all liens and encumbrances (except any assumed liabilities under the APA or related to the Assigned Contracts), with such liens and encumbrances to attach to the proceeds from the sale of the Thermotech Assets with the same validity, extent, priority and perfection as existed immediately prior to the sale, subject to the terms of the APA and the proposed sale order (attached hereto as Exhibit A). Upon information and belief, DCT believes that KeyBank will consent to the sale to the Buyer, thus satisfying section 363(f)(2) of the Bankruptcy Code.

21. Finally, DCT submits that the sale should not expose the Buyer to any liability as a successor of DCT or its estate. Courts have also consistently held that a buyer of a debtor's assets pursuant to a Bankruptcy Code section 363 sale takes free and clear from successor

liability relating to the debtor's business. See, e.g., In re Trans World Airlines, Inc., 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); In re Leckie Smokeless Coal Co., 99 F.3d at 585 (affirming the sale of debtors' assets free and clear of certain taxes); In re Insilco Techs., Inc., 351 B.R. 313, 322 (Bankr. D. Del. 2006) (stating that a 363 sale permits a buyer to take ownership of property without concern that a creditor will file suit based on a successor liability theory); see also In re Chrysler LLC, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) ("[I]n personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction."). Accordingly, the Court should approve the sale of the Thermotech Assets to the Buyer free and clear of liens and encumbrances under section 363(f) of the Bankruptcy Code.

C. Sale Is in Good Faith Under Section 363(m) of the Bankruptcy Code; and Not in Violation of Section 363(n) of the Bankruptcy Code

22. Section 363(m) of the Bankruptcy Code provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders at the sale. While the Bankruptcy Code does not define "good faith," the Third Circuit in In re Abbotts Dairies of Pennsylvania, Inc., 788 F. 2d 143 (3rd Cir. 1986) has held that:

> [t]he requirement that a Buyer act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer's good faith status at a judicial sale involves fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted); In re Made In Detroit, Inc., 414 F.3d 576, 581 (6th Cir. 2005) (following the Abbotts Dairies standard).

23. As explained above, the APA between DCT and the Buyer is the product of good faith and free from self-dealing. DCT intends to establish at the hearing on this Motion that the APA was a negotiated, arm's length transaction, in which the Buyer has acted in good faith, without collusion or fraud of any kind, and in compliance with the Abbotts Dairies standard. As noted above, the Buyer is not an insider or affiliate of DCT. The evidence at the hearing on this Motion will further establish that neither DCT nor the Buyer has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or allow DCT to avoid the sale pursuant to section 363(n) of the Bankruptcy Code with respect to the consummation of the sale transaction or the transfer of the Thermotech Assets and the assignment of the Assigned Contracts to the Buyer.

24. In light of the foregoing, DCT requests that the Court find that the Buyer has purchased the Thermotech Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code, and is entitled to the protections of sections 363(m) of the Bankruptcy Code.

D. Authorization of Assumption and Assignment of Executory Contracts

25. In order to enhance the value to DCT's estate, DCT requests approval of the assumption and assignment of the Assigned Contracts[6] to the Buyer upon the closing of the

[6] The inclusion of any agreement as an Assigned Contract does not constitute an admission by DCT that such agreement actually constitutes an executory contract under section 365 of the Bankruptcy Code, and DCT expressly reserves the right to challenge the status of any agreement included as an Assigned Contract.

transaction contemplated under the APA and payment of the cure costs for the Assigned Contracts (the "Cure Costs"). In accordance with the terms of the APA, DCT is only required to pay the Cure Cost of the Roth Investment Realty, Inc.[7] and the Buyer is obligated to pay the Cure Costs of any other of the Assigned Contracts to the extent the Buyer wants them assumed and assigned to it. The Buyer is also responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assigned Contracts.

26. Contemporaneous with the filing of this Motion, DCT is also filing a Notice to Counterparties to Executory Contracts and Unexpired Leases That Will Be Assumed and Assigned (the "Notice"). The Notice will set forth (i) a list of the Assigned Contracts; (ii) the proposed Cure Cost for each of the Assigned Contracts; and (iii) the deadline for objecting to the same.

27. Subject to the payment of any Cure Costs, DCT requests that the Buyer not be subject to any liability to a counterparty to an Assigned Contracts that accrued or arose before the closing of the sale of the Thermotech Assets, and that DCT be relieved of all liability accruing or arising thereafter pursuant to section 365(k) of the Bankruptcy Code.

28. DCT further requests that the order approving the sale provide that the Assigned Contracts will be assigned to, and remain in full force and effect for the benefit of the Buyer, notwithstanding any provisions in the Assigned Contracts, including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment. Section 365(f) of the Bankruptcy Code provides, in pertinent part, that a debtor may assign an executory contract only if:

[7] This entity is the landlord for the Tampa, Florida location.

> (A) [the debtor] assumes such contract or lease in accordance with the provisions of this section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under Section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract of the debtor." Section 365(b)(1), in turn, clarifies the requirements for assuming an executory contract of a debtor, providing that:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee --
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default [ ];
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

29. Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession's decision to assume an executory contract, courts have consistently applied a "business judgment" test when reviewing such a decision. See In re Structurelite Plastics Corp., 86 B.R. 922 (Bankr. S.D. Ohio 1988). A debtor satisfies the "business judgment" test when it determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. In re Greektown Holdings, L.L.C., No. 08-53104, 2009 WL 1653461 (Bankr. E.D. Mich. May 13, 2009); In re FCX, Inc., 60 B.R. 405, 411 (Bankr. E.D.N.Y. 1986). The assumption and assignment of the

Assigned Contracts is a negotiated and necessary part of the proposed sale to the Buyer; therefore, it will benefit the estate of DCT.

30. The Buyer is responsible for providing evidence of "adequate assurance of future performance" to the extent required in connection with the assumption and assignment of any Assigned Contracts. The meaning of "adequate assurance of future performance" for the purpose of the assumption of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that the debtors will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). As required, the Buyer will be able to provide evidence of its ability to provide adequate assurances to counterparties of the Assigned Contracts at the hearing on this Motion.

31. DCT submits that the assumption and assignment of the Assigned Contracts to the Buyer meets the business judgment standard and satisfies the requirements of section 365 of the Bankruptcy Code. The assumption and assignment of the Assigned Contracts will be necessary for the Buyer to conduct the Thermotech Business going forward; because the Buyer would not have agreed to purchase the Thermotech Assets without certain executory contracts and unexpired leases, the assumption and assignment of such agreements is essential to securing the highest and best offer for the Thermotech Assets.

Approval of the Expense Reimbursement

32. In recognition of the value of providing an offer for the Thermotech Assets – even while DCT considers higher and better offers for the Thermotech Assets in accordance with its

fiduciary duties and the risk of DCT entering into an alternative transaction – DCT and the Buyer have negotiated a provision in the APA that provides for up to a $45,000 reimbursement of reasonable diligence costs and expenses incurred by the Buyer in the event that DCT enters into an Alternative Transaction for the Thermotech Assets (the "Expense Reimbursement").

33. The Buyer was unwilling to enter into the APA without the inducement of the Expense Reimbursement on these terms. Without the Buyer, DCT would not have any offers for the Thermotech Assets, and would likely not be able to obtain a sale price of at least what is provided in the APA from any other interested parties. Therefore, the Expense Reimbursement preserves the value of the Buyer's offer for the Thermotech Assets for DCT's estate. See Corradino v. Lamb (In re Lamb), 2002 WL 31508913, at *2 (Bankr. D. Md. 2002) (stating that a break-up fee should be in the best interest of the estate and necessary).

34. Bidding incentives such as break-up fees and expense reimbursement provisions are "carefully scrutinized" in asset sales under section 363(b) of the Bankruptcy Code to ensure that a debtor's estate "is not unduly burdened and that the relative rights of the parties are protected." See In re Hupp Indus. Inc., 140 B.R. 191, 195-6 (Bankr. N.D. Ohio 1992). In reviewing break-up fees, courts in the Sixth Circuit consider a totality of the circumstances in determining the reasonableness of a break-up fee. Nashville Senior Living, 2008 WL 5062366, at *2. Courts also look to whether (i) whether the subject break-up fee constitutes a fair and reasonable percentage of the proposed purchase price; (ii) whether the subject break-up fee is so substantial that it provides a "chilling effect" on other potential bidders; and (iii) whether there exists substantial adverse impact upon unsecured creditors. Id.

35. In this case, the Expense Reimbursement is reasonable because the APA does not involve a *per se* break-up fee; the Buyer is simply entitled to reimbursement of its actual

reasonable expenses up to $45,000. First, the Expense Reimbursement is within the range of appropriate percentages granted by courts in the Sixth Circuit. See In re Wings of Medina Liquidation, et al., No. 15-52722 (N.D. Ohio Jan. 8, 2016) (approving a combined break-up fee and expense reimbursement of 4%); In re Schwab Indus., No. 10-60702, 2010 Bankr. LEXIS 5935, at *10-14, *25 (Bankr. N.D. Ohio May 28, 2010) (approving a break-up fee of $1,900,000.00, "which [was] inclusive of any expense reimbursement," and represented just under 4% of the proposed purchase price); In re Sumner Reg'l Health Sys., No. 3:10-bk-04766, 2010 Bankr. LEXIS 6173, at *5, *21-22 (Bankr. M.D. Tenn. May 18, 2010) (approving bid procedures, including actual expenses of stalking horse bidder not to exceed $1,000,000.00 which, when added to break-up fee, constituted a total payment of 2.27% of the $154,108,687.00 purchase price); Hupp Indus., 140 B.R. at 195 (finding that a reimbursement for actual expenses of stalking horse bidder capped at $50,000 and a break-up fee of $100,000 for a transaction totaling $4,750,000.00 was reasonable, but denying debtor's motion on other grounds).

36. Second, the proposed Expense Reimbursement is a fair and reasonable percentage in relation to the proposed purchase price and the funds and efforts expended by the Buyer to consummate this transaction. Hupp Indus., 140 B.R. at 194. The Buyer's offer represents a very strong offer to preserve the Thermotech Assets as a going concern, particularly given that DCT's bankruptcy case has been pending for only a couple months. The APA contemplates that DCT may consider other potential higher and better offers in accordance with its fiduciary duties, and the Expense Reimbursement provides the Buyer potential compensation for DCT's consideration of other bids.

37. Finally, the Expense Reimbursement is the result of good faith, arm's length negotiations between DCT and the Buyer. See In re Integrated Resources Inc., 147 B.R. 650, 658

(S.D.N.Y. 1992) ("A bankruptcy court should uphold a break-up fee which was not tainted by self-dealing and was the product of arm's-length negotiations."). Under the circumstances, DCT believes that the Expense Reimbursement is a fair, reasonable and necessary cost of the administration of the estate and should be approved.

Alternative Transaction

38. Notwithstanding DCT's desire to consummate the APA with the Buyer, DCT has a duty to the estate to consider higher and better offers for the Thermotech Assets prior to a hearing on this Motion. To conserve the resources of all parties involved, DCT is requiring that any other party interested in making a bid for the Thermotech Assets do so on or before November 17, 2017. Any party making such bid must make an offer that is (i) non-contingent; (ii) made in cash with a 10% deposit received by DCT prior to the hearing on this Motion; and (iii) based on the form of APA submitted with this Motion. DCT reserves the right to hold an auction for the Thermotech Assets if another bid is timely received.

39. In the event a higher and better offer is received, DCT respectfully requests that it not be required to file a separate motion seeking approval of such sale; rather, DCT may simply request approval of such alternative sale as being higher and better at the hearing on this Motion. In the event such a bid is received, Buyer is entitled to submit a higher bid at the hearing. If such an alternative transaction is approved by this Court, DCT will also seek approval to pay the Expense Reimbursement to the Buyer and return the Buyer's Sale Deposit.

Waiver of Rules 6004 and 6006

40. Notwithstanding the possible applicability of Bankruptcy Rules 6004 and 6006, DCT requests the relief sought by this Motion be immediately effective and enforceable upon entry of the order requested hereby. In order to allow the immediate realization of value for the

Thermotech Assets, DCT requests that any order grating this Motion is effective immediately and not subject to the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d).

Notice

41. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion will be served on the following parties or, in lieu thereof, to their counsel, if known: (i) the United States Trustee for the Northern District of Ohio; (ii) the Committee; (iii) the Debtors' prepetition secured lender; (iv) the District Director of Internal Revenue; (v) any party asserting a lien on the Thermotech Assets; (vi) the Buyer; (vii) all known counterparties to the Assigned Contracts; and (viii) all parties requesting notice in the chapter 11 cases. In addition, a notice of this Motion will also be provided to all known creditors of the Debtors. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice need be given.

WHEREFORE, DCT respectfully requests that the Court enter an order: (a) (i) approving the sale of the Thermotech Assets to the Buyer, free and clear of all liens and encumbrances; and (ii) approving the assumption and assignment of the Assigned Contracts in accordance with the APA; (b) authorizing and approving the Expense Reimbursement; and (c) granting such other and further relief as is just and proper.

November 3, 2017

Respectfully submitted,

/s/ Sean D. Malloy

Sean D. Malloy (0073157)
Michael J. Kaczka (0076548)
Maria G. Carr (0092412)
McDONALD HOPKINS LLC
600 Superior Avenue, E., Suite 2100
Cleveland, OH 44114
Telephone: (216) 348-5400
Facsimile: (216) 348-5474
E-mail: smalloy@mcdonaldhopkins.com
mkaczka@mcdonaldhopkins.com
mfcarr@mcdonaldhopkins.com

COUNSEL FOR DEBTORS
AND DEBTORS IN POSSESSION

EXHIBIT B

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into on the 3rd day of November, 2017, by and between **DATA COOLING TECHNOLOGIES LLC** ("Seller") and **THERMOTECH ENTERPRISES, LLC** ("Buyer").

RECITALS

A. On September 8, 2017 (the "Petition Date"), Data Cooling Technologies LLC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court"), Case No. 17-52170-amk (the "Bankruptcy Case").

B. On October 31, 2017, Buyer submitted its Letter of Intent to Seller to purchase selected assets of Seller with respect to Seller's business operations in Tampa, Florida, which Seller accepted, and this Agreement has been prepared based on the terms in the Letter of Intent.

C. Subject to the Bankruptcy Court's approval of the sale pursuant to section 363 of the Bankruptcy Code, Seller desires to sell and otherwise transfer to Buyer, and Buyer wishes to buy, the Purchased Assets (as defined below), and Seller shall assume and assign to Buyer the Assigned Contracts (as defined below) pursuant to section 365 of the Bankruptcy Code.

NOW THEREFORE, in consideration of the covenants and conditions herein set forth, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Assets Being Purchased.

1.1 Sale of Purchased Assets. Subject to the Bankruptcy Court's approval of the sale pursuant to section 363(f) of the Bankruptcy Code, Seller agrees to sell, assign, and transfer to Buyer the Purchased Assets, as defined below, with good and marketable title, free and clear of all liens, encumbrances, security interests or claims of whatever nature. Upon and subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties contained herein, Buyer agrees to purchase and take possession from Seller all of the Purchased Assets.

1.2 Purchased Assets. The Purchased Assets are the assets owned by Seller that are used or part of Seller's business operations located at 5110 W. Clifton St., Tampa, Florida (the "Tampa Location") and described more specifically on the attached Schedule 1.2. No Purchased Assets are located other than at the Tampa Location.

1.3 Assumption and Assignment of Executory Contracts. Attendant to the Sale Motion (as defined in Section 2.4), Seller shall assume and assign to Buyer certain contracts pursuant to section 365 of the Bankruptcy Code (collectively, the "Assigned Contracts"), as follows: (a) Debtor's lease with respect to the Tampa Location, (b) the contracts with respect to the jobs listed on the "Master Production November Schedule as of 10/30/2017" (as revised by mutual consent of the parties from time to time, the "Production Schedule") attached hereto as Schedule 1.3, and (c) all current and future Tampa Location customer purchase agreements and purchase orders scheduled for post-November 30, 2017 production not included on the Production Schedule. In addition, Buyer shall assume all outstanding warranties with respect to Seller's sales of products to Tampa Location customers. For clarity, if any of the specific jobs highlighted on the Production Schedule is/are not completed prior to Closing, Buyer agrees to complete each such job, and the accounts receivable (at full value) attributable to such jobs shall belong to Debtor.

1.4 Excluded Assets; No Assumption of Liabilities. Other than the Purchased Assets, no other assets of Seller are being acquired by Buyer. Other than the Assigned Contracts and assumed

warranty obligations, no other liabilities of Seller are being assumed by Buyer, and none of the Purchased Assets are subject to any other liability. For clarity, excluded assets include all accounts receivable that exist as of the Closing including accounts receivable generated from the Tampa Location (and including those accounts receivable described in the last sentence of Section 1.3). Buyer is assuming no liabilities of Seller other than the Assigned Contracts.

2. Purchase Price.

2.1 Amount of Purchase Price; Payment. In consideration for the sale and assignment of the Purchased Assets and the assignment of the Assigned Contracts to Buyer, Buyer agrees to pay to Seller (subject to a credit in the amount of the Sale Deposit, as defined below) the greater of (a) THREE HUNDRED FOURTY-SEVEN THOUSAND SIX HUNDRED THREE DOLLARS ($347,603) plus the value of the inventory purchases made as per item (f) of Schedule 1.3, or (b) such higher amount as Buyer bids at any Auction (as defined in Section 2.3) (the "Purchase Price") in cash at the closing (the "Closing") of the transactions contemplated by this Agreement (collectively, the "Transaction").

2.2 Sale Deposit. Concurrent with the execution and delivery of the Letter of Intent, Buyer previously delivered to Seller a deposit (the "Sale Deposit") in the amount of ONE HUNDRED THIRTY THOUSAND DOLLARS ($130,000) payable to the order of Seller, and the Sale Deposit shall be held by Seller's counsel in escrow in a lawyer trust account pending the Closing.

2.3 Bankruptcy Court Approval. Prior to Closing, Seller will obtain from the Bankruptcy Court an order authorizing the motion for the sale of the Purchased Assets and the assignment of the Assigned Contracts to Buyer pursuant to 11 U.S.C. §363(f) and 365 ("Sale Motion"). Seller's notice of the Sale Motion shall include a specific statement that the sale is free and clear of all claims for successor liability against Buyer. In the event Seller is unable to obtain such an order prior to November 30, 2017 other than due to material breach by Buyer (subject to extension by mutual agreement), the Sale Deposit will be refunded to Buyer. Seller will propose the sale to take place without a formal auction timetable, but subject to the fiduciary duty to accept a higher offer. If a higher offer is accepted, Seller will reimburse Buyer's reasonable out of pocket due diligence costs and legal and other expenses up to a cap of $45,000.

2.4 Assigned Contracts. As part of the sale of the Purchased Assets, Seller shall assume and assign to Buyer the Assigned Contracts under section 365 of the Bankruptcy Code. Seller shall obtain approval of the bankruptcy Court of the assumption and assignment of the Assigned Contracts prior to November 30, 2017. In the event that Seller is unable to obtain an order approving the assumption and assignment of the Assigned Contracts (the "Assumption and Assignment Order") before November 30, 2017, other than due to material breach by Buyer, then the Sale Deposit will be refunded to Buyer. Seller shall pay any cure amount associated with the Tampa Location Lease; Buyer shall pay all other cure amounts, if any, but may choose not to assume an Assigned Contract if the Bankruptcy Court determines that a cure amount is due.

2.5 Allocation of the Purchase Price. The parties agree that the Purchase Price shall be allocated as provided on Schedule 1.2.

3. Representations and Warranties of Seller. Seller hereby represents and warrants to, and covenants and agrees with Buyer, as follows with such representations, warranties and covenants terminating at Closing:

3.1 No Breach or Default. The execution and delivery of this Agreement and the consummation of the Transaction will not result in any breach of any of the terms or conditions or constitute a default under any organizational documents, agreements, loans, contracts, licenses,

Bankruptcy Court orders, or other instrument or obligation to which Seller is now a party or by which Seller or any of the Purchased Assets or Assigned Contracts may be bound or affected.

3.2 Power and Authority. Seller has the full power and authority to execute, deliver, and perform its obligations under this Agreement, subject to the approval of the Bankruptcy Court as described herein. Upon entry by the Bankruptcy Court of an order authorizing and approving this Agreement and the Transaction, this Agreement and all agreements, instruments, and documents herein provided to be executed by Seller are and as of the Closing will be duly authorized, executed, and delivered by, and are and will be binding upon Seller.

3.3 Title to Purchased Assets; No Transfer of Purchased Assets. Seller has and will transfer or cause to be transferred to Buyer good and marketable title to all of the Purchased Assets, free and clear of any mortgage, lien, pledge, claim, right, security interest, encumbrance or other adverse interest of any kind or nature. The execution of this Agreement and the performance of the covenants herein contemplated do not and will not result in the creation of any lien, charge or encumbrance upon any of the Purchased Assets pursuant to any indenture, agreement or other instrument to which Seller is bound or by which the Purchased Assets may be affected. Apart from this Agreement, Seller has not disposed of, transferred or agreed to transfer any of the Purchased Assets or assigned or terminated any of the Assigned Contracts.

3.4 No Other Warranties by Seller. Seller is selling the Purchased Assets on an "AS IS, WHERE IS" basis, with all defects, apparent and not apparent, with no representations or warranties of any kind, express or implied, either oral or written, with respect to the physical condition or value of the Purchased Assets. Upon the Closing, Buyer shall assume all risk, responsibility, liability and obligation for the physical condition, quality, performance and status of the Purchased Assets. Buyer assumes the entire cost of all necessary servicing or repair should defects appear. Seller has made no warranty or representation whatsoever regarding the fitness for a particular purpose, quality, or merchantability of the Purchased Assets.

4. Representations and Warranties of Buyer. Buyer hereby represents and warrants to and covenants and agrees with Seller as follows with such representations, warranties and covenants terminating at Closing.

4.1 Organization. Buyer is a limited liability company, duly organized, validly existing, and in good standing under the laws of Florida.

4.2 Power and Authority. Buyer has all requisite power and authority to enter into this Agreement and carry out all of its obligations under this Agreement. The officer or officers of Buyer who shall execute and deliver this Agreement have been duly authorized to do so by all requisite action on the part of Buyer.

4.3 No Litigation. To the best of Buyer's knowledge, there are no actions, suits or proceedings pending or threatened in any court or before any administrative agency which would prevent Buyer from completing the Transaction.

4.4 Capability. Buyer is willing, authorized, capable, and qualified financially, legally, and otherwise to unconditionally perform all its obligations under this Agreement.

5. Conditions Precedent to Closing.

5.1 Buyer's Conditions. Buyer's obligation to complete the Transaction is subject to the satisfaction at or prior to the Closing of each of the following conditions (any of which contained in subsections (b) and (c) may be waived in writing by Buyer):

(a) Bankruptcy Court Approval. The Bankruptcy Court shall have entered a final order which has not been stayed on appeal (the "Sale Approval Order"), approving (A) the Sale Motion and (i) authorizing Seller to transfer the Purchased Assets to Buyer free and clear of all liens, claims (specifically including, but not limited to, all claims for successor liability against Buyer), encumbrances, and other interests except as otherwise provided herein, (ii) authorizing Seller to assume and assign the Assigned Contracts, (iii) determining that Buyer is a good-faith purchaser; and (iv) authorizing Seller to assume and assign the Assigned Contracts to Buyer.

(b) Performance of Obligations. All terms, covenants, agreements and conditions set forth in this Agreement to be complied with and performed by Seller on or prior to the Closing shall have been fully complied with and performed in all material respects, and all representations and warranties of Seller shall be true at the Closing as if made on and as of such date.

(c) Delivery of Documents. Seller's transfer and sale of Purchased Assets shall be effected by the delivery by Seller to Buyer at the Closing of a bill of sale for all items of the Purchased Assets, and an assignment agreement for the Assigned Contracts, and other good and sufficient instruments of sale, transfer, assignment, and conveyance and all consents of third parties necessary thereto as shall be required, or as may be reasonably necessary in order to effectively vest in Buyer good and marketable title to the Purchased Assets and Assigned Contracts and effectuate the Transaction.

5.2 Seller's Conditions. Seller's obligation to complete the Transaction is subject to the satisfaction at or prior to the Closing of each of the following conditions (any of which contained in subsections (b) and (c) may be waived in writing by Seller):

(a) Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Approval Order.

(b) Performance of Obligations. All terms, covenants, agreements, and conditions set forth in this Agreement to be complied with and performed by Buyer on or prior to the Closing shall have been fully complied with and performed in all material respects, and all representations and warranties of Buyer shall be true at the Closing as if made on and as of such date.

(c) Delivery of Documents. Buyer and shall have executed and delivered to Seller all documents and evidence requested by Seller in its reasonable discretion to determine whether Buyer is willing, authorized, capable and qualified financially, legally and otherwise, to unconditionally perform all obligations under this Agreement in the event that the Bankruptcy Court approves this Agreement and, if applicable, accepts Buyer's Bid as the winning bid at the Auction.

6. Closing. The closing of the Transaction (the "Closing") shall occur at the offices of the Buyer's attorney or as otherwise mutually agreed, after all conditions to Closing shall be satisfied, but in any event, no later than November 30, 2017. At or before the Closing, (i) Buyer shall pay in cash to Seller the Purchase Price by wire transfer of immediately available funds and shall deliver all documents reasonably requested by Seller, and (ii) Seller shall deliver to Buyer possession of the Purchased Assets, assignment of the Assigned Contracts, and all documents reasonably requested by Buyer.

7. Covenants Pending Closing.

7.1 Conduct of Business. Seller covenants that, pending the Closing, without Buyer's prior written consent:

(a) Assigned Contracts. Seller shall not modify any Assigned Contract or enter into any contract relating to the Purchased Assets;

(b) Preserving the Purchased Assets. Seller shall use its reasonable best efforts to preserve the Purchased Assets and maintain them in the same condition as of the date of this Agreement, reasonable wear and tear excepted;

(c) No Sale of the Purchased Assets. Seller shall not sell or otherwise dispose of any material asset which constitutes a portion of the Purchased Assets; and

(d) Insurance. Seller shall continue to carry the existing insurance on the Purchased Assets and the Tampa Location.

7.2 Representations True. The representations and warranties of the parties contained herein shall continue to be true and correct on and as of the Closing as if made on and as of the Closing; and each party shall advise the other promptly in writing of any condition or circumstance occurring from the date hereof up to and including the Closing which would cause such party's representations and warranties to become untrue in any respect.

7.3 Access and Cooperation.

(a) Seller shall give Buyer access during normal business hours throughout the period prior to the Closing to the Tampa Location, the Purchased Assets, and the Assigned Contracts and to Seller's books, contracts, commitments, and other records with respect thereto, and shall furnish Buyer during such period with such information in Seller' possession concerning the Tampa Location, the Purchased Assets, and the Assigned Contracts as Buyer may reasonably request.

(b) Each party covenants and agrees to promptly furnish the other with all information and data in the furnishing party's possession requested in writing by the requesting party that is reasonable and necessary in order to assist the requesting party to secure the permits, licenses, approvals, financing, or consents required to complete the Transaction, if any.

(c) Each party covenants and agrees to promptly notify the other of any claim, action, suit, proceeding or investigation which is commenced or threatened and becomes known to any of them between the date of this Agreement and the Closing and relating to or affecting the Purchased Assets or Assigned Contracts.

7.4 Employees. At or around Closing, Seller shall terminate the Tampa Location employees and Buyer shall offer employment to such employees on reasonably equivalent terms.

8. Risk of Loss. Risk of loss to the Purchased Assets shall not pass to Buyer until the Closing. In the event of the material destruction or damage of any material Purchased Assets prior to Closing, Seller shall promptly notify Buyer in writing. Buyer shall have ten (10) days from receipt of such notice to notify Seller of its election to terminate this Agreement. Upon Buyer's providing such notice to Seller, this Agreement shall cease and terminate and be of no further force or effect, and neither party shall have any rights against the other by reason of this Agreement or of such termination. In the alternative, Buyer may elect to accept insurance proceeds payable to Seller to cover the loss, may propose a reduction in the Purchase Price to reflect the loss, or may propose other modified terms and, in such event, Seller and Buyer shall negotiate in good faith to reach an agreement to a revised Transaction. Seller agrees to support a modification that has been bargained and agreed to in writing and signed on behalf of both Seller and Buyer and, as needed, to immediately seek Bankruptcy Court approval of the modifications on shortened notice, if so requested by Buyer.

9. [Intentionally Omitted]

10. Termination.

10.1 In Absence of a Default. This Agreement may be terminated at any time prior to the approval of the Bankruptcy Court of the Sale Motion and the motion for the Sale and Assignment Order by the written agreement of Seller and Buyer. The Agreement will terminate automatically and without notice upon the closing of the sale of the Purchased Assets or any part of the Purchased Assets to a party other than Buyer. If the Bankruptcy Court or Seller conducts an auction (the "Auction") and Buyer is not the winning bidder at the Auction, this Agreement, as enhanced or supplemented at the Auction, will remain binding as a back-up offer for a period of fifteen (15) days following the Auction. Thereafter, upon the expiration of the 15-day period, Seller shall refund to Buyer the Sale Deposit and reimburse Buyer its due diligence costs and legal and other fees pursuant to Section 2.3. Any party may terminate the Agreement by written notice upon the failure of the other party to satisfy, as of the Closing date, one or more of the conditions precedent set forth in Article 4 above. In the absence of any existing default by Buyer, Seller shall return the Sale Deposit to Buyer within two (2) business days after this Agreement is terminated. However, if Seller closes a transaction with another bidder, Seller's obligations hereunder other than the return of the Sale Deposit and the last sentence of Section 2.3 hereof shall terminate.

10.2 As a Result of a Default. If any party materially breaches any covenant or representation or is otherwise in material default under the terms of this Agreement, the other party may terminate this Agreement after providing written notice to the breaching party of such breach or default if the breaching party does not cure such breach or default within ten (10) business days following receipt of the notice. In the event of a material breach by Buyer that is not cured, Seller shall be entitled to retain the Deposit.

11. Post-Closing Access. On the Closing Date, Seller shall irrevocably instruct all attorneys and servants and agents of Seller to provide to Buyer full access to all books, records, communications and information of Seller in the possession or control of such attorneys and servants and agents of Seller to the same extent as such access was available to Seller before the Closing to the extent the books, records, communications and information reasonably relate to the Tampa Location, the Purchased Assets, and the Assigned Contracts, including copies of all Debtor's financial statements commencing from 2012 through the present. Such instructions shall be confirmed by Seller after completion if reasonably requested by Buyer. After the Closing Date, Buyer shall provide Seller access to the pre-Closing books and records during reasonable business hours to the extent necessary to manage its bankruptcy estate.

12. Further Assurances. Each party shall, at the request of the other, at any time and from time to time following the Closing, execute and deliver to the requesting party all such further instruments as may be reasonably necessary or appropriate in order to more effectively assign, transfer, and convey to Buyer the Purchased Assets and Assigned Contracts, or to perfect or record Buyer's title to or interest in the Purchased Assets and Assigned Contracts, or otherwise carry out the provisions of this Agreement. In addition to the foregoing, Buyer will reasonably cooperate with Seller and its secured lender in the collection of the accounts receivables that are part of the Excluded Assets, and further agrees that it will not intentionally take any action, directly or indirectly, that might impair, prejudice, or otherwise adversely affect the collection of the receivables.

13. Miscellaneous.

13.1 Bankruptcy Court Jurisdiction; Governing Law. The resolution of any and all disputes between the parties herein concerning the Purchased Assets, the Assigned Contracts, or this Agreement, shall be subject to the exclusive jurisdiction of the Bankruptcy Court. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without reference to conflict of law principles, and except as superseded by applicable federal laws.

13.2 Entire Agreement. This Agreement (including any exhibits and schedules) contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written), including the Letter of Intent, between the parties with respect to such subject matter. The exhibits and schedules constitute a part of this Agreement as though set forth in full above.

13.3 Notices. Any and all notices, designations, consents, offers, acceptances, or any other communication provided for herein will be given in writing by registered or certified mail, return receipt requested, or recognized courier service, or by hand delivery with written receipting therefor, or by electronic mail or facsimile transmission with confirmation of receipt, to the parties at their addresses on file with the Bankruptcy Court in the Bankruptcy Case. The effective date of any notice hereunder will be the third day following mailing, or, if by hand delivery or other means, the date of delivery.

13.4 Modification and Termination; Waiver. No change of any term or provision of this Agreement will be valid or binding unless the same will be in writing and signed by all of the parties hereto and approved by the Bankruptcy Court. No waiver of any of the terms of this Agreement will be valid unless signed by the party against whom the waiver is asserted. A waiver on any one occasion will not be construed as a bar to or a waiver of any right on any future occasion.

13.5 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references to Articles, Sections, and paragraphs mean the Articles, Sections, and paragraphs of this Agreement. All provisions of this Agreement, which by their terms, impose obligations that are intended to apply after the Closing shall survive the Closing.

13.6 Fees and Expenses. Except as otherwise provided in this Agreement, the parties shall each bear their own expenses, including but not limited to legal fees, incident to the negotiation and preparation of this Agreement and the consummation of the Transaction.

13.7 Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, personal representatives, and permitted assigns.

13.8 Arm's Length Transaction. The Transaction, and the relationship between Seller and Buyer, and their respective agents, is wholly "arm's length."

13.9 Time of Essence. Time is of the essence of this Agreement and all of the terms, provisions, covenants and conditions hereof.

13.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which together will constitute one and the same instrument. Signatures received via facsimile, email, or other electronic means shall be treated the same as original signatures.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed in their respective names, on the day and year first above written.

DATA COOLING TECHNOLOGIES LLC

By:_____
Signature
Print Name:_____
Title: _____

"SELLER"

THERMOTECH ENTERPRISES, LLC

By:_____
Krister Eriksson, Manager

"BUYER"

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed in their respective names, on the day and year first above written.

DATA COOLING TECHNOLOGIES LLC

By:_____
Signature
Print Name: Richard J. Szekelyi
Title: Chief Restructuring Officer

"SELLER"

THERMOTECH ENTERPRISES, LLC

By:_____
Krister Eriksson, Manager

"BUYER"

SCHEDULE 1.2

Purchased Assets and Allocation of Purchase Price

(a) The fixed assets located at the Tampa Location (value: $55,937, which represents 10% of total asset cost of the assets still in use).

(b) The raw material inventory located at the Tampa Location (value: $214,662, which represents 70% of current/expected usable inventory list of $306,660 as of November 30, 2017).

(c) Intellectual/intangible property consisting of the following (value: $24,947, which is Debtor's actual cost to date):

(i) Two U.S. Patents -- No. 8,584,733 and No. 6,422,299.
(ii) U.S. Registered Trademark – "TEI" with design (Registration No. 3665669).
(iii) Seller's telephone number(s) for the Tampa Location.

(d) Accounts receivable generated after closing for scheduled shipments remaining for December 2017, which are attributable to Debtor's Tampa operations (estimated value: $52,057, which represents 75% of total remaining November production under the Production Plan (and invoiced after November 30, 2017.).

(e) All payments received under the Assigned Contracts other than (i) accounts receivable generated before Closing and (ii) accounts receivable, if any, as described in the last sentence of Section 1.3 hereof.

(f) Additional inventory purchases made by Debtor after execution of the Definitive Agreement for post-November production, not to exceed $130,000.

Schedule 1.3

Redacted.