

Material Adverse Change Definition Clause

“Material Adverse Change” means any materially adverse change to (a) the assets, business, liabilities, results of operations,[prospects,] or [financial condition]/[condition (financial or otherwise)] of [the Seller]/[[any of] the Seller Entities] [or] [[*buyer favorable*: any aspect of] the Business][*not used if “any aspect of” is used*: , taken as a whole], (b) the value of the [Purchased Assets]/[Business Assets, taken as a whole], [or] (c) the ability of [the Seller]/[any Seller Entity] to perform [the Seller's]/[such Seller Entity's] obligations hereunder [or to consummate the Transactions[, in each case]] [on a timely basis][*seller favorable*: , but only if any such event or circumstance could reasonably be expected to have long-term effects on the Business] [, or (d) [*specific changes that the Buyer wants to ensure constitute a Material Adverse Change*]]; except that each of the following events and circumstances [*seller favorable*: (and any event or circumstance directly or indirectly relating to, arising out of, resulting from, or attributable to any of the following events or circumstances)] is deemed to not constitute, and is not to be taken into account in determining whether there has been or could be, a “Material Adverse Change” [*buyer favorable*: to the extent that the Seller has reasonably demonstrated the occurrence or existence thereof] [[*seller favorable*: except to the extent that]/[*buyer favorable*: unless], [in each of the following cases]/[in the case of the following clauses [], [],..., and []], [*seller favorable*: the Buyer reasonably demonstrates that] such event or circumstance, as the case might be, disproportionately [and materially] affects [the Seller]/[Seller Entities] [or] [the Business][, taken as a whole,] in an adverse manner, as compared to [similarly situated businesses]/[other participants in the industries in which the Business operates]/[competitors of the Business]]:

(i)

[any change in general in the United States or foreign economies, securities markets, financial markets, currency markets, or capital markets (including changes in interest rates or the availability of financing)] / [any change arising from changes in general business or economic conditions in any of the geographical areas in which [the Seller] / [any Seller Entity] conducts the Business];

(ii)

any event or circumstance that affects one or more of the industries in which the [Seller] / [Seller Entities] [or] [the Business] operate[s];

(iii)

the Parties' entry into this Agreement, the announcement [or disclosure] of [this Agreement] / [any Transaction Document] or the Transactions [(including (A) the disclosure of the identity of the Buyer or any of the Buyer's Affiliates as being involved in the Transactions, (B) any communication by the Buyer or any of the Buyer's Affiliates regarding the plan or intentions of the Buyer or any of the Buyer's Affiliates with respect to the conduct of the Business or relating to the Transactions, and (C) the threatened or actual impact on relationships of any Company Entity with customers, vendors, suppliers, distributors, landlords, or employees (including the threatened or actual termination, suspension, modification, or reduction of such relationships))], or [any action required or [expressly] permitted [by this Agreement] / [by any Transaction Document]] / [the performance or compliance with the terms of, or the taking of any action required by [expressly] or related to, [this Agreement] / [any Transaction Document]];

(iv)

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any acts of war (whether or not declared), insurrection, sabotage, terrorism, or public enemy, or any national or international political or social conditions;

(v)

[a decline in the price, or a change in the trading volume, of the Company Common Stock on the [applicable stock exchange];]

(vi)

any acts taken, or failures to take action, or such other events or circumstances to which the Buyer has [expressly] consented or that are [expressly] permitted, prohibited, or required by this Agreement;

(vii)

[the Seller's failure[, in and of itself,] to meet internal or published projections, forecasts, or revenue or earning predictions with respect to the Business [or any other of the Seller's businesses, in each case] for any period[; except that the facts and circumstances underlying any such failure are not to be disregarded because of this clause (vii) in determining whether a Material Adverse Change has occurred (though such facts and circumstances might be disregarded because of the application of one or more other clauses of this definition)];]

(viii)

[any event or circumstance of which the Buyer had Knowledge as of the Effective Date;]

(ix)

[any event or circumstance that, as of a given time of determination, no longer exists or the Seller has cured;]

(x)

[any strike, lockout, labor dispute, riot, civil commotion, or embargo;]

(xi)

[any change in applicable Law]/[any [adverse] changes in, or developments that are directly or indirectly attributable to, any Laws, any Orders, or any acts of any Governmental Entity;]

(xii)

[any change in [GAAP]/[IFRS], or in any interpretation thereof;]

(xiii)

[any natural disaster (including earthquake, hurricane, tornado, storm, flood, [fire]/[wildfire], volcanic eruption or similar occurrence), changes in climate or weather conditions, or global health conditions (including any epidemic, pandemic or disease outbreak);]

(xiv)

[any failure of technical facilities, or any failure or delay of transportation facilities;]

(xv)

[any operating losses of [the Company Entities, on a consolidated basis]/[any Company Entity] in the Ordinary Course of Business;]

(xvi)

[any damage, destruction, impairment, or other loss of or with respect to any asset to the extent [fully] covered by insurance;]

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(xvii)

[*[any event or circumstance that the Seller wants to ensure constitutes a carve-out]*; or]

(xviii)

[any event or circumstance beyond the Seller's control.]

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