

Sale & Purchase of a Business or Business Assets

Key Aspects of Sale & Purchase

A. Seller's Organization and Title

1. Is the Seller a sole proprietorship, a partnership, a closely held corporation, a limited liability company?
2. If a partnership, do all partners have to agree and sign the contract?
3. If it is corporation does the Board of Directors have to authorize the officers to negotiate the terms, draft and sign the contract and closing documents?
4. If it is a limited liability company, is there a manager or do the members have to negotiate the terms, draft and sign the contract and the closing documents?
5. Is the title of the assets being sold in the name of an individual doing business under an assumed name, in the name of the corporation or the limited liability company? Are just the assets being sold or the stock or LLC interests?
6. If there is real estate involved is the title to the real estate held differently than than the business assets like the equipment, inventory, intellectual property?

B. Consideration

1. Cash at closing, amount and method of payment
2. Is there any Seller financing involved? How will it be secured?
3. Does the principal operator have an employment agreement?
4. Will there be a non-compete clause?

C. Assumption of Seller's Debt(s)

1. Will the Buyer assume any of the Seller's debts. Under a stock sale debts will remain the liability of the corporation but an indemnification agreement can be utilized to reduce the liability exposure of the Buyer.

D. Indemnification and Representations of Seller

1. Will the Seller and/or its stockholders, directors, officer, members represent the financial condition of the business or its assets?
2. Will the Buyer ask to see the financial records and make them subject to an audit?
3. What will be the closing date? Will there be any contingency dates in the contract?
4. Will the principals, stockholders, directors, officers or key employees be asked to sign a non-compete agreement?

E. Buyer's Note and Collateral and Guaranty

1. If the Buyer is seeking Seller financing, what will be the terms, interest rate, payment schedule, security and maturity date.
2. Will the Note have to be personally guaranteed?
3. If the Note is collateralize, what will be pledged as security?

F. Contract of Sale

1. Description of Subject Matter being sold and purchased.
2. Evidence of Title
3. Purchase Price and Payment
4. Seller's Representations

5. Seller's Warranties and Representations
6. Covenant Not-to-Compete
7. Remedies and Damages in the event of a Breach
8. Bulk Sales Act compliance
9. Notices to State Agencies
10. Documents to be delivered and signed
11. Escrows