



## DUE DILIGENCE CHECKLIST

The following information and terms will be incorporated into a Business Sale Agreement to be signed by the parties. It is important to consider each set of example terms and decide whether or not you feel they should be incorporated into the final buy-sell agreement. A formal Letter of Intent should be signed before any due diligence takes place by either party.

Included in the checklist/worksheet are lists of documents, reports, and other documentation one should prepare for the other party to review. Without these documents, the Buyer (or Seller) cannot adequately evaluate the sale as a whole.

### 1. SELLER INFORMATION

Name(s):

Phone:

Email:

### 2. BUYER INFORMATION:

Name(s):

Phone:

Email:

### 3. BUSINESS INFORMATION:

Business Name:

Address:

Phone:

Type: Sole Proprietorship / Partnership / Limited Company / Corporation

Primary Location(s):



## 4. ASSETS

On the closing date, Seller will sell to Buyer the following assets:

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CASH AND CASH ACCOUNTS, INCLUDING:

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ALL OF THE REAL PROPERTY AND IMPROVEMENTS, DESCRIBED AS FOLLOWS:

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ALL OF SELLER'S ACCOUNTS RECEIVABLE, DESCRIBED AS FOLLOWS:

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EQUIPMENT:

All rolling stock, machinery, equipment, vehicles (licensed and not licensed), office equipment, computer hardware and software, tools, supplies, parts, furniture, fixtures, and all other assets of a similar character owned by Seller and used in the business.

Also, the following equipment:

Equipment not being sold, and not part of the sale agreement, is as follows:

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INVENTORY.

option 1: All inventory held as of the closing date.

option 2: All inventory items listed on the attached Exhibit A.



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CONTRACTS

option 1: All of Seller's contracts

including leases.

including those described on the attached Exhibit B.

option 2: Those contracts listed on the attached Exhibit B.

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MISCELLANEOUS ASSETS

option 1: All other assets or properties of Seller relating to the business and in existence on the closing date, including

telephone numbers and telephone directory listings and advertising

customer lists

sales and purchase records

office records

all drawings

franchises

licenses, permits, other rights granted by governmental agencies

trademarks, trade names, logos

copyrights

patents

goodwill

know-how, processes

supplies

other: \_\_\_\_\_



option 2: All assets listed on the attached Exhibit C.

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OTHER ASSETS

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DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. List of Cash Accounts
2. Descriptions of all Real Property
3. Reports of all accounts receivable
4. Lists of equipment with asset IDs (if available)
5. Reports of Inventory
6. Lists of contracts
7. Documentation for any other assets (e.g. trademarks, patents, software code, etc.)

## 5. CLOSING INVENTORIES

Seller's inventory will be purchased

option 1: for the amount of \$ \_\_\_\_\_.

option 2: at the lower of cost or market, determined on an item-by-item basis.

Immediately prior to the closing date, Seller and Buyer will together conduct a physical inventory of the products inventory and each will initial duplicate copies of an inventory sheet listing the inventory being purchased and the purchase price for each item.



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DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Reports of existing inventory

## 6. ACCOUNTS RECEIVABLE

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SELLER'S ACCOUNTS RECEIVABLE:

option 1: are being purchased by Buyer

option 2: are not being purchased by Buyer

Seller warrants that the accounts receivable are valid and not subject to any defenses or setoffs.

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COLLECTION:

option 1: Seller will collect and retain Seller's accounts receivable.

option 2: Buyer will collect Seller's accounts receivable and remit them to Seller.

option 3: Buyer will collect and retain Seller's accounts receivable.

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DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Accounts receivable report
2. Banking documents (monthly statements, lines of credit, debt obligations, etc.)



## 7. ENVIRONMENTAL

Audit:

option 1: Seller will arrange for a Phase I environmental audit of the real estate

option 2: Buyer will arrange for a Phase I environmental audit of the real estate.

option 1: at Seller's expense.

option 2: at Buyer's expense.

If the audit or other reports indicate that the real estate may be contaminated with a hazardous substance

and if the cost of testing and/or cleanup is reasonably expected to be less than \_\_\_\_% of the purchase price of the assets,

Seller will pay for the testing and cleanup and the parties will proceed to close.

If the cost is reasonably expected to be more than that, Seller may terminate the Sale of Business Assets Agreement.

Seller will be responsible for all obligations regarding environmental reporting to applicable governmental agencies.

Seller will indemnify Buyer for obligations arising out of environmental contamination which exists before the closing (even if not discovered or actionable until some later date).

but only to the extent that such obligations exceed \$ \_\_\_\_\_ in the aggregate.  but only if acted upon by an applicable governmental agency within \_\_\_\_ years after the closing.

Buyer will indemnify Seller for all obligations arising out of environmental contamination which originate after the closing date.

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### POSSIBLE DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Environmental reports that may be required
2. Prior environmental reports or disclosures
3. Reports listing possible environmental issues



## 8. EMPLOYEES

Buyer has no obligation to employ Seller's current employees, but may do so.

Seller will pay any wages, severance pay, benefits, and retirement plan benefits accrued through the date of the closing.

Seller will indemnify Buyer against all employee obligations arising prior to the closing date.

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### POSSIBLE DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Form or template employee agreements in use
2. Actual employee, or independent contractor, agreements
3. Reports listing past wage-related audits and resolution (Department of Labor, etc.)
4. Potential or actual employee disputes
5. Existing employee non-compete agreements

## 9. COVENANT NOT TO COMPETE

Beginning on the closing date and for a period of \_\_\_\_\_ years, Seller

and Seller's owners/partners (who own 5% or more of Seller)

will not, directly or indirectly,

option 1: within a \_\_\_\_\_-mile radius of

option 1a: the Business

option 1b: other: \_\_\_\_\_

option 2: anywhere within \_\_\_\_\_

engage in any business similar to the type of business involved in this transaction  or solicit business from any of Seller's customers.

If a court finds that any of the non-compete provisions are too broad to be enforced, the court may modify those provisions to the extent necessary to permit their enforcement.



Buyer can use all legally available remedies for a breach of the non-compete covenant, including injunctive relief.

In consideration of the non-compete covenant, Buyer will pay to

option 1: Seller

option 2: Seller's shareholders

the sum of \$ \_\_\_\_\_ payable

option 1: as a lump-sum at the closing.

option 2: in \_\_\_\_\_ (number) equal \_\_\_\_\_ (e.g. monthly) installments of principal, together with interest compounded annually at \_\_\_\_\_%, beginning on the \_\_\_\_\_ day of \_\_\_\_\_ and on the \_\_\_\_\_ day of each succeeding \_\_\_\_\_.

This amount

option 1: is already included in the purchase price described above in paragraph 3.

option 2: is in addition to the purchase price described above in paragraph \_\_\_\_\_.

## 10. CONSULTING AGREEMENT

Buyer

option 1: and Seller

option 2: and \_\_\_\_\_(name of key employee(s))

("Consultant") will enter into a consulting agreement, providing for transition-period consulting for a period of \_\_\_\_\_ (term).

with a minimum of \_\_\_\_\_ hours per week.

Compensation:

- option 1: Consultant's compensation is included in the purchase price described above.





- option 2: Consultant is to be compensated at a rate of \$ \_\_\_\_\_ per \_\_\_\_\_.

Consultant will provide the following assistance to Buyer during the term of the consulting agreement: \_\_\_\_\_

## 11. TAXES

Seller will be responsible for the payment of all taxes which are payable in connection with the sale of assets.

Taxes with respect to the real estate will be prorated to the date of closing.

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POSSIBLE DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Prior year tax returns (province/state and federal)
2. Reports listing the occurrence and outcome of prior year tax audits
3. Reports listing any tax arrearages or disputes
4. Reports listing the existence of any tax liens on real property or assets

## 12. BULK SALES LAW COMPLIANCE

Seller will furnish to Buyer a complete list of existing creditors, with the amounts due to each, and agrees to cooperate with Buyer in all matters related to notice to such creditors in accordance with the provisions of the Uniform Commercial Code.

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POSSIBLE DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. List of creditors with amounts owing
2. Reports listing prior disputes (including resolution) with current or past creditors
3. Copies of any credit agreements (leases, mortgages, financing documents, etc.)



### 13. ANNOUNCEMENTS

The parties will cooperate with each other in announcing this transaction.

Seller will cooperate with Buyer in notifying key customers and vendors

in person.

through written correspondence.

### 14. ITEMS TO BE DELIVERED BY SELLER AT CLOSING

At the closing, Seller will perform all acts necessary to put Buyer in actual and complete possession and ownership of the assets, free of all liens, including providing the following documents:

Deed for the real estate and any necessary accompanying documents.

Bill of Sale for the

equipment.

inventory.

miscellaneous assets.

Assignment of

patents.

trademarks.

trade names.

copyrights.

contracts.

leases.

Assignment of motor vehicle titles.



All certificates of occupancy, licenses, tariffs, permits, authorizations, approvals and applications, required by law or issued by any government authority having jurisdiction over the assets.

Releases of all liens.

Consents of any third parties necessary to permit the sale.

Consents of any third parties necessary to assign the contracts to Buyer.

Evidence that all necessary corporate proceedings of Seller have been taken to authorize the transaction.

Seller's attorney's opinion letter.

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POSSIBLE DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Deeds to any real estate
2. Titles (Motor vehicles, etc.)
3. Leases (equipment and/or commercial property)

**15. ITEMS TO BE DELIVERED BY BUYER AT CLOSING.**

At the closing, Buyer will deliver the following:

Payment of the purchase price for the assets.

Evidence that all necessary authorizations have been obtained from Buyer's governing body.

including a corporate resolution authorizing Buyer's purchase of the assets.

Buyer's attorney's opinion letter.

Employment agreement for \_\_\_\_\_

Consulting agreement for \_\_\_\_\_



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POSSIBLE DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Draft employee / consulting agreements

## 16. FURTHER ASSURANCES

Seller will, from time to time after the closing, at Buyer's request, and without further consideration, provide such other instruments as Buyer may reasonably require to more effectively convey to Buyer good and marketable title and possession to the assets.

and the name of the business.

## 17. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS.

The obligations of Buyer to close are subject to the following conditions to be satisfied as of the closing date:

Buyer will have obtained financing for the proposed purchase

option 1: on terms reasonably satisfactory to Buyer.

option 2: providing for a loan for not less than \_\_\_\_\_% of the purchase price, repayment over a term not less than \_\_\_\_\_ years, and at an interest rate not greater than \_\_\_\_\_%.

Buyer will upon execution of the Sale of Business Assets Agreement immediately make application for such financing and use its best efforts to obtain it.

Buyer will satisfy or release such financing conditions by \_\_\_\_\_.

and if Buyer fails to release such financing conditions by that date, Seller has the option to cancel the Sale of Business Assets Agreement.

Buyer will have obtained inspection results, to its reasonable satisfaction, regarding:

the structural, mechanical, plumbing, or electrical components of the building.

pest damage to the building.

unsafe conditions or damage to the premises.



- the presence of radon gas or lead-based paint hazards.
- other conditions, the inspection of which is customary to the locality and/or required by law.
- the condition of the assets.
- Copies of all pertinent documents and records have been available to Buyer for inspection.
- Buyer has not discovered any material error, misstatement or omission in the representations and warranties made by Seller.
- The representations and warranties of Seller continue to be true and correct.
- Seller has performed all terms and conditions of the Sale of Business Assets Agreement.
- Buyer has received the items to be delivered at the closing by Seller.
- Between the date of the Sale of Business Assets Agreement and the closing date, there have not been any materially adverse changes in the assets or the business.
- No legal proceeding has been instituted or threatened which materially affects the assets or the business or which may interfere with the closing.
- Buyer has obtained all necessary or appropriate licenses, permits and governmental approvals to enable it to acquire the assets and operate the business.
- Buyer will use its best efforts to obtain such items.
- Seller and Buyer have obtained all consents of any third parties necessary to permit the closing.
- including the consent of the landlord to assign the premises lease to Buyer.
- The real estate is not contaminated by any hazardous substances, proven to Buyer's reasonable satisfaction.
- in compliance with the environmental provisions contained in the Sale of Business Assets Agreement (described above in paragraph 8).



## 18. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

The obligations of Seller to close are subject to the following conditions, to be satisfied as of the closing date:

- Seller has not discovered a material error, misstatement or omission in the representations or warranties made by Buyer.
- Buyer has performed all terms and conditions of the Sale of Business Assets Agreement.
- Seller has received the items to be delivered at closing by Buyer.

## 19. REPRESENTATIONS OF SELLER

Seller represents and warrants to Buyer the following:

- Seller is validly organized, in good standing, and operates with all necessary authority.
- The Sale of Business Assets Agreement is legally binding against Seller.
- The execution and performance of the Sale of Business Assets Agreement will not violate Seller's organizational documents or any of Seller's agreements, including loans.
- There is no legal claim pending or threatened against Seller which might have an adverse effect on the assets, the business, or this transaction.
  - except as described on Exhibit H.
- True and complete copies of all contracts, leases, agreements, licenses and permits relating to the operation of the business or the assets have been provided to Buyer by Seller. Seller and the other parties to the agreements are not in default under any of the agreements. The execution and performance of the Sale of Business Assets Agreement will not constitute a default under any of the agreements.
- A true and complete list of all of Seller's employees, and their pertinent history with Seller, has been provided to Buyer.
- At the closing, Seller will transfer good and marketable title to the assets.
- All of the tangible assets are in good working order.



The assets and the business operations are insured for adequate amounts under valid liability and casualty policies.

The real estate is not contaminated with any hazardous substances.

to the best of Seller's knowledge.

Seller is not in violation of any requirements of any environmental law with respect to the operation of the business or the assets.

to the best of Seller's knowledge.

Seller has timely filed all federal, state and local tax returns and has paid all applicable taxes and assessments which have become due and payable.

Seller has provided Buyer with accurate financial statements which fairly represent the business.

No statement, representation or warranty by Seller in the Sale of Business Assets Agreement or in any document delivered in connection with this sale contains any untrue or misleading statement of material fact. There is no information which would have a material adverse effect on the assets or the business which has not been disclosed to Buyer in writing.

Seller has not participated in any retirement plan for the benefit of any employees of the business.

Seller will change its name after the closing and take all necessary steps to transfer to Buyer the name used in connection with the business.

Seller has held all necessary licenses and permits to conduct the business.

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POSSIBLE DOCUMENTS TO PREPARE FOR DUE DILIGENCE:

1. Any organizational documents relevant to the business (meeting minutes, etc.)
2. Contracts, leases, agreements, licenses and permits relating to the operation of the business.
3. Insurance policies



## 20. REPRESENTATIONS OF BUYER

Buyer represents and warrants to Seller.

- Buyer is validly organized, and in good standing.
- The Sale of Business Assets Agreement is legally binding against Buyer.
- The execution and performance of the Sale of Business Assets Agreement will not violate Buyer's organizational documents.
- There is no legal claim pending or threatened against Buyer which might have an adverse effect on this transaction.

## 21. NEGATIVE COVENANTS OF SELLER PENDING CLOSING

From the date of the Sale of Business Assets Agreement and until the closing, with respect to the assets and the operation of the business, Seller will not:

- Incur any obligations except in the ordinary course of business.
- Allow any additional liens on the assets.
- Sell any of the assets.
  - except sales of inventory in the ordinary course of business.
- Amend, transfer or terminate any of the contracts to be assumed by Buyer.
- Grant salary or benefit increases to employees.
- Enter into any transactions other than in the ordinary course of business.

## 22. AFFIRMATIVE COVENANTS OF SELLER PENDING CLOSING

From the date of the Sale of Business Assets Agreement and until the closing, Seller will:

- Conduct its business only in the usual course of business.
- Maintain the assets and the business.





including employee and customer relationships.

including business records and accounts.

Pay all costs of operating the business as they become due and all liabilities existing on the closing date unless assumed by Buyer.

Comply with all laws.

Not breach any of the contracts or cause any representation or warranty of Seller to be untrue.

Keep all insurance in effect.

Allow Buyer or Buyer's representatives reasonable access to the facilities, assets and records.

### **23. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

All of Seller's representations, warranties, covenants and agreements will survive the closing  
 for a period of \_\_\_\_ years.

### **24. EXPENSES**

Buyer and Seller will each pay their respective expenses in connection with this transaction.

Seller is responsible for any broker fees.

### **25. RISK OF LOSS.**

All risk of loss to the assets will remain with Seller until the closing date. If a material loss of the assets occurs prior to the closing date, Buyer has the right to terminate the Sale of Business Assets Agreement.



## **26. NOTICE**

Any notice required by either party to be given to the other will be in writing addressed to the other party at its above address, and deemed given when personally delivered or 3 days after it is mailed.

## **27. SUCCESSORS AND ASSIGNS**

The Sale of Business Assets Agreement will be binding on the successors and assigns of the parties.

## **28. CONSTRUCTION**

The Sale of Business Assets Agreement will be governed by the laws of the State of \_\_\_\_\_ . If any provision of the Sale of Business Assets Agreement is ineffective, the other provisions are not affected.

## **29. COUNTERPART/ELECTRONIC SIGNATURES**

The Sale of Business Assets Agreement may be executed in counterparts, and may be accepted by sending an executed copy of the signature page electronically if the original is also mailed on the same date.

## **30. ENTIRE AGREEMENT**

The Sale of Business Assets Agreement contains the entire agreement of the parties with respect to the subject matter and cannot be modified unless in writing and signed by all the parties.



EXHIBIT A - LIST OF INVENTORY



EXHIBIT B - CONTRACTS



EXHIBIT C - MISCELLANEOUS ASSETS