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BUSINESS PURCHASE or SALE

Brief list of common issues
(*not* comprehensive)

Sale/purchase of *assets* v. sale/purchase of *stock*?

Seller a corporation, individual or partnership?

Buyer a corporation, individual or partnership?

Structure of deal: Direct sale/purchase? Direct merger(s)? Triangular/multi-party merger?

What assets being bought/sold? (Walk around-ask-look-make lists)

“Hard assets”—machinery, equipment, furniture, etc.

Phone numbers, names, trademarks, designs/logos

Other intellectual property (owned 100% by Seller?)

Domain names? website content?

Social media accounts? YouTube accounts? online persona?

Customer lists

Accounts receivable?

Cash in bank accounts?

Condition of assets?

Any assets have money owed against them?

Careful: Any fixtures, etc. owned by landlord? By an equipment lessor? (i.e., things physically present on Seller's premises but not actually owned by Seller?)

What assets *not* being bought/sold?

Seller doesn't want to sell ("personal", other lines of business)

Buyer doesn't want to buy (unwanted/unneeded, "toxic," etc.)

Price

Fixed, or variable according to inventory or accounts receivable at closing?

Variable according to performance *after* closing ("earnout")?

All-inclusive, or plus some other amount for inventory?

How paid? lump sum? installment payments? interest

Paid in form of: Cash? Shares of buyer? Other?

If deferred payments, what collateral to secure?

Assets of Seller being sold?

Assets of Buyer?

Assets of Buyer's other business

Personal assets of Buyer (TD on home, other real estate)

If deferred payments, personal guarantee by Buyer's owners?

Some portion characterized as "consulting agreement," etc? (tax planning)

Deposits ("earnest money")

How much?

When due?

Refundable, non-refundable?

What conditions, exactly, for refund to buyer, forfeiture to seller.

Deposits to escrow, or directly to seller?

Liquidated damages?

Disclosure by seller, and investigation by buyer ("due diligence") of debts, lawsuits, claims, problems with Seller, or with any of the assets being purchased

Schedule, timing of disclosure by seller, inspection by buyer

Contingencies on approval/disapproval. Time limits on exercising disapproval.

What liabilities assumed?

What liabilities *not* assumed?

Indemnity - Sellers indemnify buyers as to what?

Buyers indemnify sellers as to what?

Liability for warranty claims, refunds, gift certificates, etc., from prior to purchase, but not presented until *after* purchase.

Government licenses/registrations:

Professional/business/premises licenses, registrations, etc?

Alcohol or other regulated subjects?

Who handles transfer, etc.
Contingencies/timing

Franchise/distributorship rights? Vendor certifications or status with Gov't or other institutional customers?

Premises of business:

owned? leased? subleased?
either {agreement of landlord or
{terms of tenancy from seller

(assuming premises are leased, should purchase be contingent on satisfactory assumption or new lease from landlord?)

Contingencies?

In favor of Seller--before Seller is obligated to close?
In favor of Buyer--before Buyer is obligated to close?

Escrow necessary? Bulk Sale, ABC compliance required?

Employee payroll taxes, sales tax collected, etc.

What liabilities paid off at closing?

taxes
withholding

How handle work still in progress at time of closing? Who has to perform? Who pays for materials? Who gets payment for it?

How handle bills outstanding at/after time of closing?

Bills for inventory on hand at closing?
Bills for operating expenses?

How handle accounts receivables still outstanding at time of closing? Who gets? Who *collects*?

How handle cash in bank when sale closes.

Consulting agreement or training after closing by Seller?

Non-disclosure of confidential information by Seller.

Non-competition by Seller after sale
license

Sales tax on assets sold - who pays?

Sale publicity/announcement (timing, content)

Internal: To different levels of employees

External: To vendors/customers/public

Old customer files: who keeps? how long retain?

Old financial records: who keeps? how long retain?

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