AU-COMbsl06

Business sale agreement: Internet-based services provider; home based

Date:	[date]
Between:	
The Buyer is:	[name] of [address]
The Seller is:	[name] of [address]
The Guarantor is:	[name] of [address]

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General
Accounts
Assets
Trading and Contracts
Intellectual Property
Information technology ("IT")

Agreement for the Sale and Purchase of the Business known as [name]

This agreement is dated: [date]

Personal version:

The Buyer is: [name]

of [private address]

The Seller is: [name]

of [private address]

OR

Corporate version (use for an LP too)

The Buyer is: ABC Pty Ltd, a company incorporated in Australia [under ACN [number] and] [redacted] [[redacted]].

The Seller is: DEF Pty Ltd, a company incorporated in Australia [under ACN [number] and] [redacted] [[redacted]].

NOTE:

The personal version is for an individual seller and not a company seller. Delete whichever does not apply. Do the same for the buyer. Throughout this agreement, we have assumed that the seller is an individual, but [redacted], [redacted] "[redacted]" [redacted] "[redacted]" [redacted].

It is now agreed as follows:

1. Definitions

So far as the context permits, the following words [redacted]:

"Accounts" means the audited profit and loss account of the Business, made up to [day and month] in each year and the [redacted]

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	[redacted]
"Assets"	means all tangible and intangible assets whatever, owned by the Seller and used in the Business, [redacted]
"Business"	means the [type of business] business carried on by the Seller until today under the name and style [redacted]
"Confidential Information"	means all information about the Business, including any information which may give a commercially competitive advantage to [redacted] information about employees, their performance and [redacted] data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer [redacted] information about the Intellectual Property, the Know-how and all [redacted] information created or arising from this agreement; information owned by a third party and in respect of which the Seller [redacted] information, comment or implication published on [redacted]
"Contracts"	means current contracts of the Seller in relation to the Business, [redacted]
"Creditors"	means trade creditors and accrued [redacted]

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[redacted].

"Disclosures" means the [redacted].

"Disclosure Letter" means the disclosure letter of the [redacted].

"Domain Name" means any [redacted]:

[name1].com

[name2].com

[name3].com. au

"Excluded Assets" means the Assets listed in Schedule 2 [redacted].

"Goodwill" means the goodwill in relation to the [redacted].

"Intellectual Property" means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after [redacted].

"Know-how" means scientific or technical information, and [redacted].

"Last Accounts Date" means the date [redacted]

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	[redacted].
"Payment Service Provider"	means the banking intermediary who provides [redacted].
"Price"	means the [redacted].
"Services"	means the [redacted].
"Third Party Software"	means software owned by some [redacted].
"Warranty/Warranties"	means the warranties and undertakings [redacted] [12] [redacted] [4].
"Website"	means www.[URL] and www.[URL] and [redacted].

2. Corporate seller provisions

If the Seller is a [redacted] - [redacted], [redacted]:

2.1. Every reference to the Seller shall be interpreted [redacted].

2.2. The Business may [redacted].

2.3. Every reference to the Business shall be interpreted as [redacted].

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2.4. Every reference to the Company [redacted].

3. Interpretation

This agreement [redacted]:

3.1. a reference to one [redacted].

3.2. a reference to a person includes reference to that person's successors, legal representatives, [redacted], [redacted], [redacted] - [redacted].

3.3. the headings to the paragraphs and schedules ([redacted]) [redacted].

3.4. any agreement by any party not to do or [redacted].

3.5. a reference to an act or [redacted].

3.6. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any [redacted], [redacted]. [redacted], [redacted].

4. Entire agreement

4.1. Each party acknowledges that this agreement and the Disclosure Letter [redacted]

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[redacted].

4.2. So far as any relevant law permits, conditions, [redacted].

4.3. Each of the parties warrants that he [redacted] [redacted].

4.4. The Seller warrants and undertakes that he is not [redacted].

5. Agreement for sale

5.1. Subject to the terms of this agreement, [redacted]:

5.1.1 the Business as a going concern;

5.1.2 the Assets, excluding the Excluded Assets;

5.1.3 the Intellectual Property rights;

5.1.4 the Domain Name(s);

5.1.5 the Website;

5.1.6 the benefit of [redacted].

5.2. Completion shall take place today, [redacted].

6. Transfer of Contracts

The Seller undertakes that for a period of [three] year, he will do his utmost [redacted]. [redacted], [redacted], [redacted]:

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6.1. enter into any novation agreement.

6.2. provide information about any [redacted] [[redacted]] [redacted].

6.3. confirm to any person or governmental authority such details [redacted].

6.4. immediately inform the [redacted].

7. The Price

7.1. The Price [redacted] $ [[redacted]].

7.2. The Price shall be paid as to $ [amount], [redacted] / [redacted].

8. Items to be delivered at completion

The Seller shall handover to the Buyer or otherwise deliver [redacted], [redacted], [redacted]:

8.1. whatever Assets [redacted];

8.2. all books of account, [redacted], [redacted];

8.3. a list of user names [redacted];

8.4. all data relating to the Business, [redacted], [redacted];

8.5. all information and records relating to customers and suppliers, including a list of all the [[redacted]] [redacted] [[redacted]], [redacted]

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[redacted];

8.6. *[if the seller is a limited company]* signed and certified copy of the minutes [redacted].

8.7. forms of transfer [redacted];

8.8. transfers of the Domain Names, in whatever form is required [redacted] / [redacted];

8.9. forms of authority addressed to [redacted], [redacted].

8.10. all other [redacted].

9. Completion

9.1. As soon as the items listed above have passed [redacted], [redacted].

9.2. The Buyer shall be [redacted] [[redacted]].

9.3. As soon as possible and in any event within [14 days] from the date hereof, the Seller shall procure that the Domain Names are transferred to the Buyer. [redacted].

9.4. As soon as possible and in any event within [two days] from today, the [redacted]

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[redacted] , [redacted] .

9.5. The Seller has a continuing obligation to do what is [redacted] , [redacted] - [redacted] , [redacted] [redacted] .

9.6. The Buyer shall not be obliged to [redacted] .

9.7. If any or all of the transactions set out in this paragraph do not [redacted] , [redacted] [redacted] .

10. Creditors and liabilities

10.1. The Seller shall immediately discharge all the debts of the [redacted] , [redacted] [redacted] .

10.2. The Buyer shall not be liable for any breach of any contract by the [redacted] . [redacted] , [redacted] [redacted] .

11. Goods and Services Ta (GST)

11.1. The parties shall procure that the sale of the Business is deemed to be [redacted] ([redacted]) [redacted] 1999 , [redacted] . 35 . 325 .

11.2. The Seller shall immediately deliver to the Buyer [redacted] .

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11.3. The Buyer shall for a period of not less than [7 years] [redacted] .

12. Warranties by the Seller

12.1. The Seller warrants to the Buyer that:

12.1.1 the Warranties set [redacted] [4] [redacted] ;

12.1.2 the Disclosures are true, accurate and comprehensive;

12.1.3 where any Warranty refers to the knowledge, information [redacted] .

12.1.4 where the subject matter of a Warranty may refer both to the [redacted] .

12.2. The Seller agrees to indemnify the Buyer against all costs claims and [redacted] .

12.3. The Warranties in this agreement are not [redacted] .

OR

12.4. The Warranties in this agreement are not limited in monetary value, but no claim [redacted] [[redacted]] [redacted] . [redacted] .

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13. Limitation of Seller's liability

Except in the case of death or personal injury, the total liability of the Seller under [redacted], [redacted], [redacted] $ [20 , 000]. [redacted], [redacted].

14. Future activities

In order to give the [redacted], [redacted]:

14.1. commence or continue any business or activity whatsoever similar [redacted] [3] [redacted] [[redacted]].

14.2. within [three years] of today, promote or offer for sale any product or service which competes with [redacted] [[redacted]] [redacted]. [redacted], [redacted].

14.3. [redacted] [[redacted]] [redacted], [redacted], [redacted] [[redacted]] [redacted].

14.4. [redacted];

14.5. [redacted].

15. Confidentiality

15.1. The Seller now undertakes that he will:

15.1.1 [redacted], [redacted], [redacted];

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15.1.2 [redacted];

15.1.3 [redacted];

15.1.4 [redacted].

15.2. [redacted].

15.3. [redacted][redacted].

16. Publicity / Announcements

16.1. [redacted].

OR

16.2. No party shall:

16.2.1 make any public announcement; or

16.2.2 disclose any information; or

16.2.3 [redacted].

[redacted], [redacted][redacted].

16.3. [redacted]3, [redacted].

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17. Damages not adequate

[redacted]

18. Miscellaneous matters

18.1. [redacted]

18.2. [redacted]

18.3. [redacted]

18.4. [redacted]

18.5. [redacted]

18.6. [redacted]

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18.7. [redacted].

18.8. [redacted].

18.9. [redacted].

It shall be deemed to have been delivered:

[redacted];

[redacted] 72 [redacted];

[redacted]. [redacted], [redacted] ([redacted]) [redacted].

18.10. [redacted].

18.11. [redacted], [redacted], [redacted].

18.12. [redacted], [redacted].

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18.13. [redacted].

18.14. [redacted], [redacted] [[redacted]] [redacted] [redacted] [[redacted]].

Signed by [personal name] on behalf of [named Seller] as its / his representative who personally accepts liability for the proper authorisation by [named Seller] to enter into this agreement.

Signed by [personal name] on behalf of [named Buyer] as its / his representative who personally accepts liability for the proper authorisation by [named Buyer] to enter into this agreement.

OR

Signed by [personal name], duly authorised for the Seller

Witness to signature:

Name:

Address

Signed by [personal name], duly authorised for the Buyer

Witness to signature:

Name:

Address

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Schedule 1: Assets

[list assets]

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Schedule 2: Excluded Assets

[list excluded assets]

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Schedule 3 - Press release

[Set down the text you have agreed.]

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Schedule 4 - Warranties

[[redacted], [redacted].]

General

1. [redacted].

2. [redacted], [redacted], [redacted], [redacted], [redacted].

3. [redacted], [redacted].

4. [redacted], [redacted], [redacted].

5. [redacted], [redacted]-[redacted], [redacted].

6. [redacted] [[redacted]] [redacted], [redacted].

Accounts

7. [redacted] [[redacted]] [redacted].

8. The Accounts:

    8.1. [redacted];

    8.2. [redacted], [redacted];

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8.3. [redacted] 2001, [redacted];

9. [redacted].

10. [redacted].

11. Since the Last Accounts Date:

11.1. [redacted];

11.2. [redacted].

11.3. [redacted].

12. [redacted], [redacted]. [redacted].

Assets

13. All Assets:

13.1. are transferred by this agreement; and

13.2. [redacted], [redacted];

13.3. are now in good working order;

14. [redacted] [[redacted] $ [[redacted]]] [redacted] [[redacted]] [redacted].

Trading and Contracts

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15. [redacted].

16. [redacted].

17. [redacted], [redacted].

18. [redacted] [redacted].

19. [redacted], [redacted], [redacted], [redacted].

20. [redacted], [redacted].

21. [redacted].

Intellectual Property

22. [redacted].

23. [redacted], [redacted].

24. [redacted].

25. [redacted].

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26. [redacted].

27. [redacted].

28. [redacted].

29. [redacted] - [redacted].

Information technology ("IT")

30. [redacted]:

    30.1. the name;

    30.2. [redacted], [redacted];

    30.3. date to which the name is registered.

31. [redacted].

32. [redacted], [redacted];

33. [redacted], [redacted].

34. [redacted], [redacted]:

    34.1. [redacted];

    34.2. technical, customer and client support services;

    34.3. [redacted];

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34.4. an email service provider.

35. [redacted] 12 [redacted].

36. [redacted], [redacted].

37. [redacted], [redacted].

End of Warranties

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Explanatory notes

Business sale agreement: Internet-based services provider; home based

General notes

This is a long document which requires many changes. We suggest you save a perfect copy in case [redacted].

1. Parties named

In naming a party at the top of the document, the personal version is for an individual seller and not a company seller. Delete whichever does not apply. Do the same for the buyer. Throughout this agreement, we have assumed that the seller is an individual but if it is a [redacted].

2. Advantage to the buyer

This document is usually drawn and submitted by the buyer to the seller. If you are the seller, you have a great advantage if you are able to present this draft to [redacted].

3. Warranties and disclosure letter

The seller has a reason to sell. That may not be the reason he has given to you. The only way you can cover yourself is through the warranties. An agreement for the sale and purchase of a business or a company is all about the warranties. What you ask in warranties, and what the seller replies in the disclosure letter are of great importance. If a warranty does not apply, delete it. Generally, do [redacted].

4. Disclosure letter to be worked up

The agreement proposes that the disclosure letter is handed over at completion. It is - in the final agreed and accepted version. However, the buyer should obtain a draft disclosure letter as soon as ever possible. It will contain many matters for the buyer's further investigation. It is likely that [redacted].

5. Initial extra pages

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In a document as complicated as this, it is good practice for all parties to initial each page [redacted].

Paragraph specific notes

(Some points are covered in the Warranties [redacted])

1. Definitions

Please read the general notes sent along with [redacted].

For “Confidential Information”, we have provided a very full menu of items. Depending on your business, [redacted].

As to “Know-how”, there is no copyright in it. If you cannot write down your idea, or patent it, you have [redacted] “[redacted]”.

But if you do change any defined word, make sure it applies to every capitalised use [redacted].

You should first decide on the contents of the document, then return to check what definitions are needed and whether they really [redacted].

2. Corporate seller provisions

This paragraph enables the references to “Business” to have legal meaning when the legal reality is that a “business” does not exist. It cross references the parties and obligations back to the true seller, whether a company or an individual. If the seller [redacted], [redacted]. [redacted], [redacted].

3. Interpretation

Leave these items in place unless there is a good reason to edit or remove. Each of these items has been carefully considered in the context of this agreement and has been included for a purpose. [redacted].

4. Entire agreement

This paragraph prevents a party from later saying he was relying on some other document or web site or what was said. If other documents are to be relied on (if any), let them be [redacted], [redacted].

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5. Agreement for sale

This is your deal. Do not delete it or you may find you have no contract! Use the descriptions [redacted].

6. Transfer of contracts

If you buy a business as a going concern, you need to be sure that every person with whom the business deals, comes with it. It is generally impossible to fix up contract transfer arrangements in advance of the purchase, so this paragraph covers the best way to deal after the event. The most crucial part is the co-operation of the seller. If he [redacted], [redacted]. [redacted], [redacted].

7. The Price

The buyer may wish to apportion the purchase price among the assets so that if by chance some item is not available on completion, there is some yardstick for a claim. In most cases however, the basis for a claim would [redacted].

It may be important to specify prices [redacted]:

Goodwill

Assets

Intellectual Property

You should consult an accountant as to the most favourable apportionments, although the other party will also have a view as [redacted].

8. Items to be delivered at completion

It is essential for a smooth transaction that the seller assembles absolutely all the documents which will be needed on completion. It is a good idea to ask the seller for a list of them when you send him with a copy of this agreement in final form. Remember to [redacted], [redacted].

The necessity to transfer rights and contracts with third party suppliers causes problems. Issues arise because Internet service suppliers usually operate on inflexible standard terms. Many have no procedure for fast transfer of their service. This puts a business buyer in a difficult position. Take a payment service provider. [redacted]

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[redacted]

We suggest that the best way must be to put the obligation on the seller to get all service changes in place, subject to a telephone call, which can be made on the same day as completion of the [redacted]

Alternatively, the buyer should open his own separate account with [redacted]

9. Completion

It is a matter of negotiation and agreement as to the mechanics of completion and in particular when final issues are to be completed. Domain names may present some difficulty since there are no provisions for a conditional transfer. The buyer has to decide how long he is prepared to allow [redacted]

The power to rescind is very strong. Usually, when a buyer has taken control of [redacted]

10. Creditors and liabilities

We think this is a good arrangement but [redacted]

11. Goods and Services Tax (GST)

Sale of business as going concern from one registered person to another registered person is zero-rated [redacted]

12. Warranties by the Seller

See later for full [redacted]

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**This paragraph - confirmation of the warranties - is critical to ■■■■■ ■■■■■

Edit or delete.

17. Damages not adequate

A technical provision to prevent a judge from insisting on damages only, ■ ■ ■

I will now address the task itself and tell you how to make it happen. The first matter to consider [redacted] “ [redacted] - [redacted] - [redacted] ” [redacted] .
[redacted] . [redacted] . [redacted] . [redacted] - [redacted] .

The agreement is drawn by the buyer. That is fair because the buyer knows nothing about the business and the seller knows everything (we hope)! So the [redacted] - [redacted] , [redacted] , [redacted] , [redacted] . [redacted] “ [redacted] ”. [redacted] . [redacted] , [redacted] , [redacted] .

Warranties work like this: I am a [redacted] . [redacted] . [redacted] , [redacted] ([redacted]) [redacted] , [redacted] 60 [redacted] .

The letter of disclosure is the other “half” of the process. In my letter of disclosure, I refer in turn to each of the warranties you [redacted] . [redacted] , [redacted] . [redacted] . [redacted] . [redacted] “ [redacted] ”. [redacted] , [redacted] ([redacted]) [redacted] .

In that way, before he can sue you, the buyer has to [redacted] , [redacted] . [redacted] . [redacted] :

“Where any warranty refers to the knowledge, information [redacted] , [redacted] ”. [redacted] , [redacted] , [redacted] !

Suppose the seller warrants:

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“Neither the seller nor any of its shareholders [redacted] *,* [redacted] *,* [redacted] *.”*

The reply to this [redacted] .

Now, finally, let us suppose the warranty had not been in the draft agreement at all. This is what would have happened: [redacted] . [redacted] , [redacted] . [redacted] . [redacted] , [redacted] .

You may find aspects of my illustration to be immoral. That may [redacted] . [redacted] , [redacted] . [redacted] , [redacted] .

Warranties - seller’s tactics

The “task” of the seller is essentially to provide full and truthful information and to [redacted] . [redacted] , [redacted] . [redacted] . [redacted] “ [redacted] ” [redacted] .

As a seller, [redacted] :

- You be the one to [redacted] “ [redacted] ” [redacted] ; [redacted]
- When you receive the draft [redacted] , [redacted] ; [redacted]
- in your draft disclosure letter, which [redacted] , [redacted] ; [redacted]

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- Consider the breadth of each warranty. [redacted]
- Even where you “answer” the warranty in some [redacted]
- At all costs avoid the easy way out of leaving the warranties [redacted]

Warranties - buyer’s response

If you want a fair and satisfactory outcome, use warranties. [redacted]

However, if your warranties are all “absolute” in matters where it is unreasonable to expect the seller to [redacted]

Set out the warranties according to the transaction. Do not include warranties which [redacted]

If the seller is represented by a solicitor, you will have to decide whether this creates an unlevel playing field. [redacted]

Some solicitors acting for a buyer will see the provision of warranties as an opportunity to go back to [redacted]

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[redacted]

Warranties: drafting notes continued

It is good practice to delete irrelevant warranties, [redacted]

General

These are very [redacted]

With reference to licences and consents: in any business which has been operating for more [redacted]

Accounts

The basis of valuation of the business is likely to have been the last audited annual accounts, [redacted]

Assets

The most important answers sought here are as [redacted]

Trading and Contracts

Particular care should be taken with major contracts which could affect the viability of the business. The buyer should [redacted]

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[redacted] / [redacted] . [redacted] / [redacted] , [redacted] ([redacted]) [redacted] .

The buyer's requirement for details of customers and suppliers will be [redacted] 1 , 000 [redacted] . [redacted] .

The most common reason for litigation about contracts arises because someone, [redacted] . [redacted] , [redacted] , [redacted] , [redacted] . [redacted] .

Information technology ("IT")

These are of course an item of intellectual property. We have placed them under a separate heading to [redacted] . [redacted] - [redacted] ; [redacted] . [redacted] . [redacted] " [redacted] " [redacted] .

End of notes

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