

AU-CPcsi04

## **Company purchase agreement: shares and cash deal**

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**Agreement for the Sale and Purchase** [ ]

This agreement is dated: [date]

The Seller is: [ABC] Pty Limited, a company incorporated in the Commonwealth of Australia, ACN [number]  
[ ]

The Seller is: [name] of [private address]

OR

The Sellers are: those persons whose names are set out in Part 1  
1 .

The Buyer is: [DEF] Pty Limited, a company incorporated in the Commonwealth of Australia, ACN [number]  
[ ] .

The First Guarantor is: [name] of [private address]

The Second Guarantor is: [name] of [private address]

**It is now agreed as follows:**

## **1. Definitions**

So far as the context permits, the following words

:

“Accounts” means the financial statements, annually audited profit and loss account and balance sheet as at the Last Year End

“Assets” means and include collectively the fixed assets (fixtures and fittings, furniture, office equipment and motor vehicles of the Company), stock and good ,  
2 2 ;

“Buyer New Shares” means the ordinary shares of \$[1] each in the [Enter Buyer(company name)], to be

“Company”	means [name of Company] Limited, the Shares in which
“Confidential Information”	means all information about the Company and parties to this agreement, including any information which may give a commercially competitive : information about staff, their performance and  data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer ; information owned by a third party and in respect of which a party  information, comment or implication published on  information about the Intellectual Property and
“Disclosure Letter”	means the disclosure letter provided by the Seller to the Buyer including all such information to complete the Sale and enclosing all
“Domain Names”	means the Internet domain names used by the Company in connection with its website or in
“Intellectual Property”	means intellectual property owned by the Company, of every sort, whether or not registered or registerable in any country, including Intellectual Property of all kinds coming into existence after today; and including, among others,

“Last Year End”	means [date] (being the date to which the ).
“Property/Properties”	means the land and buildings owned and / or used by the Company, brief details of 2 1 .
“Purchase Price”	means the total price, paid or to
“Sale”	means the sale of the Shares.
“Shares”	[number] ordinary shares of \$ [1] each held by the Seller being the
“Trustee”	means [names, if few] / the Sellers
“Trustee Warranties”	means the limited warranties given by any Trustee.
“Warranty/Warranties”	means the warranties and undertakings of the Sellers contained in paragraph [ 10 ] 3 .

## 2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to a person includes a human individual, a corporate entity, a partnership, a governmental authority
- 2.2. the Sellers shall be jointly and severally liable for every
- 2.3. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted
- 2.4. a reference to a person includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a

- 2.5. a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context
- 2.6. the headings to the paragraphs and schedules (if any) to this agreement are inserted
- 2.7. any agreement by any party not to do or omit to do something includes an obligation not to allow some
- 2.8. [except where stated otherwise], any obligation of any person arising from this
- 2.9. a reference to an act or regulation includes new law of substantially the same
- 2.10. all money sums mentioned in this agreement are calculated net of GST, which will be charged when due by law and payable when
- 2.11. 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 version or translation of this agreement in any other language, the English language version shall prevail. If a version of this agreement

### 3. Entire agreement

- 3.1. Each party acknowledges that this agreement and the Disclosure Letter contain the entire agreement between them and that he relies on no
- 3.2. Each party acknowledges and warrants that he has power to enter into this agreement [and ].

3.3. Each Seller warrants and undertakes that he is not aware of anything within his reasonable control which might or will

## 4. Calculation of the Purchase Price

4.1. The Purchase Price is:

4.1.1 the sum of \$ [amount] (the "Cash")  
;

4.1.2 the sum of \$ [amount], payable by the allotment of [number] of Buyer New Shares in [ - ],  
;

4.2. The Sellers shall share

## 5. The Buyer New Shares: Buyer's obligations

The Buyer undertakes as follows:

5.1. to issue or procure [ ]

5.2. that the Buyer New Shares shall rank

5.3. that each Buyer New Share shall \$ [ ] .

5.4. to procure that the Buyer New Shares shall be

## 6. Buyer's acknowledgment of inspection

The Buyer admits that:

6.1. all of the  
;

6.2. it has made full investigation into the title,

;

6.3. he enters into this agreement on the basis of that

,

## 7. Agreement for Sale and subscription for Buyer New Shares

7.1. The Sellers agree to sell the Shares with full

7.2. The Sellers acknowledge receipt [ ]

7.3. Each of the Sellers hereby waives any pre-

,

7.4. Each Seller now hands to the Buyer a

7.5. So far as the Sellers have any powers or control of any aspect of

,

,

7.6. The Sale is :

7.6.1 the Sellers entering into a shareholders' agreement

,

7.6.2 [Beatrice Blackbird and Robin Finch] each entering

, [

].

## 8. Completion and delivery of documents

8.1. Completion of this Sale shall take

8.1.1 a bank draft

8.1.2 letters of allotment of the Buyer New Shares;

8.2. At completion,

8.2.1 the title deeds relating to

8.2.2 title deeds,

8.2.3 signed share transfer forms

8.2.4 [if the Company

8.2.5 letters of resignation of certain directors, namely [names] and [the secretary of the Company], with

8.2.6 [the resignation of

8.2.7 a list of all user names and

8.2.8 the certificate of incorporation of the Company;

8.2.9 written confirmation by

8.2.10 [employment contracts / service agreements], signed in

8.2.11 all records relating to the employment of any person

6] ;

[

8.2.12 the minutes of meetings

[Buyer nominee name] [ ;

transfer forms ;

the resignations of [name] [ ] [ ]

8.3. Following completion of this Sale, the Buyer shall obtain

8.4. Each Seller undertakes that he will:

8.4.1 immediately repay to the Company any

;

8.4.2 use his best endeavours to do

## 9. Warranties applicability and limitation

9.1. None of the

9.2. Each of the Sellers confirms that when any Warranty refers to

9.3. Each of the

9.4. Nothing done or not done by

9.5. The Buyer may make any agreement with one or more

9.6. If and only if any Warranty cannot be specifically referable to

9.7. Each Seller waives any claim he might have against

## 10. Warranties by Sellers

10.1. The Sellers (except the Trustees) jointly and severally warrant to the  
[

]:

10.1.1 the Sellers are entitled to transfer the Shares to

;

10.1.2 after completion of this ,

;

10.1.3 except as disclosed in the Disclosure Letter, all of the

3

, ,

;

10.1.4 the contents

;

10.1.5 unless otherwise specified,

;

10.1.6 [Each corporate

];

10.1.7 the Shares constitute the whole  
[

]

;

10.1.8 there is

10.2. The Warranties in this agreement are not

OR

10.3. The Warranties in this agreement are not limited in monetary value, but no claim

[ ]

## 11. Trustee Warranties

Each of the Trustees warrants:

11.1. that he has legal title

;

11.2. that he has

;

11.3. that he has no knowledge of any circumstance unknown

## 12. Restrictive agreement

12.1. So that the Buyer has the full benefit

,  
:

12.1.1 for [3] years after completion of the Sale, either alone or jointly with or

12.1.2 at any time after completion of the Sale, disclose to any

12.1.3 for [3] years after completion of the Sale, either on his own account or for any

[ 3 ]

12.2. Each of the Sellers now agrees that

12.3. Following completion of

:

12.3.1 hold himself

;

12.3.2 register nor purchase nor use any name similar to any

## 13. Sellers' protection

13.1. Any claim against any Seller, in relation to the

13.2. No claim shall be valid unless

[ ]

13.3. No single Seller can be liable for any Warranty claim unless his

\$ [ 5 , 000 ].

13.4. In any event, the maximum

\$ [ 100 , 000 ].

13.5. The Buyer may not claim more

## 14. The Guarantee

14.1. [Each of]

:

14.1.1 that every statement,

;

14.1.2 that he will procure

;

14.1.3 that he will indemnify the Buyer against all

,

;

14.2. [Each of] The Guarantor accepts that compliance by the

,

.

14.3. [Each of] The Guarantor accepts that the Buyer is

.

14.4. This guarantee is limited to:

14.4.1 the sum of [sum] in total;

14.4.2 claims notified to the

[ ]

.

## 15. Publicity / Announcements

15.1. No public or press announcement shall be made

,

.

OR

15.2. No party shall:

15.2.1 make any public announcement; or

15.2.2 disclose any information; or

15.2.3 allow expressly or by default any other person

15.3. Except, that no party shall be prohibited from making

15.4. The parties agree to the issue of a  
1 3,

15.5. [Each/every] party

## 16. Miscellaneous matters

16.1. No amendment or variation to this agreement

16.2. The parties acknowledge and agree that this

16.3. Unless otherwise stated in this agreement, all expenses in connection

16.4. So far as any time,

16.5. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated

16.6. Any obligation in this agreement

16.7. If any of the Shares shall at any time be sold or transferred, the benefit

OR

16.8. This agreement shall be binding upon each party's successors, assigns  
and ( )

16.9. No failure or delay by any party to exercise any right,

16.10. The parties agree that

16.11. Any communication to be served on either of the parties

It shall be deemed to have been delivered:

if delivered : ;

if sent by post : 72

;

If sent by e-mail to the address from which the receiving party has  
last sent e-mail: 24

-

. [

-

,

]

16.12. In the event of a dispute between the parties to this agreement,

16.13. This agreement does

16.14. In the event of any conflict between any term of this agreement and the

16.15. This agreement may be executed in multiple counterparts each

16.16. The validity, construction and performance

[ ] .

Signed by [personal name] on behalf of [named ] / [

Signed by [personal name] on behalf of [named ] / [ ]

Signed by [personal name] on behalf of [named ] / [ ]

OR

Signed by [Seller name in full]

AND

Signed by [ / ]

## Schedule 1- Part 1 Shareholdings

*[Here list all sellers, names, addresses*

*]*

*].*

<b>Name</b>	<b>Address</b>	<b>Number of Shares</b>	<b>Signature</b>

## Schedule 1 - Part 2 Details of the Company

### 1. The Company

Company number: [ ] : [ ]

Share capital: [ ] \$ [ ]

*[A company using 2001  
]*

Registered office: [address]

Directors: [list all names in full]

Secretary: [name in full]

## **Schedule 1- Part 3 Press release**

## Schedule 2: Part 1 Properties

*[Please*

*]*

- Freehold Properties
- Leasehold Properties
- Any other particulars

## Schedule 2: Part 2 Assets

*[Please list*

,

*]*

## Schedule 3 - The Warranties

### General

1. All of the information and
2. All facts and data which
3. No information has been held back
4. No governmental organisation
5. The Company has fulfilled every
6. The Company has at all times complied with current practice recommended by any department of government
7. The Company is not bound
8. The Company is not involved
9. No Seller knows of any circumstance which might
- 10.

### No damaging effect of this agreement

- 11.
12. No term of this agreement conflicts with:

12.1.

12.2. the constitution of the Company.

13.

### **Company structure and operation**

14.

15.

16.

17.

18.

18.1. all documents of title relating to its Assets;

18.2.

18.3.

19.

20.

21.

22.

23.

### Accounts

24.

25.

26.

27. The Accounts:

27.1.

27.2.

27.3.

27.4.

28.

its purchase price;

its production cost;

its net realisable value.

29.

30. Since the Last Year End:

30.1.

30.2.

30.3.

31.

**Cash flow**

32.

32.1.

32.2.

32.3.

33.

34.

[ ]

**Taxation**

35.

36.

37.

38.

39.

40.

[ ]

41.

42.

### **Guarantees and borrowing**

43. The Disclosure Letter discloses:

43.1. ;

43.2. the terms of every loan;

43.3. ;

43.4.

44.

45.

46.

### Assets

47.

:

47.1. are in its possession and control.

47.2. ,

47.3. .

47.4. .

47.5. .

### Trading and contracts

48. ,  
- - , / ,

49.

50. Since the Last Year End:

50.1. .

50.2. the Company has paid its creditors promptly.

50.3. .

50.4. [ ] .

51. , :

51.1. .

51.2. no payment due to the Company is overdue.

51.3. all contracts comply with the relevant law.

51.4.

52. [ / ]

53. No existing contract is for work which:

53.1. is beyond the normal course of business.

53.2.

[ ] .

53.3. is likely to result in a loss.

53.4.

53.5. [ 10 ] %

54. [

,  
].

55.

56. [ ],

57. [ 25 ]

[ 25 ]

58.

59.

**Properties - all**

60.

61.

62.

63.

64.

2 1

65.

66.

66.1.

66.2.

66.3. There are no rent reviews in progress.

67.

68.

69.

70.

71.

72.

73.

:

73.1. water;

73.2. drainage;

73.3. electricity;

73.4. gas;

73.5. telecommunications.

74.

·  
·

### **Properties let by the Company**

75.

2 1.

76.

77.

:

77.1. the name and address of the tenant.

77.2. the name and address of any guarantor.

77.3. the address of the Property.

77.4.

77.5. the rent.

77.6.

77.7.

77.8.

77.9.

77.10. any unusual provisions.

78.

## Employment

79.

80.

81.

82.

\$( )

83.

## Pensions

84.

84.1. copies of the trust deeds;

84.2. the latest actuarial report;

84.3. , .

85.

) ( .

## **Insurance**

86.

87. No policy contains any special term or restriction.

88.

, , .

89.

,

90.

- . , .

## **Intellectual Property**

91.

.

92.

.

93.

.

94.

.

95.

.

96.

97.

98.

### **Information technology (“IT”)**

99.

99.1. the name;

99.2. name and contact information of registrant;

99.3. date to which the name is registered.

100.

101.

102.

103.

104.

105.

105.1.

105.2. technical, customer and client support services;

105.3.

105.4. an email service provider.

106.

12

107.

108.

108.1.

108.2. what password he uses;

108.3.

108.4.

# Explanatory notes

## Company purchase agreement: shares and cash deal

### General notes

#### 1. The parties

This agreement has been drawn assuming two or more shareholders are selling a company to one corporate buyer. Little change is required to the substance to replace the corporate buyer by a number ,

#### 2. Complete when agreement dated or later?

This agreement has been drawn for completion immediately “as signed”. Signing completes the deal. The parties must then immediately do whatever else they have promised in order to complete the process. It is perfectly possible to complete at a later date than the agreement is signed. However, problems then arise with control of the company in the meantime and the possibility that anything may change between contract and completion. The Net Lawman recommended route is therefore

### Paragraph specific notes

#### 1. Definitions

The definitions have been considered very carefully. There is no reason why you should not change any if you need to do so, but do be very careful to make

By all means use the find/replace function in your word processor to change them. If you do change a defined term, make sure it

Remember too, that when a word or phrase is defined, the defined meaning capitalised, takes precedence over the

Please read the general notes sent along with

## **2. Interpretation**

A number of provisions, each of which has application at one of more points later in the document. We suggest you do not

## **3. Entire agreement**

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

## **4. Calculation of the Purchase Price**

The sellers are to receive a mixture of cash now, and shares in the buyer company. You should take advice from your accountant as to how to treat these items for tax purposes

## **5. Buyer New Shares: Buyer's obligations**

These include the terms related to new shares in the buyer company. Here you just mention the basic terms. Of course you need a detailed shareholder agreement to protect ongoing interest. Without one, the buyer can do

## **6. Buyer's acknowledgment of inspection**

In practice the buyer will have inspected whatever he needs to inspect. This paragraph is usually required to protect the seller. If you

## **7. Agreement for Sale and subscription of Buyer New Shares**

If you have a straight cash deal, delete all mention of subscription for new shares. If required,

## **8. Completion and delivery of documents**

We have included here only the documents whose form and content are well known in advance. By far the largest set of documents will

- Share certificates are documents of title, but if not available (lost or never issued), a simple declaration to that effect will be sufficient to safeguard a buyer. Large companies no longer issue hard copy

- The buyer will wish to avoid any claim for compensation by a former director. But the directors are not (necessarily) sellers, so it is important that they are bound by the proposition that they have no claim. If they receive no “consideration” as directors, they will not be bound by a simple statement  
“  
”.
- This provides for any key people to remain as employees. Their new contracts would be dated the same date as the agreement and would take
- Of course, the sellers will already have satisfied themselves that the beneficiary of a guarantee (like a bank)

## 9. Warranties applicability and limitation

No comment.

## 10. Warranties by Sellers

"Joint and several liability" means that all the sellers are jointly liable. No one of them can avoid liability to the buyer by saying he was personally not to be blamed. This means that the buyer can (and would) claim against the wealthier sellers if

To avoid this situation, the sellers should prepare a simple shareholders agreement setting out exactly which of them is responsible for what areas and who pays what to whom in the event of a claim. Such an agreement cannot prejudice the buyer, who still may sue whom he wishes. It serves only to sort the position between the shareholders themselves. One of the

A company may sign up to a deal, by the hand of its directors, but if its constitution prevent such a contract being made (for one of any number of reasons), then it can wash its hands of

Unlike the warranties in Schedule 3, these are so fundamental to the transaction that it is reasonable that they should be unlimited. (Remember to change the - !)

## 11. Trustees Warranties

Provision has been made for the proposition that one or more people may hold shares as trustees. The buyer should make certain that any such person is a disinterested trustee. It could be that a major shareholder has placed

some of shares in a family trust and he remains a trustee, or that some other person is a trustee. In that case, there is an argument for the trustee to give the warranties along with other shareholders. Either way, the buyer should insist that such person himself either gives full warranties or guarantees the same on behalf of ( ).

The trustees warrant only that they are selling fairly and know of no reason why the sale should not proceed. He has

## 12. Restrictive agreement

These provisions are required to protect the buyer and are reasonable. Note that they do not prevent a former director from setting up in ,

“ ”

This paragraph may not be enforceable against a shareholder who has hitherto had

## 13. Sellers' protection

This paragraph is most important to the sellers as it caps their liability. How this is done is a matter for negotiation. This proposal is fair, subject of course to

## 14. The Guarantee

This paragraph protects the buyer against a seller who spend the sale proceeds and refuses to assist as this agreement requires. That will arise only when the

In that case, your guarantors will be the directors of the holding company seller.

A judge will usually treat a guarantee as a matter only of money. We have worded this one clearly so that there is

## 15. **Publicity / announcements**

This may not be important to

## 16. **Miscellaneous matters**

A number of special points. We have identified each of these as important to protect you. Some are relevant to particular paragraphs in the document, some apply more

## **The Schedules**

We have no comment.

## **Notes on Warranties**

Before we give you other drafting notes, we want to explain about warranties.

Warranties are the essence of the deal. They are listed in a schedule. Do make sure that the paragraph of

These warranties have been drawn to provide as large a "menu" as

For maximum protection,

Delete any warranties that cannot apply to your

Do not delete warranties relating to matters about which full information has already been provided. If you

Take the document to your accountant to

For sellers, the strength of a warranty may be greatly reduced simply by changing

## Explanation of warranties

Unlike any sale agreement, a company sale agreement is different. The main proposition is

The agreement is usually drawn by the buyer. That is fair because the buyer knows nothing about the company and the seller knows everything (we hope)! So the agreement first covers

These are just assurances or guarantees from the seller as to the condition and state of the company and in particular, any existing liabilities, at the time of sale. No matter how thorough

## How to use warranties?

### If you are seller

The warranties are not so much the sting in the tail as half the dog. Many solicitors and entrepreneurs will deliberately insist on a seller giving

As a seller, you have a number of

- when you produce the draft agreement, remove the most “difficult” warranties before you send it to the buyer.
- provide clear and open disclosure to
- after considering the breadth of each warranty, you could edit those that
- Even where you “answer” the warranty in some way, there is still a strong case for qualifying absolute warranties,

” “  
” .

Being the seller it is essentially important to provide full and

### **If you are the buyer**

The weight of advantage is very firmly with the seller. He has the knowledge. You have none.

As a buyer you need warranties:

- to provide yourself
- The general rule of "buyer "
- In deciding to purchase share capital of the company, you have made a number of assumptions but
- To get the right to claim

Either you are the

### **Warranties: drafting notes continued**

It is good practice to delete irrelevant warranties, but by

“ ” “

### **General**

These are very basic and general requirements. They are also broad, covering

## **No damaging effect of this agreement**

The buyer needs to

## **Company structure and operation**

With reference to licences and consents: in any business which has been operating for more than a few years,

## **Accounts, Cash flow and Taxation**

The buyer should take advice

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

## **Guarantees and borrowing**

A list of creditors should be readily

## **Assets**

Even if all accounts information is absolutely correct, assets

The most important answers sought here are as

!

## **Trading and contracts**

This section covers every contract - from customers and suppliers to the office cleaner and the car leases. The buyer's requirement for details of customers and suppliers will be less important

1 , 000

( )

The most common reason for litigation about contracts arises because someone

### **Properties - all**

Real property is

Most of these items cover the facts that would be

### **Properties let by the Company**

If none, delete.

### **Employment**

We have no comment. Set the warranties

“ ”

### **Pensions**

We have no comment.

### **Insurance**

We have no comment.

### **Intellectual Property**

All business acquires some intellectual property. Even quite small

A buyer should consider what IP this company might need

### **Information technology (“IT”)**

IT is of course intellectual property. We have placed it under a separate heading to cover the

**End of notes**