IE-COMbsl07

Business sale agreement: takeaway food retailer

Date: [date]

Between:

The Buyer is: [name] ■ ■ ■ ■ [■ ■ ■ ■]

The Seller is: [name] ■ ■ ■ ■ [■ ■ ■ ■]

The Guarantor is: [name] ■ ■ ■ ■ [■ ■ ■ ■]

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Schedule 5: Press release

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]

The First Guarantor is: [name]

Of [private address]

The Second Guarantor is: [name]

Of [private address]

OR

Corporate version (use for an LLP too)

The Buyer is: ABC Limited, a company incorporated in England and Wales [under company registration number [number] ■ ■ ■ ■] ■ [■ ■ ■ ■ ■ ■ ■ ■].

The Seller is: DEF Limited, a company incorporated in England and Wales [under company registration number [number] ■ ■ ■ ■] ■ [■ ■ ■ ■ ■ ■ ■ ■].

The First Guarantor is: [name]

of [private address]

The Second Guarantor is: [name]

of [private address]

NOTE:

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*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 ■ , ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

the Business, [redacted].

"Creditors" means trade creditors and accrued charges in connection with the Business [redacted].

"Disclosures" means the disclosures set out in [redacted].

"Disclosure Letter" means the disclosure letter of the same date as this agreement from the Seller [redacted].

“Distributor” means a third party who has contracted to re-[redacted] [[redacted] / [redacted]].

"Domain Name” means any or all of the [redacted]:
[name1].ie
[name2].ie
[name3].ie

"Employee/Employees" means a person who is employed by the Seller for [redacted].

"Excluded Assets” means the Assets listed in Schedule 3 which are owned by the Seller but [redacted].

"Goodwill" means the goodwill in relation to the Business, being goodwill of the Seller until [redacted].

"ISP" means the Internet service provider; [redacted].

“Lease” means the lease or leases [redacted], [[redacted] ,] [redacted]

"Payment Service Provider" means the banking intermediary who provides [redacted]

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	■ ■ ■ ■ ■ ■ ■ ■ ■ .
"Price"	means the ■ .
“Products / Services”	means the products ■ .
"Property/Properties"	means the freehold or leasehold properties, ■ ■ ■ ■ ■ ■ ■ ■ ■ , ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

[redacted].

2.4. Every reference to the Company [redacted].

3. Interpretation

This agreement [redacted].

3.1. A reference to a person includes a [redacted], [redacted].

3.2. A reference to the knowledge, information, belief or awareness [redacted], [redacted], [redacted].

3.3. A reference to a paragraph or schedule is to [redacted]. [redacted].

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

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

3.6. [except where stated otherwise], [redacted].

3.7. 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].

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4. Entire agreement

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

4.2. So far as any relevant law permits, conditions, [redacted] , [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. Buyer's acknowledgment of inspection

The Buyer admits that:

5.1. the Assets agreed [redacted] ; [redacted]

5.2. he enters into this agreement on the basis of [redacted] , [redacted] .

6. Agreement for sale

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

6.1.1 the Business as a going concern;

6.1.2 the lease of the Property;

6.1.3 the Assets;

6.1.4 the Stocks;

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6.1.5 the Domain Name(s);

6.1.6 the Website;

6.1.7 the benefit of the Contracts, ■■■

8.2.1 as to € [amount], by banker's draft / [redacted].

8.2.2 as to the [redacted], [redacted].

8.3. If the assignment of the Lease cannot be completed today, [redacted] / [redacted] € [[redacted]] [redacted].

8.4. Value added tax will [redacted]:

[list property on which VAT payable].

OR

8.5. The Price [redacted].

9. Items to be delivered at completion

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

9.1. whatever the [redacted];

9.2. all data in electronic form, [redacted];

9.3. complete records relating to Employees, [redacted], [redacted] [6] [redacted].

9.4. signed and certified copy of the minutes of a meeting of the shareholders of the Company authorising [redacted] [[redacted]];

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9.5. assignment of the leasehold Property [unless [redacted]];

9.6. transfers of the [redacted] ;

9.7. marketing material of every sort in any medium;

9.8. all other [redacted] .

10. Completion

10.1. As soon as the items listed above have passed into the possession [redacted] .

10.2. 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] .

10.3. As soon as possible and in any event within [two days] from [redacted] .

10.4. The Seller has a continuing obligation to do what is [redacted] .

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

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

11. Employees transferred

11.1. The parties agree that with effect from today, the [redacted] .

11.2. The Buyer agrees to indemnify the Seller against any [redacted] .

12. Value Added Tax (VAT)

12.1. The parties shall procure that the sale of the Business [redacted] .

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

12.3. The Buyer shall for a period of not less than [6 years] [redacted] , [redacted] , [redacted] .

13. Warranties by the Seller

13.1. The Seller warrants to the Buyer that:

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

13.1.2 the Disclosures are true, accurate and comprehensive;

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

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

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

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

OR

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

14. Limitation of Seller's liability

Except in the case of death or personal injury, the total liability of the Seller under [redacted] , [redacted] , [redacted] € [10 , 000]. [redacted] , [redacted] .

15. Future activities

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

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15.1. commence or continue any business or activity [redacted] [redacted] [redacted] [redacted] .

15.2. within [three years] of today, employ or provide work [redacted] , [redacted] [redacted] [redacted] [redacted] .

15.3. trade under any name [redacted] .

16. The Guarantee

16.1. [Each of] [redacted] :

16.1.1 that every statement, [redacted] ;

16.1.2 that he will procure [redacted] ;

16.1.3 that he will indemnify the Buyer against all [redacted] , [redacted] ;

16.2. [Each of] The Guarantor accepts that compliance by the [redacted] , [redacted] .

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

16.4. This guarantee is limited to:

16.4.1 the sum of [sum] in total;

16.4.2 claims notified to [redacted] [redacted] [redacted] .

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17. Confidentiality

17.1. The Seller now undertakes that he will:

17.1.1 except as provided in this [redacted] , [redacted] ;

17.1.2 not use the Confidential [redacted] ;

17.1.3 not use any name or mark similar [redacted] ;

17.1.4 not use any trade name or [redacted] .

17.2. The obligations set out in this paragraph [redacted] .

17.3. The provisions of this paragraph shall continue [redacted] [[redacted]] [redacted] .

18. Publicity / Announcements

18.1. No public or press announcement shall be made [redacted] .

OR

18.2. No party shall:

18.2.1 make any public announcement; or

18.2.2 disclose any information; or

18.2.3 allow expressly or by default any other person [redacted] .

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except, that no party shall be prohibited from making [redacted] [[redacted]].

18.3. The parties agree to the issue of [redacted] 5 , [redacted] .

19. Miscellaneous matters

19.1. No amendment or variation to this agreement [redacted] , [redacted] .

19.2. The parties acknowledge and agree that this [redacted] .

19.3. So far as any time, [redacted] , [redacted] .

19.4. 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 [redacted] , [redacted] . [redacted] , [redacted] .

19.5. [redacted] .

19.6. [redacted] .

19.7. [redacted] , [redacted] .

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19.8. [redacted].

19.9. [redacted] - [redacted].

It shall be deemed to have been delivered:

[redacted]: [redacted];

[redacted]: [redacted] 72 [redacted];

[redacted] - [redacted] - [redacted]: [redacted] 24 [redacted] - [redacted]. [[redacted] - [redacted]. [redacted], [redacted] ([redacted]) [redacted]].

19.10. [redacted], [redacted].

19.11. [redacted], [redacted].

19.12. [redacted].

19.13. [redacted], [redacted].

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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.

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

OR

Signed by [Seller name in full]

AND

Signed by [Buyer name in full]

AND

Signed by [Guarantor name in full]

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Schedule 1: Leasehold Property

[redacted].

[[redacted], [redacted] ([redacted] 21 [redacted]), [redacted], [redacted]]

1. [redacted].

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

3. [redacted], [redacted], [redacted].

4. [redacted]

OR

5. [redacted] € [[redacted]] [redacted], [redacted].

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

7. [redacted], [redacted].

OR

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8. [redacted]

AND

9. [redacted]:

9.1 [redacted];

9.2 [redacted];

9.3 [redacted].

9.4 [redacted].

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

9.6 [redacted].

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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

Signed by [personal name], the Guarantor

Witness to signature:

Name:

Address

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Schedule 2: Assets

[list assets]

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Schedule 3: Excluded Assets

[list excluded assets]

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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], [redacted].

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

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

Accounts

8. [redacted] [[redacted]] [redacted].

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9. [redacted] [redacted].

10. The Accounts:

10.1. [redacted];

10.2. [redacted], [redacted];

10.3. [redacted] 2014, [redacted];

11. [redacted].

12. [redacted].

13. [redacted]; [redacted]

13.1. [redacted];

13.2. [redacted].

13.3. [redacted].

Assets

14. All Assets:

14.1. are transferred by this agreement and

14.2. [redacted], [redacted];

14.3. [redacted];

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15. ■■■

25. [redacted].

26. [redacted].

27. [redacted].

Leasehold Property

28. [redacted].

29. [redacted].

30. [redacted].

31. [redacted].

32. [redacted].

33. [redacted]:

    33.1. water;

    33.2. drainage;

    33.3. electricity;

    33.4. gas;

    33.5. telecommunications.

34. [redacted].

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35. As to the lease:

35.1. [redacted] 21 [redacted], [redacted];

35.2. [redacted].

35.3. there are no rent reviews in progress.

36. [redacted], [redacted], [redacted]-[redacted].

Information technology ("IT")

37. [redacted]:

37.1. the name;

37.2. name and contact information of registrant;

37.3. [redacted], [redacted];

37.4. date to which the name is registered;

38. [redacted].

39. [redacted], [redacted].

40. [redacted], [redacted]:

40.1. [redacted];

40.2. an email service provider.

41. [redacted]. [redacted]

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[redacted] 12 [redacted].

42. [redacted], [redacted].

43. [redacted], [redacted]:

43.1. [redacted];

43.2. what password he uses;

43.3. [redacted].

43.4. [redacted].

End of Warranties

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Schedule 5: Press release

[Set down the text you have agreed.]

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Explanatory notes:

Business sale agreement: takeaway food retailer

General notes

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

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 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ . ■ - ■ . ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

You should **first decide on the contents of the document**, then return to check what definitions are needed and whether they really ■ ■ ■

The buyer may wish to apportion the purchase price among the assets first, for tax purposes; and second, 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 [redacted] .

For various tax purposes it may be important to specify [redacted] :

Goodwill

Leasehold property

Assets

Stock for sale or manufacture

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

9. 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 [redacted] . [redacted] , [redacted] .

The necessity to transfer rights and contracts with third party suppliers causes problems. Issues arise because Internet service suppliers usually operate on [redacted] . [redacted] . [redacted] .

We suggest that the best way must be to put the obligation on the seller to get all service changes in place. That means the seller has to contact all [redacted] . [redacted] .

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

10. Completion

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It is a matter of negotiation and agreement as to the mechanics of completion and in particular when final issues are to be completed. Leasehold property will have been dealt with in advance, but domain names may present more difficulty since there are no provisions for a conditional transfer. The buyer has to decide how long [redacted].

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

11. Employees transferred

The law is quite complicated. Put very simple, an employer may not sell or transfer any business organisation ("undertaking") without also transferring the employees who work [redacted] 2003 [redacted]:

http://www.irishstatutebook.ie/eli/2003/si/131/made/en/print

12. Value Added Tax (VAT)

First, be sure to apply to be registered for VAT before this agreement is signed, so that [redacted].

13. Warranties by the Seller

See later for full [redacted].

This paragraph - confirmation of the warranties - is critical to [redacted].

This paragraph provides for the warranties to be given by both the seller and the guarantor. In addition, in another paragraph, the guarantor guarantees the performance of the contract by the seller. The buyer's position against [redacted]

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[redacted].

The guarantor may have a lesser interest than the legal seller, for example as a non-executive director of the seller, or as a relative of the seller if an individual. In that case, [redacted]. [redacted], [redacted].

The extent of the guarantee can also be [redacted].

Generally, it is good practice to delete irrelevant warranties, but by all means leave in “tough” [redacted]. [redacted] “ [redacted] ” [redacted].

To claim for breach of warranty the buyer must prove money loss. He is also under a duty of care to reduce his loss so far as [redacted]. [redacted], [redacted].

14. Limitation of Seller’s liability

This paragraph limits the liability of the seller. This is a usual provision, but flexible, [redacted]. [redacted], [redacted].

15. Future activities

The buyer should never take the seller's word for the proposition that the seller will not compete and will say only good things about the buyer and the business. The seller should be bound to appropriate "good behaviour". A covenant (promise) not to compete is not enforced by the courts unless it is reasonable in [redacted]. [redacted]. [redacted]. [redacted], [redacted].

16. The Guarantee

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This agreement is guaranteed by two individuals. If the seller is ■ ■ ■ ■ ■ ■ ■ , ■ ■ ■ ■ ■ ■ ■

[redacted] .

However, the seller should also require a document in which the landlord gives his consent to the assignment and accepts the buyer as his new tenant. If he fails to do so, the buyer is technically a [redacted] , [redacted] , [redacted] , [redacted] .

Schedule 2 - Assets

List assets to be sold

Schedule 3 - Excluded Assets

List excluded assets

Schedule 4 - Warranties:

Note: matters relating to warranties

To use this document you have to understand how warranties work. They are simpler than you thought! Here now is an [redacted] . [redacted] , [redacted] , [redacted] .

Warranties - the inside-out promises

I will now address the task itself and tell you how to make it happen. The first matter to consider is the “back-to-front” way in which the buyer or his lawyer pulls out information from a seller. [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 agreement first covers the mechanics of the deal - what is being sold, where it is, how it is to be transferred, and so on. Then it [redacted] “ [redacted] ”. [redacted] . [redacted] , [redacted]

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[redacted], [redacted].

Warranties work like this: I am a seller. You produce an agreement. In that agreement, [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:

“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]

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

Warranties - buyer's response

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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].

Warranties: drafting notes continued

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

General

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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

It is unlikely that the buyer will take over many of the contracts. It is [redacted] .

Even if a contract, with an important supplier, for example, is not [redacted] .

This section covers every contract - from customers and suppliers to the office cleaner and the car lease. Particular care should be taken with [redacted] .

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

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

Employees

The proposition in law is that the transfer of the ownership [redacted] (" [redacted] ") [redacted] . [redacted] , [redacted] .

Despite these extensive [redacted] , [redacted] .

Leasehold Properties

Most of these items [redacted] .

Personal data protection

We suggest leave it as is.

Information technology (“IT”)

A domain name used in e-commerce is not merely a [redacted] , [redacted] . [redacted] . [redacted] " [redacted] " [redacted] .

Schedule 5 - Press release

Provide text or delete if not required

End of notes

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