

IN-COMbsl04

## **Business sale agreement: restaurant; pub or bar**

**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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**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**

The Buyer is: ABC Pvt Limited, a company incorporated in the Republic of India [under corporate identification number [number] ].

The Seller is: DEF Pvt Limited, a company incorporated in the Republic of India [under corporate identification number [number] ].

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

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

**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*

**It is now agreed as follows:**

## **1. Definitions**

So far as the context permits, the following words

:

- |                            |  |
|----------------------------|--|
| "Accounts"                 | means the audited profit and loss account of the Business, made up to [day and month] in each year and the   |
| "Last Accounts Date"       | means the date to which the Accounts have  |
| "Assets"                   | means all tangible and intangible assets whatever, owned by the  |
| "Business"                 | means the [type of business] business carried on by the Seller until today under the name and style [ ]  |
| "Confidential Information" | means all information about the Business, including any information which may give a commercially competitive advantage to<br><br>information about employees, their performance and<br><br>data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer |
| "Contracts"                | means current contracts of the Seller in relation  |

to the Business,

"Creditors"	means trade creditors and accrued charges in connection with the Business
"Disclosures"	means the disclosures set out in
"Disclosure Letter"	means the disclosure letter of the same date as this agreement from the Seller
"Domain Name"	means any or all of the : <a href="#">[name1].com</a> <a href="#">[name2].com</a> <a href="#">[name3].co.in</a>
"Employee"	means a person who is employed by the Seller for
"Excluded Assets"	means the Assets listed in Schedule 3 which are owned by the Seller but
"Goodwill"	means the goodwill in relation to the Business, being goodwill of the Seller until
"Intellectual Property"	means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today, and including patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, know-how, creations

"ISP"	means the Internet service provider; that is any provider of any service in
"Lease"	means the lease or leases , [ ,]
"Payment Service Provider"	means the banking intermediary who provides
"Price"	means the
"Products / Services"	means the products
"Property/Properties"	means the freehold or leasehold properties, , 1 .
"Stocks"	means stocks of Products, raw materials, work in progress and finished goods, and goods for - , , , .
"Warranty/Warranties"	means the warranties and
"Website"	means <a href="#">www.[URL]</a> and <a href="#">www.[URL]</a> and

## 2. Corporate seller provisions

If the Seller is a

2.1. Every reference to the Seller shall be interpreted

2.2. The Business may

2.3. Every reference to the Business shall be interpreted as

2.4. Every reference to the Company

## 3. Interpretation

This agreement

3.1. A reference to a person includes a

3.2. A reference to one

3.3. In connection with any benefit given by

3.4. A reference to a person includes reference to that person's successors, legal representatives,

3.5. A reference to the knowledge, information, belief or awareness

- 3.6. A reference to a paragraph or schedule is to
- 3.7. The headings to the paragraphs and schedules ( )
- 3.8. Any agreement by any party not to do or
- 3.9. [\[except where stated otherwise\]](#),
- 3.10. A reference to an act or
- 3.11. All money sums mentioned in this
- 3.12. 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

## 4. Entire agreement

- 4.1. Each party acknowledges that this agreement and the Disclosure Letter
- 4.2. So far as any relevant law permits, conditions,



4.3. Each of the parties warrants that he

[  
].

4.4. The Seller warrants and undertakes that he is not

## 5. Buyer's acknowledgment of inspection

The Buyer admits that:

5.1. the Assets agreed

;

5.2. he enters into this agreement on the basis of that inspection and not in reliance on

[

].

## 6. Agreement for sale

6.1. Subject to the terms of this agreement,

:

6.1.1 the Business as a going concern;

6.1.2 the Goodwill;

6.1.3 the Property;

6.1.4 the Assets;

6.1.5 the Stocks;

6.1.6 the Intellectual Property rights;

6.1.7 the Domain Name(s);

6.1.8 the Website;

6.1.9 the benefit of the Contracts,

;

6.1.10 all other Assets owned by

6.2. Completion shall take place today,

6.3. The assignment of the leasehold

1.

## 7. Transfer of Contracts

The Seller undertakes that for a period of [\[three\]](#) years, he will do his utmost

7.1. enter into any novation agreement.

7.2. provide information about any  
[ ]

7.3. confirm to any person or governmental authority such details

7.4. immediately inform the

## 8. The Price

8.1. The Price for the Business shall

Goodwill Rs [ ]

Freehold Properties Rs [ ]

Leasehold Properties Rs [ ]

Assets Rs [ ]

Intellectual Property rights Rs [ ]

Contracts and all other property	Nil
The Stocks	To be ascertained
<b>Total Price [excluding Stock]</b>	<b>Rs[    ]</b>

8.2. Insofar as this agreement provides for the transfer to the Buyer of

8.3. The Price shall be paid as follows:

8.3.1 as to Rs [amount], by banker's draft /

8.3.2 as to the

8.4. If the assignment of the Lease cannot be completed today,

[       ]

8.5. Value added tax will

*[list property on which VAT payable]*

OR

8.6. The Price

## 9. Items to be delivered at completion

The Seller shall handover to the Buyer or otherwise delivers

9.1. whatever the

9.2. all books

- 9.3. computer programmes  
;
- 9.4. all data in electronic form,  
;
- 9.5. all information and records relating to customers and suppliers,  
including a list of all the [            ]  
[            ],  
;
- 9.6. complete records relating to Employees,  
[ 6 ] .
- 9.7. [if the seller is a limited company] signed and certified copy of the  
minutes of a meeting of  
  
[            ]  
];
- 9.8. assignment of the leasehold Property [unless  
];
- 9.9. forms of transfer of  
;
- 9.10. transfers of the  
;
- 9.11. marketing material of every sort in any medium;
- 9.12. all other .

## 10. Completion

- 10.1. As soon as the items listed above have passed into the possession  
,
- 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.

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

10.4. The Seller has a continuing obligation to do what is ,

10.5. The Buyer shall not be obliged to

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

## **11. Employees transferred**

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

11.2. The Buyer agrees to indemnify the Seller against any

## 12. Stocks

12.1. For the purpose of [ ],

OR

12.2. The parties shall within [14 days] of today's date jointly attend to the

AND

12.3. Any dispute as to the value of the Stocks shall be referred for final settlement to a firm of [chartered accountants] nominated jointly by the Seller and the Buyer. The accountants shall be

AND

12.4. The amounts agreed or decided under the last previous sub-paragraph shall

[ ]

12.5. The Seller shall be liable for

## 13. Creditors and liabilities

13.1. The Seller shall immediately discharge all the debts of the

OR

13.2. The Seller shall remain liable for all claims by third parties in respect of any [Products / Services] supplied by the Seller or any act or omission of the Seller prior

13.3. After today, the Buyer must discharge the outstanding obligations and liabilities of the Seller under the Contracts,

[ / ]  
].

13.4. The Buyer shall not be liable for any breach of any contract by the

## 14. Value Added Tax (VAT)

14.1. The parties shall procure that the sale of the Business

14.2. The parties have entered into this agreement on the basis that

14.3. The Seller shall immediately deliver to

14.4. The Buyer shall for a period of not less than [6 years]

## 15. Warranties by the Seller

15.1. The Seller warrants to the Buyer that:

15.1.1 the Warranties set [ 4 ]  
;

15.1.2 the Disclosures are true, accurate and comprehensive;

15.1.3 where any Warranty refers to the knowledge, information

15.1.4 where the subject matter of a Warranty may refer both to the

15.2. The Seller agrees to indemnify the Buyer against all costs claims and

15.3. The Warranties in this agreement are not

OR

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

[ ]

## 16. Limitation of Seller's liability

16.1. Except in the case of death or personal injury, the total liability of the  
Seller under



[ 100 , 0000 ].

16.2. This paragraph (and any other paragraph which excludes or restricts the )

## 17. Future activities

In order to give the

17.1. commence or continue any business or activity whatsoever [ 3 ]

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

[ ]

17.3. trade under any name

## 18. The Guarantee

18.1. [Each of]

18.1.1 that every statement,

18.1.2 that he will procure

18.1.3 that he will indemnify the Buyer against all

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

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

18.4. This guarantee is limited to:

18.4.1 the sum of [sum] in total;

18.4.2 claims notified to [ ]

## 19. Confidentiality

19.1. The Seller now undertakes that he will:

19.1.1 except as provided in this , ;

19.1.2 not use the Confidential ;

19.1.3 not use any name or mark similar ;

19.1.4 not use any trade name or

19.2. The obligations set out in this paragraph

19.3. The provisions of this paragraph shall continue [ ]

## 20. Publicity / Announcements

20.1. No public or press announcement shall be made

OR

20.2. No party shall:

20.2.1 make any public announcement; or

20.2.2 disclose any information; or

20.2.3 allow expressly or by default any other person

except, that no party shall be prohibited from making

[  
].

20.3. The parties agree to the issue of

6 ,

## 21. Damages not adequate

,  
, [ ]  
,  
,  
[ / ]

## 22. Miscellaneous matters

22.1.

22.2.

22.3.

22.4.

22.5.

22.6.

22.7.

22.8.

22.9.

It shall be deemed to have been delivered:

;

72 ;

- : 24

. [

1. ) ( ,

22.10.

,

22.11.

,

22.12.

22.13.

22.14.

22.15.

**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 ]**

## Schedule 1: Leasehold Property

50

[ , ]

1.

2. [ ]

3.

4.

OR

5. [ ] ,

6.

7.

OR

8.

AND

9.

9.1

9.2

9.3

9.4

9.5

9.6



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

## Schedule 2: Assets

*[list Assets]*

## **Schedule 3: Excluded Assets**

*[list excluded assets]*

## Schedule 4 - Warranties

[

,

.]

### General

1.

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2.

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3.

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4.

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5.

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7.

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8.

[ ]

,

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### Accounts

9.

[ ]

10.

[ ].

11. The Accounts:

11.1.

;

11.2.

;

11.3.

2013 ,,

;

11.4.

12.

:

its purchase price;

its production cost;

its net realisable value.

13.

14.

,

;

14.1.

;

14.2.

14.3.

15.

**Assets**

16. All Assets:

16.1. are transferred by this agreement and

16.2.

16.3.

17.

[ [ ] ]

**Trading and Contracts**

18.

[ / ]

19.

20.

]

21.

].

22.

23.

24.

25.

### **Employees**

26. The Disclosure Letter contains for each Employee:

26.1. an employment history;

26.2. a curriculum vitae;

26.3. terms of employment;

26.4. non-contractual matters and informal arrangements.

27.

28. [ ] ,  
[ ] %  
].

29.

[ ]

30.

[ ]

31. The Seller is involved in no employment dispute.

32.

33.

34.

35.

[ 50 ]

### **Statutory restrictions**

36.

2002 .

37.

38.

39.

### **Litigation and regulation**

40.

41.

42.

### **Leasehold Properties**

43.

1 .

44.



- 45. 1
- 46.
- 47. -
- 48.
- 49.
- 50.
- 51. :
- 51.1. ;
- 51.2.
- 52. :
- 52.1. water;
- 52.2. drainage;
- 52.3. electricity.
- 53.
- 54.
- 55. As to the leases:

55.1.

55.2. there are no rent reviews in progress.

56.

## **Intellectual Property**

57.

58.

59.

60.

61.

62.

63.

## **Information technology ("IT")**

64.

64.1. the name;

64.2. name and contact information of registrant;

64.3. date to which the name is registered;

65.

66.

67.

67.1.

67.2. technical, customer and client support services;

67.3.

67.4. an email service provider.

68.

12

69.

70.

70.1.

70.2. what password he uses;

70.3.

70.4.

**End of Warranties**



## **Schedule5 - Pension scheme**

## **Schedule6 - Press release**

*[Set down the text you have agreed].*

# Explanatory notes:

## Business sale agreement: restaurant; pub or bar

### General notes

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

#### 1. Who is the named seller?

In naming a party at the top of the document, use the personal version for any human person or people who are together a partnership,

#### 2. The Guarantee

This note covers the general proposition about a guarantee. As you will appreciate, a contract with a company is often worth nothing. The money you pay could be in the Bahamas with the director and his wife a few hours after you have completed. If you buy from a human person, you are safer, but

For a company, the guarantors should be the directors or controlling shareholders. For a private individual, insist on a spouse, life partner

If the seller is just one individual, he may be prepared to become bankrupt after having transferred assets to a spouse. So you

You can obtain additional security by structuring your deal for payment in instalments, particularly if the amount is related to profit performance. Most sellers will be reluctant to accept this,

#### 3. 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

#### 4. Parties named

In naming a party at the top of the document, use the personal version for any human person or people who are together a partnership,

## **5. 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

## **6. Disclosure letter to be worked up**

The agreement proposes that the disclosure letter is handed over at completion. It is - in the final 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

## **7. Real property references**

If no real property is to change hands, delete all references to it. Otherwise, read on. A formal legal assignment of each property will be required. This document contains a form of assignment of leasehold in the first schedule. It should be repeated for each

## **8. Initial extra pages**

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

## **Matters relating to numbered paragraphs in the document**

(some points are covered in the Warranties )

### **1. Definitions**

Please read the general notes sent along with



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

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

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

## **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 seller company. If the seller in

## **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.

## **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

## **5. 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

## **6. Agreement for sale**

There is an overlap in this list: use the descriptions that are

## **7. 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

## **8. The Price**

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

For various tax purposes it may be important to specify

:

Goodwill

Leasehold property

Assets

Intellectual Property

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

## **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 of them when you send him with a copy of this agreement in final form. Remember to

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.

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

Alternatively, the buyer should open his own separate account with

## 10. 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. 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

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

## 11. Employees transferred

The law is quite complicated, but very simple, an employer may not sell or (“ ”)

## 12. Stocks

Stock can be anything, so the agreement is drawn in broad terms. In practice, there will be occasions when ten people employed by auditors will be needed to count the stocks and other occasions when

### **13. Creditors and liabilities**

We think this is a good arrangement but

### **14. Value Added Tax (VAT)**

The transfer of business as going

### **15. Warranties by the Seller**

See later for full

This paragraph - confirmation of the warranties - is critical to

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

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,

The extent of the guarantee can also be

Generally, it is good practice to delete irrelevant warranties, but by all means leave in "tough"

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

### **16. Limitation of Seller's liability**

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

#### **17. 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

#### **18. The Guarantee**

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

This is a very tough guarantee. It assumes that the guarantors are able to perform - that they are the people with whom you have negotiated your purchase. In court, a guarantee is usually treated as

#### **19. Confidentiality**

Warranties cover only matters that exist at the date of the sale. The future must be covered separately. Confidential Information is defined as that relating to the business, so this paragraph protects the secrets of the

#### **20. Publicity / Announcements**

Edit or delete.

#### **21. Damages not adequate**

Technical provision to prevent a judge from insisting on damages only,

## **22. 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

These are just as valid in law as if we had written them

## **Notes on the schedules**

### **Schedule 1: Leasehold property**

We have provided a full leasehold assignment

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

### **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

## 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.

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

Warranties work like this: I am a seller. You produce an agreement. In that agreement, ( )  
60

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

In that way, before he can sue you, the buyer has to

“Where any warranty refers to the knowledge, information





- in your draft disclosure letter, which
- Consider the breadth of each warranty.
- Even where you “answer” the warranty in some
- At all costs avoid the easy way out of leaving the warranties

**Warranties - buyer’s response**

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

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

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

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

Some lawyers acting for a buyer will see the provision of warranties as an opportunity to go back to

## Warranties: drafting notes continued

It is good practice to delete irrelevant warranties,

### General

These are very

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

### Accounts

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

### 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. Particular care should be taken with

) / , (

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

The most common reason for litigation about contracts arises because someone,

## **Employees**

The proposition in law is that the transfer of the

Despite these extensive ,

## **Statutory restrictions**

These warranties are general,

## **Litigation and regulation**

We have no comment

## **Leasehold Properties**

Most of these items

## **Intellectual Property**

All business acquires some intellectual property. Even quite small

### **Information technology (“IT”)**

These are of course an item of intellectual property. We have placed them under a separate heading to

;

" "

### **Schedule 5 - Pension scheme**

Provide the details of pension scheme and arrangements

### **Schedule 6 - Press release**

Provide text or delete if not required

**End of notes**