

Business sale agreement: Internet-based services provider

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 identity number [number]].
[].

The Seller is: DEF Pvt Limited, a company incorporated in the Republic of India [under corporate identity 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
- information about employees, their performance and
- data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer
- information about the Intellectual Property, the

	<p>Know-how and all ; </p> <p>information created or arising from this agreement;</p> <p>information owned by a third party and in respect of which the Seller</p> <p>information, comment or implication published on</p>
"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 : [name1].com [name2].com [name3].co.in
"Employee"	means a person who
"Excluded Assets"	means the Assets listed in Schedule 3
"Goodwill"	means the goodwill in relation to the ,

"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
"ISP"	means the Internet service provider;
"Know-how"	means scientific or technical information, and
"Lease"	means the lease or leases under
"Payment Service Provider"	means the banking intermediary who provides
"Price"	means the
"Products / Services"	means the products
"Third Party Software"	means software owned by some
"Warranty/Warranties"	means the warranties and

"Website" means [www.\[URL\]](#) and [www.\[URL\]](#) 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 a paragraph or schedule is to
- 3.6. The headings to the paragraphs and schedules ()
- 3.7. Any agreement by any party not to do or
- 3.8. A reference to an act or
- 3.9. All money sums mentioned in this
- 3.10. 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. Agreement for sale

5.1. Subject to the terms of this agreement,

:

5.1.1 the Business as a going concern;

5.1.2 the Goodwill;

5.1.3 the Assets, excluding the Excluded Assets;

5.1.4 the Intellectual Property rights;

5.1.5 the Domain Name(s);

5.1.6 the Website;

5.1.7 the benefit of ,

5.2. Completion shall take place today,

6. Transfer of Contracts

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

,

:

6.1. enter into any novation agreement.

6.2. provide information about any
[] .

6.3. confirm to any person or governmental authority such details

6.4. immediately inform the

7. The Price

7.1. The Price for the Business shall

:

Goodwill	Rs []
Assets	Rs []
Intellectual Property rights	R []
The Contracts and other intellectual property rights	Nil
Total Price	Rs []

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

-

7.3. The Price shall be paid as to Rs [amount],

/

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

/

[]

7.5. Value added tax will

:

[list property on which VAT payable]

OR

7.6. The Price

8. Items to be delivered at completion

The Seller shall handover to the Buyer or otherwise deliver

- 8.1. whatever the
;
- 8.2. all books of account,
;
- 8.3. a list of user names
;
- 8.4. all data relating to the business,
;
- 8.5. all information and records relating to customers and suppliers,
including a list of all the []
[],
;
- 8.6. complete records relating to Employees,
[6] .
- 8.7. *[if the seller is a limited company]* signed and certified copy of the
minutes of a meeting of

[
];
- 8.8. forms of transfer
;
- 8.9. transfers of the
;
- 8.10. forms of authority addressed to
.
- 8.11. technical and - ,
;
- 8.12. marketing material of every sort in any medium;

8.13. all other .

9. Completion

9.1. As soon as the items listed above have passed into the possession

9.2. The Buyer shall be

[].

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.

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

9.5. The Seller has a continuing obligation to do what is

9.6. The Buyer shall not be obliged to

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

10. Employees transferred

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

10.2. The Buyer agrees to indemnify the Seller against any

11. Debtors

11.1. The Buyer shall use all reasonable effort to collect the debts on

11.2. If it becomes apparent to the Buyer that recovery of any of the book debts is not likely to be possible within

11.3. Where a debtor who has so failed to pay,

11.4. Unless the debtor shows a contrary intention when making payment,

11.5. The Seller may inspect the books of the Buyer for
[12]

12. Creditors and liabilities

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

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

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

13. Value Added Tax (VAT)

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

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

13.3. The Seller shall immediately deliver to

13.4. The Buyer shall for a period of not less than [\[6 years\]](#)

14. Warranties by the Seller

14.1. The Seller warrants to the Buyer that:

14.1.1 the Warranties set [4]
;

14.1.2 the Disclosures are true, accurate and comprehensive;

14.1.3 where any Warranty refers to the knowledge, information
,

14.1.4 where the subject matter of a Warranty may refer both to the
,

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

14.3. The Warranties in this agreement are not

OR

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

[]

15. Limitation of Seller's liability

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

[20 , 0000].

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

16. Future Activities

In order to give the

16.1. commence or continue

16.2. within [three years] of today, promote the sale of any service which competes with any service

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

16.4. trade under any name

16.5. register nor purchase nor use any Internet domain

17. The Guarantee

17.1. [Each of]

17.1.1 that every statement,

17.1.2 that he will procure

17.1.3 that he will indemnify the Buyer against all ,
;

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

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

17.4. This guarantee is limited to:

17.4.1 the sum of [sum] in total;

17.4.2 []

18. Confidentiality

18.1. The Seller now undertakes that he will:

18.1.1 , ;

18.1.2 ;

18.1.3 ;

18.1.4

18.2. []

18.3.

18.4.

[]

19. Publicity / Announcements

19.1.

OR

19.2. No party shall:

19.2.1 make any public announcement; or

19.2.2 disclose any information; or

19.2.3

[]

19.3.

3,

20. Damages not adequate

,

[]

,

] [/

21. Miscellaneous matters

21.1.

21.2.

21.3.

21.4.

21.5.

21.6.

21.7.

21.8.

21.9.

It shall be deemed to have been delivered:

;

72 ;

- : 24

.[

)

].

21.10.

21.11.

21.12.

21.13.

21.14.

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 [Company name in full]

AND

Signed by [Buyer name in full]

AND

Signed by [Guarantor name in full]

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

Signed by [personal name], the Guarantor

Witness to signature:

Name:

Address

Schedule 1: Assets

[list Assets]

Schedule 2: Excluded Assets

[list excluded assets]

Schedule 3 - Press release

[Set down the text you have agreed.]

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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6.

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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 net realisable value.

13.

14. Since the Last Accounts Date:

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.

26.

Employees

27. The Disclosure Letter contains for each Employee:

27.1. an employment history;

27.2. a curriculum vitae;

27.3. terms of employment;

27.4. non-contractual matters and informal arrangements.

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.

Intellectual Property

43.

44.

45.

46.

47.

48.

49.

50.

Information technology (“IT”)

51.

51.1. the name;

51.2. name and contact information of registrant;

51.3. date to which the name is registered.

52.

53.

54.

55.

,
:

55.1.

;

55.2. technical, customer and client support services;

55.3.

;

55.4. an email service provider.

56.

.

12

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57.

,

58.

,

59.

, :

59.1.

;

59.2. what password he uses;

59.3.

59.4.

End of Warranties

Schedule5 - Pension scheme

Explanatory notes:

Business sale agreement: Internet-based services provider

General matters

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. 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. Agreement for sale

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

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

7. 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

Assets

Intellectual Property

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

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

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. The business buyer needs the transfers in order to operate the business. He cannot afford to risk buying the business before the payment service is operating to

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 deal. That means the seller has to contact all these people and sort out their systems and procedures. He

Alternatively, the buyer should open his own separate account with

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

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

10. Employees transferred

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

11. Debtors

The arrangement we have provided is the most common

12. Creditors and liabilities

We think this is a good arrangement but

13. Value Added Tax (VAT)

The transfer of business as going

14. 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

15. Limitation of Seller's liability

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

16. 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

17. 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

18. 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

19. Publicity / Announcements

Edit or delete.

20. Damages not adequate

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

21. 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 - Assets

List Assets to be sold

Schedule 2 - Excluded Assets

List excluded assets

Schedule 3 - Press release

Provide text or delete if not required

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

, 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

Suppose the seller warrants:

“Neither the seller nor any of its shareholders

The reply to this

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

You may find aspects of my illustration to be immoral. That may

Warranties - seller’s tactics

The “task” of the seller is essentially to provide full and truthful information and to

As a seller,

- You be the one to
“ ”
- When you receive the draft ,
- 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 ownership
(" ")

Despite these extensive

Statutory restrictions

These warranties are general,

Litigation and regulation

We have no comment

Intellectual Property

All business acquire 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

End of notes