

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

Date: [date]

Between:

The Buyer is: [name] of [address]

The Seller is: [name] of [address]

The Guarantor is: [name] of [address]

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

This agreement is dated: [date]

Personal version:

The Buyer is: [name]

of [private address]

The Seller is: [name]

of [private address]

OR

Corporate version

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]].
[].

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 Know-how and all

information created or arising from this agreement;

information owned by a third party and in respect of which the Seller

information, comment or implication published on

"Contracts" means current contracts of the Seller in relation

	to the Business,
"Creditors"	means trade creditors and accrued
"Disclosures"	means the
"Disclosure Letter"	means the disclosure letter of the
"Domain Name"	means any : [name1].com [name2].com [name3].co.in
"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 , , , , , , , , - , , , ,
"Know-how"	means scientific or technical information, and

"Payment Service Provider" means the banking intermediary who provides

"Price" means the

"Services" means the

"Third Party Software" means software owned by some

"Warranty/Warranties" means the warranties and undertakings

[4].

[12]

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

3.4. The headings to the paragraphs and schedules ()

3.5. Any agreement by any party not to do or

3.6. A reference to an act or

3.7. All money sums mentioned in this

3.8. 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 Assets, excluding the Excluded Assets;

5.1.3 the Intellectual Property rights;

5.1.4 the Domain Name(s);

5.1.5 the Website;

5.1.6 the benefit of ,

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 [] .
- 7.2. The Price shall be paid as to Rs [amount], /
- 7.3. Value added tax will
:
[list property on which VAT payable]
- OR
- 7.4. 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. *[if the seller is a limited company]* signed and certified copy of the
minutes of a meeting of

[
];

- 8.7. forms of transfer
;
- 8.8. transfers of the Domain Names, in whatever form is required
/
;
- 8.9. forms of authority addressed to
,
- 8.10. all other
.

9. Completion

- 9.1. As soon as the items listed above have passed
,

- 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, the
- 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. Creditors and liabilities

- 10.1. The Seller shall immediately discharge all the debts of the
- 10.2. The Buyer shall not be liable for any breach of any contract by the

11. Value Added Tax (VAT)

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

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

11.3. The Seller shall immediately deliver to

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

12. Warranties by the Seller

12.1. The Seller warrants to the Buyer that:

12.1.1 the Warranties set [\[4 \]](#)

;

12.1.2 the Disclosures are true, accurate and comprehensive;

12.1.3 where any Warranty refers to the knowledge, information

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

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

12.3. The Warranties in this agreement are not

OR

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

[]

13. Limitation of Seller's liability

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

[20 , 000].

14. Future activities

In order to give the

14.1. commence or continue any business or activity whatsoever similar

[3]

[]

14.2. []

[]

14.3. [] ,
[] .

14.4. ;

14.5. .

15. Confidentiality

15.1. The Seller now undertakes that he will:

15.1.1 , ;

15.1.2 ;

15.1.3 ;

15.1.4 .

15.2. .

15.3. [] .

16. Publicity / Announcements

16.1. .

OR

16.2. No party shall:

16.2.1 make any public announcement; or

16.2.2 disclose any information; or

16.2.3

[
].

16.3.

3,

17. Damages not adequate

,
[]
,
,
[/]

18. Miscellaneous matters

18.1.

18.2.

18.3.

18.4.

18.5.

18.6.

18.7.

18.8.

18.9.

It shall be deemed to have been delivered:

;

72 ;

- : 24

. [

1.) (,

18.10.

,

18.11.

,

18.12.

18.13.

18.14.

,

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.

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

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. .
2. , , , .
3. , .
4. , , .
5. - , .
6. [] , .

Accounts

7. [] .
8. The Accounts:
 - 8.1. ;
 - 8.2. , ;

8.3.

2013 ,

;

9.

10.

11. Since the Last Accounts Date:

11.1.

;

11.2.

11.3.

12.

Assets

13. All Assets:

13.1. are transferred by this agreement; and

13.2.

,

;

13.3. are now in good working order;

14.

[

[]

[]

Trading and Contracts

15.

16.

17.

18.

19.

20.

21.

Intellectual Property

22.

23.

24.

25.

26.

27.

28.

29.

Information technology (“IT”)

30.

30.1. the name;

30.2. name and contact information of registrant;

30.3. date to which the name is registered.

31.

32.

33.

34.

34.1.

34.2. technical, customer and client support services;

34.3.

34.4. an email service provider.

35.

12

36.

37.

End of Warranties

Explanatory notes

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

General notes

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

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. 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

3. Warranties and disclosure letter

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

4. Disclosure letter to be worked up

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

5. 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,

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

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 true seller, whether a company or an individual. If the seller ,

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.

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

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. Creditors and liabilities

We think this is a good arrangement but

11. Value Added Tax (VAT)

The transfer of business as going

12. Warranties by the Seller

See later for full

This paragraph - confirmation of the warranties - is critical to

This paragraph provides for the warranties

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

13. Limitation of Seller's liability

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

14. 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

15. 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

16. Publicity/Announcements

Edit or delete.

17. Damages not adequate

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

18. 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

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

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

()

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,

Information technology ("IT")

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

End of notes