

IN-CPcsI01

Company purchase agreement: part payment retention

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Agreement for the Sale and Purchase []

This agreement is dated: [date]

The Seller is: [ABC] Pvt Limited, a company incorporated in the Republic of India, Corporate Identity Number [number] []

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

OR

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

The Buyer is: [DEF] Pvt Limited, a company incorporated in the Republic of India, Corporate Identity Number [number] [] .

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

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

It is now agreed as follows:

1. Definitions

So far as the context permits, the following words

:

“Accounting Date” means the and they will con be prep red. to

“Accounts” means the and the Company together with report and notes.

“Assets” means collectively the fixed assets (, furniture, office equipment and motor), stock and good will, which Schedule 2 Part

2;

“Buyer New Shares”	means	of Rs [1] each in the [
	as part	name)], to be Sellers
		Price.
“Company”	means] Limited, in
	of	agreement.
“Confidential Information”	means all	to this
	agreement,	information which
	may give	advantage to any other
	person. It	other things:
	their	their personal
	contact information,	
	data	to suppliers, product plans,
	marketing strategies,	,
	operations,	, customer profiles,
	sales estimates, business plans;	
	information owned by	in
	a party has	
	of non-disclosure.	
	information,	on
	any	medium.
	information	Property
	-how.	
“Disclosure Letter”	means the	by the Seller to the
	Buyer for the	the Warranties.
“Domain Names”	means the Internet	used by the
	with its	anticipation
	of a future need to use that name.	
“First Year Accounts”	means the	be first
	after today.	
“Intellectual Property”	means	in any country, including
	intellectual property of all kinds coming into	
	, unregistered marks, designs,	
	copyrights,	names,
	discoveries	and
	inventions.	

“Last Year End”	the).
“Net Profit”	<p>means the net profit (less losses) of the Company as y the Accounts or accounts for that period (as appropriate):</p> <p>a) after expenses and depreciation;</p> <p>b) after adding , , paid bonuses, , to directors;</p> <p>c) after gth and any unusual transactions</p> <p>d) without tak tal profits or losses;</p> <p>e) before g tax on that profit.</p>
“Property/Properties”	<p>means Company, brief details of out in Schedule 2 Part 1.</p>
“Retention”	<p>means the] set aside in the as security against a shortfall.</p>
“Purchase Price”	<p>means the to for the Shares.</p>
“Sale”	<p>means .</p>
“Shares”	<p>[number] ssued share capital of the Company.</p>
“Trustee”	<p>means [rustee.</p>
“Trustee Warranties”	<p>means the given by any Trustee.</p>
“Warranty/Warranties”	<p>means the paragraph [11] and hedule [3].</p>

2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to a person includes a human individual, a corporate entity, a partnership, a governmental authority
- 2.2. the Sellers shall be jointly and severally liable for
- 2.3. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted
- 2.4. a reference to a person includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a
- 2.5. a reference to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context
- 2.6. the headings to the paragraphs and schedules (if any) to this agreement are inserted
- 2.7. any agreement by any party not to do or omit to do something includes an obligation not to allow some
- 2.8. [\[except where stated otherwise\]](#), any obligation of any person arising from this
- 2.9. a reference to an act or regulation includes new law of substantially the same
- 2.10. all money sums mentioned in this agreement are calculated net of VAT, which will be charged when due by law and payable when
- 2.11. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any

other language, the English language version shall prevail. If a version of this agreement

3. Entire agreement

- 3.1. Each party acknowledges that this agreement and the Disclosure Letter contain the entire agreement between them and that he relies on no
- 3.2. Each party acknowledges and warrants that he has power to enter into this agreement [and]].
- 3.3. Each Seller warrants and undertakes that he is not aware of anything within his reasonable control which might or will

4. Calculation of the Purchase Price

- 4.1. The Purchase Price is the total of:
 - 4.1.1 the sum of Rs [amount] (the "Cash")
 - 4.1.2 the sum of Rs [amount], the Retention, so far as
 - 4.1.3 the sum of Rs [amount], payable by the allotment of [number] of Buyer New Shares in the [-]
- 4.2. The Sellers shall share the Purchase Price in proportion

5. The Buyer New Shares: Buyer's obligations

The Buyer undertakes as follows:

- 5.1. to issue or procure the issue of [number]
- 5.2. that the Buyer New Shares shall rank pari passu with the ordinary shares of the Buyer,
- 5.3. that each Buyer New Share shall be valued for the purpose of this []
- 5.4. to procure that the Buyer New Shares shall be allotted to the Sellers in proportion to the number of shares

6. Buyer's acknowledgment of inspection

The Buyer admits that:

- 6.1. all of the Assets of the Company have ;
- 6.2. it has made full investigation into the title, condition and any external circumstance which might affect ;
- 6.3. it enters into this agreement on the basis of that inspection and investigation and not in reliance on any representation,

7. Agreement for Sale and subscription for Buyer New Shares

- 7.1. The Sellers agree to sell the Shares with full title guarantee and the Buyer agrees to buy the Shares for
- 7.2. The Sellers acknowledge receipt of the Cash and [certificates]
- 7.3. Each of the Sellers hereby waives any pre-emption rights he may have in relation to any ,

- 7.4. Each Seller now hands to the Buyer a letter of resignation as a director of the Company and
- 7.5. So far as the Sellers have any powers or control of any aspect of the affairs of the Company, he will relinquish it and will so far as
- 7.6. The Sale is conditional on immediately on
- 7.6.1 the Sellers entering into a shareholders' agreement with the Buyer and its existing shareholders, [in]].
- 7.6.2 [Prateek Kothari and Manish Kataria] each entering into a contract of employment with the Company, []].

8. The Retention and the shortfall

For the purpose of this paragraph "Warranted Net Profit" means the minimum sum of Net Profit warranted by the

- 8.1. The Retention shall be retained in an account with [bank], in the joint names of [the Buyer and Seller or accountants or other representatives of the parties] until
- 8.2. No part of the Retention, nor interest accrued on it, may be withdrawn from the
- 8.3. As soon as possible after the date of the First Year Accounts, the Accountants shall be instructed jointly by the Sellers and the Buyer to [prepare and] audit the First Year Accounts on
- 8.4. The cost of the audit and certification shall be paid as to one half by the Sellers, pro rata to their holdings of

OR

- 8.5. The cost of the audit and certification shall be
- 8.6. The parties shall promptly provide to the Accountants all the information they may need or request
- 8.7. The Warranted Net Profit is Rs [amount].
- 8.8. The Buyer agrees that he will not take any action or decision which would have the effect,
- 8.9. If the Net Profit shown by the First Year Accounts is less than the Warranted Net Profit, then the Purchase Price shall be [3]
- 8.10. The shortfall shall be paid out of the Retention immediately after certification of the Accounts by the Accountants. The
- 8.11. If the Net Profit shown by the First Year Accounts is greater than the Warranted Net Profit, then the Sellers
- 8.12. No claim lies for a breach of Warranty insofar as the value of that claim has been taken into account in the

9. Completion and delivery of documents

- 9.1. Completion of this Sale shall take
- 9.1.1 a bank draft
- 9.1.2 a second bank draft [];
- 9.1.3 letters of allotment of the Buyer New Shares;
- 9.2. At completion,

- 9.2.1 the title deeds relating to ;
- 9.2.2 title deeds, ;
- 9.2.3 signed share transfer forms ;
- 9.2.4 [if the Company] ;
- 9.2.5 letters of resignation of certain directors, namely [names] [and the secretary of the Company], with ,
- 9.2.6 [the resignation of] ;
- 9.2.7 a list of all user names and .
- 9.2.8 the certificate of incorporation of the Company;
- 9.2.9 written confirmation by ;
- 9.2.10 [employment contracts / service agreements], signed in , [] ;
- 9.2.11 all records relating to the employment of any person [6] ;
- 9.2.12 the minutes of meetings : [Buyer nominee name] [] ;

transfer forms

;

the resignations of [name] [] []

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

9.4. Each Sellers undertakes that he will:

9.4.1 immediately repay to the Company any

;

9.4.2 use his best endeavours to do

10. Warranties applicability and limitation

10.1. None of the

10.2. Nothing done or not done by

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

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

10.5. Each of the

10.6. Each Seller waives any claim he might have against the

11. Warranties by Sellers

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

]:

11.1.1 the Sellers are entitled to transfer the Shares to

;

11.1.2 after completion of this ,

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

3

, ,

;

11.1.4 the contents

;

11.1.5 unless otherwise specified,

11.1.6 [Each corporate

];

11.1.7 the Shares constitute the whole

]

[

;

11.1.8 there is

;

11.2. The Warranties in this agreement are not

OR

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

[]

12. Trustee Warranties

Each of the Trustees warrants:

12.1. that he has legal title

;

12.2. that he has

;

12.3. that he has no knowledge of any circumstance unknown

, , ,

.

13. Restrictive agreement

13.1. So that the Buyer has the full benefit

,
:

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

,

.

13.1.2 at any time after completion of the Sale, disclose to any person,

,

,

;

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

[3] , ,

, ,

.

13.2. Each of the Sellers now agrees that

.

13.3. Following completion of _____ ,
_____ :

13.3.1 hold himself _____ ;

13.3.2 register nor purchase nor use any name similar to any _____ .

14. Sellers' protection

14.1. Any claim against any Seller, in relation to the _____ ,
_____ ,
_____ .

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

_____ , _____ [_____] .

14.3. In any event, the _____ [_____] .

14.4. The Buyer may not claim more _____ ,
_____ .

15. The Guarantee

15.1. [Each of] _____ :
_____ ;

15.1.1 that every statement, _____ ;

15.1.2 that he will procure _____ ;

15.1.3 that he will indemnify the Buyer against all _____ ,
_____ ;

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

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

15.4. This guarantee is limited to:

15.4.1 the sum of [sum] in total;

15.4.2 claims notified to the []

16. Publicity / Announcements

16.1. No public or press announcement shall be made

OR

16.2. No party shall:

16.2.1 make any public announcement; or

16.2.2 disclose any information; or

16.2.3 allow expressly or by default any other person

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

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

16.5. [Each/every] party

17. Miscellaneous matters

17.1. No amendment or variation to this agreement

17.2. The parties acknowledge and agree that this

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

17.4. So far as any time,

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

17.6. Any obligation in this agreement

17.7. [If any of the Shares shall at any time be sold or transferred, the benefit](#)

[OR](#)

17.8. [This agreement shall be binding upon each party's successors, assigns and \(\)](#)

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

17.10. The parties agree that

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

It shall be deemed to have been delivered:

if delivered :

;

if sent by post : 72

;

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

-

. [

-

,

]

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

17.13. This agreement does

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

17.15. This agreement may be executed in multiple counterparts each

17.16. The validity, construction and performance of this agreement shall be governed

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

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

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

OR

Signed by [Seller name in full]

AND

Signed by [/]

Schedule 1- Part 1 Shareholdings

[Here list all sellers, names, addresses

]

].

Name	Address	Number of Shares	Signature

Schedule 1 - Part 2 Details of the Company

1. The Company

Corporate Identity number: [] : []

Share capital: [share] [] []

[Companies Amendment Act, 2015
-]

Registered office: [address]

Directors: [list all names in full]

Secretary: [name in full]

Schedule 1- Part 3 Press release

Schedule 2: Part 1 Properties

[Please

]

- Freehold Properties
- Leasehold Properties
- Any other particulars

Schedule 2: Part 2 Assets

[Please list

,

]

Schedule 3 - The Warranties

General

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

No damaging effect of this agreement

11. The Sellers has no reason to believe that as a result of the
12. No term of this agreement conflicts with:

12.1

12.2

13.

Company structure and operation

14.

15.

16.

17.

18.

18.1 all documents of title relating to its Assets;

18.2

18.3

19.

its net realisable value.

29.

30. Since the Last Year End:

30.1

30.2

30.3

31.

Cash flow

32.

32.1

32.2

32.3

33.

34.

[]

Taxation

35.

36.

37.

38.

39.

40.

[]

41.

42.

Guarantees and borrowing

43. The Disclosure Letter discloses:

43.1

;

43.2 the terms of every loan;

43.3

;

43.4

44.

45.

46.

Assets

47.

47.1 are in its possession and control.

47.2

47.3

47.4

47.5

Trading and contracts

48.

49.

50. Since the Last Year End:

50.1

50.2 the Company has paid its creditors promptly.

50.3

50.4

[]

51.

51.1

51.2 no payment due to the Company is overdue.

51.3 all contracts comply with the relevant law.

51.4

52.

[/]

53. No existing contract is for work which:

53.1 is beyond the normal course of business.

53.2

[]

53.3 is likely to result in a loss.

53.4

53.5

[10] %

54.

[

].

55.

56.

[],

57. [25]

[25]

58.

59.

Properties - all

60.

61.

62.

2 1

63.

64.

64.1

64.2

64.3 There are no rent reviews in progress.

65.

66.

67.

68.

69.

70.

71.

:

71.1 water;

71.2 drainage;

71.3 electricity.

72.

Properties let by the Company

73.

2 1 .

74.

75.

:

75.1 the name and address of the tenant.

75.2 the name and address of any guarantor.

75.3 the address of the Property.

75.4

75.5 the rent.

75.6

75.7

75.8

75.9

75.10 any unusual provisions.

76.

Employment

77.

78.

79.

80.

[]

81.

Insurance

82.

83. No policy contains any special term or restriction.

84.

85.

86.

Intellectual Property

87.

88.

89.

90.

91.

92.

93.

94.

Information technology ("IT")

95.

:

95.1 the name;

95.2 name and contact information of registrant;

95.3 date to which the name is registered.

96.

97.

98.

99.

[

].

100.

101.

,

:

101.1

;

101.2 technical, customer and client support services;

101.3

;

101.4 an email service provider.

102.

12

103.

104.

, :

104.1

;

104.2 what password he uses;

104.3

;

104.4

.

Explanatory notes

Company purchase agreement: part payment retention

General notes:

1. The parties

This agreement has been drawn assuming either a company seller or two or more shareholders selling a company to one

2. Complete when agreement dated or later?

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

3. Basis of retention and shortfall

We have used only Net Profit, specifically defined. Depending on the business of the company it may be more efficient to either edit the definition of Net Profit or to refer instead, or as well, to net assets. If you are dealing with a company which

().

Paragraph-specific notes

1. Definitions

The definitions have been considered very carefully. At Net Lawman we try to avoid a large raft of definitions, but in this agreement there is no alternative. There is no reason why you should not change any if you need to do so, but do

First Year Accounts: the sale of a company rarely falls at the perfect time to tie in with prompt preparation of annual accounts. A buyer must either insist on new accounts soon after completion, or chase for completion very soon after the last annual accounts, or simply take pot luck. But there is no reason in principle why accounts should not be prepared

“Net Profit” must be considered very carefully, as it is the base line for calculation of the retention and shortfall. The important point is to make the calculation the same for pre

If the same accountants conduct the audits, that should present no problem. If the buyer is likely to appoint new accountants, he would be wise to obtain a written statement from the sellers’ accountants setting out the method of calculation, so that he can instruct new accountants to use the same methodology. It may also be necessary further

2. Interpretation

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

3. Entire agreement

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

4. Calculation of the Purchase Price

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

5. Buyer New Shares: Buyer’s obligations

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

buyer can

6. Buyer's acknowledgment of inspection

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

7. Agreement for Sale and subscription for Buyer New Shares

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

8. The Retention and the shortfall

Arrangements for repayment of part of the price if the company fails to come up to expectations are a matter for negotiation as to both method and amount. This is a simple provision based on adequacy of net profit. However, the sellers should remember that once the buyer is in the driving seat, he can take what decisions he likes as to the

If there is no retention, that fact will not prevent the buyer from claiming against the sellers. The sellers will then have to find the amount of any claim from their own pockets. Because they are jointly and severally liable, the buyer may choose to claim the full amount against only some of them.

The following steps may be taken in :

1. It has obvious benefits to the buyer, who may choose to use it as "leverage" in a claim on the warranties. Further, if he is dealing with many shareholders, he will find it far easier to enforce a
2. The only possible advantage to a seller is for wealthier sellers to know that they will not have to sue others for a
3. Agree the amount to be retained and whether this sum is also to be the "cap"

4. Who will operate the bank account which contains the retention, or will the buyer simply hold back some sum? If retention is required, you will have to agree in whose name the bank account is to be. If you use solicitors, then a joint account in both their names would be usual. If you do not, then joint accountants may be a possibility. For a small

5. How long will the retention process continue - until next accounts? For one year or more? For two or three years? This agreement is worded for a retention which will last for three years (so that you see how it works). This is the maximum period generally considered. One year is recommended as long enough. If the buyer seeks more certainty than that,

6. Assuming the retention is to cover a deficiency in Net Profit, then consistency between account periods is vitally important if the calculation

9. Completion and delivery of documents

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

- Share certificates are documents of title, but if not available (lost or never issued), a simple declaration to that effect

- The buyer will wish to avoid any claim for compensation by a former director. But the directors are not (necessarily) sellers, so it is important that they are bound by the proposition that they have no claim. If they receive no “consideration” as directors, they will not be bound by a simple statement

- This provides for any key people to remain as employees. Their new contracts would be dated the same date as the agreement and would take

- Of course, the sellers will already have satisfied themselves that the beneficiary of a guarantee (like a bank)

10. Warranties applicability and limitation

Do not edit without very good reason and full understanding of the effect. If you

11. Warranties by Sellers

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

To avoid this situation, the sellers should prepare a simple shareholders agreement setting out exactly which of them is responsible for what areas and who pays what to whom in the event of a claim. Such an agreement cannot prejudice the buyer,

A company may sign up to a deal, by the hand of its directors, but if its articles and memorandum of association prevent such a contract being made (),

The warranties are so fundamental to the transaction

12. Trustees Warranties

Provision has been made for the proposition that one or more people may hold shares as trustees. The buyer should make certain that any such person is a disinterested trustee. It could be that a major shareholder has placed some of shares in a family trust and he remains a trustee, or that some other person is

().

The trustees warrant only that they are selling fairly and know of no reason why

13. Restrictive agreement

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

“ ”

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

14. Sellers' protection

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

15. The Guarantee

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

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

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

16. Publicity / announcements

This may not be important to

17. Miscellaneous matters

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

The Schedules

We have no comment.

Notes on Warranties

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

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

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

For maximum protection,

1. Delete any warranties that cannot apply to your
2. Do not delete warranties relating to matters about which full information has already been provided. If you
3. Take the document to your accountant to
4. For sellers, the strength of a warranty may be greatly reduced simply by changing

Explanation of warranties

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

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

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

How to use warranties?

If you are seller

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

As a seller, you have a number of

✓ when you produce the draft agreement, remove the most “difficult” warranties before you send it to the buyer.

✓ provide clear and open disclosure to

✓ after considering the breadth of each warranty, you could edit those that

✓ Even where you “answer” the warranty in some

“ ” “ ”

Being the seller it is

If you are the buyer

The weight of advantage is very firmly with the

As a buyer you need warranties:

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

Either you are the

Warranties: drafting notes continued

It is good practice to delete irrelevant warranties, but by all

General

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

No damaging effect of this agreement

The buyer needs to

Company structure and operation

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

Accounts, Cash flow and Taxation

The buyer should take advice

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

Guarantees and borrowing

A list of creditors should be readily

Assets

Even if all accounts information is absolutely correct,

The most important answers sought here are as

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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

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

The most common reason for litigation about contracts arises because
someonesomewhere

Properties - all

Real property is

Most of these items cover the facts that would be

Properties let by the Company

If none, delete.

Employment

We have no comment. Set the warranties

“ ”

Insurance

We have no comment.

Intellectual Property

All companies acquire some intellectual property. Even a quite small

A buyer should consider what IP this company might need

Information technology (“IT”)

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

“ ”

End of all notes