

IN-CPcsI05

Company purchase agreement: simple cash deal

Content

1. Definitions
2. Interpretation
3. Entire agreement
4. The Purchase Price
5. Buyer's acknowledgment of inspection
6. Completion and delivery of documents
7. Warranties applicability and limitation
8. Warranties by Sellers
9. Trustee Warranties
10. Restrictive agreement
11. Sellers' protection
12. The Guarantee
13. Publicity / Announcements
14. Miscellaneous matters

Schedule 1	Part 1 Shareholdings
	Part 2 Details of the Company
	Part 3 Press release
Schedule 2	Warranties
	General
	No damaging effect of this agreement
	Company structure and operation
	Accounts
	Taxation
	Assets
	Trading and contracts
	Employment
	Insurance
	Intellectual Property
	Information technology ("IT")

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 Identification 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 Identification Number [number]
[] .

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

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

1. Definitions

So far as the context permits, the following words
:

“Accounts” means the financial statements, annually audited profit and loss account and balance sheet as at the Last Year End

“Company” means [name of Company] Limited, the Shares in which

“Confidential Information” means all information about the Company and parties to this agreement, including any information which may give a commercially competitive

	information about staff, their performance and
	data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer
	information owned by a third party and in respect of which a party
	information, comment or implication published on
	information about the Intellectual Property and
“Disclosure Letter”	means the disclosure provided by the Seller to the Buyer including all such information to complete the Sale and enclosing all such
“Domain Names”	means the Internet domain names used by the Company in connection with its website or in
“Intellectual Property”	means intellectual property owned by the Company, of every sort, whether or not registered or registerable in any country, including intellectual property of all kinds coming into existence after today; and including, among others,
“Last Year End”	means [date] (being the date to which the
“Purchase Price”	means the total price, paid or to
“Sale”	means the sale of the Shares.
“Shares”	[number] ordinary shares of Rs [1] each held

by the Seller being the

- “Trustee” means [names, if few] / the Sellers
- “Trustee Warranties” means the limited warranties given by any Trustee.
- “Warranty/Warranties” means the warranties and undertakings of the Sellers contained in paragraph [10]
2 .

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 every
- 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],

;

2.9. a reference to an act or

;

2.10. all money sums mentioned in this agreement are calculated net of

,

,

.

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

,

.

,

.

3. Entire agreement

3.1. Each party acknowledges that this agreement and the Disclosure Letter

,

,

.

3.2. Each party acknowledges and warrants that he

[

].

3.3. Each Seller warrants and undertakes that he is not

.

4. The Purchase Price

4.1. The Sellers agree to sell the Shares with full

.

- 4.2. The Purchase Price is [] ;
- 4.3. The Buyer shall pay the .
- 4.4. The Sellers .
- 4.5. The Sellers shall share .

5. Buyer's acknowledgment of inspection

The Buyer admits that:

- 5.1. all of the books of ;
- 5.2. he has made full investigation into ,
- 5.3. he enters into this agreement on the basis of that ,

6. Completion and delivery of documents

- 6.1. Completion of this Sale shall take place ,
- 6.2. At completion, :
- 6.2.1 signed share transfer forms , ;
- 6.2.2 [if the Company] ;
- 6.2.3 letters of resignation of certain directors, namely [names] and [the secretary of the Company], with ,

6.2.4 [the resignation of

];

6.2.5 a list of all user names and

6.2.6 the certificate of incorporation of the Company;

6.2.7 written confirmation by

6.2.8 [employment contracts / service agreements], signed in

[
];

6.2.9 all records relating to the employment of any person

6] ;

6.2.10 the minutes of meetings

[Buyer nominee name] [] ;

transfer forms

the resignations of [name] [] []

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

6.4. Each Sellers undertakes that he will:

6.4.1 immediately repay to the Company any

6.4.2 use his best endeavours to do

7. Warranties applicability and limitation

7.1. None of the

7.2. Nothing done or not done by

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

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

7.5. Each of the

7.6. Each Seller waives any claim he might have against

8. Warranties by Sellers

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

]:

8.1.1 the Sellers are entitled to transfer the Shares to

;

- 8.1.2 after completion of this , ;
- 8.1.3 except as disclosed in the Disclosure Letter, all of the 3
- 8.1.4 the contents ;
- 8.1.5 unless otherwise specified,
- 8.1.6 [Each corporate Seller];
- 8.1.7 the Shares constitute the whole [;
- 8.1.8 there is .

8.2. The Warranties in this agreement are not

OR

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

9. Trustee Warranties

Each of the Trustees warrants:

- 9.1. that he has legal title ;
- 9.2. that he has ;

9.3. that he has no knowledge of any circumstance unknown

10. Restrictive agreement

10.1. So that the Buyer has the full benefit

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

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

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

[3]

10.2. Each of the Sellers now agrees that

10.3. Following completion of

10.3.1 hold himself

10.3.2 register nor purchase nor use any name similar to any

11. Sellers' protection

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

11.2. No claim shall be valid unless made _____ ,
_____ [_____]

11.3. No single Seller can be liable for any Warranty claim unless
_____, _____ [_____].

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

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

12. The Guarantee

12.1. [Each of] _____
_____ :

12.1.1 that every statement,
_____ ;

12.1.2 that he will procure _____ ;

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

12.2. [Each of] The Guarantor accepts that compliance by the _____ ,
_____ .

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

12.4. This guarantee is limited to:

12.4.1 the sum of [sum] in total;

12.4.2 claims notified to the []

13. Publicity / Announcements

13.1. No public or press announcement shall be made

OR

13.2. No party shall:

13.2.1 make any public announcement; or

13.2.2 disclose any information; or

13.2.3 allow expressly or by default any other person

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

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

13.5. [Each/every] party

14. Miscellaneous matters

14.1. No amendment or variation to this agreement

14.2. The parties acknowledge and agree that this

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

14.4. So far as any time,

14.5. 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

14.6. Any obligation in this agreement

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

[OR](#)

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

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

14.10. The parties agree that

14.11. 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

-

. [

-

,

]

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

14.13. This agreement does

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

14.15. This agreement may be executed in multiple counterparts each

14.16. 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 [Buyer name in full]

AND

Signed by [Guarantor / Director name in full]

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

[] : []

[] : [] [] []

[] , 2015 -

Registered office: [\[address\]](#)

Directors: [\[list all names in full\]](#)

Secretary: [\[name in full\]](#)

Schedule 1- Part 3 Press release

Schedule 2- The Warranties

General

1.

2.

3.

4.

5.

6.

7.

No damaging effect of this agreement

8.

9. No term of this agreement conflicts with:

9.1

9.2

10.

Company structure and operation

11.

12.

13.

14.

15.

15.1 all documents of title relating to its assets;

15.2

15.3

16.

17.

18.

19.

20.

Accounts

21.

[] .

22. The Accounts:

23.1

23.2

23.3

23.

its purchase price;

its production cost;

its net realisable value.

24.

25. Since the Last Year End:

25.1

25.2

25.3

26.

Taxation

27.

28.

29.

30.

31. []

32.

33.

Assets

34.

34.1 are in its possession and control.

34.2

34.3

34.4

34.5

Trading and contracts

35.

- - , / ,

36.

37. Since the Last Year End:

37.1

37.2 the Company has paid its creditors promptly.

37.3

37.4

[]

38.

38.1

38.2 no payment due to the Company is overdue.

38.3 all contracts comply with the relevant law.

38.4

39.

[/]

40. No existing contract is for work which:

40.1 is beyond the normal course of business.

40.2

[] .

40.3 is likely to result in a loss.

40.4

.

40.5

[10] %

41.

[

,
].

42.

.

43.

[],

.

44.

[25]

[25]

.

45.

,

.

46.

.

Employment

47.

,

-

48.

.

49.

50. []

51.

Insurance

52.

53. No policy contains any special term or restriction.

54.

55.

Intellectual Property

56.

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.

66.1

66.2 technical, customer and client support services;

66.3

66.4 an email service provider.

67.

68.

68.1

68.2 what password he uses;

68.3

;

68.4

.

Explanatory notes:

Company purchase agreement: simple cash deal

General matters

1. The parties

This agreement has been drawn assuming two or more shareholders are selling a company to one corporate buyer. Little change is required to the substance to replace the corporate buyer by a number

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

Paragraph specific notes:

1. Definitions

The definitions have been considered very carefully. There is no reason why you should not change any if you need to do so, but do be very careful to make

By all means use the find/replace function in your word processor to change them. If you do change a defined term, make sure it

Remember too, that when a word or phrase is defined, the defined meaning capitalised, takes precedence over the

Please read the general notes sent along with

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. The Purchase Price

The sellers are to receive cash at the time of signing this agreement. No arrears

You should take advice from your accountant as to how to treat these items for tax purposes and how to express

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 you

6. 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 will be sufficient to safeguard a buyer. Most larger companies no longer issue hard copy
- 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)

7. Warranties applicability and limitation

No comments.

8. Warranties by Sellers

Warranties can be given by any shareholder, whether a seller or a continuing shareholder. It is up to you to edit

It may be that you have been invited to buy shares by the continuing shareholders and it is therefore they, and not the sellers, who should

"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. This means that the buyer can (and would) claim against the wealthier sellers if

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, who still may sue whom he wishes. It serves only to sort the position between the shareholders themselves. One of the

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 (for one of any number of reasons), then it can wash its hands

Unlike the warranties in Schedule 3, these are so fundamental to the transaction that it is reasonable that they should be unlimited. (Remember to change the !)

9. 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 a trustee. In that case, there is an

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

10. 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

11. 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

12. 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.

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

13. Publicity / announcements

This may not be important to

14. 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,

Delete any warranties that cannot apply to your

Do not delete warranties relating to matters about which full information has already been provided. If you

Take the document to your accountant to

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

“ ” “ ”

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 and Taxation

The buyer should take advice

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

Assets

Even if all accounts information is absolutely correct, 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. The buyer's requirement for details of customers and suppliers will be less important 1,000

The most common reason for litigation about contracts arises because someone

Employment

We have no comment. Set the warranties

Insurance

We have no comment.

Intellectual Property

All business acquires some intellectual property. Even quite small

A buyer should consider what IP this company might need

Information technology (“IT”)

IT is of course intellectual property. We have placed it under a separate heading to cover the

End of all notes