Sale agreement: manufacturing business

Date: [date]

Between:

The Buyer is: [name] of [address]

The Seller is: [name] of [address]

The Guarantor is: [name] of [address]

Contents

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- 3. Interpretation
- 4. Entire agreement
- 5. Buyer's acknowledgment of inspection
- 6. Agreement for sale
- 7. Transfer of Contracts
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- 9. Items to be delivered to the Buyer at completion
- 10. Completion
- 11. Transfer of Employees
- 12. Stocks
- 13. Debtors
- 14. Creditors and liabilities
- 15. Goods and Services Tax (GST)
- 16. Warranties by the Seller
- 17. Limitation of Seller's liability
- 18. Future activities
- 19. The Guarantee
- 20. Confidentiality
- 21. Publicity / Announcements
- 22. Damages not adequate
- 23. Miscellaneous matters

Schedule 1: Part 1: Freehold Property
Schedule 1: Part 2: Leasehold Property

Schedule 2: Assets

Schedule 3: Excluded Assets

Schedule 4: Warranties

General Accounts Assets

Trading and contracts

Employees

Statutory restrictions Litigation and regulation

Freehold and leasehold Properties

Intellectual Property

Information technology ("IT")

Schedule 5: Pension scheme Schedule 6: Press release

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 (use for an LP too)

The Buyer is: ABC Pty Ltd, a company incorporated in New Zealand

The Seller is: DEF Pty Ltd, a company incorporated in New Zealand

under company 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

							, ■								- 1		61
	•	" ■		"		"											

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
"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 •••••••••••••••••••••••••••••••••••
	data or information relating to pre-clinical and clinical trial results, processes, formulae, procedures, designs, drawings, apparatus,
	information about the Intellectual Property and
"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 \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
"Disclosure Letter"	means the disclosure letter of the same date as this agreement from the Seller • • • • • • • •
"Domain Name"	means any or all of the \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
	[name1].com
	[name2].com
	[name3].co.nz
"Employee"	means a person who is employed by the Seller for
"Excluded Assets"	means the Assets listed in Schedule 3 which are owned by the Seller but

"Goodwill"	means the goodwill in relation to the Business, being goodwill of the Seller until
"Intellectual Property"	means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today, and including patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, Know-how, creations
"ISP"	means the Internet service provider; that is any provider of any service in •••••••••••••••••••••••••••••••••••
"Last Accounts Date"	means the date to which the Accounts have ■
"Lease"	means the lease or leases under which the Property, [or • • • • • • • • • • • • • • • • • • •
"Payment Service Provider"	means the banking intermediary who provides the service of transferring money from the Website
"Price"	means the price to be paid ••••••••••••••••••••••••••••••••••••
"Products / Services"	means the products
"Properties/Property"	means the freehold or leasehold properties,
"Stocks"	means stocks of Products, raw materials, work in progress and finished goods, and goods for

"Third Party Software"	means software owned by some
"Warranties/Warranty"	means the warranties and undertakings of the
	4].
"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 \blacksquare
2.3.	Every reference to the Business shall be interpreted as • • • • • • • • • • • • • • • • • •
	••••
2.4.	Every reference to the Company ••••••••••••••••••••••••••••••••••••

3. Interpretation

This a	agreement = = = = = = = = = = = = = = = = = = =
3.1.	A reference to one
3.2.	In connection with any benefit given by
3.3.	A reference to a person includes reference to that person's successors legal representatives,
3.4.	A reference to the knowledge, information, belief or awareness ,
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.	[except where stated otherwise],
3.9.	A reference to the knowledge, information, belief or awareness , , , , , , , , , , , , , , , , , ,
3.10.	A reference to an act or

3.11.	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
Enti	re 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 warrant that he = = = = = = = = = = = = = = = = = =
4.4.	The Seller warrants and undertakes that he is not
Buy	er's acknowledgment of inspection
The E	Buyer admits that:
5.1.	the Assets agreed to
5.2.	he enters into this agreement on the basis of that inspection and not in reliance on
	

6. Agreement for sale

6.1.	Subjec	t to the terms of this agreement, ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
	••••	:
	6.1.1	the Business as a going concern;
	6.1.2	the Goodwill;
	6.1.3	the Property;
	6.1.4	the Assets;
	6.1.5	the Stocks;
	6.1.6	the Intellectual Property rights;
	6.1.7	the Domain Name(s);
	6.1.8	the Website;
	6.1.9	rights to use Third Party Software;
	6.1.10	the benefit of the Contracts;
	6.1.11	all other Assets owned by
6.2.	Comple	etion shall take place today, ••••••••••.
6.3.	The as	signment of the leasehold
6.4.	The tra	nsfer of the freehold Property
0.4.		
	1.	

7. Transfer of Contracts

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

7.1. enter into any novation agreement.

7.2.	•	information about 	•••	•••••
7.3.	confirm	to any person or governmental authority suc	ch deta	ails = = = = =
	••••		•••	
7.4.		ately inform the 		• • • • • • • • • • • • • • • • • • • •
The	Price			
8.1.	••••	ce for the Business shall	•••	
	Goodw	ill	\$[1
	Freeho	ld Properties	\$[1
	Leaseh	nold Properties	\$[1
	Assets		\$[1
	Intellec	tual Property rights	\$[1
	Contra	cts and all other property, Assets and rights	Nil	
	The St	ocks	To be	e ascertained
	Total F	Price [excluding Stock]	\$[1
8.2.	Insofar	as this agreement provides for the transfer to	o the E	Buyer of ■ ■ ■
			••••	
	••••			
8.3.	The Pri	ce shall be paid as follows:		
	8.3.1	as to \$ [amount], by banker's draft / • • •	•••	
		•••••	•••	•••••
	8.3.2	as to the •••••••••••••••••••••••••••••••••••	•••	•••••

8.4.	If the assignment of the Lease cannot be completed today,
lten	ns to be delivered to the Buyer at completion
	Seller shall handover to the Buyer or otherwise deliver
9.1.	whatever the = = = = = = = = = = = = = = = = = = =
9.2.	all books • • • • • • • • • • • • • • • • • • •
9.3.	all documentation recording matters • • • • • • • • • • • • • • • • • • •
9.4.	computer programmes • • • • • • • • • • • • • • • • • • •
9.5.	all data in electronic form, •••••••;
9.6.	all information and records relating to customers and suppliers, including a list of all the [• • • •] • • • • • • • • • • • • • •
	;
9.7.	complete records relating to Employees, ■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■
9.8.	[if the seller is a limited company] signed and certified copy of the minutes of a meeting of
	[];
9.9.	assignment of the leasehold Property [unless = = = = = = = = = = = = = = = = = =

9.10.	transfers of the freehold \blacksquare
9.11.	forms of transfer of •••••;
9.12.	transfers of the ••••, ••••••
9.13.	forms of authority addressed to
9.14.	all technical and •••••••;
9.15.	marketing material of every sort in any medium;
9.16.	a list of sales distributors and agents, identifying sales ,
9.17.	policies of insurance, continuing;
9.18.	all other = = = = = = = = = = = = = = = = = = .
Com	pletion
10.1.	As soon as the items listed above have passed into the possession
10.2.	The Buyer shall be = = = = = = = = = = = = = = = = = =
10.3.	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.

	10.4.	As soon as possible and in any event within [two days] from today,
	10.5.	The Seller has a continuing obligation to do what is • • • • , • • • •
	10.6.	The Buyer shall not be obliged to •••••••••••••••••••••••••••••••••••
	10.7.	If any or all of the transactions set out in this paragraph do not
11.	Trar	nsfer of Employees
	11.1.	The parties agree that the Employees
	11.2.	The Buyer agrees to indemnify the Seller against any
12.	Stoc	cks
	12.1.	For the purpose of • • • • • • • • • • • • • • • • • •
	OR	

AND	
12.3	Any dispute as to the value of the Stocks shall be referred for final settlement to a firm of [chartered accountants] nominated jointly by the Seller and the Buyer. The accountants shall be
AND	
12.4	. The amounts agreed or decided under the last sub-paragraph shall be paid
12.5	. The Seller shall be liable for
Del	otors
13.1	. The Buyer shall use all reasonable effort to collect the debts on ■ ■ ■ ■
	,
13.2	If it becomes apparent to the Buyer that recovery of any of the book debts is not likely to be possible within
13.3	. Where a debtor who has so failed to pay, ■■■■■■■■■■■■■■

13.4.	Unless the debtor shows a contrary intention when making payment,
13.5.	The Seller may inspect the books of the Buyer for
Cred	ditors and liabilities
14.1.	The Seller shall immediately discharge all the debts of the
OR	
14.2.	The Seller shall remain liable for all claims by third parties in respect of any [Products / Services] by the Seller or any act or omission of the Seller prior to
14.3.	After today, the Buyer must discharge the outstanding obligations and liabilities of the Seller under the Contracts, including
14.4.	The Buyer shall not be liable for any breach of any contract by the , , , , , , , , , , , , , , , , , , ,

15. Goods and Services Tax (GST)

- 15.2. The Seller shall immediately deliver to the Buyer
- 15.3. The Buyer shall for a period of not less than 7 years from the

16. Warranties by the Seller

- 16.1. The Seller warrants to the Buyer that:

 - 16.1.2 the content of ***** **** **** **** **** *** *** *** *** *****

 - 16.1.4 where the subject matter of a Warranty may refer both to the
- 16.2. The Seller agrees to indemnify the Buyer against all costs claims and

	16.3.	The Warranties in this agreement are not
		OR
	16.4.	The Warranties in this agreement are not limited in monetary value, but no claim • • • • • • • • • • • • • • • • • • •
17.	Lim	itation of Seller's liability
	17.1.	Except in the case of death or personal injury, the total liability of the Seller under
	17.2.	This paragraph (and any other paragraph which excludes or restricts the liability of the Seller)
18.	Futu	ure activities
		er to give the ••••••••••••••••••••••••••••••••••
	18.1.	commence or continue
	18.2.	within [three years] of today, promote, make or sell any product or service which competes with
	18.3.	within [three years] of today, employ or provide work

	18.4.	trade under any name
	18.5.	register nor purchase nor use any Internet domain
19.	The	Guarantee
	19.1.	[Each of] = = = = = = = = = = = = = = = = = = =
		19.1.1 that every statement, ••••••••••••••••••••••••••••••••••••
		19.1.2 that he will procure •••••;
		19.1.3 that he will indemnify the Buyer against all
	19.2.	[Each of] The Guarantor accepts that compliance by the
	19.3.	[Each of] The Guarantor accepts that the Buyer is
	19.4.	This guarantee is limited to:
		19.4.1 the sum of [sum] in total;
		19.4.2 claims notified to the = = = = = [= = =] = = = = = =

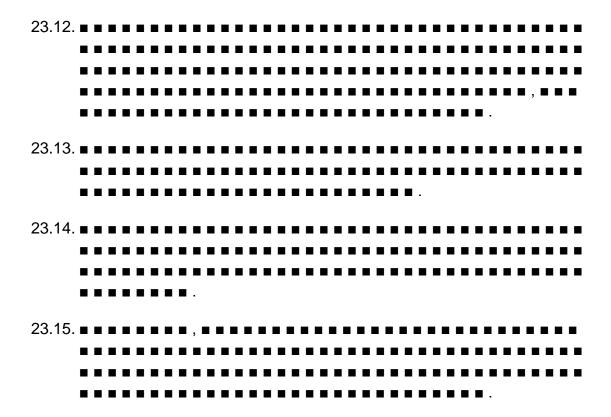
20. Confidentiality

20.1. The Seller now undertakes that he will:

		20.1.1	except as provided in this •••, ••••;
		20.1.2	not use the Confidential • • • • • • • • • • • • • • • • • • •
		20.1.3	not use any name or mark similar
			;
		20.1.4	not use any trade name or
	20.2.	-	he rules of any stock exchange or by applicable
	20.3.	The ob	ligations set out in this paragraph
		••••	
	20.4.	The pro	ovisions of this paragraph shall continue
		••••	
21.	Pub	licity /	Announcements
	21.1.	No pub	olic or press announcement shall be made
		••••	
	OR		
	21.2.	No part	ty shall:
		21.2.1	make any public announcement; or
		21.2.2	disclose any information; or
		21.2.3	allow expressly or by default any other person

	except, that no party shall be prohibited from making
21.3.	The parties agree to the issue of •••••••••••••••••••••••••••••••••••
Dam	ages not adequate
	ut prejudice to any other rights or remedies which a party may have, the
remed	s now acknowledge and agree that damages would not be an adequate by for \blacksquare
_	
	[/
	[/
Misc	[/
Misc	cellaneous matters
Misc 23.1.	cellaneous matters No amendment or variation to this agreement
Misc 23.1.	cellaneous matters No amendment or variation to this agreement
Misc 23.1.	cellaneous matters No amendment or variation to this agreement The parties acknowledge and agree that this
Misc 23.1.	cellaneous matters No amendment or variation to this agreement
Misc 23.1.	cellaneous matters No amendment or variation to this agreement The parties acknowledge and agree that this So far as any time, If any term or provision of this agreement is at any time held by any
Misc 23.1. 23.2.	cellaneous matters No amendment or variation to this agreement The parties acknowledge and agree that this So far as any time,
Misc 23.1. 23.2.	cellaneous matters No amendment or variation to this agreement The parties acknowledge and agree that this So far as any time, 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
Misc 23.1. 23.2.	cellaneous matters No amendment or variation to this agreement The parties acknowledge and agree that this So far as any time, 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

	••••••
23.5.	The rights and obligations of the
23.6.	Any obligation in this agreement
23.7.	No failure or delay by any party to exercise any right, ■ ■ ■ ■ ■ ■ ■
23.8.	The Parties agree that
23.9.	Any communication to be served on either party by
	It shall be deemed to have been delivered:
	if delivered = = = = = = : = = = = = = = = = = = =
	if sent by post • • • • • • • • • • • • • • • • • • •
	: - 24 [
23.10.	
23.11.	,,



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

AND

Signed by [Buyer name in full]

AND

Signed by [Guarantor name in full]

Schedule 1: Properties

Address

Part 1	: Freehold Properties
1.	
2.	
3.	The Seller sells with full title guarantee.
4.	[5]
5.	
	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:

Signed by [personal name], the Guarantor
Witness to signature:
Name:
Address

Schedule 1: Part 2

Leasehold Property

				•	•	 •				•	•		= 1				= 1		
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8. AND 9

	:
9.1	

9.2

9.3

9.4 ----------

9.5

9.6,...... ------...................................

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 2: Assets

[list assets]

Schedule 3: Excluded Assets

[list excluded assets]

Schedule 4: Warranties

	•				,																•								•		
Gene	General																														
1.	••																							•	-	•	•			•	•
2.	• •																							_				_	_	_	
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3.																															
4.																				,											
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5.																															
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[-----

8.

Accounts

9.	
10.	•[••••••].
11.	The Accounts:
	11.1.
	••••;
	11.2.
	11.3.
	11.4.
12.	:
	its purchase price;
	its production cost;
	its net realisable value.
13.	•••••
14.	,
	14.1.
	14.2.
	14.3.

15.	
Asse	ts
16.	All Assets:
	16.1. are transferred by this agreement; and
	16.2.
	16.3.
17.	
Tradi	ing and Contracts
18.	
19.	
20.	
21.	•••••
22.	
23.	

	[25]
24.	
25.	
26.	
27.	••••••••••••••••••••••••••••••••••••••
28.	
29.	
Emplo	oyees
30.	The Disclosure Letter contains for each Employee:
	30.1. an employment history;
	30.2. a curriculum vitae;
	30.3. terms of employment;
	30.4. non-contractual matters and informal arrangements.
31.	
32.	
33.	,,,,,,,,,,,,,,,,,,

34.	
35.	
36.	The Seller is involved in no employment dispute.
37.	
	■■.
38.	,
39.	
40.	
	[50]
01-1	
	tory restrictions
41.	
40	1986 .
42.	
43.	
44.	

45.	
46.	
47.	
Freeh	old and leasehold Properties
48.	••••••••••••••••••••••••••••••••••••••
49.	
50.	None of the Properties is:
	50.1.
	50.2. situated in a conservation area;
51.	50.4. in an area liable to flooding.
52.	,
53.	
54.	
55.	
56.	

57.							•••		 		::	••
58.	••••		••••			 	•••	• • •				••
	58.1.					 • • • •	•••		•••		• • • • ;	
	58.2.	•••••		•••	•••	 • • •	•••	•••	••		• • •	
59.	••••		•••	• • • •	• • • •	 •••	•••	•••	•••			••
	59.1.	water;										
	59.2.	drainage;										
	59.3.	electricity;										
	59.4.	gas;										
	59.5.	telecomm	unicatio	ns.								
60.	• • • • • ·	••••		• • • •		 •••		• • •			••	••
61.						 					••	••
						 					••	••
62.						 						
	••••	. ■ :										
	62.1.		••••	•••	•••		• • •		•••	:	•	
		there are i										
63.											- 8	, ■

Intelle	ectual Property	
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Inforn	mation technology ("IT")	
71.		I
	71.1 the name:	
	71.1. the name;	
	71.2. name and contact information of registrant; 71.3.	
	71.5.	- !
	71.4. date to which the name is registered.	
72.		J
73.		

.............

74.		
75.		
	75.1.	;
	75.2.	technical, customer and client support services;
	75.3.	;
	75.4.	an email service provider.
76.		
		12
77.	•••	
,,,		
78.	•••	,
	•••	•••••••••
79.		••••••••••••··························
	79.1.	
	79.2.	what password he uses;
		•••••••
	79.4.	

Schedule5: Pension scheme

Schedule6: Press release

[Set down the text you have agreed.]

Explanatory notes:

Sale agreement: manufacturing business

General notes

10. 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, and the \blacksquare \blacksquare \blacksquare \blacksquare

11. 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

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,

12. 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

13. 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 = = = = = = = = = = = = = = = . = = = = = = = = = = = = = = =

14. 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

15. Real property references

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

16. Use a solicitor for conveyancing

A freehold property can be transferred only by a suitable form of transfer, for which you will need help from a solicitor or licensed conveyancer. However, a large part of the work of a conveyancer is spent in preliminary matters and drawing the agreement for sale which usually precedes the transfer document, signed at "completion". The answers to the usual preliminary enquiries are covered by the warranties. The buyer should make sure that the replies in the disclosure letter are accurate and avoid "fudge". You may need to add more warranties

17. Initial extra pages

Paragraph specific notes

(Some points are covered in the Warranties ■ ■ ■ ■ ■ ■ ■ ■ ■ 18. **Definitions** 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 You should first decide on the contents of the document, then return to check what definitions are needed and whether they really 19. 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 **\\ \B** 20. 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. 21. **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 ********, ********, ********* 22. Buyer's acknowledgment of inspection We have included this paragraph in case it is required by the seller. It is not in the buyer's interest to include it. We have given it to you only so that **\\ \\ \\ \| \| \| \| \|**

23. Agreement for sale

There is an overlap in this list: use the descriptions that are \blacksquare
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
The Price
The buyer may wish to apportion the purchase price among the assets 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 a claim would \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
It may be important to specify prices ■ ■ ■ ■ ■ ■ ■ :
Goodwill
Leasehold property
Freehold property
Assets
Intellectual Property
Stock for sale or manufacture
You should consult an accountant as to the most favourable apportionments, although the other party will also have a view as •••••••••••••••••••••••••••••••••••
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
■.

25.

Delivery means delivery of possession. Some assets may of course be handed over physically, such as keys and certain books of account. If the buyer will not be
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 each service provider. Even that EXECUTE EXECUTE EXECU
Completion
It is a matter of negotiation and agreement as to the mechanics of completion and in particular when final issues are to be completed. Leasehold property will have been dealt with in advance, but domain names may present more difficulty since there are no provisions for a conditional transfer. The buyer has to decide how long
The power to rescind is very strong. Usually, when a buyer has taken control
of = = = = = , = = = = = = = = = = = = =

28. Transfer of Employees

In law, an employer has an obligation to not sell or transfer any \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
While it is the responsibility of the seller to make certain that the law is complied with, the
Also note that extra protection is given to certain groups of employees. These
include the staff for cleaning, catering, laundry and ■ ■ ■ . ■ ■ ■ ■ ■ ■ ■
November 2000 and information of
You can access more information at:
https://www.employment.govt.nz/workplace-policies/workplace- change/restructuring-when-business-sold-or-transferred/
Stocks
Stock can be anything, so the agreement is drawn in broad terms. In practice,
the new will be a second on a subsection of the second of
there will be occasions when ten people employed by auditors will be needed to count the stocks and other occasions when ••••••••••••••••••••••••••••••••••••
to count the stocks and other occasions when
to count the stocks and other occasions when , , , , , , , , , , , , , , , , , , ,
to count the stocks and other occasions when
to count the stocks and other occasions when
to count the stocks and other occasions when Debtors The arrangement we have provided is the most common
to count the stocks and other occasions when Debtors The arrangement we have provided is the most common Creditors and liabilities We think this is a good arrangement but
to count the stocks and other occasions when Debtors The arrangement we have provided is the most common Creditors and liabilities We think this is a good arrangement but Goods and Services Tax (GST) Sale of business as going concern from one registered person to another
to count the stocks and other occasions when Debtors The arrangement we have provided is the most common Creditors and liabilities We think this is a good arrangement but Goods and Services Tax (GST)

30.

31.

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
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
Limitation of Seller's liability
This paragraph limits the liability of the seller. This is a usual provision, but flexible,
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

34.

The Guarantee
This agreement is guaranteed by two individuals. If the seller is \blacksquare
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
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
Publicity / Announcements
Edit or delete.
Damages not adequate
A technical provision to prevent a judge from insisting on damages only, ■ ■
••.
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

37.

38.

39.

	nese are just as valid in law as if we had written them ••••••••••••••••••••••••••••••••••••
Sche	dule 1, part 1:
	To be certain that a freehold property is agreed to be sold I I I I I I I I I I I I I I I I I I
1.	Accurately describes or refers to the subject property
2.	Describes the buyer by name
3.	Is signed by or for the seller
4.	That the seller has authority to sell
5.	That the agreement contained here is • • • • • • • • • • • • • • • • • •
6.	We have provided for a witness, •••••••••••••••••••••••••••••••••••
Sche	dule 1, part 2:
	Leasehold property: we have provided a full \blacksquare
	However, the seller should also require a document in which the landlord gives his consent to the assignment and accepts the buyer as his new tenant. If he fails to do so, the buyer is technically a \blacksquare
Sche	dule 2: Assets
	List assets to be sold
Sche	dule 3: Excluded Assets
	List excluded assets

Note: matters relating to warranties

Schedule 4: Warranties:

	simpler than you thought! Here now is an \blacksquare
Warra	nties - the inside-out promises
	I will now address the task itself and tell you how to make it happen. The first matter to consider " " " " " " " " " " " " " " " " " "
	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
	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
	,

m,	Where any warranty refers to the knowledge, information ■ ■ ■ ■ ■ ■ ■ ■
	,
•	
S	Suppose the seller warrants:
<i>(</i> (Neither the seller nor any of its shareholders ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
•	
•	
T -	he reply to this
-	low, finally, let us suppose the warranty had not been in the draft agreement
	at all. This is what would have happened:
•	
•	
•	
•	
•	
Y	ou may find aspects of my illustration to be immoral. That may ■ ■ ■ . ■ ■
•	
,	.,
Warran	ties - seller's tactics
	The "task" of the seller is essentially to provide full and truthful information
a ■	
•	
•	
_	
Α	As a seller, ••••••••••••••••••••••••••••••••••••

•	You be the one to
•	; = = = : : : : : : : : : : : : : : : :
•	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
Warra	anties - 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 solicitor, you will have to decide whether this creates an unlevel playing field.
! !	
(Some solicitors acting for a buyer will see the provision of warranties as an opportunity to go back to
Warrar	nties: drafting notes continued
	t is good practice to delete irrelevant warranties,
Genera	al
	These are very
	With reference to licences and consents: in any business which has been operating for more
1 1 1	
Accou	nts
	The basis of valuation of the business is likely to have been the last audited annual accounts,
! !	

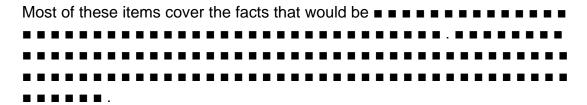
Α	S	S	ρ	t	S
_	J	J	·		•

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 • • • • • • • • • • • • • • • • • •
The most common reason for litigation about contracts arises because someone,
Employees
The proposition in law intends to support a fair process and holds
Despite these extensive ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
Statutory restrictions
These warranties are general,

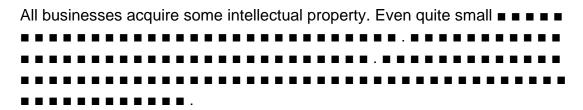
Litigation and regulation

We have no comment.

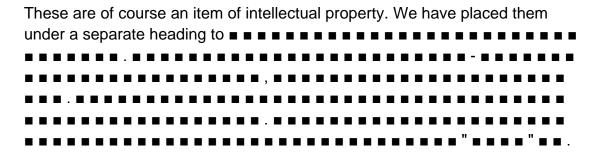
Freehold and leasehold Properties



Intellectual Property



Information technology ("IT")



Schedule 5: Pension scheme

Please provide the details of pension scheme and arrangements

Schedule 6: Press release

Provide text or delete if not required

End of notes