NZ-COMbsl10

Business sale agreement: sports coach or personal trainer

Date: [date]

Between:

The Buyer is: [name] of [address]

The Seller is: [name] of [address]

The Guarantor is: [name] of [address]

Contents

- 1. Definitions
- 2. Interpretation
- 3. Entire agreement
- 4. Agreement for Sale
- 5. Transfer of Contracts
- 6. The Price
- 7. Items to be delivered at completion
- 8. Completion
- 9. Creditors and liabilities
- 10. Goods and Services Tax (GST)
- 11. Warranties by the Seller
- 12. Future activities
- 13. Confidentiality
- 14. Publicity / Announcements
- 15. Miscellaneous matters

Schedule 1: Assets

Schedule 2: Warranties

Accounts

Intellectual Property

Information technology ("IT")

Schedule 3: 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 LLP too)

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

under company number [number] = = = = = = = =

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 • • • • • • • • • • • • • • • • • • •								
It is	It is now agreed as follows:							
1.	Definitions							
	So far as the context permi	ts, 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 •••••••••••••••••••••••••••••••••••						
		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 $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$

	information, comment
	data or information relating to pre-clinical and clinical trial • • • , • • • • , • • • • , • • • • , • • • • , • • • • .
	information about • • • • • • • • • • • • • • • • • • •
"Contracts"	means current contracts of the
"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.nz
"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 all kinds coming into existence after
"ISP"	means the Internet service provider;
"Last Accounts Date"	means the date • • • • • • • • • • • • • • • • • • •
"Lease"	means the lease or leases • • • • • • • • • • • • • • • • • •
"Payment Service Provider"	means the banking intermediary who provides
"Price"	means the
"Products / Services"	means the products
"Stocks"	means stocks of Products, raw materials, work in progress and finished goods, and goods for
"Third Party Software"	means software owned by some

"Warranty/Warranties"	means the warranties and undertakings of the ■
"Website"	means www.[URL] and www.[URL] and \blacksquare

2. Interpretation

This a	agreement
2.1.	A reference to one
2.2.	In connection with any benefit given by
2.3.	A reference to a person includes reference to that person's successors, legal representatives,
2.4.	A reference to the knowledge, information, belief or awareness = = = =
	,
2.5.	A reference to a paragraph or schedule is to •••••••••••••••••••••••••••••••••••
2.6.	The headings to the paragraphs and schedules (■ ■ ■ ■ ■ ■ ■ ■ ■ ■

	2.7.	Any agreement by any party not to do or
	2.8.	A reference to an act or
	2.9.	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
3.	Entii	re agreement
	3.1.	Each party acknowledges that this agreement and the Disclosure Letter
	3.2.	The Seller warrants and undertakes that he is not •••••••••••••••••••••••••••••••••••
		••••
4.	Agre	
4.		
4.		eement for sale

		4.3.2	the Assets;
		4.3.3	the Stocks;
		4.3.4	the Intellectual Property rights;
		4.3.5	the Domain Name;
		4.3.6	the Website;
		4.3.7	All other Assets owned by
	4.4.	Compl ■ ■ ■ ■	etion shall take place today, •••••••••.
5.	Trai	nsfer (of Contracts
	The S	Seller un	dertakes that for a period of [three years], he will do his utmost
		••••	,
	5.1.	enter i	nto any novation agreement.
	5.2.		e information about = = = = = = = = = = = = = = = = = = =
	5.3.	confirn	n to any person or governmental authority such details
	5.4.		liately inform the
3.	The	Price	!
	6.1.	••••	rice for the Business shall

the Business as a going concern;

4.3.1

		Goodwill	\$[]
		Assets	\$[1
		Intellectual Property rights	\$[1
		Contracts and all other property	Nil	
		The Stocks	To be	ascertained
		Total Price [excluding Stock]	\$[1
	6.2.	The Price shall be paid as follows:		
		6.2.1		-/
		6.2.2		,
	6.3.			
	6.3.			
	6.3.	•		
	6.3.	•		
7.		•		
7.	Item	as to be delivered at completion		
7.	Item	s to be delivered at completion		•••••
7.	Item	as to be delivered at completion		•••••
7.	Item	s to be delivered at completion	••••	••••••••••••••••••••••••••••••••••••••
7.	Item	s to be delivered at completion		••••••
7.	Item	s to be delivered at completion		

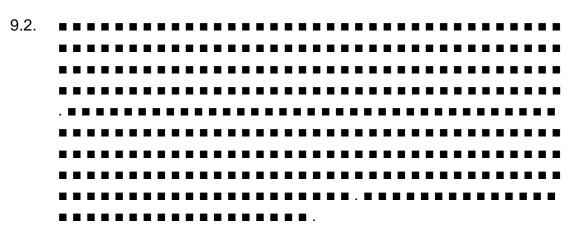
7.4.	
7.5.	
7.6.	marketing material of every sort in any medium.
Con	npletion
8.1.	
8.2.	[14]
8.3.	
8.4.	
8.5.	

8.

8.6.

9. Creditors and liabilities





9.3.

10. Goods and Services Tax (GST)

10.1.

10.2.

10.3.

 		 	■ .					

11. Warranties by the Seller

11.1. The Seller warrants to	o the	Buyer	that:
------------------------------	-------	-------	-------

- 11.1.2 the Disclosures are true, accurate and comprehensive;
- 11.1.3
- 11.2.
- 11.3.

OR

11.4.

12. Future activities

12.1.

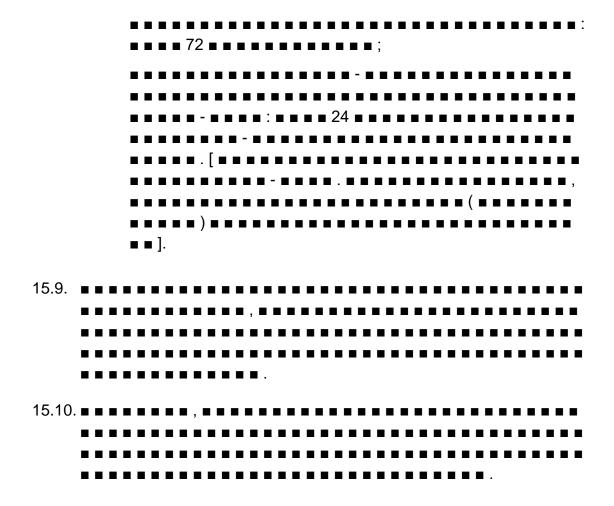
12.2.	
10.0	
12.3.	
12.4.	;
12.5.	
Con	fidentiality
13.1.	The Seller now undertakes that he will:
	13.1.1
	13.1.2
13.2.	
Pub	licity / Announcements
14.1.	
14.2.	
	, ■ .

13.

14.

15. Miscellaneous matters

15.1.	***************************************	
15.2.		
15.3.		
. 0.0.		
15.4.		
15.5.		
15.6.		
15.7.		
15.8.		
10.0.		
	It shall be deemed to have been delivered:	



Signed by [Seller name in full]

AND

Signed by [Buyer name in full]

Schedule 1: Assets

[list assets]

Schedule 2: Warranties		
■ ■ , ।	••••••••••••••••J	
Acco	unts	
1.		
2.	The Accounts:	
	2.1.	
	2.2.	
	2.3.	
3.		
	its purchase price;	
	its production cost;	
	its net realisable value.	
4.		
5.	;	
	5.1.	
	5.2.	

	5.3.																	•	•	•	• •	•	•	= !	
6.	, .					•••		•••		•	•	•	•••	-				•	-			•	•	• •	
Intelle	ectual						•	-																	
7.					-		-																		
8.	•••																								
9.	•••																								
Inforn	nation	techr	nolog	ју ("	ʻIT")																			
10.	10.1. 10.2. 10.3.	the n	■ ■ ■ ame; e and	l cor	∎ ∎ ntac	∎ ∎	ı∎		ı ∎	. .	∎ ■	∎ egis	■ ■	ı ■			•						••		
	10.4.	•••	•••	. .									••		•	••		•	■ 1	••	• •	•	•	• •	 I ■
11.	:::	• • •		• • •	• •	 					• •	-			.		•	•			• •	•			I =
12.	:::	•••			••		_		_						_										=

12.1.
12.2. technical, customer and client support services;
12.3. ;
12.4. an email service provider.
12

End of Warranties

Schedule 3: Press release

Explanatory notes:

Business sale agreement: sports coach or personal trainer

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, and the

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 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

Paragraph specific notes

(Some points are covered in the Warranties)

1. 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 capitalised use

You should **first decide on the contents of the document**, then return to check what definitions are needed and whether they really **E E E E E E E**

2. 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.

3. 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

4. Agreement for sale

There is an overlap in this list: use the descriptions that are most

5. 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 \blacksquare
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
It may be important to specify prices ■ ■ ■ ■ ■ ■ ■ :
Goodwill
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 to what is or is not acceptable. It may be necessary to obtain clearance from HM Revenue and Customs in advance. This
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 ••••••••••••••••••••••••••••••••••••
It is not of course necessary to physically move or hand assets to the buyer. Delivery means delivery of possession. Some assets may of course be handed over physically,

6.

7.

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
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 more 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
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 registered person is zero-rated

8.

9.

10.

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
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

13. Confidentiality

12.

Warranties by the Seller

11.

	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
14.	Publicity / Announcements
	Edit or delete. The buyer may want to publicise the deal ,
15.	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 , = = = = = = = = = = = = = = = = = =
Sched	lule 1: Assets
List As	ssets
Sched	lule 2: Warranties:
Note:	matters relating to warranties
simple	e this document you have to understand how warranties work. They are than you thought! Here now is an ,
Warra	nties - the inside-out promises
	ow address the task itself and tell you how to make it happen. The first matter sider

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 •••••••••••••••••••••••••••••••••••
"Where any warranty refers to the knowledge, information ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
, = = = = = = = = = = = = = = = = !
Suppose the seller warrants:
"Neither the seller nor any of its shareholders

The rep	ply to this
This is	nally, let us suppose the warranty had not been in the draft agreement at all. what would have happened:
You ma	ay find aspects of my illustration to be immoral. That may
Warrai The "ta	nties - seller's tactics ask" of the seller is essentially to provide full and truthful information and to
As a se	eller, — — — — — — — — — — — — — — — — — — —
•	; ■ ■ ■ ■ When you receive the draft ■ ■ ■ , ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
	Consider the breadth of each warranty.

•	Even where you "answer" the warranty in some ••••, ••••• ••••••••••••••••••••••••••
Warra	nties - buyer's response
	want a fair and satisfactory outcome, use warranties.
expec	ver, if your warranties are all "absolute" in matters where it is unreasonable to the seller to •••••••••••••••••••••••••••••••••••
	It the warranties according to the transaction. Do not include warranties which
	seller is represented by a solicitor, you will have to decide whether this creates evel playing field.
	solicitors acting for a buyer will see the provision of warranties as an tunity to go back to

Warranties: drafting notes continued
It is good practice to delete irrelevant warranties,
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
Intellectual Property
All businesses acquire some intellectual property. Even quite small
Information technology ("IT")
These are of course an item of intellectual property. We have placed them under a separate heading to

End of notes