Company purchase agreement: part payment retention

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General

No damaging effect of this agreement

Company structure and operation

Accounts

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Taxation

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Assets

Trading and contracts

Properties – all

Properties rented by the Company

Employment

Pensions

Insurance

Intellectual Property

Information technology ("IT")

This agreement is dated: [date]

The Seller is: [ABC] Limited, a company incorporated in New Zealand

[under company number] [number] and] ■ ■ ■ ■ ■ ■ ■

-----;----[-----];----

OR

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

OR

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

The Buyer is: [DEF] Limited, a company incorporated in New Zealand

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 \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare

----:

"Accounting Date" means the date to which the Accounts have

historically been prepared and to \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare

"Accounts" means the financial statements, annually audited

profit and loss account and balance sheet of the

.

"Assets" means and include collectively the fixed assets

(fixtures and fittings, furniture, office equipment and motor vehicles of the Company), stock and good ••••, •••••

"Buyer New Shares" means the ordinary shares of \$[1] each in the

	[Enter Buyer(company name)], to be I I I I I I I I I I I I I I I I I I
"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 • • • • • • • • • • • • • • • • • • •
"Disclosure Letter"	means the disclosure letter provided by the Seller to the Buyer for
"Domain Names"	means the Internet domain names used by the Company in connection with its website or in
"First Year Accounts"	means the accounts to be drawn to the \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
"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 $\blacksquare \blacksquare \blacksquare \blacksquare$
"Net Profit"	means the net profit (less losses) of the Company as shown by the Accounts or ■ ■ ■ ■ ■ ■ ■ ■
	after deducting all expenses and depreciation; after adding added back all payments, bonuses, options and pensions and any after adding back sums for transactions not at
	without taking account of capital profits or losses; before deducting tax on that profit.
"Properties"	means the land and buildings owned and / or used by the Company, brief details of •••••••••••••••••••••••••••••••••••
"Retention"	means the sum of \$ [amount] set aside in the terms of •••••••••••••••••••••••••••••••••••
"Purchase Price"	means the total price, paid or to •••••••••••••••••••••••••••••••••
"Sale"	means the sale of the Shares.
"Shares"	[number] ordinary shares of \$ [1] each held by the Sellers 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 [11] • • • • • • • • • [3].

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 $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$
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 GST, 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

	•	nent and any version or
	•.	
Enti	re agr	eement
3.1.	Letter c	arty acknowledges that this agreement and the Disclosure contains the entire agreement between them and that he relies
0.0		
3.2.	Each party acknowledges and warrants that he has power to enter into this agreement [and = = = = = = = = = = = = = = = = = = =	
3.3.		eller warrants and undertakes that he is not aware of anything his reasonable control which might or will
Calc	ulatio	on of the Purchase Price
4.1.	4.1. The Purchase Price is the total of:	
	4.1.1	the sum of \$ [amount] (the "Cash") ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
	4.1.2	the sum of \$ [amount], the Retention, so far as • • • • • • • • • • • • • • • • • •
	4.1.3	the sum of \$ [amount], payable by the allotment of [number] of Buyer New Shares in the [• • • • • (• • • • • •)], • • • • • • • ;
4.2.	The Se	llers shall share the Purchase Price in proportion ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
The	Buye	r New Shares: Buyer's obligations
The B	uyer und	dertakes as follows:
5.1.	to issue	e or procure the issue of [number]

4.

	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.	Buy	er's acknowledgment of inspection
	The I	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.	•	reement for Sale and issuance of Buyer New ares
	7.1.	The Sellers agree to sell the Shares and the Buyer agrees to buy the Shares for the
	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.	affairs	as the Sellers have any powers or control of any aspect of the of the Company, he will relinquish it and will so far as ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
7.6.	The Sa ■ :	ale = = = = = = = = = = = = = = = = = = =
	7.6.1	the Sellers entering into a shareholders' agreement with , [
	7.6.2	[Beatrice Blackbird and Robin Finch] each entering , , , , , , , , , , , , , , , , , ,
].
The	Reter	ntion and the shortfall
For th	e purpo	se of this paragraph "Warranted Net Profit" ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
8.1.		etention shall be retained in an account with [bank], in the joint
8.2.	No par	t of the Retention, nor interest
8.3.	Accour	n as possible after the date of the First Year Accounts, the ntants shall be
8.4.	The co	st of the audit and certification shall be paid as ■ ■ ■ ■ ■ ■ ■ ■

OR		
8.5.	The cost of the	
8.6.	The parties shall promptly provide to the	
8.7.	The Warranted • • • • • • • • • \$[147 , 000].	
8.8.	The Buyer agrees that he will not take	
8.9.	· · · · · · · · · · · · · · · · · · ·	
8.10.	The shortfall shall be paid out of the Retention	
8.11.	If the Net Profit shown by the First Year Accounts	
8.12.	No claim lies for a breach of Warranty insofar as	
	•••••	
•		
Completion and delivery of documents		

9.1.	•	
	9.1.1	a bank draft
	9.1.2	a second bank draft
	013	letters of allotment of the Ruyer New Shares:

9.2.	At com	pletion, = = = = = = = = = = = = = = = = = = =
	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 • • • • • • • • • • • • • • • • • • •
	9.2.12	the minutes of meetings ••••••••••••••••••••••••••••••••••••

		9.2.12.1 [Buyer nominee name] = = = [= = = = = = = = ;	1
		9.2.12.2 transfer forms • • • • • • • • • • • • • • • • • • •	ı
		9.2.12.3 the resignations of [name] • • • • [• • • •] • • • • • • • • •	
	9.3.	Following completion of this Sale, the Buyer shall obtain • • • • • • • • • • • • • • • • • • •	
	9.4.	Each Seller undertakes that he will:	
		9.4.1 immediately repay to the Company any series s	
		9.4.2 use his best endeavours to do	
10.	War	ranties 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 • • • •	

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

11. Warranties by Sellers

11.1.		
]:	
	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
	11.1.4	the contents ••••;
	11.1.5	unless otherwise specified,
	11.1.6	[Each corporate Seller
	11.1.7	the Shares constitute the whole • • • • • [• • • • • • • • • • • • •
	11.1.8	there is • • • • • • • • • • • • • • • • • •
11.2.	The Wa	arranties in this agreement are not

OR

11.3.	no clair	arranties in this agreement are not limited in monetary value, but m = = = = = = = = [= = =] = = = = = = =
Trus	stee W	/arranties
Each	of the Ti	rustees warrants:
12.1.		has legal title
12.2.	that he	has = = = = = = = = = = = = = = = = = = =
12.3.		has no knowledge of any circumstance unknown
	••••	
Res	trictiv	e agreement
13.1.		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 \blacksquare \blacksquare
		;
	13.1.3	for [3] years after completion of the Sale, either on his own account or for any

13.2.	Each o	f the Sellers now agrees that ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
13.3.		ng completion of
	13.3.1	hold himself • • • • • • • • • • • • • • • • • • •
	13.3.2	register nor purchase nor use any name similar to any ■ ■ ■
Sell	ers' p	rotection
14.1.		aim against any Seller, in relation to the
	•	
14.2.	No sing	gle Seller can be liable for any Warranty claim unless his ■ ■ ■
		■,■■■\$[5,000].
14.3.	-	event, the maximum
14.4.		lyer may not claim more
	.	
The	Guara	antee
15.1.	[Each o	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 $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$, $\blacksquare \blacksquare$
	15.2.	[Each o	f] The Guarantor accepts that compliance by the ■■■■■■
			.,
	15.3.	[Each o	f] The Guarantor accepts that the Buyer is
	15.4.	This gua	arantee is limited to:
		15.4.1	the sum of [sum] in total;
		15.4.2	claims notified to the
16.	Pub	licity /	Announcements
16.		-	Announcements ic or press announcement shall be made
16.		No publ	
16.		No publ	ic or press announcement shall be made ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
16.	16.1. <i>OR</i>	No publ	ic or press announcement shall be made
16.	16.1. <i>OR</i>	No publ	ic or press announcement shall be made
16.	16.1. <i>OR</i>	No publ	ic or press announcement shall be made • • • • • • • • • • • • • • • • • • •
16.	16.1. <i>OR</i>	No puble No party 16.2.1 16.2.2	ic or press announcement shall be made • • • • • • • • • • • • • • • • • • •
16.	16.1. <i>OR</i>	No puble No party 16.2.1 16.2.2	ic or press announcement shall be made
16.	16.1. <i>OR</i> 16.2.	No puble No party 16.2.1 16.2.2 16.2.3	ic or press announcement shall be made

16.4.	The parties agree to the issue of a • • • • • • • • • • • • • • • • • •
16.5.	[Each/every] party
Misc	cellaneous 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
	It shall be deemed to have been delivered:
	if delivered • • • • • • • • • • • • • • • • • • •
17.12	In the event of a dispute between the parties to this agreement,
17.13	. Unless otherwise stated, this agreement does not give any right to any third party under the Contract and Commercial Law Act 2017 or ■ ■ ■ ■

	,,,
	•
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 ■

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

Signed by [Seller name in full]

Signed by [Guarantor / Director name in full]

Schedule 1: Part 1 Shareholdings

[Here list all sellers' names,	addresses and ■ ■ ■ ■ ■	
	■ ■ ■ <i>].</i>	

Name	Address	Number of Shares	Signature

Schedule 1: Part 2 Details of the Company

1. The Company

Share capital:

Authorised $\{ [\blacksquare \blacksquare \blacksquare]$

Registered office: [address]

Directors: [list all names in full]

Secretary: [name in full]

Schedule 1: Part 3 Press release

Schedule 2: Part 1 Properties

- 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 could • • • • • • • • • • • • • • • • • • •
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
10.	Since the Last Year
No da	amaging effect of this agreement
11.	
12.	No term of this agreement conflicts with:

	12.2. the constitution of the Company.
13.	
Comp	pany structure and operation
14.	
15.	
16.	
10.	
17.	
	•••••••
18.	
	18.1. all documents of title relating to its Assets;
	18.2. ••••••••••••
	18.3.
19.	
	■ .

20.	
21.	
22.	
23.	
Acco	unts
24.	
25.	• [• • • • • • • • • • •].
26.	
27.	The Accounts:
	27.1.
	27.2.
	27.3.
	27.4.
28.	
	its purchase price;
	its production cost;

	its net	realisa	able va	ılue.														
29.		• • • •			•••	•••		••							•		•	-
30.	Since	the La	st Yea	r End:														
	30.1.								-		-	•	• •			-	• •	•
	30.2.	 ,									••		• • •	••		•	• •	
	30.3.	:::							-		. ■ ,			ı .	• •		•	-
31.															•			
Cash	flow																	
32.		• • • •			•									-	•	= :		
	32.1.								-		-		• • •				• •	
	32.2.	:::									-		• • 1	••		, ■	•	-
	32.3.						•••		-	==	-		• • •				• •	
33.																		
															•			-
34.																		
		_		_								-					_	•
Taxati	ion																	
35.											• •			-	• •		•	•

<i>3</i> 6.	:::	• • •		•		• •	•	•	• •								•			•	•	- 1			•	•		
37.		■ ■ ,			• •	•																						
38.						•		•			-		•	= !			•			•	•	-				- 1		
39.				•	• •	• •			• •																			
40.						•			• •				•	-			•			-		•		•		- 1		•
41.	:::					• •		-			=	•	•		• •		•	-		-	-	- 1			-	- ·		
42.		•••		•		• •		-		•				-			•	-				- 1				- 1		•
						• •																						
Guara	ntees	and	bor	row	vin	g																						
43.	The D	isclo	sure	Le	ette	r d	lisc	clo	se	s:																		
	43.1.	■ ■ ;	••		•	•	• •	•			•	•	•		•	- 1	-	•	=			•		•	•	ı =	-	• •
	43.2.	the	term	s o	f e	ve	ry l	loa	an;																			
	43.3.	■ ■ ;	••		•	•		•	-	- 1		•	•	•	•	- 1		•			•	-			-	I =	-	
	43.4.	••					• •		-	- I	• •			-	•	.	• •	•		 			•	. .			-	

	••••••••••••••••••••••••••••••••••••••
44.	
45.	
46.	
Asset	ts
47.	
	47.1. are in its possession and control.
	47.2.
	47.3.
	47.4.
	47.5.
Tradii	ng 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.		
<i>5</i> 2.		
53.	No ex	cisting 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.	is priced in a currency other than dollars.
	53.5.	••••••••••••••••••••••••••••••••••••••
54.		
J -1 .		
].
55.	•••	
56.		[],

57.						•		-	•	- 1							•		-					-		.	
		■ ■ .	-																								
58.																				•	• •		•		•		1
59.				••			- 1		•	- 1		•					•										
Prope	erties -	all																									
60.												•	•		• •	•	•	• •	•	•	•	, ■	•			•	I
61.	•••																			•		•		•	•	.	-
62.																•	•			•		= 1			•	.	
63.					- 1		- 1									•	•		. =	•	•	•		. =	•	- 1	-
64.	•••												•		■ 2				ı 1	•		.		•	•		
65.		• • •		•••		• •	•			• •			•				•	•	•	•		= 1	••	•		= 1	-
66.	•••	• • • •			•	• •	•		•	• •		•	•			•	•			•	-	•	••	•	•	- 1	-
	66.1.	••	•••	• • •	• •	•	• •	= !															•	. .	• •	■	-
										•				•	• '			•									
67.	66.2.										_				.											-	-
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68.	•••			••	- 1		- 1	-	•	- 1	•				•		•	•	•				••	•		•	

69.		•••			- 1									- 1	■,		•	= !			•	•		= ! ! =	•
70.		• • •	••	••	• •	• •	• •	•		•				- 1	• •		• •	=	•	• •	• •	•			• •
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72.	:::	•••			- 1					•			•	• •	• •	- 1	• •	•	•	• ·	• •	•		■ ! ■ !	• •
73.	73.1. 73.2. 73.3. 73.4. 73.5.	wate drain elect gas;	age ricity	; /;					••			• •		•	• •		• •		•	•	• •				•
74.		• • • • .		••	•	• •		•											-	- ·	• •	•			•
_	erties r	ented	by	the	Со	mp	oan	У																	
75.		•••	••		•		• •						•		• •										
76.	:::		 		•				- - - ,		_				•		•	=	• • •	• •	•	•		= ! ! =	-
77.	•••	•••	••	••	• •	• •		•		•	-		•		• •	•	• •		•	• •	• •		- 1	- 1	• •

78.		
	78.1.	the name and address of the tenant.
	78.2.	the name and address of any guarantor.
	78.3.	the address of the Property.
	78.4.	
	78.5.	the rent.
	78.6.	••••••
	78.7.	••••••
	78.8.	
	78.9.	
	78.10	any unusual provisions.
79.		
Emplo	oymen	t
80.		
		,
81.		
82.	:::	

83.	\$[]
84.	
Pensi	ions
85.	
	85.1. copies of the trust deeds;
	85.2. the latest actuarial report;
	85.3.
86.	
Insura	ance
87.	
88.	No policy contains any special term or restriction.
89.	
90.	
91.	

Intelle	ectual Property
92.	
93.	
94.	
95.	
96.	
97.	•••••
98.	
99.	•••••••
Inforn	nation technology ("IT")
100.	:
	100.1. the name;
	100.2. name and contact information of registrant;
	100.3. tag holder name, land address and website;
	100.4. date to which the name is registered.
101.	••••••
102.	

103.	
104.	
105.	
106.	
	106.1.
	106.2. technical, customer and client support services;
	106.3.
	106.4. an email service provider.
107.	12
108.	
109.	•,••••••••
	109.1.
	109.2. what password he uses;
	109.3.

109.4.

Explanatory notes

Company purchase agreement: part payment retention

General notes

1. The parties

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

Notes numbering refers to paragraph numbers.

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

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
Interpretation
A number of provisions, each of which has application at one of more points later in the document. We suggest you do not ••••••••••••••••••••••••••••••••••
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 •••, ••••••••••••••••••••••••••••••••
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
Buyer New Shares: Buyer's obligations
J

3.

4.

5.

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
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
Agreement for Sale and issuance of Buyer New Shares
If you have a straight cash deal, delete all mention of issuance of new shares. If required,
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 considering •••••• :
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 , , , , , , , , , , , , ,

7.

8.

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 a 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 \blacksquare \blacksquare \blacksquare
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
Co	empletion and delivery of documents
	e have included here only the documents whose form and content are well own 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 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
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 constitution prevents such a contract being made (for
	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
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 \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
This paragraph may not be enforceable against a shareholder who has hitherto had •••••••••••••••••••••••••••••••••••
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
The Guarantee
This paragraph protects the buyer against a seller who spends 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 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
Publicity / announcements

14.

15.

16.

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 E E E E E E E E E E E E E E E E E E E	
Sche	dule 1 and 2	
We ha	We have no comment.	
Sche	Schedule 3- The Warranties	
Note	e: matters relating to warranties	
Before	e we give you other drafting notes, we want to explain about warranties. ■ ■ ■	
•••		
	anties are the essence of the deal. They are listed in a schedule. Do make sure ne paragraph of	
These	e warranties have been drawn to provide as large a "menu" as ■ ■ ■ ■ ■ ■ ■	

.....

For maximum protection,

Explanation of warranties

	any sale agreement, a company sale agreement is different. The main
nothin agreer	greement is usually drawn by the buyer. That is fair because the buyer knows g about the company and the seller knows everything (we hope)! So the ment first covers
	, ,
of the	are just assurances or guarantees from the seller as to the condition and state company and in particular, any existing liabilities, at the time of sale. No matternorough
•••	
	•••••••
How t	o use warranties?
If you	are seller
and er	arranties are not so much the sting in the tail as half the dog. Many lawyers ntrepreneurs will deliberately insist on a seller giving
	,
As a s ■ ■ ■ I	eller, 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 way, there is still a strong case for qualifying absolute warranties,

✓	Being the seller it is = = = = = = = = = = = = = = = = = =
If you	are the buyer
The we	eight of advantage is very firmly with the
As a b	ouyer 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
It is go	nties: drafting notes continued od 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
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 1,000
The most common reason for litigation about contracts arises because someone , , , , , , , , , , , , , , , , , ,
Properties - all
Real property is
Most of these items cover the facts that would be
Properties rented by the Company
If none, delete.
Employment
We have no comment. Set the warranties

We have no comment.
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 notes

Pensions