NZ-CPcsl03

Company purchase agreement: cash and shares, part deferred

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Agreement for the Sale and Purchase ■ ■ ■ ■ ■ ■ ■ ■ [■ ■ ■ ■]

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 ■ ■ ■ ■ ■ ■ ■ ■ 1 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .
The Buyer is:	[DEF] Limited, 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]

It is now agreed as follows:

1. Definitions

So far as the context permits, the following words ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

	Shares, deferred until the outcome of trading 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 ■ ■ ■ ■ , ■ 2 ■ ■ ■ ■ 2 ;
"Buyer New Shares"	means the ordinary shares of $ [1] each in the [Enter Buyer(company name)], to ■ .
"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 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ . ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

■ ■ ■

■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .

"Trustee Warranties"	means the limited warranties given by any Trustee as set ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ [12].
"Warranty/Warranties"	means the warranties and undertakings of the Sellers contained in paragraph [12] ■ ■ ■ ■ ■ ■ ■ ■ [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 ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

2.9. a reference to an act or regulation includes new law of substantially the same ■ ■ ■

4.3. The Sellers shall share the Purchase Price in proportion ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .

5. Buyer New Shares: Buyer's obligations

The Buyer undertakes as follows:

5.1. to issue or procure the issue of [number] ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .

5.2. that the Buyer New Shares shall rank pari passu with the ordinary shares of the Buyer, ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

6.4. The parties shall promptly provide to the Accountants all the information they may need or request ■ ■ ■

7.2. it has made full investigation into the title, [redacted];

7.3. it enters into this agreement on the basis of that [redacted], [redacted].

8. Agreement for Sale and issuance of Buyer New Shares

8.1. The Sellers agree to sell the Shares and [redacted].

8.2. The Sellers acknowledge receipt [redacted] [[redacted]] [redacted].

8.3. Each of the Sellers hereby waives any pre- [redacted], [redacted].

8.4. Each Seller now hands to the Buyer a letter of [redacted] ([redacted]) [redacted].

8.5. So far as the Sellers have any powers or control of any aspect of [redacted], [redacted]; [redacted].

8.6. The Sale [redacted]:

8.6.1 the Sellers entering into a shareholders' agreement [redacted] [[redacted]].

8.6.2 [Beatrice Blackbird and Robin Finch] each [redacted] [[redacted]].

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9. Completion and delivery of documents

9.1. Completion of this Sale shall [redacted], [redacted]

9.1.1 a payment receipt [bank [redacted]] [redacted];

9.1.2 letters of allotment of the Buyer New Shares;

9.2. At completion, [redacted]:

9.2.1 the title deeds relating to [redacted], [redacted];

9.2.2 title deeds, [redacted];

9.2.3 signed share transfer forms [redacted], [redacted];

9.2.4 [if the Company [redacted]] [redacted];

9.2.5 letters of resignation of certain directors, namely [names] [and the secretary of the Company], with [redacted], [redacted], [redacted], [redacted];

9.2.6 [the resignation of [redacted]];

9.2.7 a list of all user names and [redacted].

9.2.8 the certificate of incorporation of the Company;

9.2.9 written confirmation by [redacted];

9.2.10 [employment contracts / service agreements], signed in [redacted], [redacted] [[redacted]] [redacted];

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9.2.11 all records relating to the employment of any person ■ ■ ■

10.4. Nothing done or not done by [redacted].

10.5. The Buyer may make any agreement with one or more [redacted], [redacted].

10.6. The Buyer undertakes to use its best endeavours to conduct the businesses [redacted].

10.7. If and only if any Warranty cannot be specifically referable to [redacted], [redacted].

10.8. Each Seller waives any claim he might have against [redacted].

11. Warranties by Sellers

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

11.1.1 the Sellers are entitled to transfer the Shares to [redacted];

11.1.2 after completion of this [redacted], [redacted];

11.1.3 except as disclosed in the Disclosure Letter, all of the [redacted] 3 [redacted], [redacted], [redacted], [redacted];

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11.1.4 the contents [redacted];

11.1.5 unless otherwise specified, [redacted];

11.1.6 [Each corporate Seller [redacted]];

11.1.7 the Shares constitute the whole [redacted] [[redacted]] [redacted];

11.1.8 there is [redacted].

11.2. The Warranties in this agreement are not [redacted].

OR

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

12. Trustee Warranties

Each of the Trustees warrants:

12.1. that he has legal title [redacted];

12.2. that he has [redacted];

12.3. that he has no knowledge of any circumstance unknown [redacted], [redacted], [redacted], [redacted].

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13. Restrictive agreement

13.1. So that the Buyer has the full benefit [redacted] :

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

13.1.2 at any time after completion of the Sale, disclose to any [redacted] ;

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

13.2. Each of the Sellers now agrees that [redacted] .

13.3. Following completion of [redacted] :

13.3.1 hold himself [redacted] ;

13.3.2 register nor purchase nor use any name similar to any [redacted] .

14. Sellers' protection

14.1. Any claim against any Seller, in relation to the [redacted]

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[redacted].

14.2. No single Seller can be liable for any Warranty claim unless his [redacted], [redacted] $ [5 , 000].

14.3. In any event, the maximum [redacted] $ [100 , 000].

14.4. The Buyer may not claim more [redacted], [redacted].

15. The Guarantee

15.1. [Each of] [redacted]:

15.1.1 that every statement, [redacted];

15.1.2 that he will procure [redacted];

15.1.3 that he will indemnify the Buyer against all [redacted], [redacted];

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

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

15.4. This guarantee is limited to:

15.4.1 the sum of [sum] in total;

15.4.2 claims notified to the [redacted] [[redacted]] [redacted].

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16. Publicity / Announcements

16.1. No public or press announcement shall be made [redacted] , [redacted] .

OR

16.2. No party shall:

16.2.1 make any public announcement; or

16.2.2 disclose any information; or

16.2.3 allow expressly or by default any other person [redacted] .

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

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

16.5. [Each/every] party [redacted] .

17. Miscellaneous matters

17.1. No amendment or variation to this agreement [redacted] , [redacted] .

17.2. The parties acknowledge and agree that this [redacted] .

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

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17.4. So far as any time, [redacted] .

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 [redacted] .

17.6. Any obligation in this agreement [redacted] .

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

OR

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

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

17.10. The parties agree that [redacted] .

17.11. Any communication to be served on either of the [redacted] - [redacted] .

It shall be deemed to have been delivered:

if delivered [redacted] : [redacted] ;

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if sent by post [redacted] : [redacted] 72 [redacted] ;

If sent by e-mail to the address from which the receiving party has last sent e-mail: [redacted] 24 [redacted] - [redacted] . [[redacted] - [redacted] . [redacted] , [redacted]].

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

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 [redacted] , [redacted] , [redacted] , [redacted] , [redacted] , [redacted] . [redacted] .

17.14. In the event of any conflict between any term of this agreement and the [redacted] , [redacted] .

17.15. This agreement may be executed in multiple counterparts each [redacted] .

17.16. The validity, construction and performance of this agreement shall be [redacted] .

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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]

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Schedule 1: Part 1 Shareholdings

*[Here list all sellers' names, addresses and ■■■■■■■■■■■■■■■. ■■■■■■■■■■■■■■■

Schedule 1: Part 2 Details of the Company

1. The Company

Company number: [■ ■ ■ ■] ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ : [■ ■ ■ ■]

Share capital:

authorised $ [■ ■ ■ ■] ■ ■ ■ ■ $ [■ ■ ■ ■]

Registered office: [address]

Directors: [list all names in full]

Secretary: [name in full]

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Schedule 1: Part 3 Press release

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Schedule 2: Part 1 Properties

[Please [redacted] *]*

- Freehold Properties
- Leasehold Properties
- Any other particulars

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Schedule 2: Part 2 Assets

*[Please list ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ , ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

Schedule 3: The Warranties

General

1. All of the information and ■■■

12.1. [redacted].

12.2. the constitution of the Company.

13. [redacted], [redacted].

Company structure and operation

14. [redacted].

15. [redacted], [redacted], [redacted], [redacted], [[redacted].]

16. [redacted], [redacted], [redacted] ([redacted]) [redacted]. [redacted] [5] % [redacted] ([redacted]).

17. [redacted].

18. [redacted]:

18.1. all documents of title relating to its Assets;

18.2. [redacted];

18.3. [redacted].

19. [redacted].

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20. [redacted] [redacted] / [redacted].

21. [redacted], [redacted], [redacted], [redacted], [redacted].

22. [redacted].

23. [redacted], [redacted].

Accounts

24. [redacted] [redacted] [redacted].

25. [redacted] [redacted].

26. [redacted].

27. The Accounts:

    27.1. [redacted].

    27.2. [redacted] 1993, [redacted].

    27.3. [redacted].

    27.4. [redacted], [redacted].

28. [redacted]:

    its purchase price;

    its production cost;

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its net realisable value.

29. [redacted].

30. Since the Last Year End:

31. [redacted].

    31.1. [redacted], [redacted].

    31.2. [redacted], [redacted].

32. [redacted].

Cash flow

33. [redacted]:

    33.1. [redacted].

    33.2. [redacted], [redacted].

    33.3. [redacted].

34. [redacted].

35. [redacted] [[redacted]] [redacted].

Taxation

36. [redacted], [redacted], [redacted].

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37. [redacted].

38. [redacted], [redacted].

39. [redacted], [redacted].

40. [redacted], [redacted].

41. [redacted] [[redacted]] [redacted].

42. [redacted].

43. [redacted].

Guarantees and borrowing

44. The Disclosure Letter discloses:

44.1. [redacted];

44.2. the terms of every loan;

44.3. [redacted];

44.4. [redacted]

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[redacted].

45. [redacted].

46. [redacted], [redacted], [redacted].

47. [redacted].

Assets

48. [redacted]:

    48.1. are in its possession and control.

    48.2. [redacted], [redacted].

    48.3. [redacted].

    48.4. [redacted].

    48.5. [redacted].

Trading and contracts

49. [redacted], [redacted] - [redacted] - [redacted], [redacted] / [redacted], [redacted].

50. [redacted].

51. Since the Last Year End:

    51.1. [redacted].

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51.2. the Company has paid its creditors promptly.

51.3. ■■■

58. [redacted] [25] [redacted] [25] [redacted].

59. [redacted], [redacted].

60. [redacted].

Properties - all

61. [redacted], [redacted].

62. [redacted].

63. [redacted].

64. [redacted].

65. [redacted] 2 [redacted] 1 [redacted], [redacted].

66. [redacted].

67. [redacted]:

    67.1. [redacted].

    67.2. there are no rent reviews in progress.

68. [redacted], [redacted] - [redacted].

69. [redacted].

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70. [redacted], [redacted].

71. [redacted].

72. [redacted].

73. [redacted].

74. [redacted]:

74.1. water;

74.2. drainage;

74.3. electricity;

74.4. gas;

74.5. telecommunications.

75. [redacted]. [redacted].

Properties rented by the Company

[redacted].

76. [redacted], [redacted] 2 [redacted] 1 .

77. [redacted].

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78. [redacted]:

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. [redacted].

78.5. the rent.

78.6. [redacted]

78.7. [redacted].

78.8. [redacted], [redacted], [redacted].

78.9. [redacted].

78.10. any unusual provisions.

79. [redacted].

Employment

80. [redacted], [redacted]-[redacted].

81. [redacted].

82. [redacted], [redacted]

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[redacted], [redacted].

83. [redacted] $[[redacted]] [redacted].

84. [redacted].

Pensions

85. [redacted], [redacted], [redacted], [redacted]:

    85.1. copies of the trust deeds;

    85.2. the latest actuarial report;

    85.3. [redacted], [redacted].

86. [redacted] ([redacted]) [redacted].

Insurance

87. [redacted].

88. No policy contains any special term or restriction.

89. [redacted], [redacted], [redacted].

90. [redacted], [redacted] - [redacted].

91. [redacted], [redacted].

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Intellectual Property

92. [redacted].

93. [redacted].

94. [redacted].

95. [redacted].

96. [redacted].

97. [redacted].

98. [redacted] ([redacted]) [redacted], [redacted].

99. [redacted] - [redacted].

Information technology ("IT")

100. [redacted]:

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. [redacted].

102. [redacted].

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103. [redacted], [redacted].

104. [redacted] [redacted].

105. [redacted], [redacted].

106. [redacted], [redacted]:

106.1. [redacted];

106.2. technical, customer and client support services;

106.3. [redacted];

106.4. an email service provider.

107. [redacted]. [redacted] 12 [redacted].

108. [redacted], [redacted].

109. [redacted], [redacted]:

109.1. [redacted];

109.2. what password he uses;

109.3. [redacted];

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109.4. [redacted].

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Explanatory notes:

Company purchase agreement: cash and shares, part deferred

General notes

1. The parties

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

2. Complete when agreement dated or later?

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

[redacted] . [redacted] .

"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 [redacted] , [redacted] .

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 to [redacted] " [redacted] ", [redacted] .

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 [redacted] .

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 [redacted] , [redacted] .

4. Calculation of the Purchase Price

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

The words "if it becomes due" should be left in place to assist the Sellers discussions with Revenue and Customs as to [redacted] .

5. Buyer New Shares: Buyer's obligations

These include the terms related to new shares in the buyer company. Here you just mention the basic terms. Of course you need a detailed shareholder agreement to protect ongoing interest. Without one, the buyer can do [redacted] , [redacted] .

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6. The Additional Price: calculation and payment

The agreement provides for an addition sum to be paid to the sellers if profits exceed a pre-determined sum. We have also included terms to cater ■ ■ ■

- 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 ■ ■ ■

[redacted], [redacted], [redacted].

The trustees warrant only that they are selling fairly and know of no reason why [redacted]. [redacted].

13. Restrictive agreement

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

This paragraph may not be enforceable against a shareholder who has hitherto had [redacted].

14. Sellers' protection

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

15. 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 [redacted]. [redacted].

In that case, your guarantors will be the directors of the holding company seller. [redacted], [redacted] - [redacted], [redacted].

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

16. Publicity / announcements

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This may not be important to ■ ■ ■ ■ . ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .

17. Miscellaneous matters

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

4. For sellers, the strength of a warranty may be greatly reduced simply by changing [redacted] .

Explanation of warranties

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

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 [redacted] .

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 [redacted] .

How to use warranties?

If you are seller

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

As a seller, you have a number of [redacted] :

- when you produce the draft agreement, remove the most “difficult” warranties before you send it to the buyer. [redacted] .
- provide clear and open disclosure to [redacted] .

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- after considering the breadth of each warranty, you could edit those that [redacted] ; [redacted]
- Even where you “answer” the warranty in some way, there is still a strong case for qualifying absolute warranties, [redacted] “ [redacted] ” [redacted] “ [redacted] ”.

Being the seller it is essentially important to provide full and [redacted] .

If you are the buyer

The weight of advantage is very firmly with the [redacted] . [redacted] . [redacted] . [redacted] , [redacted] . [redacted] .

As a buyer you need warranties:

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

  Either you are the [redacted] , [redacted] , [redacted] .

Warranties: drafting notes continued

It is good practice to delete irrelevant warranties, but by all [redacted] “ [redacted] ” [redacted] . [redacted] “ [redacted]

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[redacted]

General

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

No damaging effect of this agreement

The buyer needs to [redacted]

Company structure and operation

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

Accounts, Cash flow and Taxation

The buyer should take advice [redacted]

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

Guarantees and borrowing

A list of creditors should be readily [redacted]

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Assets

Even if all accounts information is absolutely correct, [redacted].

The most important answers sought here are as [redacted]!

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 [redacted].

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

The most common reason for litigation about contracts arises because someone [redacted].

Properties - all

Real property is [redacted].

Most of these items cover the facts that would be [redacted].

Properties rented by the Company

If none, delete.

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Employment

We have no comment. Set the warranties [redacted] . [redacted] [redacted] “ [redacted] ”

Pensions

We have no comment.

Insurance

We have no comment.

Intellectual Property

All companies acquire some intellectual property. Even a quite small [redacted] . [redacted] . [redacted] .

A buyer should consider what IP this company might need [redacted] . [redacted] - [redacted] .

Information technology (“IT”)

These are of course an item of intellectual property. We have placed them under a separate heading to [redacted] . [redacted] - [redacted] , [redacted] . [redacted] . [redacted] " [redacted] " [redacted] .

End of notes

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