Company purchase agreement: shares and cash deal

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General

No damaging effect of this agreement

Company structure and operation

Accounts Cash flow

**Taxation** 

Guarantees and borrowing

**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 ■ ■

....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]

It is now agreed as follows:

#### 1. Definitions

"Accounts" means the financial statements, annually audited

profit and loss account and balance sheet as at the Last Year End

"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 ■ ■ ■ ■ ■

"Company"	means [name of Company] Limited, the Shares in which •••••••••••••••••••••••••••••••••••
"Confidential Information"	means all information about the Company and parties to this agreement, including any information which may give a commercially competitive
	information about staff, their performance and ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ,
	data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer • • • • , • • • ;
	information owned by a third party and in respect of which a party ••••••••••••••••••••••••••••••••••••
	information, comment or implication published on
	information about the Intellectual Property and ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .
"Disclosure Letter"	means the disclosure letter provided by the Seller to the Buyer including all such information to complete the Sale and enclosing all
"Domain Names"	means the Internet domain names used by the Company in connection with its website or in
"Intellectual Property"	means intellectual property owned by the Company, of every sort, whether or not registered or registerable in any country, including Intellectual Property of all kinds coming into existence after today; and including, among

	others, ••••, ••••, ••••, •••, •••, •••, •••
"Last Year End"	means [date] (being the date to which the $\blacksquare$ $\blacksquare$ $\blacksquare$
"Properties"	means the land and buildings owned and / or used by the Company, brief details of • • • • • 1.
"Purchase Price"	means the total price, paid or to $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$
"Sale"	means the sale of the Shares.
"Shares"	[number] ordinary shares of \$ [1] each held by the Seller being the
"Trustee"	means [names, if few] / the Sellers
"Trustee Warranties"	means the limited warranties given by any Trustee.
"Warranty/Warranties"	means the warranties and undertakings of the Sellers contained in paragraph [ 10 ] $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$

## 2. Interpretation

In this agreement unless the context otherwise requires:

a reference to a person includes a human individual, a corporate entity, a partnership, a governmental authority
the Sellers shall be jointly and severally liable for every • • • • • • • • • • • • • • • • • • •
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 $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$
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 agreement and any version or
Enti	re agreement
3.1.	Each party acknowledges that this agreement and the Disclosure Letter contains the entire agreement between them and that he relies on no ••••••••••••••••••••••••••••••••

	3.2.	this ag	party acknowledges and warrants that he has power to enter into reement [and = = = = = = = = = = = = = = = = = = =				
	3.3.		Seller warrants and undertakes that he is not aware of anything his reasonable control which might or will				
4.	Cal	Calculation of the Purchase Price					
	4.1.	The Pu	urchase Price is:				
		4.1.1	the sum of \$ [amount] (the "Cash") • • • • • • • • • • • • • • • • • • •				
		4.1.2	the sum of \$ [amount], payable by the allotment of [number] of Buyer New Shares in [ • • • • • • • • • • ], • • • • • • • •				
	4.2.	The Se	ellers shall share the Purchase Price in proportion				
5.	The Buyer New Shares: Buyer's obligations						
	The I	Buyer un	dertakes as follows:				
	5.1.	to issu	e or procure the issue of [number]				
	5.2.		e Buyer New Shares shall rank pari passu with the ordinary of the Buyer,				
	5.3.		ach Buyer New Share shall be valued for the purpose of this ■ ■ ■ ■ \$ [ ■ ■ ■ ■ ] ■ ■ ■ ■ .				
	5.4.	-	cure that the Buyer New Shares shall be allotted to the Sellers in tion to the number of shares				

## 6. Buyer's acknowledgment of inspection

The Buyer admits that:

6.1.	all of th	e assets of the Company have <b>••••••••••</b> ;			
6.2.	it has made full investigation into the title, condition and any external circumstance which might affect the •••••;				
6.3.	he enters into this agreement on the basis of that inspection and investigation and not in reliance on any representation,				
Agre Sha		nt for Sale and issuance of Buyer New			
7.1.		llers agree to sell the Shares and the Buyer agrees to buy the for the			
7.2.	The Se	llers 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 o	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	le is conditional immediately on			
	7.6.1	the Sellers entering into a shareholders' agreement with the Buyer and its existing shareholders, in •••••••••••••••••••••••••••••••••••			
	7.6.2	[Beatrice Blackbird and Robin Finch] each entering into a contract of employment with the Company, [ = = = = = = = = = = ].			

# 8. Completion and delivery of documents

8.1.	Completion of this Sale shall take place immediately upon the signing of				
	8.1.1	a bank draft • • • • • • • • • • • • • • • • • • •			
	8.1.2	letters of allotment of the Buyer New Shares;			
8.2.	At com	pletion, <b></b>			
	8.2.1	the title deeds relating to ••••••;			
	8.2.2	title deeds, = = = = = = = = = = = = = = = = = = =			
	8.2.3	signed share transfer forms • • • • • • • • • • • • • • • • • • •			
	8.2.4	[if the Company			
	8.2.5	letters of resignation of certain directors, namely [names] and [the secretary of the Company], with			
	8.2.6	[the resignation of ••••••••••••••••••••••••••••••••••			
	8.2.7	a list of all user names and			
	8.2.8	the certificate of incorporation of the Company;			
	8.2.9	written confirmation by			
	8.2.10	[employment contracts / service agreements], signed in $\blacksquare$			

			6]	• ;
		8.2.12		es of meetings
			8.2.12.1	[Buyer nominee name]
			8.2.12.2	transfer forms • • • • • • • • • • • • • • • • • • •
			8.2.12.3	the resignations of [name] = = = [ = = = ] = = = = [ = = = ] = = = =
	8.3.	Followi	ng complet	tion of this Sale, the Buyer shall obtain
	8.4.	Each S	eller under	takes that he will:
		8.4.1	immediate	ely repay to the Company any
			••••	;
		8.4.2	use his be	est endeavours to do
			••••	
9.	War	rantie	s applic	ability and limitation
	9.1.	None o	f the <b>= = =</b>	••.
	9.2.			s confirms that when any Warranty refers to • • • •
	9.3.	Each o	f the ■ ■ ■	

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

..........

9.4.	Nothing done or not done by $\blacksquare \blacksquare \blacksquare$	•••
9.5.	The Buyer may make any agreement with one or more ■ ■ ■ ■ ■ ■ ■	
		••
9.6.	f and only if any Warranty cannot be specifically referable to ■ ■ ■	••
	,	•••
9.7.	ach Seller waives any claim he might have against ■ ■ ■ ■ ■ ■ ■ ■	•••
		• • •
Wa	anties by Sellers	
10.1	The Sellers (except the Trustees) jointly and severally warrant to the	
		•••
	:	• • •
	0.1.1 the Sellers are entitled to transfer the Shares to	•••
		• • •
	0.1.2 after completion of this $\blacksquare \blacksquare \blacksquare$	••
	0.1.3 except as disclosed in the Disclosure Letter, all of the	
		■ ■ 3   ■ ■
	.,,	
	0.1.4 the contents = = = = = = = = = = = = = = = = = = =	••
	0.1.5 unless otherwise specified,	
	0.1.5 unless otherwise specified,	

		[Each corporate	
		he Shares constitute the whole • • • • • [ • • • • • • ] • • • • • • •	••
	10.1.8 th	here is <b>= = = = = = = = = = = = = = = = = = =</b>	■ ■
10.2.		ranties in this agreement are not	::
OR			
10.3.	no claim	ranties in this agreement are not limited in monetary value,	•
Trus	stee Wa	arranties	
Each	of the Trus	stees warrants:	
11.1.	that he ha	as legal title	
11.2.	that he ha	as • • • • • • • • • • • • • • • • • • •	••
11.3.		as no knowledge of any circumstance unknown	••
Res	trictive	agreement	
12.1.		he Buyer has the full benefit	
	W	or [3] years after completion of the Sale, either alone or joir with or	ntly ■ ■

		12.1.2	at any time after completion of the Sale, disclose to any  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,  ,
		12.1.3	for [3] years after completion of the Sale, either on his own account or for any
	12.2.	Each o	f the Sellers now agrees that
	12.3.	Followi	ng completion of <b>= = = = = = = = = , = = = = = = = =</b>
		12.3.1	hold himself = = = = = = = = = = = = = = = = = = =
		12.3.2	register nor purchase nor use any name similar to any
13.	Sell	ers' pı	rotection
	13.1.		im against any Seller, in relation to the
	13.2.		m shall be valid unless = = = = = = = = = , = = = = = = = = =
	13.3.		gle Seller can be liable for any Warranty claim unless his
			■,■■■■\$[5,000].

	13.4.	n any event, the maximum = = = = = = = = = = = = = = = = = =
	13.5.	The Buyer may not claim more
14.	The	Guarantee
	14.1.	[Each of] • • • • • • • • • • • • • • • • • • •
		14.1.1 that every statement, ••••••••••••••••••••••••••••••••••••
		14.1.2 that he will procure <b>************************</b> ;
		14.1.3 that he will indemnify the Buyer against all
	14.2.	[Each of] The Guarantor accepts that compliance by the •••••
	14.3.	[Each of] The Guarantor accepts that the Buyer is ••••••
	14.4.	This guarantee is limited to:
		14.4.1 the sum of [sum] in total;
		14.4.2 claims notified to the
15.	Pub	licity / Announcements
	15.1.	No public or press announcement shall be made • • • • • • • • • • • • • • • • • • •

OR

15.2. No party shall:

		15.2.1	make any public announcement; or	
		15.2.2	disclose any information; or	
		15.2.3	allow expressly or by default any other person ■ ■ ■ ■ ■ ■ ■	
				ı
	15.3.	Except,	that no party shall be prohibited from making	
		••••		ı
	15 4	The par	rties agree to the issue of a ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■	
	10.1.			
	15 5		word porty	
	15.5.		every] party = = = = = = = = = = = = = = = = = = =	ı
		••.		
16	Mio	allan	saua mattara	
16.			eous matters	
16.			eous matters  endment or variation to this agreement	1
16.				
16.		No ame		
16.	16.1.	No ame	endment or variation to this agreement	•
16.	16.1. 16.2.	No ame	endment or variation to this agreement	
16.	16.1. 16.2.	No ame	endment or variation to this agreement	
16.	16.1. 16.2. 16.3.	No ame	endment or variation to this agreement	
16.	16.1. 16.2. 16.3.	No ame	endment or variation to this agreement	•

16.6.	Any obligation in this agreement
16.7.	If any of the Shares shall at any time be sold or transferred, the benefit
OR	
16.8.	This agreement shall be binding upon each party's successors, assigns and ••••••(••••••)•••••
16.9.	No failure or delay by any party to exercise any right, $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$
	•••••••••••
16.10.	The parties agree that
16.11.	Any communication to be served on either of the
	It shall be deemed to have been delivered:
	if delivered • • • • • • • : • • • • • • • • • • •
	if sent by post <b>= = = = = = = = = = : = = =</b> 72 <b>= = = = = = = :</b> ;
	If sent by e-mail to the address from which the receiving party has last sent e-mail:

16.12.	In the event of a dispute between the parties to this agreement, ■ ■ ■
1	
	Unless otherwise stated, this agreement does not give any right to any third party under the Contract and Commercial Law Act 2017 or ■ ■ ■ ■
1	
16.14.	In the event of any conflict between any term of this agreement and the
!	
16.15.	■ ■ ■ ■ ■ ■ ■ .  This agreement may be executed in multiple counterparts each ■ ■ ■ ■
1	
16.16. ·	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]

**AND** 

Signed by [Guarantor / Director name in full]

## **Schedule 1- Part 1 Shareholdings**

[Here list all sellers, names, addresses • • • • • • • • • • • • • • • • •	
	•

Name	Address	Number of Shares	Signature

### **Schedule 1 - Part 2Details 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 d	amaging effect of this agreement
11.	The Sellers has no reason to believe that as a result of the
12.	No term of this agreement conflicts with:

	12.1. any other contract • • • • • • • • • • • • • • • • • • •
	12.2. the constitution of the Company.
13.	No term of this agreement nor the agreement as
Com	pany structure and operation
14.	Full details are set out in the
15.	Since the Last Year End, no change has been made in the structure, ■ ■ ■
16.	None of the Sellers has any interest, directly or indirectly, in any business
	(other than those of the
	<b></b> ).
17.	The Company has not entered into any contract by which
18.	The Company has
	18.1. all documents of title relating to its Assets;
	18.2. an original copy
	18.3. an original copy
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 realisable value.

29.															
30.	Since the Last Year End:														
	30.1.														
	30.2.														
	30.3.														
31.															
Cash <sup>•</sup>	flow														
32.	:														
	32.1.														
	32.2.														
	32.3.														
33.															
34.															
Taxati	ion														
35.															

36.					-	-				-	•	•	-	-	-	-	- :		. =	•		•	-	-	-	•	- 1	-				•
37.		■ ■ ,		•																												
38.					•	-	•			•	•	•			•						-	•	•		-	-	<b>=</b> !	<b>.</b> !		•	•	•
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41.		•••		••				•••	•	•	•	-	-	-	-	-	- ·	• •		•	-	-	-	-	-				• •	• •		•
42.																																
Guara	ntees	and	bor	rov	wir	ng																										
43.	The D	isclo	sure	e Lo	ette	er	dis	scl	os	es	:																					
	43.1.	<b>■ ■</b> ;	• •	•		•	•		- 1	• •		•	•	•	•	•	-	•		• •	•	•	•	•	-	-	•	•	•	•	•	
	43.2.	the	tern	ns (	of e	eve	ery	/ lc	ar	١;																						
	43.3.	<b>.</b> .	••	•		•			- 1	• •	• •	•			•	•		-		• •	•	-		•	-	•	-	-	•	•	•	
	43.4.	•••	••		• •		•	•									-	-						-	-		-	•	•	• •	-	

44.		
45.		
46.		
Asset	s	
47.		:: ::
		are in its possession and control.
	47.3.	••••
	47.4.	••••
	47.5.	
Tradir	ng and	contracts
48.		,,,,,,,,,,
40		•••.
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.	•••	
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.	••••••[10]%
54.	•••	
		].
55.		
56.		
	•••	

57.		• • • • • [	25 <u>]</u>		-															- 1					
58.	:::																•	•	-	. =			•	- 1	
59.								•	•				•					-	•						
Prope	erties -	all																							
60.											•	• •	• •	•				•		■ ,			•	- 1	•
61.																					•	•			•
62.	:::													•				•			•	•		-	•
63.											•	• •	• •	•				•			• •	•		-	•
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65.	•••	• • .							•		•			•								•		•	•
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66.		• • ·	•			•	-	•	•			•	• •					•		•	•		-		
	66.1.	::	1	• • •	• •					•			<b>.</b> .	• •		• •	•	• •	• •	-	- ·				. <b>.</b>
	66.2.	ther	e are	e no	ren	t re	evie	ws	in	pro	ogr	es	S.												
67.	:::			, <b>■</b>	••		•	• •	• •	-		ı -	• •	•	•	• •	-			-	••	•	•	• •	. <b>=</b>
68.	•••		• • •			•		•	•	• •	•	• •	• •	•				•			• •	•		•	•

69.		•••				•		- 1	•		 •			, ∎		-			-			•	•	•
70.		•••	••	••		•		• •			 ı <b>=</b>	- 1	• •	•	•••						• •	•	•	-
71.	:::							•	• •		 •		• •	•		•	•		•	-	• •	•	•	-
72.	:::	•••			-	•		- 1	•				• •	•		-					• •		•	•
73.	73.1. 73.2. 73.3. 73.4. 73.5.	water drain electrogas;	age;	; ⁄;					••		•	• •			••	•		-	•			•	•	•
74.					•••	•	••		• •												- •	•		•
Prope	erties r	ented ■ ■ ■	by	the ■ ■	Co	mp	any	y <b>=</b> 1			 			•			-			-		. =	•	•
75.	:::	•••					•••	•	 ■ , :	_	 _			•	••		•	• •	•			•	•	•
76.	•••	•••	• •	• •		•					 •	• •	• •	•		•	•		•	•	• •	•	•	•

77.	
	77.1. the name and address of the tenant.
	77.2. the name and address of any guarantor.
	77.3. the address of the Property.
	77.4.
	77.5. the rent.
	77.6.
	77.7.
	77.8
	77.9.
	77.10. any unusual provisions.
78.	
Empl	oyment
79.	
73.	,
80.	
81.	

	•••••••
82.	**************************************
83.	
Pensi	ions
84.	
	84.1. copies of the trust deeds;
	84.2. the latest actuarial report;
	84.3.
85.	
Insura	ance
86.	
87.	No policy contains any special term or restriction.
88.	
89.	
90.	,

Intelle	ectual P	roperty																	
91.														•	• •				
92.		••••																	
93.																			
94.											••	•		•				<b>=</b> 1	
95.																			
96.																			
00.																			
97.	■ ■ ) ■					••				•		•	•		-			• •	I
98.		••••												•		<b>=</b> 1		•	
Inforn	nation t	echnolo	gy ("IT	")															
99.			•		• • •				• •		•	•		•	• • • :		•		
	99.1. 1	the name	•																
	99.2. ı	name and	d conta	ct info	orma	tion	of r	egis	strai	nt;									
	99.3. 1	ag holde	r name	, lanc	d add	lress	an	d w	ebs	ite;									
	99.4.	date to w	hich the	e nan	ne is	regi	ster	ed.											
100.	::::								• •		••	•	• •	•	• •	<b>=</b> 1			
101.									• •		••			•		-		•	

102.	
103.	
104.	
105.	
	105.1.
	105.2. technical, customer and client support services;
	105.3.
	105.4. an email service provider.
106.	12
107.	
108.	•,••••••••
	108.1.
	108.2. what password he uses;
	108.3.

108.4.

# **Explanatory notes:**

Company purchase agreement: shares and cash deal

#### **General matters**

## 1. The parties

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

## 2. Complete when agreement dated or later?

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

## Paragraph specific notes

#### 1. Definitions

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

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

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

2.	Interpretation
	A number of provisions, each of which has application at one of more points later in the document. We suggest you do not
3.	Entire agreement
	This paragraph prevents a party from later saying he was relying on some other document or information or what was said. If other documents are to be relied on (if any), let them be listed • • • • • • • • • • • • • • • • • • •
4.	Calculation of the Purchase Price
	The sellers are to receive a mixture of cash now, and shares in the buyer company. You should take advice from your accountant as to how to treat these items for tax purposes
	****************
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 •••••••••••••••••••••••••••••••••••
6.	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 •••••••••••••••••••••••••••••••••••
7.	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,
8.	Completion and delivery of documents
	We have included here only the documents whose form and content are well known in advance. By far the largest set of documents will ••••••••••••••••••••••••••••••••••

Please read the general notes sent along with  $\blacksquare$   $\blacksquare$   $\blacksquare$   $\blacksquare$   $\blacksquare$   $\blacksquare$  .

•	Share certificates are documents of title, but if not available (lost or never issued), a simple declaration to that effect will be sufficient to safeguard a buyer. Most larger companies no longer issue hard copy
•	The buyer will wish to avoid any claim for compensation by a former director. But the directors are not (necessarily) sellers, so it is important that they are bound by the proposition that they have no claim. If they receive no "consideration" as directors, they will not be bound by a simple statement
•	This provides for any key people to remain as employees. Their new contracts would be dated the same date as the agreement and would take
•	Of course, the sellers will already have satisfied themselves that the beneficiary of a guarantee (like a bank)
Warranties applicability and limitation	
Do not edit without very good reason and full	
Do no	t edit without very good reason and full ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
	t edit without very good reason and full ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
Warra "Joint of thei blame	
Warra "Joint of ther blame wealth  To ave agree who p	and several liability" means that all the sellers are jointly liable. No one m can avoid liability to the buyer by saying he was personally not to be d. This means that the buyer can (and would) claim against the

9.

10.

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

change the <b> </b>
Trustees Warranties
Provision has been made for the proposition that one or more people may hold shares as trustees. The buyer should make certain that any such person is a disinterested trustee. It could be that a major shareholder has placed some of shares in a family trust and he remains a trustee, or that some other person is a trustee. In that case, there is an argument for the trustee to give the warranties along with other shareholders. Either way, the buyer should insist that such person himself either gives full warranties or guarantees the same on behalf of
,
The trustees warrant only that they are selling fairly and know of no reason why the sale should not proceed. He has •••••••••••••••••••••••••••••••••••
Restrictive agreement
These provisions are required to protect the buyer and are reasonable. Note that they do not prevent a former director from setting up in
This paragraph may not be enforceable against a shareholder who has hitherto had
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 Guerantee
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.
	A judge will usually treat a guarantee as a matter only of money. We have worded this one clearly so that there is $\blacksquare$
15.	Publicity / announcements
	This may not be important to ••••.•••••.
16.	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
Sche	dules 1 and 2
	We have no comment.
Sche	dule 3- The Warranties
Note	e: matters relating to warranties
	Before we give you other drafting notes, we want to explain about warranties.
	***************************************
	Warranties are the essence of the deal. They are listed in a schedule. Do make sure that the paragraph of
	These warranties have been drawn to provide as large a "menu" as

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

	For maximum protection,
	Delete any warranties that cannot apply to your
	Do not delete warranties relating to matters about which full information has already been provided. If you
	Take the document to your accountant to ••••••••••••••••••••••••••••••••••
	For sellers, the strength of a warranty may be greatly reduced simply by changing ••••••••••••••••••••••••••••••••••
Explar	nation of warranties
	Unlike any sale agreement, a company sale agreement is different. The main proposition is
	The agreement is usually drawn by the buyer. That is fair because the buyer knows nothing about the company and the seller knows everything (we hope)!  So the agreement first covers
	These are just assurances or guarantees from the seller as to the condition and state of the company and in particular, any existing liabilities, at the time of sale. No matter how thorough
How to	o 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

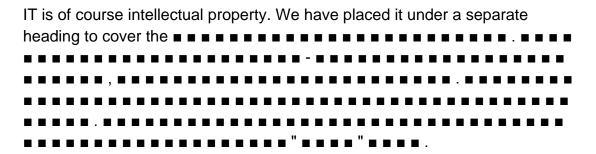
As a s	seller, you have a number of ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
•	when you produce the draft agreement, remove the most "difficult" warranties before you send it to the buyer.
•	provide clear and open disclosure to •••••••••••••••••••••••••••••••••••
•	after considering the breadth of each warranty, you could edit those that
•	Even where you "answer" the warranty in some way, there is still a strong case for qualifying absolute warranties,
Being	the seller it is essentially important to provide full and
If you are th	ne buyer
	veight of advantage is very firmly with the seller. He has the knowledge.
As a	buyer you need warranties:
•	to provide yourself legal protection regarding the
•	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
Eithe ■ ■ •	er you are the <b></b> , <b></b> .
Warranties	s: drafting notes continued
■ ■ "	good practice to delete irrelevant warranties, but by all
• • •	
General	
cove	se are very basic and general requirements. They are also broad, ering
No damagi	ing effect of this agreement
The ■ ■ •	buyer needs to
Company	structure and operation
	reference to licences and consents: in any business which has been rating for more than a few years,
Accounts.	Cash flow and Taxation
The ■ ■ •	buyer should take advice

The basis of valuation of the business 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, assets		
The most important answers sought here are as		
Trading and contracts		
This section covers every contract - from customers and suppliers to the office cleaner and the car leases. The buyer's requirement for details of customers and suppliers will be less important		
The most common reason for litigation about contracts arises because someone		

Propertie	s - all
Rea	al property is = = = = = = = = = = = = = = = = = =
Mo	st of these items cover the facts that would be
••	
Pro	operties rented by the Company
lf n	one, delete.
Employm	ent
We	have no comment. Set the warranties
Pensions	
We	have no comment.
Insurance	9
We	have no comment.
Intellectu	al Property
All	business acquire some intellectual property. Even quite small
A b	ouyer should consider what IP this company might need

## Information technology ("IT")



## **End of notes**