Company purchase agreement: simple cash deal

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- 12. The Guarantee
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Schedule 1 Part 1 Shareholdings

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Part 3 Press release

Schedule 2 Warranties

General

No damaging effect of this agreement

Company structure and operation

Accounts

Taxation

Assets

Trading and contracts

Employment

Insurance

Intellectual Property

Information technology ("IT")

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 ■ ■

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]

1. Definitions

"Accounts" means the financial statements, annually audited

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

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

•

"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 **E E E E E E E E E**

	information about staff, their performance and additional additional and additional additiona
"Disclosure Letter"	means the disclosure provided by the Seller to the Buyer including all such information to complete the Sale and enclosing all such
"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
"Purchase Price"	
	means the total price, paid or to $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$
"Sale"	means the total price, paid or to •••••• •••••••••••••••••••••••••••••
"Sale" "Shares"	

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 every \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

	,
2.10.	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.	Each party acknowledges and warrants that he has power to enter into this agreement [and • • • • • • • • • • • • • • • • • • •
3.3.	Each Seller warrants and undertakes that he is not aware of anything within his reasonable control which might or will
The	Durchage Dries
me	Purchase Price
4.1.	The Sellers agree to sell the Shares and the Buyer agrees to buy the Shares for the
4.2.	The Purchase Price is the sum of \$ [amount] = = = = = = = = = = = = = = = = = = =
4.3.	The Buyer shall pay the full Purchase Price in cash on •••••••••••••••••••••••••••••••••••
4.4.	The Sellers acknowledge receipt of the
	2.11. Enti 3.1. 3.2. The 4.1. 4.2. 4.3.

a reference to an act or regulation includes new law of substantially the

2.9.

	4.5.	The Se	ellers shall share the Purchase Price in proportion ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
5.	Buy	/er's a	cknowledgment of inspection
	The E	Buyer ad	lmits that:
	5.1.	all of th	ne books of
	5.2.	he has	s made full investigation into
		••••	• • • .
	5.3.	he ente	ers into this agreement on the basis of that
		••.	
6.	Cor	npletio	on and delivery of documents
	6.1.		etion of this Sale shall take
	6.2.	At com	npletion, = = = = = = = = = = = = = = = = = = :
		6.2.1	signed share transfer forms • • • • • • • • • • • • • • • • • • •
		6.2.2	[if the Company
		6.2.3	letters of resignation of certain directors, namely [names] and [the secretary of the Company], with ,
		6.2.4	[the resignation of

	6.2.5	a list of all	user names and • • • • • • • • • • • • • • • • • • •
	6.2.6	the certific	cate of incorporation of the Company;
	6.2.7		nfirmation by ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
	6.2.8	,	ent contracts / service agreements], signed in
	6.2.9	all records	s relating to the employment of any person
	6.2.10		es of meetings • • • • • • • • • • • • • • • • • • •
		6.2.10.1	[Buyer nominee name]
		6.2.10.2	transfer forms • • • • • • • • • • • • • • • • • • •
		6.2.10.3	the resignations of [name] = = = [= = =] = = = = = = = = = = =
6.3.	Followin	ng complet	ion of this Sale, the Buyer shall obtain
C 4			
6.4.	6.4.1	immediate	takes that he will: ely repay to the Company any
	6.4.2	use his be	est endeavours to do

		••
7.1.	None o	of the .
7.2.		g done or not done by
7.3.		uyer may make any agreement with one or more = = = = = = = =
	,	••.
7.4.		only if any Warranty cannot be specifically referable to ■ ■ ■ ■ ■
	••••	
7.5.	Each c	of the
7.6.	Each S	Seller waives any claim he might have against
	••••	
War	rantie	es by Sellers
8.1.		ellers (except the Trustees) jointly and severally warrant to the
]:	
	8.1.1	the Sellers are entitled to transfer the Shares to
	8.1.2	after completion of this = = = , = = = = = = = =
	0.1.2	
	8.1.3	except as disclosed in the Disclosure Letter, all of the • • • •

Warranties applicability and limitation

7.

8.

		-,;
	8.1.4	the contents = = = = = = = = = = = = = = = = = = =
	8.1.5	unless otherwise specified, ••••••••••••••••••••••••••••••••••••
	8.1.6	[Each corporate Seller • • • • • • • • • • • • • • • • • • •
	8.1.7	the Shares constitute the whole • • • • • [• • • • • • • • • • • • •
	8.1.8	there is •••••••••••••••••••••••••••••••••••
8.2.	••••	arranties in this agreement are not
OR		
8.3.	The Warranties in this agreement are not limited in monetary value, but no claim • • • • • • • • • • • • • • • • • • •	
Trus	stee W	/arranties
Each	of the T	rustees warrants:
9.1.	that he	has legal title • • • • • • • • • • • • • • • • • • •
9.2.	that he	has • • • • • • • • • • • • • • • • • • •
9.3.		has no knowledge of any circumstance unknown

9.

10. Restrictive agreement

10.1.		the Buyer has the full benefit • • • • • • • • • • • • • • • •
	10.1.1	for [3] years after completion of the Sale, either alone or jointly with or
		•••••••••
	10.1.2	at any time after completion of the Sale, disclose to any ■ ■ ■ , ■ ■ ■ ■ , ■ ■ ■ .
		;
	10.1.3	for [3] years after completion of the Sale, either on his own account or for any
10.2.	Each of	f the Sellers now agrees that
		••••••
10.3.		ng completion of
	10.3.1	hold himself = = = = = = = = = = = = = = = = = = =
	10.3.2	register nor purchase nor use any name similar to any

11. Sellers' protection

11.1. Any claim against any Seller, in relation to the

		•.
	11.2.	No claim shall be valid unless made • • • • • • • • • • • • • • • • • • •
	11 2	No single Coller can be liable for any Warranty claim unless his = = = =
	11.3.	No single Seller can be liable for any Warranty claim unless his
		■■■■,■■■\$[5,000].
	11.4.	In any event, the maximum • • • • • • • • • • • • • • • • • •
	11.5.	The Buyer may not claim more
		■.
12.	The	Guarantee
	12.1.	[Each of] = = = = = = = = = = = = = = = = = = =
		12.1.1 that every statement, ••••••••••••••••••••••••••••••••••••
		12.1.2 that he will procure •••••;
		12.1.3 that he will indemnify the Buyer against all
	12.2.	[Each of] The Guarantor accepts that compliance by the I I I I I I I I I I I I I I I I I I
	12.3.	[Each of] The Guarantor accepts that the Buyer is ••••••
		•••••••
	12 4	This guarantee is limited to:

		12.4.2 claims notified to the
13.	Pub	licity / Announcements
	13.1.	No public or press announcement shall be made • • • • • • • • • • • • • • • • • • •
	OR	
	13.2.	No party shall:
		13.2.1 make any public announcement; or
		13.2.2 disclose any information; or
		13.2.3 allow expressly or by default any other person
	13.3.	Except, that no party shall be prohibited from making
	13.4.	The parties agree to the issue of a • • • • • • • • • • • • • • • • • •
	13.5.	[Each/every] party
14.	Misc	cellaneous matters
	14.1.	No amendment or variation to this agreement

12.4.1 the sum of [sum] in total;

14.2.	The parties acknowledge and agree that this
14.3.	Unless otherwise stated in this agreement, all expenses in connection
14.4.	So far as any time, ••••••••••••••••••••••••••••••••••••
14.5.	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
	••••••
14.6.	Any obligation in this agreement
14.7.	If any of the Shares shall at any time be sold or transferred, the benefit
OR	
14.8.	This agreement shall be binding upon each party's successors, assigns
	and = = = = = (= = = = = = = =) = = = =
14.9.	No failure or delay by any party to exercise any right, ■ ■ ■ ■ ■ ■ ■
14.10.	The parties agree that

14.11.	Any communication to be served on either of the
	••.
	It shall be deemed to have been delivered:
	if delivered = = = = = = : = = = = = = = = = = = =
	if sent by post • • • • • • • • • • • • • • • • • • •
	If sent by e-mail to the address from which the receiving party has last sent e-mail:
	• • • •].
14.12.	In the event of a dispute between the parties to this agreement,
14.13.	Unless otherwise stated, this agreement does not give any right to any third party under the Contract and Commercial Law Act 2017 or
14.14.	In the event of any conflict between any term of this agreement and the
14.15.	This agreement may be executed in multiple counterparts each
14.16.	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
OR
Signed by [Seller name in full]
Signed by [Buyer name in full]
Signed by [Guarantor / Director name in full]
Signed by [Guarantor / Director name in full]

Schedule 1: Part 1 Shareholdings

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

Name	Signature	Address	Number of Shares

Schedule 1: Part 2 Details of the Company

1. The Company

Registered office: [address]

Directors: [list all names in full]

Secretary: [name in full]

Schedule 1: Part 3 Press release

Schedule 2: The Warranties

General 1. 2. 3. 4. ----------------5. 6. 7. No damaging effect of this agreement 8. No term of this agreement conflicts with: 9. 9.1. the constitution of the Company. 10.

Company structure and operation

11.	
12.	
13.	
14.	[5]%
15.	
16.	16.1. all documents of title relating to its assets; 16.2.
	16.3. •••••••••••••••••••••••••••••••••••
17.	•.
18.	[
19.	

20.	
21.	
Acco	unts
22.	
23.	The Accounts:
	23.1.
	23.2.
	23.3.
24.	
	its purchase price;
	its production cost;
	its net realisable value.
25.	••••••
26.	Since the Last Year End:
	26.1.
	26.2.
	26.3.

27.		::				• • • •	•	- ·		•	-			• •		-	-					-	-	-	-	-	-	-		-
Taxat	ion																													
28.	:::																										-			•
29.		••			•					•		-	- 1					-			-	-	•			•		-	-	•
30.			, ■ •			-																								
31.	:::				-				•																					
32.						• •	•			•	-			•		-	-					-	-	- -	-	-	-	-	•	
33.		•••		•••		•••				•	•						•					-	-	-	- -	• •	-	-	-	-
34.		•••	•••	•••		••	•	- ·	• •	•	•						-					-	-	-	- -	- -	-	-	= =	- -
Asset	s																													
35.	:::				= 1	• •	•		•	•	•	= 1	.		-		-	= 1	• •	•	•	•	•	•	•	•	•	•		•
	35.1.	are	in it	ts p	oss	ses	sio	n a	anc	d c	on	trc	ol.																	

	35.2.	
	35.3.	
	35.4.	
	35.5.	
Tradi	ng and contracts	
36.		
37.	•••••	
38.	Since the Last Year End:	
	38.1.	
	38.2. the Company has paid its creditors promptly.	
	38.3.	••
	38.4.	••
39.	,	
	39.1.	
	39.2. no payment due to the Company is overdue.	
	39.3. all contracts comply with the relevant law.	

	39.4.
40.	
41.	No existing contract is for work which:
	41.1. is beyond the normal course of business.
	41.2.
	41.3. is likely to result in a loss.
	41.4. is priced in a currency other than dollars.
	41.5.
42.	
43.	
44.	
45.	[25]
46.	[25]
40.	
47.	
Empl	oyment
48.	

49.	••••••••.
50.	
51.	\$[]
52.	
Insura	nnce
53.	
54.	No policy contains any special term or restriction.
55.	
56.	
Intelle	ectual Property
57.	
58.	
59.	
60.	

61.		
62.		
63.	■ ■) :	
64.	I	••••••
Inforn	nation	technology ("IT")
65.	•••	
	65.1.	the name;
	65.2.	name and contact information of registrant;
	65.3.	tag holder name, land address and website;
	65.4.	date to which the name is registered.
66.	:::	
67.	•••	
	67.1.	
	67.2.	technical, customer and client support services;
	67.3.	;
	67.4.	an email service provider.
68.	•••	

	•••••	12
	•	
		.
■,■	:	
69 1		
03.1.	;	_
69.2.	what password he uses;	
69.3.		
		ı =
	;	
60.4		
03.4.		. =

Explanatory notes:

Company purchase agreement: simple cash deal

General notes

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

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

Notes numbering refers to paragraph numbers.

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 •••••••••••••••••••••••••••••••••••	
Please read the general notes sent along with ■ ■ ■ ■ ■ ■ ■ .	
Interpretation	
A number of provisions, each of which has application at one of more points later in the document. We suggest you do not In the document. We suggest you do not In the document. We suggest you do not In the document.	
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 ••••, •••••••••••••••••••••••••••••••	
The Purchase Price	
The sellers are to receive cash at the time of signing this agreement. No arrears	
You should take advice from your accountant as to how to treat these items for tax purposes and how to express • • • • • • • • • • • • • • • • • •	
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 •••••••••••••••••••••••••••••••••••	
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	
 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 	

2.

3.

4.

5.

6.

• 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)	
Warra	inties applicability and limitation	
Do no	t edit without very good reason and full understanding ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■	
Warra	inties by Sellers	
Warranties can be given by any shareholder, whether a seller or a continuing shareholder. It is up to you to edit		
•	be that you have been invited to buy shares by the continuing nolders and it is therefore they, and not the sellers, who should	
of ther	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 hier sellers if	
agreei who p	oid this situation, the sellers should prepare a simple shareholders ment setting out exactly which of them is responsible for what areas and ays what to whom in the event of a claim. Such an agreement cannot lice the buyer, who still may	

7.

8.

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 one of any number of reasons), then it can wash its hands of

Unlike the warranties in Schedule 2, these are so fundamental to the transaction that it is reasonable that they should be unlimited. (Remember to change the
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
.,
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
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

12. The Guarantee

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

9.

10.

11.

	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
13.	Publicity / announcements
	This may not be important to ••••.•••.
14.	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	dule 1
	We have no comment.
Sche	dule 2- 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, $\blacksquare \blacksquare \blacksquare$
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 ••••••••••••••••••••••••••••••••••
Explanation 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 use warranties?

If you are seller

The warranties are not so much the sting in the tail as half the dog. Many lawyer and entrepreneurs will deliberately insist on a seller giving \blacksquare \blacksquare \blacksquare \blacksquare

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 • • • • • • • • • • • • • • • • • • •
•	after considering the breadth of each
•	Even where you "answer" the warranty in some • • • • • • • • • • • • • • • • • • •
Being ■ ■ ■ .	the seller it is
If you	are the buyer
The w	veight of advantage is very firmly with the I I I I I I I I I I I I I I I I I I
	,
As a	buyer 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 To get the right to claim
Either you are the,
Warranties: drafting notes continued
It is good 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 and Taxation
The buyer should take advice
The basis of valuation of the business is likely to have been the last audited annual accounts,
.,,
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

Employment
We have no comment. Set the warranties
Insurance
We have no comment.
Intellectual Property
All businesses acquire some intellectual property. Even quite small ■ ■ ■ ■
A buyer should consider what IP this company might need
Information technology ("IT")
IT is of course intellectual property. We have placed it under a separate heading to cover the

End of notes