

UK-CPcsi07

Company purchase agreement: Group of companies

Content

1. Definitions
2. Interpretation
3. Entire agreement
4. The Purchase Price
5. Buyer's acknowledgment of inspection
6. Agreement for Sale
7. Completion and delivery of documents
8. Warranties applicability and limitation
9. Warranties by Sellers
10. Trustee Warranties
11. Restrictive agreement
12. Sellers' protection
13. The Guarantee
14. Publicity / Announcements
15. Miscellaneous matters

Schedule 1	Part 1 Shareholdings
	Part 2 Details of the Group
	Part 3 Press release
Schedule 2	Part 1 Properties
	Part 2 Assets
Schedule 3	Warranties
	General
	Group structure and operation
	Accounts
	Cash flow
	Taxation
	Guarantees and borrowing
	Assets
	Trading and contracts
	Exceptional regulations
	Litigation and regulation
	Properties - all
	Properties let by Group Companies
	Employees
	Insurance
	Intellectual Property
	Information technology ("IT")

This agreement is dated: [date]

The Seller is: ABC Limited, a company incorporated in England and Wales [under company registration number] [number] and] [];

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 England and Wales [under company registration 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
:

“Accounting Date” means the date to which the Accounts have historically been prepared and to .

“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 each Group Company), stock and ,

2

2 ;

"Confidential Information"	<p>means all information about the Group Company and parties to this agreement, including any information which may give a commercially competitive</p> <p>.</p> <p>:</p> <p>information about staff, their performance and</p> <p>,</p> <p>data or information relating to suppliers, product plans, marketing strategies, finance, performance, operations, customer</p> <p>,</p> <p>,</p> <p>;</p> <p>information owned by a third party and in respect of which a party</p> <p>-</p> <p>.</p> <p>information, comment or implication published on</p> <p>.</p> <p>information about the Intellectual Property and</p> <p>-</p> <p>.</p>
"Disclosure Letter"	<p>means the disclosure letter provided by the Seller to the Buyer for</p> <p>.</p>
"Domain Names"	<p>means the Internet domain names used by the Group in connection with its websites or in</p> <p>.</p>
"Group"	<p>means either the Holding Company and its Subsidiaries</p> <p>.</p>
"Group Accounts"	<p>means the audited profit and loss account and balance sheet as at the Last Year End of each Group Company and the consolidated profit and loss</p> <p>.</p>
"Group Company"	<p>means the Holding Company and/or</p>

"Holding Company"	means [name of Company] Limited, the Shares in which
"Know-how"	means scientific or technical information, and other procedures and ways of working and organising
"Intellectual Property"	means intellectual property owned by any Group 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
"Properties"	means the land and buildings owned and / or used by the Group Company, brief details 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 whole
"Subsidiary"	means a subsidiary of the Holding Company as defined in . 1159 2006 .
"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 [9]
[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
- 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 VAT, 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 translation of this agreement in any other language, the English language version shall prevail. If a version of this agreement

3. Entire agreement

- 3.1. Each party acknowledges that this agreement and the Disclosure Letter contain 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

4. The Purchase Price

- 4.1. The Purchase Price is £ []
- 4.2. The Buyer shall pay the
- 4.3. The Sellers
- 4.4. The Sellers shall share

5. Buyer's acknowledgment of inspection

The Buyer admits that:

- 5.1. all of the Assets
;
- 5.2. it has made full investigation into the title,
;
- 5.3. it enters into this agreement on the basis of that
,
- .

6. Agreement for Sale

- 6.1. The Sellers agree to sell the Shares with full
.
- 6.2. Each of the Sellers hereby waives any pre-
,
- .
- 6.3. Each Seller now hands to the Buyer a letter
.
- 6.4. So far as the Sellers have any powers or control of any aspect of
,
,
- .
- 6.5. The Sale is
:
- 6.5.1 the Sellers entering into a shareholders' agreement with
, [].
- 6.5.2 [Beatrice Blackbird and Robin Finch] each
, [].

7. Completion and delivery of documents

7.1. Completion of this Sale shall take place immediately

7.2. At completion,

7.2.1 the title deeds relating to ;

7.2.2 title deeds, ;

7.2.3 signed share transfer forms in respect of the Shares

7.2.4 [if the Holding Company] ;

7.2.5 the statutory books of - - ;

7.2.6 letters of resignation of certain directors, namely [names] [and the secretary of the Group Company], with

7.2.7 [the resignation of the];

7.2.8 a list of all user names and passwords ;

7.2.9 the certificate of incorporation of each Group Company;

7.2.10 written confirmation by each ;

7.2.11 [employment contracts / service agreements], signed [

]

;

7.2.12 all records relating to the employment of any person

[

6] ;

7.2.13 all documentation recording matters

;

7.2.14 the minutes of meetings

, :

[Buyer nominee name] [

;

transfer forms

;

the resignations of [name] [] []

.

7.3. Following completion of this Sale, the Buyer shall obtain the

,

.

7.4. Each Seller undertakes that he will:

7.4.1 immediately repay to the Group Company

;

7.4.2 use his best endeavours to do

.

8. Warranties applicability and limitation

8.1. None of the

.

8.2. Each of the Sellers confirms that when any Warranty refers to

,

,

.

- 8.3. Each of the
.
- 8.4. Nothing done or not done by
.
- 8.5. Each Seller waives any claim he might have against
.
- 8.6. The Buyer may make any agreement with one or more
,
.
- 8.7. The Buyer undertakes to use his best endeavours to conduct all the businesses
.
- 8.8. If and only if any Warranty cannot be specifically referable to
,
.

9. Warranties by Sellers

- 9.1. The Sellers (except the Trustees) jointly and severally warrant to the
[

]:
- 9.1.1 the Sellers are entitled to transfer the Shares to

;
- 9.1.2 after completion of this
,
;
- 9.1.3 except as disclosed in the Disclosure Letter, all of the

9.1.4 the contents

9.1.5 unless otherwise specified,

9.1.6 [Each corporate Seller

9.1.7 the Shares constitute the whole
]

9.1.8 there is

9.2. The Warranties in this agreement are not

OR

9.3. The Warranties in this agreement are not limited in monetary value, but
no claim

[]

10. Trustee Warranties

Each of the Trustees warrants:

10.1. that he has legal title

10.2. that he has

10.3. that he has no knowledge of any circumstance unknown

11. Restrictive agreement

11.1. So that the Buyer has the full benefit

,
:

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

,

.

11.1.2 at any time after completion of the Sale, disclose to any

,

,

,

;

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

,

[3]

,

,

.

11.2. Each of the Sellers now agrees that

.

11.3. Following completion of

,

:

11.3.1 hold himself out

;

11.3.2 register nor purchase nor use any name similar to any of

.

12. Sellers' protection

12.1. Any claim against any Seller, in

,

.

12.2. No single Seller can be liable for any Warranty claim unless his

,
£ [5 , 000].

12.3. In any event, the maximum
£ [100 , 000].

12.4. The Buyer may not claim more

13. The Guarantee

13.1. [Each of]

:

13.1.1 that every statement,
;

13.1.2 that he will procure
;

13.1.3 that he will indemnify the Buyer against all
;

13.2. [Each of] The Guarantor accepts that compliance by the

,

.

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

.

13.4. This guarantee is limited to:

13.4.1 the sum of [sum] in total;

13.4.2 claims notified to the []

.

14. Publicity / Announcements

14.1. No public or press announcement shall be made

OR

14.2. No party shall:

14.2.1 make any public announcement; or

14.2.2 disclose any information; or

14.2.3 allow expressly or by default any other person

14.3. Except, that no party shall be prohibited from making

14.4. The parties agree to the issue of a
1 3 ,

15. Miscellaneous matters

15.1. No amendment or variation to this agreement

15.2. The parties acknowledge and agree that this

15.3. Unless otherwise stated in this agreement, all expenses in connection

15.4. So far as any time,

15.5. 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

15.6. Any obligation in this agreement

15.7. This agreement shall be binding upon each party's successors, assigns and ()

15.8. No failure or delay by any party to exercise any right,

15.9. The parties agree that

15.10. Any communication to be served on either of the parties

It shall be deemed to have been delivered:

if delivered :

;

if sent by post : 72

;

If sent by e-mail to the address from which the receiving party has last sent e-mail: 24

-

. [

-

,

]

15.11. In the event of a dispute between the parties to this agreement,

15.12. This agreement does not give any right

()
1999 .

15.13. In the event of any conflict between any term of this agreement and the

15.14. This agreement may be executed in multiple counterparts each

15.15. The validity, construction and performance of this agreement shall be
governed by the laws of [/ /

] [/ /].

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 [] / []
[] .

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 2 Details of the Group

1. The Company (Holding Company)

Company number: [] : []
Share capital: [share] £ [] £ []
[a company using 2006
]

Registered office: [address]

Directors: [list all names in full]

Secretary: [name in full]

2. The Subsidiaries

Name:[name] : [] : []
Share capital: £ [] £ []
[a company using 2006
]

Registered office: [address]

Directors: []

Secretary: [name in full]

Name:[name] : [] : []
Share capital: £ [] £ []
[a company using 2006
]

Registered office: [address]

Directors: []

Secretary: [name in full]

Schedule 1- Part 3 Press release

Schedule 2: Part 1 Properties

[Please

]

- 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. Each Group Company has at all times complied with current practice recommended by any department of , , , .
6. The Seller has no reason to believe that as a result of , - , .
7. The Disclosure Letter lists all licences and consents now valid and required to operate the Business
[] , .
8. Since the Last Year End .
9. No term of this agreement conflicts with:
 - 9.1 any other contract .
 - 9.2 the articles of association of any Group Company.
10. No term of this agreement nor the agreement as , .

Group structure and operation

11.

12.

13.

14.

15.

16.

16.1 all documents of title relating to its Assets;

16.2

16.3

17.

18.

19.

20.

21.

Accounts

22.

23.

24.

25. The Accounts:

25.1

25.2

25.3

25.4

26.

its purchase price;

its production cost;

its net realisable value.

27.

28. Since the Last Year End:

28.1

28.2

28.3

29.

Cash flow

30.

30.1

30.2

30.3

31.

32.

[]

Taxation

33.

34.

35.

36.

37.

38.

39.

40.

41.

Guarantees and borrowing

42. The Disclosure Letter discloses:

42.1

;

42.2 the terms of every loan;

42.3

;

42.4

43.

44.

45.

Assets

46.

46.1 are in its possession and control.

46.2

46.3

46.4

46.5

Trading and contracts

47.

48.

49. Since the Last Year End:

49.1

49.2 every Group Company has paid its creditors promptly.

49.3

49.4

[]

50.

50.1

50.2

50.3 all contracts comply with the relevant law.

50.4

51. No existing contract is for work which:

51.1 is beyond the normal course of business.

51.2

[]

51.3 is likely to result in a loss.

51.4

51.5

[10] %

52.

[

].

53.

54.

[],

55. [25]

[25]

56. ,

57. .

Exceptional regulations

58. No Group Company is:

58.1 /

58.2 a producer of replacement components for such vehicles.

58.3 /
().

59. , -
,
2009 .

60. (94 / 62 /
, () 2003 ()
() 2007 ()
)
.

61. ,
3 . 2 3 ()
) 1272 / 2008 ,
.

Litigation and regulation

62. .

63.

,

.

64.

.

65.

-

,

1980

2002 .

66.

,

.

67.

.

68.

.

Properties - all

69.

,

.

70.

.

71.

.

72.

.

73.

2

1

,

.

74.

.

75.

:

75.1

.

75.2

.

75.3 there are no rent reviews in progress.

76.

,

-

.

77.

.

78.

,

.

79.

.

80.

.

81.

.

82.

:

82.1 water;

82.2 drainage;

82.3 electricity;

82.4 gas;

82.5 telecommunications.

83.

Properties let by Group Companies

84.

2 1 .

85.

86.

:

86.1 the name and address of the tenant.

86.2 the name and address of any guarantor.

86.3 the address of the Property.

86.4

86.5 the rent.

86.6

86.7

86.8

86.9

86.10 any unusual provisions.

87.

Employees

88. The Disclosure Letter contains for each employee:

88.1 an employment history;

88.2 a curriculum vitae;

88.3 terms of employment;

88.4 non-contractual matters and informal arrangements.

89.

90.

91. [] ,
[] %
].

92.

93. £[]

94.

95.

Insurance

96.

97. No policy contains any special term or restriction.

98.

99.

100.

Intellectual Property

101.

102.

103.

104.

105.

106.

107.

Information technology ("IT")

108.

108.1 the name;

108.2 name and contact information of registrant;

108.3 tag holder name, land address and website;

108.4 date to which the name is registered.

109.

110.

111.

112.

113.

114.

114.1

114.2 technical, customer and client support services;

114.3

114.4 an email service provider.

115.

116.

116.1

116.2 what password he uses;

116.3

;

116.4

.

Explanatory notes:

Company purchase agreement: Group of companies

General matters

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

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 do be very careful to make

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

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. 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

5. 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

6. Agreement for Sale

This paragraph provides protection for the buyer. The Law of Property (Miscellaneous Provisions) Act 1994 provides that the words “
”, :

- the sellers have the right to dispose of ;
- they will at their own cost do all that they reasonably can to give the buyer the ;
- they are selling free of all charges which they do not and could not reasonably

7. 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

- 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)

8. Warranties applicability and limitation

Do not edit without very good reason and full understanding of the effect. If you have not previously used warranties, we urge you to read the complete explanation in plain English at <http://www.netlawman.co.uk/info/selling-your-business-part1.php>

9. 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. This means that the buyer can (and would) claim against the wealthier sellers if

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, who still may sue whom he wishes. It serves only to sort the position between the shareholders themselves. One of the

A company may sign up to a deal, by the hand of its directors, but if its articles of association prevent such a contract being made (for one of any number of reasons), then it can wash its hands of

The warranties are so fundamental to the transaction that it is reasonable that

10. 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. Either way, the buyer should insist that such person himself either gives full warranties or guarantees the same on behalf of his trustee(s).

The trustees warrant only that they are selling fairly and know of no reason why

11. 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

12. 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

13. The Guarantee

This paragraph protects the buyer against a seller who spend 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

14. Publicity / announcements

This may not be important to

15. Miscellaneous matters

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

The Schedules

We have no comment.

Notes on 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,

1. Delete any warranties that cannot apply to your

2. Do not delete warranties relating to matters about which full information has already been provided. If you
3. Take the document to your accountant to
4. 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 solicitors and entrepreneurs will deliberately insist on a seller giving

As a 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 the buyer

The weight of advantage is very firmly with the seller. He has the knowledge. You have none.

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

Either you are the seller or buyer, if you want a fair and satisfactory outcome, [use warranties](#).

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

Group structure and operation

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

A loan (or some other borrowing) by the company is registrable at Companies

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,

Exceptional regulations

Leave or delete,

Litigation and regulation

These warranties are general,

Properties - all

Real property is

Most of these items cover the facts that would be

Properties let by Group Companies

If none, delete.

Employees

We have no comment. Set the warranties

“

”

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 all notes