Business sale agreement: any business

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General

Schedule 5 Pension scheme and arrangements

Agreement for the Sale and Purchase of the Business known as [name]

The Date of this Agreement is: [Date]

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

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

The Guarantor is [name] of [Private Address]

[Note: if a party is a company, • • • • • • • • • • • • • • •]

It is now agreed as follows:

1. Definitions

So far as the conte	xt permits, the following words
"Accounts"	means the audited profit and loss account of the Business for the year ended [date] and the balance sheet
"Accounts Date"	means the date to which the Principal Principal Principal
"Assets"	means all of the Assets of the Seller
"Business"	means the [type of business] business carried on by the Seller until today under the name and style • • • • • • • • • • • • • • • • • • •
"Confidential Information"	means all information about the Business. It includes among other things, information about staff, and their personal contact information, methods of doing business, future plans, policies, suppliers and customers. It includes
"Contracts"	means current contracts of the Seller in relation to the Business,
"Creditors"	means trade creditors and accrued charges in connection with the Business

"Disclosures"	means the disclosures set out in a disclosure letter of today's date from the
"Distributor"	means a third party who has contracted to assist in some way with
"Domain Name"	
Domain Name	means any or all of the
	[name].com [name2].com
	[name3].co.za
"Employees"	means people who are employed by the Seller for ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ .
"Excluded Assets"	means the Assets listed in Schedule 3 which are
	owned by the Seller but
"Fixed Assets"	means all plant, machinery, tools, equipment and vehicles owned by the Seller for the
	
"Goodwill"	means the goodwill in relation to the Business, being goodwill of the Seller until
"Intellectual Property"	means all intellectual property owned by the Seller and used in the Business, including intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today. and including,
"ISP"	means the Internet service provider. that is any provider of any service in
"Lease"	Means the lease or leases under which the Property, [or
"D + 0 :	

"Payment Service means the banking intermediary who provides the

Provider"

service of Transferring money from the Website • • •

"Party" means a party to this Agreement and "Parties" ■ ■ ■ "Price" 3 . "Products / means the products and services sold by the Seller Services" "Properties" means the freehold or leasehold properties, or both, "Stocks" means stocks of Products, raw materials, work in progress and finished goods, and goods for re-sale owned by the Seller for the purposes of or in connection with the Business, including ■ ■ ■ ■ "Third Party means software owned by some person other than the Software" Seller and used "Warranties" means the warranties and undertakings of the Seller "Website" means www.[URL] and www.[URL] and includes any additional web pages and all software now or

2. Agreement for Sale

2.1.	This Agreement, Warranties, Disclosure Letter and the Schedules
	constitute

- - 2.2.1 the Business as a going concern.
 - 2.2.2 the Goodwill.

		2.2.3	the Property.	
		2.2.4	the Fixed Assets.	
		2.2.5	the Stocks.	
		2.2.6	the Intellectual Property Rights.	
		2.2.7	the Domain Name(s).	
		2.2.8	the Website.	
		2.2.9	rights to use Third Party Software.	
		2.2.10	the benefit of the Contracts.	
		2.2.11	all other Assets owned by the Seller and	••
	But ex	xcluding	the Excluded Assets	
	2.3.	Comple	etion shall take place today, immediately upon exchange of the	his
	2.4.	The as	signment of the Leasehold	-
	2.5.	The tra	ansfer of the Freehold	••
3.	The	Purch	hase Price	
	3.1.	The Pri	ice for the business shall \blacksquare	
			:	••
		goodwi	ill ====[]
		freehol	d Properties ■■■[]
		leaseho	old Properties ■■■[]
		fixed A	ssets]
		intellec	etual Property Rights ■■■ []
		contrac	cts and = = = = = = = = = , = = = = = = = = =	•

	the Sto	ocks to be ascertained			
	Total p	orice [= = = = = =]		[]
3.2.	There	shall be deducted from the			
	••••				
3.3.	The Pr	ice shall be paid as follows:			
	3.3.1	as to R [amount], by banker's draf		•••••	••
			• • • • • •		•••
	3.3.2	as to the value ••••••••••••••••••••••••••••••••••••	,	•••••	••
3.4.	If the a	ssignment of the Lease cannot be o	•	-	
3.5.	Value	added tax will :			••
	[list pro	operty on which VAT payable]			
OR					
3.6.	The Pr	ice		•••••	
Item	ns to k	e delivered at Completio	n		
The S		all hand to the Buyer or otherwise d			
•••					
4.1.	Such c	f the = = = = = = = = = = =	•••••		
4.0					
4.2.		ks • • • • • • • • • • • • • • • • • • •			
4.3.	ne tru	ist deeds, assets, funding arrangem	nents, ■ ■ ■ ■	. ,	
			<u>-</u>		

4.4.	Computer programmes • • • • • • • • • • • • • • • • • • •
4.5.	All data in electronic form,
4.6.	All information and records relating to customers and suppliers, including a list of all
4.7.	Marketing material in any medium.
4.8.	Contracts with the Employees,
4.9.	[If the seller is a limited company] signed and certified copy of the minutes of a meeting of
4.10.	Assignment of the Leasehold Property [unless = = = = = = = = = = = = = = = = = =
4.11.	Transfers of the Freehold • • • • [• • • • • • • • • • • • • •
4.12.	Contracts and assignments of Contracts.
4.13.	Forms of transfer of
4.14.	Transfers of the ,
4.15.	Forms of authority addressed to the owners of
4.16.	All technical and
4.17.	Marketing material of every sort in any medium.

4.18.	A list of sales Distributors and agents, identifying sales
4.19.	Policies of insurance, continuing.
4.20.	All other = = = = = = = = = = = = = = = = .
Con	npletion
5.1.	As soon as the items listed above have passed into the possession
5 0	TI D 1 11
5.2.	The Buyer shall be
5.3.	As soon as possible and in any event within 14 days from the date hereof, the Seller shall procure that the Domain Names are transferred to the Buyer.
5.4.	As soon as possible and in any event within two days from the date hereof,
	,
5.5.	The Seller has a continuing obligation to do what is \blacksquare
5.6.	The Buyer shall not be obliged to

5.7.	If any or all of the transactions set out in this paragraph do not
Sto	cks
6.1.	The Parties shall within 14 days of today's date jointly attend to the valuation
6.2.	Any dispute as to the value of the Stocks shall be referred for final settlement to a firm of [chartered accountants] nominated jointly by the Seller and the Buyer. The accountants shall
6.3.	The amounts agreed or decided under the last sub-paragraph shall
6.4.	The Seller shall be liable for $\blacksquare \blacksquare \blacksquare$
Deb	otors
7.1.	The Buyer shall use all reasonable effort to collect the debts on , , , , , , , , , , , , , , , , , ,
7.2.	If it becomes apparent to the Buyer that recovery of any of the book

7.

debts is not likely to be possible within $\blacksquare \blacksquare \blacksquare$

7.3.	Where a debtor who has so failed to pay,
7.4.	Unless the debtor shows a contrary intention when making payment,
7.5.	The Seller may inspect the books of the Buyer
Cre	ditors and Liabilities
8.1.	The Seller shall immediately discharge all the debts of the
8.2.	The Seller shall remain liable for all claims by third parties in respect of any goods or services supplied by the Seller or any act or omission of the Seller prior to

8.4.	The Buyer shall not be liable for any breach of any contract by the
Valu	ue Added Tax (VAT)
9.1.	The Parties shall procure that the sale of the
9.2.	The Seller shall immediately deliver to the
9.3.	The Buyer shall for a period of not less than 6 years from
War	ranties by the Seller
The S	Seller warrants to the Buyer that:
10.1.	If more than one person constitute the •••, ••••••••••••••••••••••••••••••••
10.2.	The Warranties set
10.3.	The Disclosures are true, accurate and comprehensive.
10.4.	Where any Warranty refers to the knowledge, information ••••••••••••••••••••••••••••••••••••
10.5.	The Seller agrees to indemnify the Buyer against all costs claims and ■

10.

 \blacksquare \blacksquare .

11. Future Activities

12.

	er to give the ••••••••••••••••••••••••••••••••••
11.1.	Commence or continue any business or activity whatsoever similar to
11.2.	At any time disclose to any person or ••••••••••••••••••••••••••••••••••
11.3.	For a period of [2] years after today either on its own account or through any other person directly
11.4.	For a period of [2] years after today's date without the Buyer's prior written ••••• [•••
	•••••••
11.5.	Trade under any name
11.6.	Register nor purchase nor use any Internet domain
The	Guarantor
12.1.	The Guarantor personally guarantees
	12.1.1 the sum of [sum] in total.
	12.1.2 claims notified to ••••••[••••]•••••

	12.3.	If the breach cannot be made good, or the Seller has failed to make good, then after [28] days from the date • • • • • • • • • • • • •
	12.4.	The Guarantor hereby guarantees that the Warranties and the Disclosures are true and accurate and indemnifies
13.	Con	nmunications
	13.1.	Any communication to be served on either of the Parties
		7 thy communication to be served on children of the Farites
		It shall be deemed to have been delivered:
		It shall be deemed to have been delivered: if delivered • • • • • • • • • • • • • • • • • • •
		It shall be deemed to have been delivered: if delivered
		It shall be deemed to have been delivered: if delivered • • • • • • • • • • • • • • • • • • •
		It shall be deemed to have been delivered: if delivered • • • • • • • • • • • • • • • • • • •

12.2. If the Seller is in breach of this agreement, the Buyer shall \blacksquare \blacksquare \blacksquare \blacksquare

14. Miscellaneous Matters

14.1.	The headings
14.2.	any cause of action arising out of or related to
14.3.	No waiver by a Party, in exercising any right shall operate as a ■ ■ ■
14.4.	If any term in this Agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as •••••••••••••••••••••••••••••••••••
	•••••
14.5.	In the event of a dispute arising out of or in connection with
	••.
14.6.	This Agreement binds
14.7.	This Agreement shall be interpreted according to the laws

Signed by [personal name], duly authorized for the Seller

Witness to signature:

Name:

Address
Signed by [personal name], duly authorized for the Buyer
Witness to signature:
Name:
Address
Signed by [personal name], the Guarantor
Witness to signature:
Name:
Address

Schedule 1 - Properties

Part 1:	Freehold properties
[For ea	ach freehold property,
1.	The Sellers agrees to sell
2.	The Property is sold subject
3.	The Seller sells with full title guarantee.
4.	The contract rate shall be four
	The balance of the purchase price attributable to the freehold property namely [
	by [personal name], duly authorized for the Seller Witness to signature: name:
	Address
Signed	by [personal name], duly authorized for the Buyer
Witnes	es to signature:
Name:	

Signed by [personal name], the Guarantor

Address

Name	:
Addre	ess
Part 2	2: Leasehold property
[For e	ach leasehold property, ••••••••••, •••••••
6.	The Sellers agrees to sell and
7.	The Lease[s] is hereby assigned to the Buyer for the
8.	A copy of the Lease have been supplied to the Buyer,
9.	No part
OR	
10.	The sum of ZAR [amount]
11.	From today, the Buyer promises to pay the rent reserved by the Lease and to observe and perform the
12.	The Seller has obtained the written • • • • • • • • • • • • • • • • • • •
OR	

Witness to signature:

13.	The S	Seller will at his own cost and
AND		
14.		the consent of the Landlord has been obtained,
	•••	
	14.1.	he is
	14.2.	the licence fee
	14.3.	the Buyer will observe all the covenants in the lease and generally comply
		,
	14.4.	The Buyer will be liable for third party public
	14.5.	The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease, in the The assignment of the Lease
	14.6.	

Signed by [personal name], duly authorized for the Seller

Witness to signature:
Name:
Address
Signed by [personal name], duly authorized for the Buyer
Witness to signature:
Name:
Address
Signed by [personal name], the Guarantor
Witness to signature:
name:
Address

Schedule 2 - Fixed Assets

[List fixed assets]

Schedule 3 - Excluded Assets

[List Excluded Assets]

Schedule 4 - Wa	rranties
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Assets	
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6.2. Have bee	n regularly and properly maintained.
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Stocks	
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Acco	unts
12.	Since the Accounts Date:
	12.1. The Business has operated in its normal way.
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End of warranties

Schedule 5 Pension scheme and arrangements

Explanatory notes:

Business sale agreement: any business

General notes

1.	This is a long document which requires many changes. We suggest you save a perfect copy in case
2.	It is assumed that the seller is a limited company. It makes no difference to the agreement if it is one or more individuals.
3.	This document is designed to cover virtually all the eventualities which will be important in a business sale and purchase. But there is little statutory interference in a negotiation of this nature. You may
4.	This document is usually drawn and submitted by the buyer to the seller. It is good practice to delete irrelevant warranties, but by all means leave in "tough" ones. You may be surprised what comes " ""
5.	There are very many points where your input is required. We suggest you search for square brackets automatically in order to check I I I I I I I I I I I I I I I I I I
6.	It is essential for a smooth transaction that the Seller gets together absolutely all the documents which will be needed on completion. It is a good idea to provide a list of them to the Buyer with a copy of this agreement in final form. Ask for approval of the list.
7.	The Buyer should not hesitate to apportion the purchase price among the assets so that he does not pay for items he is not getting. Agreement should be reached in advance as to the amounts to be retained. For example, a lease may have no value, but without property, the business may not be able
8.	A formal legal assignment of each property will be required. This document contains a form of assignment of a leasehold in the first schedule. It should be repeated for each leasehold property separately. Do

9.	A freehold property can be transferred only by a suitable form of transfer, for which you will need help from a attorney or licensed conveyancer. However, a large part of the work of a conveyancer is spent in preliminary matters and drawing the agreement for sale which usually precedes the transfer document, signed at "completion". This sale agreement document contains all the information necessary to constitute an agreement for the sale of a freehold. You do not need more. The answers to the usual preliminary enquiries are covered by the warranties. The buyer should make sure that the replies in the disclosure letter are accurate and avoid "fudge".

10.	If there is only one property, simply delete the paragraphs and references to freehold if the
11.	As for the warranties, the seller should console himself with the thought that any claim by the buyer for breach of warranty must prove money loss to the buyer and that the buyer is under a duty to reduce his loss so far as reasonably possible. As a result, it is generally worth
12.	This agreement is guaranteed by two individuals. It may be assumed they are the executive director and shareholder in the company Seller and his / her spouse. If the Seller is just one individual, it would also be usual to ask for a guarantor. Since bankruptcy has become far less catastrophic, many more people are prepared to become bankrupt having
	Further, a seller may be selling because he has run out of cash. It is not good for a buyer to be able to rely on this brilliant agreement if the seller is

Paragraph specific notes

Note: numbering refers to paragraph numbers.

1 Definitions

It is of course fundamental to the agreement to specify the subject matter precisely. One of the reasons for so many defined terms is so that this paragraph is simple and devoid of long descriptions. There is some overlap between the terms,

	We know your first thought will be: "Good heavens, do I really need this lot?" Well, the answer is "Yes, probably". Even the smallest business has accounts (we hope!) confidential info
	The term "Contracts is intentionally broad, so as to cover many types of business. It could include contracts to buy, sell or supply goods • • • • • •
	The term "Third Party Software" is relevant because you never buy your software. What happens in law is that you get a licence to use it. So your computer is full of software you do not own. If you buy a business, you expect to take over all those licences. So the document has to provide for that. There is more: if any owner tells you the licence is not transferable you will have to pay afresh. But you
2	Agreement for Sale
	There is an overlap in this list: use the descriptions that are most \blacksquare
3	The Purchase Price
. :	For various tax purposes it may be important to specify
	Goodwill Leasehold property Freehold property Fixed assets Intellectual property Stock for sale or manufacture
	You should consult an accountant as to the most favourable apportionments, although the other party will also have a view as to what is or is not acceptable. It may be necessary to obtain clearance from the SARS in advance. This
1	Items to be delivered at completion

It is not of course necessary to physically move or hand assets to the buyer. Delivery means delivery of possession. Some assets may of course be

	y, such as keys and certain books of account. If the
problems. Issues arise inflexible standard term service. This puts a but	er rights and contracts with third party suppliers causes because Internet service suppliers usually operate on as. Many have no procedure for fast transfer of their siness buyer in a difficult position. Take a payment
all service changes in p	est way must be to put the obligation on the seller to get place, subject to a telephone call, which can be made mpletion of the
Alternatively, the buyer	should open his own separate account with \blacksquare \blacksquare \blacksquare \blacksquare
Completion	
and in particular when will have been dealt windifficulty since there are	tion and agreement as to the mechanics of completion final issues are to be completed. Leasehold property the in advance, but domain names may present more e no provisions for a conditional transfer. The buyer
•.	
•	s very strong. Usually, when a Buyer has taken ■ ■ ■
	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
Stocks	

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5.7

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Stocks can be anything, so the agreement is drawn in broad terms. In practice, there will be occasions when ten people employed by auditors will be

	needed to count the stocks and other occasions when ••••••••••••••••••••••••••••••••••••
9	Value added tax
	First, be sure to apply to be registered for VAT before this agreement is signed, so that

10	Warranties by the Seller
	This confirmation of the warranties is critical to the protection ••••••••••••••••••••••••••••••••••••
11	Future Activities
	The buyer should never take the seller's word for the proposition that the seller will not compete and will say only good things about the buyer and the business. The seller should be bound to appropriate "good behaviour". A covenant (promise) not to compete is not enforced by the courts unless it is reasonable in
14	Misc Matters
	Leave all these provisions in place unless you I I I I I I I I I I I I I I I I I
Schee and ∎	dule 1, part 1: Provided the parties are agreed, the property clearly identified
The c	ontract is usually completed sometime later, but
assigi	dule 1, part 2: Leasehold property: this section provides a full and effective nment of leasehold property. Leases for periods of longer than 10 years must, er to be binding against a

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Matters relating to warranties
To use this document you have to understand how warranties work. They are simpler than you thought! Here now is an •••••••••••••••••••••••••••••••••••
Warranties - the inside-out promises
I will now address the task itself and tell you how to make it happen. The first matter to consider is the "back-to-front" way in which the buyer or his lawyer pulls out information from a seller .
The agreement is drawn by the Buyer. That is fair because the Buyer knows nothing about the business and the Seller knows everything (we hope)! So the agreement first covers the mechanics of the deal - what is being sold, where it is, how it is to be transferred, and so on. Then it
Warranties work like this: I am a seller. You produce an agreement. In that agreement, ••••••••••••••••••••••••••••••••••••
The letter of disclosure is the other "half" of the process. In my letter of disclosure, I refer in turn to each of the warranties you have written in to the agreement. I then qualify them in the letter, so as to make them true. I do this by providing the information which then
In that way, before he can sue you, the buyer has to prove not merely that the warranty is breached, but that you knew it was wrong

"Where any Warranty refers to the knowledge, information or belief of the Seller, he undertakes that it has made • • • • • • • • • • • • • • • • • • •
=====!
Suppose the Seller warrants:
"Neither the Seller nor any of its shareholders has any interest, directly or indirectly, in any
The reply to this warranty above could also be that
Now, finally, let us suppose the warranty had not been in the draft agreement at all. This is what would have happened: I sell to you. My dear old mum steps in and makes the peace between me and my brother and in five minutes I am in there
You may find aspects of my illustration to be immoral. That may be. But I assure you that the World is full of pleasant people who
Warranties - seller's tactics
The "task" of the seller is essentially to provide full and truthful information and to avoid being tripped up in the process. The task of the buyer is to ask for the warranties,
As a seller, ••••••••••••••••••••••••••••••••••••
• You be the one to • • • • • • • • • • • • • • • • • •
• When you receive the draft = = = , = = = = = = = = = = = = = = =

In your draft disclosure letter, which
Consider the breadth of each warranty. I I I I I I
Even where you "answer" the warranty in some ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
 At all costs avoid the easy way out of leaving the warranties
Warranties - buyer's response
If you want a fair and satisfactory outcome, use warranties.
However, if your warranties are all "absolute" in matters where it is unreasonable to expect the seller to
Set out the warranties according to the transaction. Do not include warranties which
If the seller is represented by a attorney, you will have to decide whether this creates an unlevel playing field.

!
Some attorneys acting for a buyer will see the provision of warranties as an opportunity to go back to
,
,
Warranties: drafting notes continued
General
The warranties have been widely drawn so that they are likely to cover a buyer's
Assets
The most important answers sought here are as
Stocks
The quality and saleability of stock is the area where most arguments later arise. It is very easy for a seller to hide un-saleable stock or fail to
Accounts
The basis of valuation of the business is
The basis of valuation of the business is

Suppliers and customers

Of course they have! The purpose of these warranties is \blacksquare
Licenses, consents and passwords
In any business which has been operating for more than a few years,
Seller's activities
This section is particularly important if the seller is a company. There are
circumstances where
Contracts
Particular care should be taken with major contracts which could affect the viability of the business. The buyer should *** **** **** **** **** **** **** **** **** **** **** **** **** ****
Intellectual property
All business acquires some intellectual property. Even quite small ■ ■ ■ ■ ■ ■ ■
Internet domain names
These are of course an item of intellectual property. We have placed them under a separate heading to •••••••••••••••••••••••••••••••••••

End of notes