# Business sale agreement: takeaway food retailer

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- 10. Future Activities
- 11. The Guarantor
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Schedule 1 Leasehold Property

Schedule 2 Fixed Assets

Schedule 3 Excluded Assets

Schedule 4 Warranties

**Assets** 

**Stocks** 

Accounts

**Employees** 

Suppliers and customers

Licences, consents and passwords

Insurance

Statutory restrictions

Litigation

Seller's activities

Contracts

**Properties** 

Leasehold properties

Intellectual property

Internet domain names

General

#### 

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]

It is now agreed as follows:

#### 1. Definitions

Definitions	
So far as the context p	permits, the following words are
:	
"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 hot food take-away business carried on by the Seller until today under the name and style of [
"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 - - - - - - - - - - - - - - -.................. "Domain Name" means any or all of the [name].com [name2].com [name3].co.za "Employees" mean people who are employed by the Seller for "Excluded Assets" means the Assets listed in Schedule 3 which are owned by the Seller but  $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$ "Fixed Assets" means all plant, machinery, tools, equipment loose cutlery, crockery, catering equipment and furniture owned by the Seller for the purpose of the Business including items which, although subject to **I I I I** ....................... -----------------. . . . . . . . . . 2 . "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,  $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare = \blacksquare$ ,  $\blacksquare \blacksquare \blacksquare = \blacksquare$ ,  $\blacksquare \blacksquare \blacksquare = \blacksquare$ . . . . . . , . . . . , . . . , . . . , . . . . . ....... "Lease" Means the lease or leases under which the Property. [or some = = = = = = = = = = = = ,] = = = = "Partv" means a party to this Agreement and "Parties" ■ ■ ■ "Price" **..........** 3.

means the leasehold Property, owned or used by the

"Property"

"Stocks" means stocks of food and drink, bought means software owned by some person other than the Seller and used means and undertakings of the Seller set out means www.[URL] and www.[URL] and includes any additional web pages and all software now or previously used in means m

#### 2. Agreement for Sale

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2.1.	-	greement, Warranties, Disclosure Letter and the Schedules ute
2.2.	-	t to the terms of this Agreement, the Seller shall sell to the Buyer I title ■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■
	2.2.1	the Business as a going concern;
	2.2.2	the Goodwill;
	2.2.3	the leasehold 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

	2.3.	Completion shall take place today,
	2.4.	The sale of the Property
3.	The	Purchase Price
	3.1.	The Price for the business shall
		Goodwill
		Leasehold Property ■■■■ [ ]
		Fixed Assets
		Intellectual Property Rights ■■■ [ ]
		Contracts and
		The Stocks to be ascertained
		Total price [excluding = = = ]
	3.2.	There shall be deducted from the
	3.3.	The Price shall be paid as follows:
		3.3.1 As to R [amount], by banker's draft / • • • • • • • • • • • • • • • • • •
		3.3.2 As to the value • • • • • • • • • • • • • • • • • • •
	3.4.	If the assignment of the Lease cannot be completed today,

But excluding the Excluded Assets

	3.5.	Value added tax will
		[List property on which VAT payable
	OR	
	3.6.	The Price
4.	Item	ns to be delivered at Completion
	The s	eller shall hand to the buyer or otherwise deliver
	4.1.	Such of the
	4.2.	All books • • • • • • • • , • • • • • • • • • •
	4.3.	Computer programmes • • • • • • • • • • • • • • • • • • •
	4.4.	All information ••••••;
	4.5.	Contracts with the employees, •••••;
	4.6.	(if seller is a company)the following
		4.6.1 signed and certified copy of the minutes of a meeting of the shareholders of
	4.7.	Assignment of the Leasehold Property [unless • • • • • • • • • • • • • • • • • •
	4.8.	Contracts and assignments of Contracts;
	4.9.	Forms of transfer of • • • • • • • • • • • • • • • • • •

4.10.	Transfers of the <b> </b>
4.11.	Forms of authority addressed to the owners of
4.12.	All technical and
4.13.	Marketing material of every sort in any medium;
4.14.	Policies of insurance, continuing;
4.15.	All other = = = = = = = = = = = = = = = ;
_	
Con	npletion
5.1.	As soon as the items listed above have passed into the possession
5.2.	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.
5.3.	As soon as possible and in any event within two days from the
	■.
5.4.	The Seller has a continuing obligation to do what is $\blacksquare \blacksquare \blacksquare \blacksquare$ , $\blacksquare \blacksquare \blacksquare \blacksquare$
5.5.	The Buyer shall not be obliged to •••••••••••••••••••••••••••••••••••
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5.6.	If any or all of the transactions set out in sub-paragraphs 4, 5.3 = = = 5 . 4 = = = = = = = = = = = = = = = = = =
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 be entitled
6.3.	The amounts agreed or decided under the last sub-paragraph shall
6.4.	The Seller shall be liable for   I I I I I I I I I I I I I I I I I I
Cre	ditors and Liabilities
7.1.	The Seller shall immediately discharge all the debts of the  ,
7.2.	The Seller shall remain liable for all claims by third parties

7.

7.3.	When the Seller becomes aware of any such claim he must immediately provide details of it
	•••••
7.4.	The Buyer shall not be liable for any breach of any contract by the
	•••••••••
Valu	ue Added Tax (VAT)
8.1.	The Parties shall procure that the sale of the Business
8.2.	The Seller shall immediately deliver to the
	••••••
8.3.	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:
9.1.	If more than one person constitute the •••, •••••
	;
9.2.	The warranties set •••••••••••••••••••••••••••••••••

9.

9.3.

The disclosures are true, accurate and comprehensive;

9.4.	where any warranty refers to the knowledge, information
	;
9.5.	The seller agrees to indemnify the buyer against all costs claims and ■
- 1	A . (* 141
	ure Activities
In ord	ler to give the ••••••••••••••••••••••••••••••••••
10.1.	Commence or continue any business or activity whatsoever similar to ■
40.0	
10.2.	At any time disclose to any person or
40.0	
10.3.	For a period of [2] years after today either on its own account or through any other person ••••••••••••••••••••••••••••••••••••
	;
10.4.	For a period of [2] years after today's date without the buyer's prior ■ ■
	;
10.5.	Trade under any name ••••;
10.6.	Register nor purchase nor use any internet domain

## 11. The Guarantor

**12.** 

10.7.	The Guarantor personally guarantees
10.71	
	10.7.1 the sum of [sum] in total;
	10.7.2 Claims notified to
10.8.	If the Seller is in breach of this agreement, the Buyer shall ■ ■ ■ ■ ■
10.9.	If the breach cannot be made good, or the Seller has failed to make good, then after [28] days from the date • • • • • • • • • • • • •
	,
	,
10.10.	The Guarantor hereby guarantees that the Warranties and the Disclosures are true and accurate and indemnifies <b>■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■</b>
Com	munications
10.11.	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

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# 13. Miscellaneous Matters

10.15.	. If any term in this Agreement is at any time held by any jurisdiction to
10.15.	■■■■■■■ .  If any term in this Agreement is at any time held by any jurisdiction to
10.14.	. No waiver by a Party, in exercising any right shall operate as a ■ ■ ■ ■
	;,
10.13.	Any cause of action arising out of or related to

10.16. Contracts with Employees:

10.16.1 The parties agree that with effect from the date hereof, the employees shall
10.16.2 The seller agrees to indemnify and hold the
■■.

10.17. In the event of a dis	spute arising out of or in connection with
	ds = = = = = = = = = = = = = = = = = = =
10.19. This Agreement sha	all be interpreted according to the
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 C	Guarantor
Witness to signature:	name:
Address	

### Schedule 1: Leasehold property and details of the lease .......... The Sellers agrees to sell and 1. 2. The Lease[s] is hereby assigned to the Buyer for the **E E E E E E E E E E** ............. 3. ........ 4. OR The sum of R [amount] 5. From today, the Buyer promises to pay the rent reserved by the Lease and to 6. observe and perform the .............. 7. The Seller has obtained the written OR 8. The Seller will at his own cost and ................. --------**AND** 9. Until the consent of the Landlord has been obtained, ..........

9.1.	He is •••••••;
9.2.	The licence fee • • • • • • • • • • • • • • • • •
9.3.	The buyer will observe all the covenants in the lease and generally comply,,,,,,,
9.4.	The buyer will be liable for third party public
9.5.	The assignment of the lease, in the  7
9.6.	If the seller is unable to obtain a licence to assign the property from the landlord, after all reasonable efforts to do so including applying to the court for a declaration that the licence
Signed by [p	ersonal name], duly authorized for the Seller
Witness to si	ignature: name:
Address	
Signed by [p	ersonal name], duly authorized for the Buyer

name:

Witness to signature:

#### 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]

Sch	edule	e 4 - Warranties
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Asset		
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	6.2.	Have been regularly and properly maintained;
	6.3.	;;
	6.4.	
Stock	S	
7.	•••	
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Acco	unts
11.	Since the Accounts Date:
	11.1. The Business has operated in its normal way;
	11.2.
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Supp	liers and Customers
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26.	So far as the Seller is aware:
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Licen	ces, consents and passwords
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Lease	hold Proper	ty																			
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Intell	ectual Property	
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Intern	et Domain Names	
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**End of warranties** 

# **Explanatory notes:**

Business sale agreement: takeaway food retailer

## **General notes:**

9.

1.	This is a long document which requires many changes. We suggest you save a perfect copy in case
2.	This template is suitable for virtually any ■ ■ ■ ■ ■ ■ ■ .
3.	It is assumed that the seller is a limited company. It makes no difference to the agreement if it is one or more individuals.
4.	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
5.	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 "
6.	There are very many points where your input is required. We suggest you search for square brackets automatically in order to check
7.	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.
8.	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
9.	A formal legal assignment of each property will be required. This document

contains a form of assignment of leasehold in the first schedule. It should be

	repeated for each leasehold property separately. Do • • • • • • • • • • •
10.	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
	"
11.	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 $\blacksquare$ $\blacksquare$ $\blacksquare$ $\blacksquare$ .

### 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 "Contracts is intentionally broad, so as to supply goods 

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The term "Contracts is intentionally broad, so

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

	pay afresh. But you = = = = = = = = = = = = = = = = = = =
	•••••••
2	Agreement for Sale
	There is an overlap in this list: use the descriptions that are most   I I I I I I I I I I I I I I I I I I
3	The Purchase Price
<b>.</b> :	For various tax purposes it may be important to specify
	Goodwill Leasehold 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
4	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 handed over physically, such as keys and certain books of account. If the buyer will not be
	The necessity to transfer rights and contracts with third party suppliers causes problems. Issues arise because Internet service suppliers usually operate on inflexible standard terms. Many have no procedure for fast transfer of their service. This puts a business buyer in a difficult position. Take a payment service provider.

We suggest that the best way must be to put the obligation on the seller to get

	all service changes in place, subject to a telephone call, which can be made on the same day as completion of the
	Alternatively, the buyer should open his own separate account with
	======================================
5	Completion
	It is a matter of negotiation and agreement as to the mechanics of completion and in particular when final issues are to be completed. Leasehold property will have been dealt with in advance, but domain names may present more difficulty since there are no provisions for a conditional transfer. The buyer has to decide how long
5.7	The power to rescind is very strong. Usually, when a Buyer has taken • • • • • • • • • • • • • • • • • • •
6	Stocks
	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  $\blacksquare$   $\blacksquare$   $\blacksquare$   $\blacksquare$   $\blacksquare$ 

11	Future Activites					
	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					
assign	<b>Jule 1:</b> Leasehold property: this section provides a full and effective ament of leasehold property. Leases for periods of longer than 10 years must, er to be binding against a creditor					
■ ■ ■ □	rs relating to warranties					
	e this document you have to understand how warranties work. They are than you thought! Here now is an					
Warra	nties - the inside-out promises					
to con	ow address the task itself and tell you how to make it happen. The first matter sider is the "back-to-front" way in which the buyer or his lawyer pulls out ation from a seller.					
The a	greement is drawn by the Buyer. That is fair because the Buyer knows nothing					

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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.
• Even where you "answer" the warranty in some • • • , • • • • • • • • • • • • • • •
• At all costs avoid the easy way out of leaving the warranties
Warranties - buyer's response

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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 unlevelled 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  ,,,,,,, .

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**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   I I I I I I I I I I I I I I I I I I
Suppliers and customers
Of course they have! The purpose of these warranties is ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
Licenses, consents and passwords
In any business which has been operating for more than a few years,
Seller's activities
Seller's activities  This section is particularly important if the seller is a company. There are

# 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 Intellectual property

#### Internet domain names

These are of course an item of intellectual property. We ha separate heading to	•
	• • • • • • • • • • • • • • • • • • • •
• • • • • • • • • • • • • • • • • • • •	

#### **End of notes**