Sale agreement: home based trading business

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Schedule 1 Fixed Assets

Schedule 2 Excluded Assets

Schedule 3 Warranties

Assets

Stocks

Accounts

Suppliers and customers

Licences, consents and passwords

Insurance

Joint ventures and partnerships

Statutory restrictions

Litigation

Seller's activities

Contracts

Defective products and service liabilities

Intellectual property

Internet domain names

General

Agreement for the Sale and Purchase of the $\blacksquare \blacksquare \blacksquare$

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

So far as the cont ■■■■:	ext 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 The state of the
"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
"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, including sales agents and Internet affiliates and partners, who have contracted to assist in ■
	/
"Domain Name"	means any or all of the
	[name].com
	[name2].com
	[name3].co.za
"Excluded Assets"	means the Assets listed in Schedule 2 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
Coodwiii	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,
	,,,,,,
W.O.D.II	
"ISP"	means the Internet service provider; that is any provider of any service in ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** * ** ** ** **
"Payment	means the banking intermediary who provides the service
Service Provider"	of transferring money from the Website
"Party"	means a party to this Agreement and "Parties"
"Price"	means the price to be paid for the Business \blacksquare
"Products / Services"	means the products and services sold by the Seller .
"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 Software"	means software owned by some person other than the Seller and used ••••••••••••••••••••••••••••••••••••
"Warranties"	means the warranties and
"Website"	means www.[URL] and www.[URL] and

2. Agreement for Sale

2.1.	This Ag	greement, Warranties,
2.2.	Subject	t to the terms of this Agreement,
	2.2.1	the Business as a going concern;
	2.2.2	the Goodwill;
	2.2.3	the Fixed Assets;
	2.2.4	the Stocks;
	2.2.5	the Intellectual Property Rights;
	2.2.6	the Domain Name(s);
	2.2.7	the Website;
	2.2.8	rights to use Third Party Software;
	2.2.9	the benefit of the Contracts;
	2.2.10	all other Assets

The	The Purchase Price				
3.1.	••••	rice for the business shall			
	Goodv	vill	[]	
	Fixed A	Assets	■■■[]	
	Intelle	ctual Property Rights	■■■[]	
	Contra	acts and , 			
	the Sto	ocks To be ascertained			
	Total _I	orice [excluding ■ ■ ■ ■]	[]	
	There	shall be deducted from the			
		• • .			
3.2.	The Pr	rice shall be paid as follows:			
	3.2.1	As to R [amount], by banker's draft /			
	3.2.2	As to the value of ■■■■■■■ , ■■ ■■■■ [6]■■■■.		•••	
3.3.	Value	added tax will • • • • • • • • • • • • •	•••••		
	[List pr	roperty on which VAT payable]			
OR					
3.4.	The Pr	rice		I .	

Completion shall take place today,

2.3.

4. Items to be delivered at Completion

	eller shall hand to the buyer or otherwise deliver
	,:
4.1.	Such of the
4.2.	All books of account and vat records;
4.3.	Computer programmes • • • • • • • • • • • • • • • • • • •
4.4.	All data in electronic form,
4.5.	All information and records relating to customers and suppliers, including a list of all
4.6.	Marketing material in any medium;
4.7.	[if the seller • • • • • • • • • • • • • • • • • • •
4.8.	minutes of a meeting of the shareholders of the seller authorising the sale of the
4.9.	Contracts and assignments of contracts;
4.10.	Forms of transfer of •••••;
4.11.	Transfers of the = = = = = = , = = = = = = = = = = = =
4.12.	Forms of authority addressed to the owners of
4.13.	All technical and ••••-•• ;
4.14.	Marketing material of every sort in any medium;

	4.15.	A list of sales distributors and agents, identifying sales ,
	4.16.	Policies of insurance, continuing;
	4.17.	All other • • • • • • • • • • • • • • • • • • •
5.	Cor	mpletion
	5.1.	As soon as the items listed above have passed into the possession
	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 •••, ••••
	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	ocks
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
Del	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 • • • • • • • • • • • • •

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	editors 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
8.3.	After today, the Buyer must discharge the outstanding obligations and liabilities of the Seller under the Contracts,

	8.4.	The Buyer shall not be liable for any breach of any contract by the
9.	Valı	ue Added Tax (VAT)
	9.1.	The Parties shall procure that the sale of the Business
	9.2.	The Seller shall immediately deliver to the
	9.3.	The Buyer shall for a period of not less than 6 years from ••••••••••••••••••••••••••••••••••••
10.	Waı	
		ranties by the Seller
	The se	eller warrants to the buyer that:
	10.1.	eller warrants to the buyer that: If more than one person constitute the
	10.1.	eller warrants to the buyer that: If more than one person constitute the,,,,,,,
	10.1.10.2.10.3.	eller warrants to the buyer that: If more than one person constitute the

11. Future Activities

	•	e the • • • • • • • • • • • • • • • • • • •
11.1.		ence or continue any business or activity whatsoever similar to
11.2.	-	time disclose to any person or
11.3.	For a p	eriod of [2] years after today either on its own account or any other person directly
11.4.	written	eriod of [2] years after today's date without the buyer's prior
		;
11.5.		under any name = = = = = = = = = = = = = = = = = = =
11.6.	Registe	er nor purchase nor use any internet domain
	••••	
The	Guar	antor
12.1.	The Gu	arantor 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
Cor	nmunications
13.1.	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:
	••••]
	12.4. Cor

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

14. Miscellaneous Matters

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•••
n to
•••

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:	ame:
Address	
Signed by [personal name],	the Guarantor
Witness to signature:	ame:
Address	

Schedule 1 - Fixed Assets

[List fixed assets]

Schedule 2 - Excluded Assets

[List excluded assets]

Sch	edule	e 3 - Warranties
■■,■		
Asset		
1.		
2.		••••••••••••••••••••••••••••••••••••••
3.		•••••••
4.		
5.	•••	2
6.		,,
	6.1.	
	6.2.	Have been regularly and properly maintained;
	6.3.	;;
	6.4.	
Stock	S	
7.	:::	
8.	•••	

9.	
10.	
11.	
Acco	unts
12.	Since the Accounts Date:
	12.1. The Business has operated in its normal way;
	12.2.
	12.3.
	12.4.
	12.5.
	12.6.
13.	
14.	

15.	:::	
	4-0	■ ;
	15.2.	;
	15.3.	,
Suppl		nd Customers
16.		
17.	So far	as the Seller is aware:
	17.1.	3 ,
	17.2.	3 ,
	·	onsents and passwords
18.	•••	
19.		

20.	
21.	
Insura	ance
22.	
23.	
24.	
Joint	Ventures and Partnerships
25.	The Seller:
	25.1. ;
	25.2.
	25.3.

Statutory restrictions
26.
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9.
itigation
[10,000],
Seller's activities
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Cont	racts																
35.																	
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36.	None	of the	Cont	racts	:												
	36.1.							■,■							- - :		
	36.2.																
	JU.Z.											· • • •					
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	36.3.																
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43.					•			= 1	-		•	• •	•			-			•			•	- ·	• •	•	-	•
Defec	tive	Prod	duc	ts a	ınd	Se	rvio	e I	Lia	bil	itie	es															
44.													•		• •	-			-			•		• •	•		
45.			- , , , , , , , , , , , , , , , , , , ,	•••	• •	, =	••		, =			• •	•			-			-			-	-		•	- I	

Intellectual proper	rty					
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61.	••,	•••		•••	• • •	•••	• • •		• • •	•••		•••	::

End of warranties

Explanatory notes:

Sale agreement: home based trading business

General notes:

1. This is a long document which requires many changes. We suggest you save 2. This template is suitable for sale of virtually any business conducted from •• 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 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" 6. There are very many points where your input is required. We suggest you search for square brackets automatically in order to check It is essential for a smooth transaction that the Seller gets together absolutely 7. 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 9. 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

reasonably possible. As a result, it is generally worth

buyer and that the buyer is under a duty to reduce his loss so far as

	""".										
10.	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										
Par	agraph 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										

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	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 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,
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. Domain names may present difficulty since there are no provisions for a conditional transfer. The buyer has to decide how long he is prepared to allow for
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
	••••
14	Misc Matters
	Leave all these provisions in place unless you • • • • • • • • • • • • • • • • • • •
Matte	rs relating to warranties
simple	e this document you have to understand how warranties work. They are er 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.
	■■.
about first co	greement is drawn by the Buyer. That is fair because the Buyer knows nothing the business and the Seller knows everything (we hope)! So the agreement overs the mechanics of the deal - what is being sold, where it is, how it is to be erred, and so on. Then it
•••	,
	,
agreei	nties work like this: I am a seller. You produce an agreement. In that ment, ■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■

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,	

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As a seller, you have a number of $\blacksquare \blacksquare \blacksquare$
• You be the one to produce the draft agreement and remove the = = = " = = :
When you receive the draft agreement, you must seek the ■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■
• in your draft disclosure letter, which will be sent to the buyer with your amendments • • • • • • • • • • • • • • • • • • •
• Consider the breadth of each warranty. It may be appropriate to give a
• 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 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
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

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••••••
Accounts
The basis of valuation of the business is \blacksquare
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
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