Shares subscription agreement

Date: [date]

Between

Shareholder 1: [name]

Shareholder 2: [name]

Shareholder 3: [name]

Shareholder 4: [name]

and

Company Name: [Company name]

and

Subscriber Name: [Subscriber name]

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Schedule 1 Warranties

General

No damaging effect of this agreement

Company structure and operation

Accounts

Cash flow

Taxation

Guarantees and borrowing

Assets

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Properties - all

Properties let by the Company

Defective Products and Service Liabilities

Exceptional regulations

Employment

Pensions

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Information technology

Schedule 2 Short particulars of the properties

Schedule 3 Pension arrangements

Date: [date]

This agreement is made between:

```
[Company name] Pty Ltd, number [number], whose registered office \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
[----"
       [full name 1]
of
       [full address] (a Shareholder)
       [full name 2]
       [full address] (a Shareholder)
of
       [full name 3]
of
       [full address] (a Shareholder)
       [full name 4]
       [full address] (a Shareholder)
of
       [full name 5]
       [full address] (■ ■ ■ " ■ ■ ■ ")
of
```

Background

- B. The parties have agreed that the Subscriber shall subscribe for [4560] ■ ■

Terms of agreement

1. Definitions

"Accountants"	means the firm of [name of Accountants] $\blacksquare \blacksquare \blacksquare \blacksquare$ [$\blacksquare \blacksquare \blacksquare \blacksquare$].
"Accounts"	means the audited profit and loss account and balance sheet as at the Last Year End of •••••••••••••••••••••••••••••••••••
"Asset"	means fixed or moveable, tangible or intangible property, including • • • • • • • • • • • • • • • • • • •
"Business"	means any business conducted by the Company now or likely to be ••••• 12 ••••
"Completion Date"	means today or any future date when $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$
"Confidential Information"	means all information about the parties to this agreement, including any information which may give a commercially competitive advantage
	information about staff and their personal contact information, data or information relating to product plans, marketing strategies, finance, operations, customer relationships, customer profiles, sales estimates, business plans,
	information about the Intellectual Property and ■
"Deficiency"	means the difference between the Minimum Net Profit and the Net Profit as certified • • • • • • • • • • • • • • • • • • •
"Disclosure Letter"	means the disclosure letter of the same date as this agreement

"Domain Names"	means the Internet domain names used by the Company in connection with the Website or in
"First Year Accounts"	means the audited consolidated balance sheet of the Company at [first date after today to which annual accounts and balance sheet are • • • • • • • • • • • • • • • • • • •
"FRS"	means a financial reporting standard or statement of standard accounting practice ••••••••••••••••••••••••••••••••••••
"Intellectual Property"	means intellectual property of every sort, whether or not registered or registerable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, trade marks, unregistered marks, designs, copyrights, software, domain names, discoveries, know-
"Last Year End"	means [date] (being the date to which $\blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare$
"Minimum Net Profit"	means the sum of R[amount]
"Net Profit"	means the consolidated profit (less losses) of the Company as shown
	a) after deducting all expenses and depreciation;
	 b) after adding added back all payments, bonuses, options and pensions and any ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
	c) after adding back sums for transactions not at arms
	d) without taking account of capital profits or

losses;

	e) before deducting tax on that profit.
"New Shares"	means new ordinary shares of R [amount] each in the Company, \blacksquare
"Price"	means R [amount] for each ordinary share ■ ■ ■ ■ [■ ■ ■ ■] ■ ■ ■ ■ .
"Properties"	means the land and buildings owned and / or used by the Company, brief details • • • • • • • • • • • • • • • • • • •
"Shareholder"	means every person who is a shareholder immediately \blacksquare
"Subscription Price"	means \$[amount] for each ordinary
"Subscription Money"	means money paid by the Buyer to the Company
"Trustee"	means a Shareholder who holds Shares ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
"Warranties"	means the warranties and undertakings of the Shareholders contained in paragraphs [6 ■ ■ ■ 7] ■ ■ ■ ■ ■ ■ ■ [1].
"Website"	means the website of the Company and all data of the Company accessed via the Internet, together with all software systems, website "engines",
	■■■.

2. Interpretation

In this agreement unless the context otherwise requires:

2.1.	a reference to one gender shall include any or all genders and a reference to the singular may be interpreted I I I I I I I I I I I I I I I I I I
2.2.	reference to a person includes a human • • • , • • • • • • • • • • • • • • •
2.3.	in connection with any benefit given by \blacksquare
2.4.	a reference to a person includes reference to that person's successors, legal representatives,
2.5.	a reference to a paragraph or schedule is to
2.6.	the headings to the paragraphs and schedules (\blacksquare
2.7.	any agreement by any party not to do or
2.8.	[except where stated otherwise], ••••••••••••••••••••••••••••••••••••
2.9.	a reference to the knowledge, information, belief or awareness ,
2.10.	the words "without limitation" shall
2.11.	a reference to an act or

	2.12.		and the sum of the state of the
	2.13.	conflic	reement is made only in the English language. If there is any tin meaning between the English language version of this nent
		••••	
3.	Agr	eeme	nt for subscription
	3.1.	Subjec	et to
		3.1.1	subscribe for [50,000] • • • • • • • • • [• • • •] • • •
		3.1.2	lend to the Company the sum of R [5 • • •] • • • • • • • • • • • • • • •
	3.2.		ubscription Money shall be paid as to R [300, 000] • • • • • [200
	3.3.	[===	ompany acknowledges receipt of the sum of $\blacksquare \blacksquare \blacksquare \blacksquare [300,000]$
	3.4.		Shareholders certify that the necessary arrangements have nade for the issue of
4.	Calc	culatio	on of minimum Net Profit

4.1.

After completion of this agreement, the Accountants shall be instructed

jointly by the Shareholders

	• • • •	
4.2.	The co	st of the audit and certification shall be paid as \blacksquare
OR		
4.3.		st of the
4.4.	••••	rties shall promptly provide to the
4.5.		irst Year Accounts show a Deficiency,
4.6.	••••	duction in the Purchase Price
4.7.	-	duction in the Subscription ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■
4.8.	If the S	subscription Price is reduced on account of a Deficiency,
Com	pletio	on and delivery of documents
5.1.	Comple	etion of this transaction
5.2.	The Sh	pareholders shall deliver to the Subscriber:
	5.2.1	a share certificate for the New Shares.
	5.2.2	letters of resignation as directors by [name directors] with a written acknowledgment from

		;
	5.2.3	[the resignation
	5.2.4	a list of
(Only	if contro	ol is to be changed)
	5.2.5	the statutory books • • • • • • • • • • • • • • • • • • •
	5.2.6	the certificate of incorporation of the Company;
	5.2.7	the title \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
	5.2.8	the appropriate forms to be •••••;
	5.2.9	[Employment contracts / service agreements], signed in escrow, ••••••••••••••••••••••••••••••••••••
	5.2.10	The minutes of meetings • • • • • • • • • • • • • • • • • • •
		[name] = = = [= = =] = = = = = = = = = = =
		transfer forms = = = = = = = = = = = = = = = = = = =
		the resignations of [name] • • • • [• • • •] • • • • [• • • •
War	rantie	s applicability and limitation
6.1.	None o	f = = = = = = = = = = = = = = = .
6.2.	Each o	f the Shareholders undertakes, in relation to any Warranty

		,					
			•••••		■ ■ .		
6.3.	Each o	of the	• • • • • •		• • • • • •		• • • •
6.4.	The rig	hts and reme			in • • • •		
6.5.		the Subscrib					
	6.5.1	provide full	particulars ı				•••
	6.5.2	,	s opinion =			•••••	• • • •
6.6.	[Each S	Shareholder /	Every part	y to this ag	reement] wa	aives 	
0.7							
6.7.		ubscriber may			• • • • • •	more = =	••••
6.8.	The Su	ubscriber ackı	nowledges	that it has r	not = = = = :		
6.9.		ubscriber und					te /
6.10.		only if any wa				ole to ■ ■ ■	
			 		• • • • • •		

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7	۱л	V 2	rra	nti	00
1 -	v	٧a	ula	III	C 3

The S	Shareholders (except = = = = =) = = = = = = = = = = = = =
7.1.	(If any Shareholder is a company) [= = = = = = = = = = = = = = = = = =
7.2.	after completion of this = = = , = = = = = = = = = = = = = = =
7.3.	except as disclosed in the Disclosure Letter, all of the •••••••••••••••••••••••••••••••••••
7.4.	the contents of the Disclosure Letter are true • • • • • • • • • • • • • • • • • • •
7.5.	The warranties = = = = = = = = = = = = = = = = = = =
Sha	reholders' protection
8.1.	Any claim against any Shareholder, in relation to the
8.2.	No claim shall be valid unless made in writing, before the expiry of [
8.3.	If proceedings in respect of a Warranty claim have not been issued and served • • • [• • • •] • • • • • • • • • • •
8.4.	No single Shareholder can be liable for any Warranty claim unless his

	 , [5 , 000].
8.5.	In the calculation of any Warranty claim or other payment ,
8.6.	In any event, the
	■■■■■■■■■■■[20,000]
Misc	cellaneous matters
9.1.	No amendment or variation to this agreement
9.2.	The parties acknowledge and agree that this • • • • • • • • • • • • • • • • • • •
9.3.	Unless otherwise stated in this agreement, all expenses in connection
9.4.	So far as any time,
9.5.	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
9.6.	Any obligation in this agreement
0.7	No public appoundement shall be made = = = = = = = = = = = = = = = = = = =
9.7.	No public announcement shall be made

9.8.	If, within three years of the Completion Date, any of the New Shares shall be sold or
9.9.	No failure or delay by any party to exercise any right,
9.10.	The parties agree that
0.10.	
9.11.	Any communication to be served on either of the parties by
	It shall be deemed to have been delivered: if delivered = = = = = = = = = = = = = = = = = = =
	■ ■ ;
	if sent by post • • • • • • • • • • • • • • • • • 72 • • • •
	If sent by ••••••24 • •••;
	If sent by e-mail to the address from which the receiving party has last sent e-mail:
9.12.	In the event of a dispute between the parties to this agreement,
9.13.	This agreement does ••••••••••••••••••••••••••••••••••••

	9.14.	In the event of any conflict between any term of this agreement and the
	9.15.	This agreement may be executed in multiple counterparts
	9.16.	The validity, construction and performance of this agreement shall be governed
_		name] a director of the Company, who certifies that he has the authority any to sign this agreement on its behalf.
Signe	d by [r	personal name], a Shareholder
Signe	d by [r	personal name], a Shareholder
Signe	ed by [r	personal name], a Shareholder
Signe	d by [r	personal name], a Shareholder

Signed by [personal name], the Subscriber

Schedule 1: The Warranties

General

1.	All of	the information and • • • • • • • • • • • • • • • • • • •
2.		ormation concerning the Company, given by the Shareholders ■ ■ ■ ■
		,
3.		ets and data which could
4.		formation has been held back = = = , = = = = = , = = = .
5.	No go	overnmental organisation
6.		Company has at all times complied with current practice recommended y department of government ■ ■ ■ ■ , ■ ■ ■ ■ ■ , ■ ■ ■ ■ ■ , ■ ■ ■ ■ , ■ ■ ■ ■ .
	:::	
7.		the last year end
No da	ımagin	ng effect of this agreement
8.	The S	Shareholders have no reason to
	8.1.	any contractual or non-contractual • • • • • • • • • • • • • • • • • • •
	8.2.	any employee will leave the Company.
9.	No te	rm of this agreement conflicts with:
	9.1.	any other contract
	9.2.	the memorandum of incorporation of the Company;

10.	No term of this agreement nor the agreement
Comp	pany structure and operation
11.	None of the Shareholders has any interest, directly or indirectly, in any business (other than those of
12.	The Company has not entered into any contract by which
13.	The Company has fulfilled every
14.	So far as any other company is a debtor of
15.	The Company has \blacksquare
	15.1. all documents of title relating to its Assets;
	15.2. an original copy = = = = = = = = = = = = = = = = = = =
	15.3. an original copy = = = = = = = = = = = = = = = = = = =
16.	No guarantee • • • • • • • • • • • • • • • • • •
17.	The Company uses no • • • • • • • • • • • • • • • • • •
18.	The Company is not now, and has not , , , , , , , , , , , , , , , , , ,

19.	No person other than • • • • • • • • • • • • • • • • • • •
20.	The Disclosure Letter contains full details of every licence and consent required
Acco	ounts
21.	The Accounts have been prepared on exactly the same ••••••••••••••••••••••••••••••••••••
22.	The Accounts have been • • • • • • • • • • • • • • • • • •
23.	All accounts and records
24.	The Accounts:
	24.1. give a true and fair view of the Assets
	24.2. comply with the requirements • • • • • • • • • • • • • • 2008tax
	24.3. comply with FRS.
	24.4. make full provision •••••••, ••••••••••••••••••••••••••••
25.	No Asset has been included • • • • • • • • • • • • • • • • • •
	its purchase price;
	its production cost;
	its net realisable value.
26.	All of the
27.	Since the Last Year End:

	27.1. no change has •••••;
	27.2. no debt due to ••••;
	27.3. no new liabilities = = = = = = = = , = = = = = = = = = =
28.	The Disclosure Letter contains full details of all government and other grants and
	••.
Cash [•]	flow
29.	Since the Last Year End the Company
30.	The Company's cash flow forecast is based
31.	Since the Last Year End
32.	The Company has enough working capital to carry on the Business
Taxati	ion
33.	Since the Last Year End all
34.	All liabilities for past taxation have been paid in
35.	No liability to tax has arisen since

37. The Disclosure Letter contains full details of \$\circ\$ \$\c	36.	Except as disclosed in the Disclosure Letter, no revenue
39. The Company has not since the Last Year End been active or	37.	
40. The Company has no liability or potential liability in	38.	The Company has not in the last [five] years sold
41. The Company has made no election [39.	The Company has not since the Last Year End been active or
Guarantees and borrowing 42. In relation :: 43. the name :: 44. the terms of every loan; 45. :: 46. :: 47. :: 48. :: 4	40.	The Company has no liability or potential liability in \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
42. In relation	41.	The Company has made no election [
43. the name • • • • • • • • • • • • • • • • • • •	Guara	antees and borrowing
44. the terms of every loan; 45. 46. 47. 48.	42.	In relation = = = = = = = = = , = = = = = = = :
 45. 46. 47. 48. 	43.	the name • • • • • • • • • • • • • • • • • • •
 46. 47. 48. 	44.	the terms of every loan;
47. 48. 48.	45.	;
48.	46.	•••••
	47.	•••••
	48.	

49.	•.	
Asset	s	
50.	:	I
	50.1. are in its possession and control;	
	50.2.	•
	50.3.	
	50.4.	
	50.5. are required to operate the Business.	
51.		I
Tradir	ng and contracts	
52.		ı
53.	••••••••••••••••••••••••••••••••••••••	
54.	Since the Last Year End:	
	54.1.	! !
	54.2. the Company has paid its creditors promptly;	
	54.3.	

	54.4.	
55.		
	55.1.	;
	55.2.	no payments due to the Company are overdue;
	55.3.	all contracts comply with the relevant law;
	55.4.	
56.	•••	
57.	No ex	cisting contract is for work which:
	57.1.	is outside the normal course of business;
	57.2.	[;
	57.3.	is likely to result in a loss;
	57.4.	is priced in a currency other than Rand;
	57.5.	••••••••••••••••••••••••••••••••••••••
58.		
59.		
60.		
61.		

62.	::		= = = [:			•			<u> </u>		-	= !		•			•	- 1		•	•					- 1	
63.	::																		•	- 1		•	-	= 1		. =	
64.	::			••	• •	•		ı, ı		•			•	- 1	-	•	- 1			•		•		•		-	
65.	::	• •			-	•			•		-	= 1		•				- 1								- 1	• •
66.	::	••				•		•	= 1			•				•		- 1		•							
Statu	tory	rest	rict	ions	5																						
67.	•••																					-	•	- 1	•		■
68.	::	• •				•	-	•	•	-		•	-			•		•		•	•		-			■ ,	•
69.	::				•••		•••								• •	•	•	• •	• •	=	• •	•••	•	•	-	- ·	• •
Litiga	ition	and	reç	gula	tior	1																					
70.	••	••		••		-							• •				-	•	•				•	•			
71.	■ ■	 ·	 · - ·				•••			 · -			• •		•••		-	• •		-	•	••	. =	-	-		• •

72.		
Prope	erties - all	
73.		
74.		
75.	None of the Properties is:	
	75.1.	•
	75.2. situated in a conservation area;	
	75.3.	
	75.4. in an area liable to flooding.	
76.		
77.		
78.		
	78.1.	ı
	78.2.	=
	78.3. there are no rent reviews in progress.	
79.		•
80.		

81.	••••								 ••	۱, ۱	•		•	•					
82.	••••								 ••	•		• •	• •	• •	• •	-	• •	•	•
83.	••••						•		 	•									
84.									••	•		•	• •		• •	-		•	•
	84.1.	• • • •																	
	84.2.	• • • •				 	••	••	 • •		•	•		•	••	•	•		•
85.	••••		•••			 	•	••	 •	•		•	•	•		-		-	-
	85.1.	water;																	
	85.2.	drainag	ge;																
	85.3.	electric	ity;																
	85.4.	gas;																	
	85.5.	telecon	nmun	icati	ons.														
86.		•••				 		••	 	-		• •			• •	= !		-	•
									 	_							 	 . .	•
	••••	•••																	
87.		•••				• • •	•	• •	 ••	•		•	•	- 1	• •	= !		-	•
88.									 										•
<i></i> .									 	I =		•		•	-	= 1	 	. =	
	••••		•••									•							-

89.		
Prope	erties l	et by the Company
	••••	
90.	•••	
	•••	
91.		
92.	•••	
	•••	:
	92.1.	the name and address of the tenant;
	92.2.	the name and address of any guarantor;
	92.3.	the address of the Property;
	92.4.	;
	92.5.	the rent;
	92.6.	;
	92.7.	
	92.8.	•••••;
	92.9.	
	92.10	

93.		
Defec	tive Pr	oducts and Service Liabilities
94.	•••	
	•••	
95.	The D	isclosure Letter list particulars of:
	95.1.	;
	95.2.	
		;
	95.3.	••••
Excep	otional	regulations
96.	No pa	rt of the Business is:
	96.1.	
	96.2.	A producers of replacement components for such vehicles;
	96.3.	
97.		
31.		,
	•••	
98.	•••	

92.11. any unusual provisions.

99.	
	1973
Empl	oyees
100.	
101.	
102.	
103.	

104.	
105.	
400	
106.	
Pensi	ions
107.	■ 5 .
	OR
108.	
	108.1. copies of the trust deeds;
	108.2. the latest report by the fund manager;

109.	
	,,
Insura	ance
110.	
111.	No policy contains any special term or restriction.
112.	
113.	
Intelle	ectual Property
114.	
115.	
116.	
110.	
117.	
440	
118.	
119.	
	■■.
120.	

108.3. details of the current membership.

121.	
Inforn	mation technology ("IT")
122.	
	122.1. the name;
	122.2. name and contact information of registrant;
	122.3. tag holder name, land address and website;
	122.4. date to which the name is registered;
123.	
124.	
125.	
126.	
127.	
128.	
120.	,
	128.1.
	128.2. technical, customer and client support services;
	128.3.
	128.4. an email service provider.
129.	

	.**********************************
130.	

131.	
	•,•••••
	131.1.
	131.2. what password he uses;
	131.3.
	131.4.

Schedule 2: Short particulars of the properties

Part 1: Freehold properties

Part 3: Particulars of tenancies

Schedule 3: Pension arra	angements	
[•••••

Explanatory notes:

Shares subscription agreement

General notes

2.

1. What is the deal?

what is the deal?
This document covers a deal whereby the subscriber subscribes to new shares. The structure of your deal will be agreed only after extensive consideration of the effects in tax and control of the company. The permutations are endless, so we have not tried to give you examples. Where we have inserted a figure, we have done so only to tell you that a
•.
So far as different documents are inter-reliant, all documents should be exchanged as a pack. Do not complete one part of the agreement and leave some other part outstanding. Specifically, if a loan is involved you should record it properly in a loan agreement.
***.
Tough or tender?
This agreement has been drawn to be tough on the existing shareholders. If your counter party is "friendly" he will certainly wish to see many of these points deleted. It is up to you
How you want to use a document depends not only on your business philosophy but also on your commercial strength. You cannot bully a rich counter party into accepting the terms you want, nor
We give thought to the question of who is our customer and we draw documents to support that person. But we sometimes make provision for matters which your counter party will insist on. We are trying to make your life easy, not saddle you with arguments when you first start to negotiate. Other documents,

	There is a great psychological advantage in "presenting" the document for a deal. Your counter party may want additions, deletions and conditions, but he is still working on your document. It is rather like playing a new board game where the referee insists on the rules you have the only rule book. It is very rare indeed for a counter party to say "Sorry, I do not ••••••••••••••••••••••••••••••••••
	■■■.
	We also consider whether your counter party is here in your jurisdiction or in some other. Our documents are based on the law where you are. However, there are surprisingly few occasions where fundamental issue arise from an international element.
	But remember, the best way to avoid cash problems is to do a deal where you receive \blacksquare
3.	Complete the agreement now
	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
Para	agraph specific notes
Notes	following the numbered paragraphs
1.	Definitions
	You will find it easiest to edit the document then come back \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare .
	First Year Accounts: the sale of a company rarely falls at the perfect time to tie in with prompt preparation of annual accounts. A subscriber must either insist on new accounts soon after completion, or chase for completion very soon after the last annual accounts, or simply take pot luck. But there is no reason in

"Net Profit" must be considered very carefully, as it is the base lines for calculation of a shortfall. The important point is to make the calculation the same for pre and post sale of shares, so that figures are truly comparable. Of course, you may not
If the same accountants conduct the audits, that should present no problem. If the subscriber is likely to appoint new accountants, he would be wise to obtain a written statement from the shareholders' accountants setting out the method of calculation, so that he can instruct new accountants to use the same methodology. It may also be necessary further
Provision has been made for the proposition that one or more people may hold shares as trustees. The subscriber should make certain that any such person is a disinterested trustee. It could be that a major shareholder has placed some of the shares in a family trust and he remains a trustee, or that some other person is a trustee. Either way, the subscriber should insist that such person himself either gives full warranties or guarantees the same on behalf of his trustee(s).
Interpretation
There are a number of provisions, each of which has application at one of more points later in the document. We suggest you do
Agreement for subscription
This is the basic deal. Edit only to reflect the precise terms
Calculation of minimum Net Profit
The template document provides for the possibility of a "claw back" from the

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shareholders of some part of the purchase price in the event of the company failing to produce expected profits. Clearly, this provision is inappropriate if the subscriber is buying only a small minority interest. However, if the interest bought is material, or a loan is attached, or the company depends on particular future

5.	Com	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					
		5.2.2	Share certificates are documents of title, but if not available (lost or never issued), a simple declaration to ••••••••••••••••••••••••••••••••••			
		5.2.3	The subscriber will wish to avoid any claim for compensation by a former director. But the directors are not (necessarily) shareholders, 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 """			
		5.2.9	This provides for any key people to remain as employees. Their new contracts would be dated the same date as the agreement and			
	Check!		The shareholders will already have satisfied themselves that the beneficiary of a guarantee (like a bank)			
6.	Warranties applicability and limitation					
	66	Georg	nts a shareholder from saying later "Well, I was told this by ge, who was acting as a director of the company at the time he e, so I can •••••••••••••••••••••••••••••••••••			
	6.7		er words, the subscriber can do a deal or let off one shareholder ut			
7.	Warr	anties				
	"Joint and several liability" means that all the shareholders are jointly liable. No one of them can avoid liability to the subscriber by saying he was					

claim against the wealthier shareholders if he has a claim at all, and not

personally not to be blamed. This means that the subscriber can (and would)

against those particularly involved in the warranty breach. To avoid this situation, the shareholders 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 subscriber, who still may sue whom he
A company may sign up to a deal, by the hand of its directors, but if its constitution of company prevent such a contract being made (for one of any number of reasons), then it can wash its hands of •••••••••••••••••••••••••••••••••••
Unlike the warranties in schedule 1, these are so fundamental to the transaction that it is reasonable that they should be unlimited. (Remember to change the
Shareholders' protection
This paragraph is most important to the shareholders as it caps their liability. How this is done is a matter for negotiation. This proposal is fair, subject of course to fair figures being inserted. Shareholders should be aware that it is usually easy for a subscriber
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 generally. Some are included to strengthen your position generally. Do
The Shareholders' signatures
If no more than say, ten shareholders, then all should sign. There are no rules on this. If more than say ten, then subscriber should make sure the signing shareholder really does have authority to sign on behalf of every other shareholder. This can be

8.

9.

No fu	rther n	otes on numbered paragraphs			
	Notes on Schedule 1 Warranties				
	Warranties: a buyer has no particular "right" to warranties other than those given in the body of the				
	We have provided here a very full set of warranties. They are suitable for a transaction where the buyer - • • • • • • • • • • • • • • • • • •				
	The extent and your choice of warranties will also depend on the industry sector, the proportion of control				
	These warranties have been draw to provide as large a "menu" as possible a prospective buyer. Some				
	•••				
	A.	Delete any warranties that do			
	B.	Tick to accept those warranties that you • • • • • • • • • • • • • • • • • • •			
	C.	For the rest, check those which may to some extent duplicate			
	D.	Do not delete warranties relating to matters about which full information has already been provided. If you •••••, ••••, ••••, •••••, •••••			
	E.	Add new industry-specific • • • • • • • • • • • • • • • • • • •			
		the document to your account to check and			

Warranties relating to accounts and tax are usually passed to the company accountants with an instruction such as: "Please confirm that the shareholders may safely give these warranties. Please also provide precise text
•••••••
Note: explanation of warranties
To use this document you have to understand how warranties work. They are simpler than ••••••••••••••••••••••••••••••••••••
Warranties - the inside-out promises
The first matter to consider is the "back-to-front" way in which the buyer or his lawyer pulls out information from a seller. Most legal agreements consist in a number ■ ■
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
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
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
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

For shareholders, warranties may be greatly reduced in effect simply by

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
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 s	eller, you have a number of
•	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 way, there is still a strong case for qualifying absolute warranties,
•	At all costs avoid the easy way out of leaving the warranties as they are. It is odds on that your buyer, who
Warra	nties - buyer's response
	want a fair and satisfactory outcome, use warranties. The weight of advantage y with the seller. He has the
expect	ver, if your warranties are all "absolute" in matters where it is unreasonable to the seller to be able to give such an adamant response, it will be he, not you, alks away from the deal.
	·

Set out the warranties according to the transaction. Do not include warranties which are irrelevant, such as warranties about spare parts when the business is an

accountant's
If the seller is represented by a attorney, you will have to decide whether this creates an uneven playing field. Certainly a attorney will give you "marginally honest" information with responses like "We have deleted a number of warranties which """" """""""""""""""""""""""""""""""
Some attorneys acting for a buyer will see the provision of warranties as an opportunity to go back to the seller later for damages for breach of warranty, possibly under the threat of complete rescission of the contract.
Warranties: drafting notes continued
It is good practice to delete irrelevant warranties,
General
These are very basic and general requirements. They are also broad, , , , , , , , , , , , , , , , , , ,
No damaging effect of this agreement
The buyer needs to a a a a a a a a a a a a a a a a a a
Company structure and operation
With reference to the licences and consents: in any business which has been operating for more than a few \blacksquare

A loan (or some other borrowing) by a company are can be registered at ■ ■ ■ ■
Accounts, Cash flow and Taxation
The buyer should take advice
The basis of valuation of the business 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

cleaner and the car leases. Particular care should be taken with
The buyer's requirement for details of customers and suppliers will be ***
The most common reason for litigation about contracts arises because someone,
Statutory restrictions These warranties are general,
Litigation and regulation We have no comment
Properties - all Real property is
Most of these items cover the facts that would be
Properties let by the Company
If none, delete.

Defective Products and Service Liabilities

No matter how strong the insurance, this is an area for determined questioning. We strongly
Exceptional regulations
The reason why we have included this special section is that these items have become ••••••••••••••••••••••••••••••••••••
•;•••••
Employees
If your involvement with the business is not relevant to management, \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare \blacksquare
Pensions
See our comment above on "Employees".
Insurance
We have no comment
Intellectual Property
All businesses acquire some intellectual property. Even quite a small

Information technology ("IT")

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•		
These are of course an item of intellectual property. We have place separate heading to ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■		

End of notes