

## **Legal aspects of buying and selling a business**

Whether we like it or not, when buying or selling businesses, the legal aspects need to be addressed in order to protect both the buyer (Purchaser) and the seller (Vendor), which will require a “contract of sale” agreement. Whilst no deal is the same, deals often follow a process where there are 5 key stages:-

### **Pre-Sale**

The key here is to ensure that appropriate advisers in place; such as tax, financial and legal advisers. Before discussions for sale or purchase get underway make sure that there is a Confidentiality Agreement or Non-Disclosure Agreement (NDA) in place. This will help ensure that matters remain confidential during negotiations and remain so, should the deal fall through, with important documentation returned to the Vendor.

### **Heads of Agreement**

This is an important document which will detail what is included (or excluded) in the sale, the price and payment structure, pre-conditions of sale, together with an outline of warranties and indemnities. It needs to be carefully drafted to ensure that the confidentiality terms of the Non-Disclosure Agreement are included. It will also need to confirm any periods of exclusivity to complete the sale, which is the main legal aspect of this document.

### **Due Diligence**

Vendors are required by Purchasers to complete what can often be a lengthy questionnaire covering all aspects of the business for sale, ranging from accounts, to litigation, to regulatory compliance and property/environmental issues. Very often due diligence specialists are used to carry out investigation work, reporting back their findings to the Purchaser. It is essential that this process is policed properly as due diligence work may impact on warranties and indemnities a Vendor may be asked to give in due course. Also, if the business is not as described by the Vendor, it may result in the offer being revised or withdrawn.

### **The Contract of Sale**

The Contract of Sale (Agreement) should include all terms required, using clear straightforward language. The type of contract will be tailored to meet the parties’ requirements and therefore, the document will be unique to each sale. This will apply whether the transaction is a share or asset sale, a management buy-in (MBI) or buy-out (MBO), a sale to family members, a joint venture or merger, or part sale.

Typically, an Agreement will include the sale price, completion arrangements, warranties and tax covenants, limitations on claims and third party rights. From a practical view, it will also need to deal with the non-disclosure of confidential information known to both parties and competition issues between the parties. It may be necessary to consider provisions covering situations where there are on-going contracts or staff transferring from one employer to another.

## **Warranties/Indemnities/Disclosure**

Clearly, a Purchaser will want wide ranging warranties, whilst a Vendor will want to ensure a warranty is qualified to avoid a claim! A practical solution is needed which meets the needs of both.

The key for a Vendor is to ensure that the warranties given are accurate. Careful consideration needs to be given as to the promises being made about the business for sale. A practical view should be taken on negotiating limitations for potential liabilities by setting a time limit for claims, agreeing a threshold on claims (eg an aggregate limit or agreed excess), or setting a cap on the maximum amount which can be claimed.

From the Purchaser's viewpoint, the key is to ensure that all relevant information is disclosed at the Due Diligence stage and that information is not distilled by ineffective warranties or indemnities. The potential impact of inaccurate information being provided must be considered and a view taken. Due diligence work is therefore, a vital and essential part of the buying & selling process, forming a bridge from the initial offer to legal completion.

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Stirling Business Solutions Ltd can provide further information, help and advice on selling a business. Contact details are:-

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