

BUYING AND SELLING A BUSINESS: CONTRACTS AND DOCUMENTS

Buying and selling a business include several stages such as: valuing the business, getting tax advice, market research and marketing, preliminary offers, negotiating terms, heads of agreement, legal sale and purchase agreement concurrently with due diligence, and finally, completing the sale. The buyer shall research thoroughly to ensure each stage of the negotiation is documented in order to include all agreements and conditions in the final contract. This must be done even if the business is small and the sale straightforward.

This article sets out the main contracts and documents involved in the process of buying or selling a business, what they should cover and what are its main clauses. In particular six contracts and documents, in chronological order:

- Confidentiality Agreement for Selling a Business.
- Due Diligence Report.
- Letter of Intent to Purchase a Business.
- Disclosure Letter for Selling a Business.
- Broker Agreement for the Sale of a Business.
- Business Sale and Purchase Agreement.

All these documents need to be carefully prepared and thoroughly checked. If the seller does not meet the preconditions, the sale will probably not go ahead. If warranties are breached, the buyer can sue for damages.

CONFIDENTIALITY AGREEMENT FOR SELLING A BUSINESS

The first step is to draw up a legally-binding confidentiality or non-disclosure agreement to be signed by all prospective buyers before they receive the sales documents.

This Confidentiality Agreement protects the goodwill of the business, and the sensitive information (financial details, commercial or technological secrets) which is brought forward in the process of negotiations between the Seller and the potential Buyer.

This type of Agreement is normally used when a company is engaged in negotiations for the sale of the business, such as mergers and acquisitions, investments discussions, negotiations about joint ventures or discussions with consultants or financial institutions about selling and purchasing businesses.

[Model of Confidentiality Agreement for Selling a Business](#)

DUE DILIGENCE REPORT

Once the Confidentiality Agreement is signed, the buyer's advisers carry out thorough searches into the business records, called detailed Due Diligence. The Due Diligence

includes a systematic examination of a business, ahead of an event such as a merger or acquisition, partnership, investment, etc. It is the investigation carried out prior to a financial transaction to assess commercial and legal risks, as well as opportunities.

There are three types of due diligence:

- legal - for example, checking that the business has legal title to the assets which it is selling/transferring.
- financial - checking that everything is in order financially.
- commercial - assessing the business' position in the marketplace.

These three types of Due Diligence form part of the Due Diligence Report

During this period, negotiations continue with the seller on drafting the final sale agreement, or sale purchase contract.

[Model of Due Diligence Report](#)

LETTER OF INTENT TO PURCHASE A BUSINESS

This Letter is a written statement prepared and signed by the Seller and Buyer of the business that indicates their intention to enter into a legally binding contract to transfer the ownership of the company.

Although the letter is unenforceable and does not guarantee that the Parties will go through with a proposed deal, it helps to speed up the process of negotiations, builds up trust between the seller and the buyer, allowing them to confirm their intentions to sell and purchase said business, and informs the parties about the mutual expectations and requirements.

[Model of Letter of Intent to Purchase a Business](#)

DISCLOSURE LETTER FOR SELLING A BUSINESS

This document – which takes the form of a letter from the Seller to the Buyer - provides the Buyer with general and specific information that will inform the decision about whether to proceed with the purchase of the business. The Disclosure Letter is a commonly used document in business transactions, particularly business, asset and share sales, as well as M&A (Mergers and Acquisitions), to assist buyers with the Due Diligence Report.

The Disclosure Letter also provides the Seller with an opportunity to update the purchaser on any document changes or previously provided information that requires updating for the business sale.

[Model of Disclosure Letter to Purchase a Business](#)

BROKER AGREEMENT FOR THE SALE OF A BUSINESS

It is common for the sale and purchase of business to be carried out through companies that put both parties -seller and buyer- in contact with each other and advice on the negotiation. These companies are called brokers and the seller must enter into an agreement with them. In this Agreement, a company interested in pursuing the sale of its business gives a broker the sole and exclusive right to sell all the assets (equipment, property, stock, intellectual property, contracts, etc.) to potential buyers. Some of the most important aspects of the agreement are: exclusivity, assets of the business, term, broker's fee, law and jurisdiction, etc.

[Model of Broker Agreement for the Sale of a Business](#)

BUSINESS SALE AND PURCHASE AGREEMENT

Finally, once the due diligence process has been successfully completed and the parties have reached an agreement on the price and form of payment, it is time to draw up the Business Sale and Purchase Agreement. Every business sale agreement differs in the details. But there are standard parts that almost any agreement will contain.

Parties

The names and locations of the buyer and seller will be clearly stated in the first paragraph or two of the contract. The name and location of the business being sold also need to be expressed in unmistakable terms.

Assets

The agreement will detail the specific assets being transferred. Physical assets may include real estate, vehicles, inventory, furnishings, fixtures, machinery and equipment. Financial assets such as accounts receivable and cash might also be transferred. Intangible assets could be the business name, goodwill and customer lists. If any assets are not going to be sold, this will also be spelled out.

Liabilities

If the buyer is assuming any liabilities by purchasing the business, these will be listed here. Liabilities might include taxes to local, state or country governments, accounts payable and outstanding loans. A statement that the buyer is not assuming any unlisted liabilities is also often included here.

Terms

The sale price being paid by the buyer clearly is a key part of this section. Also included here will be the closing date of the transaction. Whether the price will be paid in a lump sum or installments will also be specified. If the buyer is putting up security or collateral, that will be.

Disclosures

In this section both parties will reveal any potential impediments to the deal. Examples might include outstanding debts, pending lawsuits, obligations and fines.

Other Agreements

Various other agreements are often part of the business sale document. For instance, both parties may sign non-disclosure agreements. The seller may agree not to compete with the new owner for a period of time. Or the seller may agree to remain as an employee of the business working with the new owner for a set period.

Documents

A business sale agreement is often accompanied by numerous other supporting documents. These may include a bill of sale, copies of leases, customer and supplier contracts. Intellectual property such as recipes, operating manuals, trademarks, copyrights and patents could be attached as well.

Disputes

This section will describe any acts or conditions that would constitute a default or breach of the terms of the contract. An example of such an act could be the buyer failing to make a scheduled payment.

Should a dispute arise, it will detail how it will be dealt with. For instance, it will say whether disputes will be resolved by arbitration or litigation. It may also name the legal jurisdiction where any lawsuits will be heard.

Notifications

Each party will provide a way for the other to notify them in case any matters need to be dealt with later. A standard approach is to provide an address for in-person notification or for delivering a certified letter.

Signatures

Signatures by the buyer and seller or their representatives are necessary to finalize the agreement and make it binding. The signatures also will be dated. In addition, business sale agreements are often witnessed and notarized by a notary public.

[Model of Business Sale and Purchase Agreement](#)

In conclusion, the negotiation of the sale and purchase of a company is a long process during which the parties - buyer and seller - with their lawyers, advisors, brokers, etc.

must draft and sign different types of documents culminating in the Business Sale and Purchase Agreement. It is important to carefully review and understand the terms of all these documents before entering into it. Failure to do so may result in legal action, such as a breach of contract lawsuit.

[PACK BUSINESS SALE AND PURCHASE AGREEMENTS](#)

MODEL CONTRACTS

INTERNATIONAL CONTRACTS (ENGLISH, SPANISH, FRENCH, GERMAN & PORTUGUESE)

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Strategic Alliance Agreement
- International Franchise Contract
- International Services Contract
- International Consulting Contract
- International Technology Transfer Agreement
- International Trademark License Agreement

- International Supply Contract
- International Manufacturing Contract
- International Buying Agent Contract
- Logistics Services Contract
- Export Contract
- Confidentiality Agreement
- Expatriate Contract of Employment
- Memorandum of Understanding for International Distribution
- Memorandum of Understanding for Joint Venture
- **Pack 10 Contracts in English**
- **Pack All Contracts in English**

BUSINESS CONTRACTS (ENGLISH, SPANISH, FRENCH, GERMAN & PORTUGUESE)

- Distribution Contract
- Commercial Agency Contract
- Sales Representative Agreement
- Commission Contract
- Joint Venture Contract
- Services Provider Contract

- Consulting Contract
- Strategic Alliance Agreement
- Franchise Contract
- Supply Contract
- **Pack 12 Commercial Contracts (Premium)**

CHINA CONTRACTS (ENGLISH-CHINESE DUAL VERSION)

- Distribution Contract China
- Agency Contract China
- Commission Contract China
- Supply Contract China

- Manufacturing Contract China
- Confidentiality Contract China
- Memorandum of Understanding for Distribution Contract China
- Memorandum of Understanding for Joint Venture China

LETTERS OF INTENT (ENGLISH & SPANISH)

- Letter of Intent for International Sale
- Letter of Intent for International Distribution

- Letter of Intent for International Joint Venture
- **Pack 3 Letters on Intent**

LETTERS FOR EXPORTERS (ENGLISH & SPANISH) LETTERS FOR IMPORTERS

- Presentation to potential client
- Proposal for agent/distributor
- Proposal to form a strategic alliance
- Invitation to a trade fair
- Making a commercial offer
- Preparation of a contract
- Reminder of payment pending
- **Pack 15 Letters for Exporters**

- Request for information to an overseas supplier
- Offering as agent/distributor
- Reply to proposal for strategic alliance
- Making contact after a trade fair
- Renegotiation of a contract
- Complaint about delivery of faulty goods
- **Pack 15 Letters for Importers**
- **Pack 30 Letters for Exporters and Importers**

