Purchase/Sale Agreement Checklist

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Selling to a third party? Use this Purchase/Sale Agreement Checklist to make sure you and the buyer cover all the critical issues involved!

The purchase and sale agreement is the formal document that captures all contractual arrangements between the buyer and the seller. The terms of this agreement are usually negotiated during the buyer's due diligence investigation, and possibly for some time afterwards. While a professional advisor will spearhead the drafting of the agreement, it is important that you, the seller, understand what the agreement covers so you can ask the right questions.

How to use this template:

This checklist is intended as guidance to help the seller and the buyer ensure all the critical elements of the purchase and sale agreement are being discussed.

Important notes:

Purchase/sale agreements should normally cover the matters listed below, in addition to any other issues that apply to the transaction in question.

Price	✔
Purchase/Sale Terms including:	
Closing date	
Clear definition of what is being purchased	
Identification of all parties involved in the transaction	
Buyer and seller representations, obligations, and warranties	
Form of consideration (all cash, shares in a new company, retirement of debt)	
Timing of consideration (paid on closing or paid out over time)	
Buyer and seller conditions, both pre and post-closing, including any indemnification provisions	
Creation of applicable schedules (financial statements, asset lists, employee lists, etc.)	
Creation of sub-agreements (employment contracts, USA, leases, etc.)	

Note: The entire purchase price should be accounted for in the description of the consideration given for the stock or assets being sold.

Representations of Buyer and Seller	✔
Ownership of assets being sold	
Legal authority of individuals to conduct the transaction	
Existence of actual and contingent liabilities	
Liabilities secured by assets	

Pre-closing Obligations of Buyer and Seller	✔
Buyer's access to seller's records	
Seller's conduct of business as usual during pre-closing period	
Seller's maintenance of adequate insurance during pre-closing period	
Limitations on seller transactions that would diminish assets or otherwise harm the business during the pre-closing period	
Buyer's provision of financial information	
Buyer's provision of information showing arrangements to secure adequate financing	
Buyer's agreement to maintain confidentiality	

Pre-closing Obligations of Buyer and Seller	✔
Buyer ascertaining before closing that all seller representations are reasonably accurate and that there have been no material adverse changes in the financial condition or operations of the target	
Seller has obtained title insurance policies on all real property included in the deal Buyer has obtained assurance that lease rights are assignable	
The necessary governmental and regulatory approvals have been obtained	
Buyer's representations are reasonably accurate	
Buyer has obtained third-party guarantees for any debt established under the agreement	

Closing Procedures

This part of the agreement specifies the property, payments, and documents that will be transferred between buyer and seller in completion of the transaction and the time and place of the closing meeting.

Post-closing Obligations *Generally, the post-closing obligations of the seller involve taking specified actions if seller representations turn out to be inaccurate and honoring any noncompete agreements. The buyer may also have post-closing obligations.*	✔
Miscellaneous and Optional Provisions	
Which party will pay business broker's or finder's fees and transaction costs	
Arbitration procedures in the event of disputes between buyer and seller	
Which laws govern the transaction	
Circumstances whereby either party can terminate the agreement without penalty (such as litigation, inaccurate representations, or default by one of the parties regarding compliance with other terms of the purchase/sale agreement)	

Other	✔
Making sure certain contracts are in place related to the business sale. This could include employment contracts for senior managers, lease agreements on land and buildings and supplier agreements for key inputs.	

Note: The buyer should be particularly interested in negotiating language giving the desired flexibility to cancel the deal.