

BUSINESS PURCHASE AGREEMENT

This **Business Purchase Agreement** (this "Agreement") is entered into as of the _____ day of _____, 20____ (the "Effective Date") by and between _____ [name of entity 1], a _____ [state of entity 1 formation] _____ [type of entity 1: corporation/limited liability company/partnership/limited partnership/limited liability partnership] (the "Seller") located at _____ [address of entity 1] and _____ [name of entity 2], a _____ [state of entity 2 formation] _____ [type of entity 2: corporation/limited liability company/partnership/limited partnership/limited liability partnership] (the "Buyer") located at _____ [address of entity 2].

WHEREAS, the Seller owns and conducts a business known as _____, which engages in the business of: _____.
The business is located at the following street address _____, in the City of _____, County of _____, and State of _____ Zip _____.

WHEREAS, the parties intend that the Seller shall sell to the Buyer the above-identified going business concern for the price, terms and conditions described below, and pursuant to the attachments and exhibits, if any, annexed to this main document.

NOW THEREFORE, for the reasons set forth, and in consideration of the mutual covenants and promises of the parties hereto, and intending to be legally bound, the Seller and Buyer agree as follows:

1. **Sale of Business.** The parties agree that the Seller will sell and the Buyer will purchase, free and clear of all liens, encumbrances, and liabilities, Seller's business described and identified above, including merchandise and stock in trade, furniture, fixtures, machinery, equipment, notes and accounts receivable, insurance policies which may be transferable, and all other assets of Seller's business, tangible and intangible, including its good will as a going concern, all of which are more fully described and enumerated in the attached Exhibit "A" which is annexed to and made a part of this Agreement. This sale shall include the all of the Seller's rights under its contracts, licenses, privileges, franchises and agreements, and all assets and property owned and used by Seller in the business as specified in Exhibit A, other than any property that may be specifically excluded in this Agreement or in the annexed "Exhibit B". This sale does not include the Seller's cash on hand or in banks at the date of closing or such other property as may be listed in Exhibit B.

2. **Purchase Price.** Buyer will pay to the Seller the purchase price for the sale of the business in the total sum of \$ _____ in cash or certified check to the order of Seller, payable as follows:

(a) \$ _____ at or before the signing of this Agreement, which sum shall be held in escrow by _____, and applied to the purchase price at the time of closing hereunder; and

(b) The sum of \$ _____ in cash or certified check to the order of Seller at the time of closing hereunder, subject however to any adjustments provided for in any other part of this agreement.

(c) As agreed to by the Parties as part of the Agreement, Purchaser will provide Seller with a security interest of _____ as collateral for payment of the balance upon the following agreed terms for installment payments:

3. Allocation of Purchase Price. The purchase price shall be allocated in the following amounts to the different business assets indicated:

- | | |
|--|-----------------|
| a) Accounts Receivable and contract rights | \$ _____ |
| b) Equipment and machinery used in business | \$ _____ |
| c) Furniture and fixtures used in business | \$ _____ |
| d) Goodwill of the business as a going concern | \$ _____ |
| e) Stock in trade and merchandise on premises | \$ _____ |
| f) Trademark, copyright, franchise, etc. | \$ _____ |
| g) Seller's restrictive covenant | \$ _____ |
| h) Other | \$ _____ |
| Total Amount | \$ _____ |

4. Adjustments at Closing. Adjustments shall be made at the time of closing for all operating expenses including, but not limited to, rent and rent deposits, prepaid interest, insurance premiums, utility charges and deposits, maintenance charges and taxes, payroll, and payroll taxes.

5. Closing Date. The sale and transfer of assets and the closing under this Agreement shall take place on _____, 20____, at _____ o'clock ____ M, at the following location: _____. At that time Seller shall deliver possession of the tangible property and all assets included in the sale to the Buyer, including all keys to the business premises, a Bill of Sale, Bulk Sales Affidavit if required, and all other instruments and documents necessary to transfer Seller's business and assets to Buyer. Seller shall at that time execute and deliver all papers and instruments suitable for filing and/or which are necessary to transfer ownership of the trade name to Buyer, and Seller shall thereafter cease to use said name in any manner or purpose. When that delivery is made to Buyer and when the Seller receives the balance due on the purchase price, the sale by Seller to Buyer shall be completed and effective, and Buyer shall have ownership and possession of the business and the assets, subject to security interests or notes payable hereunder, if any.

6. Covenant Not to Compete.

(a) Seller shall not engage in a business similar to that involved in this transaction in any capacity, directly or indirectly, either as a principal, agent, manager, owner, partner, employee,

officer, director, or stockholder of any company or corporation, or engage in or become interested financially or otherwise in any business, trade, or occupation similar to or in competition with the business sold hereunder, within a radius of _____ miles from the City of _____, for a period of _____ years from the date of closing or so long as Buyer or his successors carry on a like business, whichever first occurs. The parties agree that this provision is an essential part of this Agreement and is material to the sale and purchase of Seller's business, and the sum allocated to the covenant in paragraph 3 above is fair and reasonable. For purposes of this Agreement, "business similar to that involved in this transaction" includes within its scope any of the following: _____.

(b) The parties agree that Buyer shall have the right to assign this restrictive covenant in the event that Buyer sells the business, and Seller agrees to remain obligated by the covenant to any subsequent purchases from Buyer.

7. Representations of Seller. Seller represents and warrants that:

(a) He is duly qualified under the laws of the State of _____ to carry on the business as now owned and operated.

(b) He is the owner of and has good and marketable title to the property involved in this sale, free of all restrictions on transfer or assignment and all encumbrances except for those that are set forth in Exhibit C that is attached and made a part of this Agreement.

(c) No proceedings, judgments, or liens are now pending or threatened against him or against the business.

(d) Seller has complied with all applicable federal, state, and local statutes, laws, and regulations affecting Seller's properties or the operation of Seller's business, and he has received no notice of a violation or citation same from any governmental agencies.

(e) Seller has not contracted to sell, pledge, or mortgage all or part of his business.

(f) He will, up to the date of closing, operate his business in the usual and ordinary manner and will not enter into any contract except as may be required in the regular course of business.

(g) Seller shall not remove or cause to be removed any stock or merchandise except upon sale in the ordinary course of business or in the event of return to a supplier for credit.

(h) Seller has paid and until the date of closing will continue to pay all taxes, federal, state and local.

(i) Seller agrees that stock and merchandise on hand at closing shall have a fair market value of not less than \$ _____.

(j) Seller agrees that up until closing Seller will not do anything to cause a violation of the lease pertaining to the business premises and will not increase the salary or commissions of any employee, agent, or representative of the business.

8. Risk of Loss. Seller assumes all risk of destruction, loss, or damage by fire or other casualty prior to the closing of this transaction. If any such destruction, loss, or damage amounts to more

than \$_____, Buyer may at his option terminate this Agreement. In such an event, the escrow agent shall forthwith pay to Buyer the purchase money held by him, and the escrow agent shall be discharged from all liability therefore. Notwithstanding the foregoing, if a loss, destruction or damage due to fire or other casualty prior to closing does not interrupt Seller's business, the purchase price shall be adjusted to reflect such loss at the date of closing and all other terms and conditions of this Agreement shall remain in full force and effect.

9. Inspection of books and records. Buyer shall have the right at any reasonable time prior to closing, at Buyer's expense, to inspect or have inspected by a certified public accountant or other financial expert, the books and records of Seller's business.

10. Inspection of Business. Buyer represents and agrees that he has inspected the business premises and the furniture, fixtures, equipment, and does not rely on any representations of Seller or Seller's agent as to past, current, or prospective profits or business volume.

11. Assumption of Liabilities.

(a) Buyer agrees to assume those contracts listed in the attached schedule of property, Exhibit A, and those liabilities that arise in the ordinary course of Seller's business after the signing of this Agreement but before closing. Buyer shall assume and hereby agrees to be bound by all contracts between seller and any third person executed during the normal course of Seller's business, which are set forth in Exhibit B that is attached and made a part of this Agreement. Buyer shall not be liable for any of the obligations or liabilities of Seller of any kind and nature other than those specifically mentioned herein. Buyer will indemnify Seller against any and all liability under the contracts and obligations assumed hereunder, provided that Seller is not in default under any of such contracts or obligations at the date of closing.

(b) Seller shall continue to perform any contracts requiring performance between the date of this Agreement and the date of closing, and Seller agrees to indemnify and hold Buyer harmless against any liability or expense arising out of any breach of any contract prior to closing.

(c) Buyer shall indemnify and hold Seller harmless from any liability or expense arising from any contract entered into by Seller that is later assumed or performed by the Buyer after the date of closing.

12. Binding Agreement. This Agreement shall be binding upon the heirs, administrators, successors and assigns of the respective parties.

13. Entire Transaction. This Agreement and the attachments and any associated documents represent the entire agreement between the parties, and there are no representations, warranties, covenants or conditions, except those specified herein or in accompanying instruments or documents.

14. Bulk Sales Affidavit. The parties shall comply with the Bulk Sales Act of the state of _____, or in the absence of applicable state law, the provisions of the Uniform Commercial Code shall be followed. Seller hereby covenants, warrants and represents that there are no creditors of his business at the time of closing and Seller shall execute any further documents or affidavits, under oath, to that effect. Seller agrees to indemnify and hold Buyer

harmless and defend Buyer from any liability, loss, or expense as a result of any violation of this provision.

15. **Amendment.** This Agreement may be amended or modified only by a written agreement signed by both of the parties.

16. **Survival of Terms.** All covenants, warranties, and representations herein shall survive this Agreement and the closing date.

17. **Accounts Receivable.** The parties understand that Seller does not warrant the collectability of the accounts receivable of the business. Seller does represent that he has no knowledge or notice of a defense to an account receivable.

18. **Liquidated Damages for Violation of Covenant not to Compete.** Seller shall pay the sum of \$_____ to Buyer for each week in which or during which Seller may breach or violate the restrictive covenant not to compete contained herein. Buyer's receipt of such sums each week shall not be deemed a waiver or release of Buyer's rights to prevent further violations by seeking equitable relief in a court of law.

19. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent.

20. **Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of _____, without regard to the principles of conflict of laws. Each party consents to the exclusive jurisdiction of the courts located in the State of _____ for any legal action, suit or proceeding arising out of or in connection with this Agreement. Each party further waives any objection to the laying of venue for any such suit, action or proceeding in such courts.

21. **Miscellaneous.** References to gender herein are interchangeable and generic in all respects. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the party and any such waiver will be limited to the terms of such writing.

22. **Additional Provisions.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Signed this _____ day of _____, 20____.

Seller Signature

Buyer Signature

Seller Full Name

Buyer Full Name

Seller Company Title

Buyer Company Title

Exhibit A
Schedule of Assets Included

Exhibit B
Schedule of Assets Excluded

Exhibit C
Schedule of Encumbrances

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GENERAL INSTRUCTIONS

WHAT IS A BUSINESS PURCHASE AGREEMENT?

A Business Purchase Agreement documents the sale of a business. Either assets of a business or shares in the company can be transferred. As a legally enforceable contract, a Business Purchase Agreement ensures that both the seller and purchaser will follow through with their promises and creates an opportunity to confirm the terms and conditions of the transaction. After doing your research and negotiating the best deal, properly transfer the ownership of a business with proper documentation. Without the details of your negotiation in writing, the thorny details needed for a smooth transfer from one business owner to the next could get lost or cause problems later.

WHEN IS IT NEEDED?

If you are either considering selling or purchasing a business, you should memorialize such an important transaction in a Business Purchase Agreement to confirm all details are carefully considered and documented.

A Business Purchase Agreement allows both parties to prevent the following misunderstandings:

- Seller does not have the required power or authority to sell the business
- Business lacks the needed license, permits or authorizations to operate
- Financial statements have not been examined by a certified public accountant
- Accounts receivable may be subject to undisclosed set-offs or counterclaims
- Some liabilities or obligations have not already been paid or discharged
- Dividends have been unexpectedly set aside or paid
- Salaries and benefits to officers or employees have been unexpectedly increased
- Existing condition of the company does not match Purchaser's understanding

Here are just a few of the situations when a Business Purchase Agreement is commonly used:

- Sell your company name
- Sell furniture, machinery, or supplies from your business
- Purchase another company's real estate or office
- Sell only your customer list or accounts receivable
- Ensure Seller's representations and warranties are enforceable.

WHAT SHOULD BE INCLUDED

A Business Purchase Agreement should generally address the following:

- Who is selling or transferring the business and who will be the new owner
- What assets of the business are being transferred or number of shares being sold
- Whether existing employees will be re-hired by the new owner
- When the transfer will be complete ("Closing Date")
- How liabilities like loans, mortgages, or accounts payable will be transferred, if at all

Here are some other useful details a Business Purchase Agreement might include:

- Accounts Receivable: detail how outstandings payments will be collected and handled
- Assets: detail all items that should be included in the sale like furniture, machinery, accounts receivable, or customer lists or excluded in the sale like cash, real estate, and automobiles
- Conditions Precedent: actions that must take place before the Closing Date
- Disclosure: Purchaser can access documents and records between the date of the Agreement and before the Closing Date to confirm the representations and warranties
- Inventory: include all purchases that will be part of the sale
- Liabilities: which debts, if any, will be transferred from the Seller to the Purchaser
- Payment Terms: detail the amount that will be transferred on closing day or paid later
- Termination: confirm the transfer of employees from the Seller to the Purchaser and detail the termination and re-hiring process and paperwork needed

OTHER NAMES

As a reference, a Business Purchase Agreement can also go by the following names: Agreement for Purchase and Sale of Servicing, Agreement of Purchase and Sale of Business Assets, Agreement to Sell Business, Asset Purchase Agreement, Bill of Sale and Assignment and Assumption Agreement, Business Sale Agreement, Business Sale Contract, Business Transfer Agreement, Contract for Sale of Business, Purchase of Business Agreement, Sale of Business Agreement, Share and Asset Purchase Agreement, or Small Business Purchase Agreement