

## **PURCHASE OF A BUSINESS**

### **CHECKLIST FOR THE PURCHASER**

	YES	NO	ANSWER
<b>PRELIMINARY QUESTIONS</b>			
<b>Identify the Purchaser</b>			
a) An existing company?			
b) A company that will be incorporated?			
c) A corporate trustee and trust?			
d) Partnership?			
e) Individual?			
<b>What is the Vendor's current business structure?</b>			
a) Company			
b) Partnership			
c) Individual			
d) Trust			
<b>What is the Purchaser purchasing?</b>			
a) Shares in the Vendor Company			
b) An interest in the Vendor Partnership			
b) Business name and assets of the trading entity			
c) Assets of the trading entity			
<b>What type of business is the Purchaser buying?</b>			
<b>DUE DILIGENCE</b>			
Has the Purchaser engaged their accountant to conduct due diligence on the business? <b>(Highly Recommended)</b>			
The Purchaser's Accountant's contact details?			
Has the Purchaser or the Purchaser's Accountant obtained the following documents from the Vendor?			
• Profit and Loss Statement			
• Balance Sheet			
• Tax returns (minimum 3 years recommended)			
• Schedule setting out the assets and price apportionment			

	YES	NO	ANSWER
• Inventory of equipment			
• Depreciation schedule			
• List of stock in trade (including value)			
• List of work in progress (including value)			
• Any licenses affecting the business			
• List of employees and their entitlements			
• Notices affecting the business – from council and government bodies			
• Orders affecting the business – from courts, tribunals and similar			
• Any continuing agreements (customers, suppliers or contractors)			
• If a franchise, any franchise agreements			
• Any current or proposed lease documents (including head leases, subleases, strata laws, list of covenants etc)			
Are there any other documents that the Vendor has provided to the Purchaser?			
Are all documents provided by the Vendor to the Purchaser being annexed to the Contract?			
Has the Vendor provided a warranty that the contents of all documents provided to the Purchaser are true and correct?			
<b>ASSETS AND PROFIT</b>			
Has the Vendor provided the Purchaser with a list of the business assets being purchased?			
Has the Purchaser's Accountant advised the Purchaser regarding the current and anticipated future profits of the business and whether the purchase price is reasonable?			
Has the Purchaser's Accountant reviewed all the key financial documents?			

	YES	NO	ANSWER
Has the Purchaser's Accountant provided any written advice?			
<b>LIABILITIES</b>			
Has the Vendor provided a current list of all liabilities of the business, including the following:			
• Outstanding refunds and warranties			
• Unpaid Supplier invoices			
• Current and recent legal proceedings			
• Outstanding Court orders/judgments			
• Future contractual obligations			
• Existing and anticipated disputes or claims			
• Outstanding gift cards and vouchers			
• Unpaid Tax obligations			
• Unpaid Employee obligations			
• Unpaid Superannuation obligations			
• Director penalty notices			
• Fines and penalties			
<b>TAX</b>			
Has the Purchaser obtained advice from the Accountant regarding all potential tax implications of purchasing the business?			
Including but not limited to:			
• Goods and Services Tax			
• Capital Gains Tax			
• Stamp Duty			
<b>CONTRACTUAL RELATIONS</b>			
<b><u>Supplier Contracts</u></b>			
Does the Vendor have any key Supplier contracts of the business?			

	YES	NO	ANSWER
Has the Purchaser secured all the key Supplier contracts of the business?			
<b><u>Customer Contracts</u></b>			
Does the Vendor have any key Customer contracts of the business?			
Has the Purchaser secured all the key Customer contracts of the business?			
<b>EMPLOYEES OF THE BUSINESS</b>			
What does the Purchaser desire regarding retaining the existing employees of the business:			
<ul style="list-style-type: none"> <li>Accept transfer of all employees and the employees' entitlements liability?</li> </ul>			
<ul style="list-style-type: none"> <li>Accept transfer of some employees and the applicable employees' entitlements liability?</li> </ul>			
<ul style="list-style-type: none"> <li>Accept transfer of NO employees or the employees' entitlements liability?</li> </ul>			
Has the Purchaser been provided with legal advice regarding the employee entitlements and options?			
Does the Contract for Sale of Business reflect the Purchaser's decision regarding employees and employee entitlements			
Has the Purchaser been provided with legal advice regarding securing key personnel for the business?			
Does the Purchaser want the Vendor or departing senior management to provide a handover period?			
If some employees are not taking employment with the Purchaser have those employees' employment contracts been reviewed regarding restraints of trade			

	YES	NO	ANSWER
to avoid employees joining or starting competitive business			
Has the Purchaser advised the employees not being transferred to Purchaser that their positions have been made redundant? If not, Fair Work Act can deem the employees and all of their entitlements the liability of Purchaser			
<b>PREMISES OF THE BUSINESS</b>			
Does the Vendor own the premises?			
Is the Purchaser purchasing the premises?			
Does the Vendor have a lease or any rights of occupation to the premises?			
Is the Purchaser guaranteed to obtain occupation rights to the premises?			
Are there any existing encumbrances over the business premises?  If so, what are they?			
Will any existing mortgages or caveats prevent the property or lease being transferred to the Purchaser?			
Is there an existing lease?			
Is it a sublease?			
Will the existing lease be transferred to the Purchaser?			
If not;  1. Will there be a sublease?  2. Will the landlord enter a new lease with the Purchaser?			

	YES	NO	ANSWER
Is the term of the lease of sufficient duration and include sufficient options for renewal?			
Has the Purchaser obtained legal advice on the terms and conditions of the lease? ( <b>Highly recommended</b> )			
Has any mortgagee of the premises consented to the lease? (s53(4) <i>Real Property Act</i> 1900)			
Has the Purchaser obtained a current Building Report?			
Has the Purchaser obtained a current Pest Report?			
<b>CONDUCTING RELEVANT SEARCHES</b>			
If the Vendor is a company, conduct an ASIC Search			
Conduct an ABN/ASIC search on the business name			
Is the Purchaser purchasing any intellectual property?			
Conduct an AusPat search through IP Australia regarding any patents			
Conduct an ATMOSS search through IP Australia regarding any trademarks			
Conduct a Title Search on the premises			
Conduct a search of the Personal Property Securities Register			
Search any searchable collateral (asset) of the business on the PPSR (if asset is identified by a serial number PPSR search for it).			
Conduct an internet search of business name – can Purchaser register domain name for the business?			
Who owns the domain name?			

	YES	NO	ANSWER
<b>QUESTIONS FOR THE PURCHASER</b>			
Have you inspected the premises?			
Have you inspected equipment included in the sale? (vehicles, machinery)			
Has the Vendor or someone else said anything to you that has induced into the Purchase that is not stated in the Contract for Sale of Business?			
Has the Purchaser obtained finance for the purchase?			
If you are purchasing customers/clients have you obtained a fully itemised client list?			
If there are any passwords, access cards, codes, keys etc is there a list of these and has it been agreed that these will be provided at settlement?			
Does the business have any Facebook, LinkedIn, twitter or other social media account?			
Is the Purchaser purchasing any social media account?			
<b><u>Stock In Trade (SIT)</u></b>			
What is the <i>trading stock maximum sum</i> ? (stated on front page of standard Contract for Sale of Business – 2004 edition)			
Is the value of the trading stock more than the <i>trading stock maximum sum</i> ?  If so, complications can arise see clause 4.4 of standard Contract for Sale of Business – 2004 edition.			
Has a value of SIT been agreed on?			
Has an independent valuation been conducted?			

	YES	NO	ANSWER
Has the Vendor been prevented from selling stock at a discount between the exchange of contracts and completion?			
Is the sum of the trading stock greater than the maximum trading stock sum? This is can be problematic- see Clause 4.4 of the standard Contract for Sale.			
<b>REVIEW DRAFT PURCHASE AGREEMENT / CONTRACT FOR SALE OF BUSINESS</b>			
Is the purchase agreement the standard Contract for Sale of Business? ( <b>Recommended</b> )			
Is the business name/company registered?			
What type of business is listed on the front page of the contract? This will affect the type of lease.			
What is the restraint distance from the Premises that the Vendor and the Vendor's key persons cannot be involved in a competitor's business?			
What is the restraint time (starting on the date of purchase) during which the Vendor and the Vendor's key persons cannot be involved in a competitor's business within the restraint period?			
Is the restraint distance and time reasonable? (If not reasonable restraint will not be enforceable - Legal Advice required)			
Does the Contract for Sale of Business contain a clause to the effect of:  <i>The Vendor warrants that all liabilities are paid or the Purchaser has been otherwise notified in writing of the particulars of all outstanding liabilities.</i>			
Does the Contract for Sale of Business contain a clause to the effect of:			

	YES	NO	ANSWER
<i>The Vendor warrants the truth and accuracy of all documents provided to the Purchaser (or its agents) in relation to or in connection with the purchase of the business.</i>			
Does the Contract for Sale of Business contain a clause to the effect of:  <i>Indemnity from the Vendor against any claim or action arising after completion relating to any default by the Vendor prior to completion.</i>			
Does the Contract for Sale of Business contain a clause to the effect of:  <i>The Vendor warrants that it has complied with all applicable laws in regards to and in connection with the business, the premises and employees.</i>			
Does the Contract for Sale of Business contain a clause to the effect of:  <i>Vendor warrants that the Intellectual Property is owned by Vendor, not aware of any dispute or circumstances likely to give rise to claim regarding the IP.</i>			
Does the Contract for Sale of Business contain a clause to the effect of:  <i>Vendor warrants that it is not aware of any charge, security interest or other encumbrance over any assets being purchased by the Purchaser other than as disclosed in the Contract.</i>			
<b>PRE-SETTLEMENT</b>			
Has a settlement agenda been prepared?			
Have all rent adjustments been made?			

	YES	NO	ANSWER
If employees are concerned, has an allowance been made in favour of the Purchaser for accrued long service leave and holiday pay entitlements? (Clause 31 Standard Contract)			
If employees are concerned, has the Purchaser complied with employment offer and other obligations? (Clause 31 Standard Contract)			
If finance is being provided by the Vendor, has it all been completed and executed security documents been provided?			
<p>If the Vendor does not own the business assets unencumbered (free of loans / security interests), have steps been taken to ensure title to those assets will pass to the Purchaser? eg:</p> <ul style="list-style-type: none"> <li>• An asset under a lease – the balance outstanding under the lease agreement must be paid to the lessor by the Vendor on completion</li> <li>• A fixed or floating charge – the balance outstanding must be paid to the charge holder in the registrable form.</li> </ul>			

	YES	NO	ANSWER
<b>POST-SETTLEMENT</b>			
Has Stamp Duty been paid? <ul style="list-style-type: none"> <li>Stamp Duty is assessed proportionately based on the purchase price of the business.</li> <li>The purchase price generally includes goodwill, chattels, plant, equipment and unencumbered assets.</li> <li>Stamp duty <u>must</u> be paid within three (3) months of the date of exchange of contracts to avoid interest accruing on the duty.</li> </ul>			

### **Disclaimer**

The content of this document is a general guide only, is not exhaustive on the topic and must not be relied on as legal advice. When purchasing a business, we strongly recommend the purchaser obtains legal and accounting/tax advice from qualified professionals.

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