

Select Business Brokers

Manager's
Initials

Date

Purchase Agreement for Business Assets

INTRODUCTION: This is an offer and an agreement to buy and sell business assets.

Date:

1. DEFINITIONS: The following definitions and designations shall apply regardless of number or gender:

BUSINESS:

BUYER:

SELLER:

BUYER'S BROKER:

SELECT BUSINESS BROKERS
1601 N. SEPULVEDA BLVD. NO. 524
MANHATTAN BEACH, CA 90266

AGENT'S NAME:

SELLER'S BROKER:

SELECT BUSINESS BROKERS
1601 N. SEPULVEDA BLVD. NO. 524
MANHATTAN BEACH, CA 90266

AGENT'S NAME:

COP: Change of possession of business assets from Seller to Buyer.

CLOSING OR COE: Close of escrow.

2. SALE OF BUSINESS ASSETS: Seller agrees to sell the business assets to Buyer and Buyer agrees to buy the business assets from Seller for the price and on the terms and conditions set forth below.
3. ASSETS: This sale shall include all the assets of the business including but not limited to any equipment, trade fixtures, leaseholds, leasehold improvements, contract rights, business records (with Seller retaining a reasonable right of inspection), licenses, franchises, goodwill, covenant not to compete, trade secrets, trade names, telephone numbers, supplies, work in progress and inventory. It shall not include accounts receivable, accounts payable, bank accounts, deposits, cash, financial records (however Buyer shall have a right to make copies prior to closing), or
4. PURCHASE PRICE: The purchase price shall be the sum of \$ _____, and shall be payable as follows:
 - a. \$ _____ deposited by Buyer upon signing this agreement as part of the down payment. Broker is authorized to:
 - hold deposit check uncashed until escrow is opened OR
 - deposit check into escrow trust account or Broker trust account upon acceptance of offer.
 - b. \$ _____ additional deposit upon opening of escrow
 - c. \$ _____ balance of down payment to be deposited in escrow the day before closing (Estimated closing costs will also be deposited)
 - d. \$ _____ total down payment
 - e. \$ _____ (approximately) by the assumption of a note balance payable \$ _____ per month including _____ % per annum interest. If the actual balance differs from the above figure, any note to the Seller shall be adjusted up or down accordingly.
 - f. \$ _____ balance in the form of a non-negotiable note in customary form with right of offset, payable to Seller in equal monthly installments, including _____ % per annum interest computed from COP, so as to fully amortize over _____ months (i.e., \$ _____ per month), payments to begin one month from COP, secured by a security agreement on the assets of the business as described by the Seller, with the right to prepay without penalty. If Buyer is a corporation or other entity, the owners shall personally guarantee the obligations to the Seller under this agreement.
5. INVENTORY:
 - The purchase price shall include salable inventory and consumable supplies of \$ _____ at cost. If the actual inventory varies from that figure, the purchase price and any note to the Seller will be adjusted accordingly OR
 - the salable inventory at cost shall be paid for at COE in addition to the total purchase price above. Notwithstanding the above, the inventory shall not exceed \$ _____ and the Buyer can reject any part of the inventory over that amount. The inventory count shall be made on COP
 - by Buyer and Seller OR
 - by an independent inventory service, with the fees to be divided equally between Buyer and Seller.Work in progress shall be valued at the actual cost of material and direct labor incurred by Seller and reimbursed by Buyer in cash at closing.
6. PURCHASE PRICE ALLOCATION: Buyer and Seller shall endeavor to allocate the purchase price among the assets to be purchased before COE.

Buyer

Buyer

Seller

Seller

7. **CONDITIONS:** This agreement is subject to the following conditions:
- Buyer's inspection of and reasonable satisfaction with the assets, financial and other records, contracts, leases of the business and Seller's Disclosure Statement (see paragraph 17) which shall promptly be made available for Buyer's inspection.
 - Seller's reasonable satisfaction with the Buyer's qualifications to purchase and operate business successfully, written verification of Buyer's funds to cover the down payment, Buyer's creditworthiness and Buyer's Disclosure Statement (see paragraph 18). Adequate information shall promptly be made available to Seller.
- For conditions 7a and 7b above, Buyer's and Seller's satisfaction shall be upon the signing of a Statement of Conditions Removal. Conditions removal shall take place within ten days from the signing of this agreement unless contrary written notice is given to the other party's Broker or this Agreement automatically becomes null and void. Upon execution of both the Buyer's and Seller's Statement of Conditions Removal, Broker will open escrow or equivalent.
- CONDITIONS to be removed after the opening escrow or equivalent:
- the written consent of the landlord to assignment of the existing premises lease OR
 the making of a new lease between the landlord and the Buyer which is reasonably acceptable to Buyer.
- d.
8. **ESCROW:** The purchase price and closing adjustments shall be paid through an escrow to be established with _____, the escrow holder. Separate escrow instructions may be signed to define the duties of the parties and the escrow holder. All parties shall cooperate with the escrow holder in performing any acts and completing any papers necessary to complete this transaction. The Broker is a party to the escrow as to the payment of any sales commissions and an irrevocable assignee of the sale proceeds to the extent of such commissions.
9. **REPRESENTATIONS & WARRANTIES:** Seller and its owners acknowledge and represent as follows, except as otherwise set forth herein:
- Seller is operating the business in compliance with all applicable laws and contracts. This compliance will not be violated by this sale and the business will pass all applicable inspections upon COP.
 - There are no claims or investigations pending which would affect the business or assets being sold.
 - All leases and contracts relevant to the ownership and operation of the business are complete and in effect, and there are no undisclosed amendments.
 - All the financial information and statements furnished to Buyer are complete, accurate, prepared in a manner consistent with prior statements, and fairly present the financial condition of the business as of the dates stated on them.
 - Since the date of the last financial statements furnished, there have been no material adverse changes in the aggregate in the assets, liabilities, revenues, expenses, or any other items shown on such statements.
 - All assets currently used in the business are owned by Seller free from liens and encumbrances, will be paid off at COE or will be assumed by Buyer, and they are in good and operable condition.
- Seller warrants that these representations are true, shall be true as of COE, and shall survive COE. Seller shall indemnify and hold Buyer and Broker harmless from any damage resulting from their falsity.
10. **CONTINUITY:** Pending COE, the Seller shall continue to operate the business in the usual way, protect its assets and goodwill, allow the Buyer to make reasonable inspections, and maintain good relations with suppliers, customers, and employees.
11. **TAXES and EXPENSES:**
- Utilities, personal property taxes, other taxes, insurance, rent, payroll, vacation pay, and other expenses of the business not otherwise provided for in this agreement shall be prorated to COP. Buyer shall reimburse Seller at COE for facility lease deposits and other miscellaneous deposits transferred to Buyer.
 - Except as otherwise noted in this agreement, each party shall pay when due all operating costs incurred while that party is in possession and hold the other party harmless therefrom.
 - Any license or franchise annual fees shall not be prorated and Buyer shall pay any franchise training costs, transfer or issue fees for permits and licenses required.
 - The Buyer and Seller shall pay equally all transfer costs and escrow fees. Each party shall pay its own accountants, attorneys, and other advisors.
 - The Buyer shall pay at COE any sales tax assessed on the sale of the business assets.
 - Seller shall hold Buyer harmless from any liability to the California Employment Development Department, the California Franchise Tax Board or the California Board of Equalization arising from the operation of the business prior to COP. Prior to the receipt by the escrow holder of releases of transferee liability from these agencies, the Buyer shall be protected from the possible imposition of transferee liability by a reserve to be approved by Buyer and retained in escrow until such releases are obtained.
12. **MISCELLANEOUS LEASES, ETC.:** The Seller shall transfer to Buyer the following contracts used in the operation of the business, and the Buyer shall assume obligation for them.
- | | |
|--|---|
| <input type="checkbox"/> Alarm system lease or maintenance agreement | <input type="checkbox"/> Other equipment lease(s) or purchase contract(s) |
| <input type="checkbox"/> Telephone system lease or purchase contract | <input type="checkbox"/> Equipment or software maintenance agreement(s) |
| <input type="checkbox"/> Vehicle lease(s) or purchase contract(s) | <input type="checkbox"/> Music service contract |
| <input type="checkbox"/> Vending machine contract(s) | <input type="checkbox"/> Advertising contract(s), including Yellow Pages |
| <input type="checkbox"/> Other: | |
13. **CLOSING DATE:** The estimated date for COE is _____, _____. Buyer and Seller shall make their best efforts to complete COE on or before that date.
14. **BROKER:** Buyer acknowledges that Broker has furnished to Buyer financial and other information obtained from Seller and other sources, the accuracy and completeness of which have not been verified by Broker. By signing this agreement, Buyer is acknowledging that he is relying solely on his own inspection of the business, its assets, financial statements, business records, contracts, any assumed liabilities, operational history, future profitability and the representations by the Seller, and not by the Broker. Seller acknowledges that Broker has made no representations concerning the Buyer's creditworthiness or ability to complete this transaction or to successfully operate the business by signing this agreement, Seller is acknowledging that he is relying solely on his own investigation of the creditworthiness and

Buyer

Buyer

Seller

Seller

business qualifications of Buyer and not on Broker. Should any representations of Seller or Buyer be untrue, Buyer and Seller agree to look solely to each other for relief and shall release, hold harmless, indemnify, and defend the Broker from any claims.

15. TRAINING: Seller shall train Buyer in the operation of the business for a period of _____ consecutive weeks from COP, for _____ hours per week, without additional cost to Buyer.

16. COVENANT NOT TO COMPETE: Seller shall not directly or indirectly carry on a similar business within a radius of _____ miles of the business being sold, attempt to hire any existing employees of the business, solicit any customers of the business nor assist anyone else except the Buyer to do so within these limits; nor have any interest, directly or indirectly, in such business, except as an employee of the Buyer, for a period of _____ consecutive years from COP. This covenant shall become an asset of the business and may be transferred as part of any future sale of the business.

17. SELLER'S AND BUYER'S DISCLOSURE STATEMENTS:

a. Seller's Disclosure Statement

- Buyer has received and read the completed Seller's Disclosure Statement OR
 Seller shall provide to Buyer the completed Seller's Disclosure Statement within three days after acceptance.

b. Buyer's Disclosure Statement:

- Seller has received and read the completed Buyer's Disclosure Statement OR
 Buyer shall provide to Seller the completed Buyer's Disclosure Statement within three days after acceptance.

18. MEDIATION OF DISPUTES: Buyer, Seller and all Brokers and agents involved in this transaction agree to and shall mediate any dispute or claim between them arising out of this contract or any resulting transaction. The mediation shall be held prior to any court action or arbitration. The mediation shall be confidential and in accordance with the California Evidence Code §1152.5. In the event the parties are not able to agree on a mediator within thirty days of the first party seeking mediation, the presiding judge of the Superior Court of the county in which the business is located shall have jurisdiction to appoint a mediator. In the event the mediator determines that a second mediation session is necessary, it shall be conducted in accordance with this paragraph. Should the prevailing party attempt an arbitration or a court action before attempting mediation, the prevailing party shall not be entitled to attorney fees that might otherwise be available to it in a court action or arbitration, and in addition thereto, the party who is determined by the arbitrator to have resisted mediation may be sanctioned by the arbitrator or judge. Mediation fees, if any, shall be divided equally among the parties to the disputes. The following matters are excluded from mediation hereunder: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a security agreement or deed of trust, (b) an unlawful detainer action, (c) injunctive relief to enforce paragraph 16, (d) any matter which is within the jurisdiction of a probate or small claims court, or (e) an action for bodily injury or wrongful death, or for latent or patent defect to which Code of Civil Procedure §337.1 or §337.15 applies. Participation by Broker(s) or agent(s) in mediation shall not make them a party to this agreement.

19. COMMISSION: The Broker(s) identified in paragraph 1 has/have acted as the only Broker(s) for this sale and earned a commission. Seller agrees to pay a commission to Broker(s) for services as follows:

_____ percent of total purchase price to _____, Broker and _____ percent of total purchase price to _____, Broker, payable (a) on COE.

20. SUMMARY: The entire agreement of the parties relating to the sale of the business assets is set forth in this agreement and can only be modified in writing. This agreement shall bind and benefit the parties and their legal successors and shall supersede any prior written or oral agreements. This agreement may be signed in counter parts and faxed signatures may be considered as originals. In any action, proceeding or arbitration between Buyer and Seller arising out of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 18.

21. ACKNOWLEDGMENT AND PERSONAL GUARANTEE: By signing below, the Buyer and Seller each acknowledge that they have carefully read and fully understand this agreement and have received a copy of it. The undersigned warrant that their signatures are legally sufficient to bind the Buyer and Seller. If the Buyer and/or Seller is a corporation or other entity, the undersigned shall personally guarantee the performance of this agreement.

22. ACCEPTANCE: This offer shall expire unless it is accepted in writing by Seller and that acceptance is communicated to Buyer by 11:59 p.m. on _____, _____. Any later acceptance shall constitute a counter offer. The undersigned Seller accepts and agrees to sell the business on the above terms and conditions.

THIS IS A LEGALLY BINDING DOCUMENT. IF YOU DO NOT UNDERSTAND IT, CONSULT AN ATTORNEY. THE BROKER IS NOT AUTHORIZED TO GIVE LEGAL OR TAX ADVICE.

SUBJECT TO ATTACHED ADDENDUM

SUBJECT TO ATTACHED COUNTER OFFER

Buyer _____ Date _____

Seller _____ Date _____

Buyer _____ Date _____

Seller _____ Date _____

Broker's Agent _____ Date _____

Broker's Agent _____ Date _____

Buyer Buyer Seller Seller