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Business Sale Contract

When buying or selling a business there are many considerations to take into account. A successful sale can often depend on the construction of the documentation used to sell the business, that is, the Contract of Sale. If you are considering buying or selling a business, it is highly advisable that you engage the help of a solicitor to prepare and negotiate the terms of the Contract of Sale.

For use in respect of Queensland based business, the Real Estate Institute of Queensland (REIQ) publishes a standard Business Sale Contract ("Contract"). A copy of the most recent version of this the Contract can be purchased from the REIQ by telephone (07) 3249 7347 or www.reiq.com.au. Alternatively, your solicitor will provide you with a completed copy of the Contract if you so instruct them.

The Contract is similar to the REIQ Contract for Houses and Land that is commonly used by real estate agents in the sale and purchase of residential property. Similarly to the REIQ Contract for Houses and Land, the Business Sale Contract contains standard conditions that can be deleted or amended as well as the possibility for additional special conditions to be included in the Contract.

Standard features of a REIQ Business Sale Contract

Details of the business being sold

The Contract is commonly prepared by either the Vendor's or the Purchaser's solicitor and will require particulars of the transaction inserted in the Items Schedule. Such particulars include, amongst other things:

- The details of the business.
- Whether the business is sold on a walk-in walkout-basis and if not sold on this basis, the details of the stock in trade or work in progress will need to be completed.
- How the purchase price is to be apportioned between the goodwill of the business, fixtures, fittings and chattels of the business.
- The leasing requirements of the business.
- Any restriction on the vendor's ability to compete with the business in the future (commonly referred to as a 'restraint of trade' clause).
- Any period for which the vendor is required to tutor or assist the purchaser in the operation of the business.

Standard conditions

Attached to each Contract are several pages of standard conditions that, unless otherwise deleted, amended or altered by virtue of special conditions, are binding upon each party to the Contract. It is therefore very important for each party to know what their respective rights, duties and responsibilities are under these conditions (including any amendments) before they enter into the Contract.



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Set out below are some specific clauses of a standard Contract. This is not intended to be an exhaustive list of issues in a Contract and it is highly advisable for you to consult your solicitor before entering into a Contract for the sale or purchase of a business.

Statements and warranties

By signing the Contract, unless otherwise disclosed, the vendor states and assures the purchaser that, amongst other things:

- The business is free from any charges and encumbrances.
- All leases, permits, patents, certificates, consents or other approvals necessary for the operation of the business are valid.
- All plant and equipment used in the business is in good working condition.
- On completion of the sale there will not be any subsisting breach of the lease by the vendor and the details of the lease provided in the Items Schedule are correct.
- All trading figures and financial data relating to the business that has been provided to the purchaser are true and correct.

If the vendor breaches any of the warranties of the Contract, the purchaser may have grounds to terminate the Contract and sue the vendor for damages for any loss arising from the breach.

Employee entitlements: wages, holiday pay and long service leave

Usually, employment of all staff employed in the business will be terminated upon completion of the sale and the vendor is required to pay to each such employee, the respective amounts due to him or her as at the date of completion of sale in respect of wages, holiday pay and holiday loadings, sick leave, superannuation and long service leave, together with any other lawful entitlements.

The purchaser is then at liberty to re-employ all or any of the employees previously employed in the business by the vendor and in which case a payment or an allowance may be required from the vendor to the purchaser for any lawful entitlements.

Trial period

Where agreed between the parties, the purchaser and vendor may make the sale of the business conditional upon a satisfactory trial run of the business for the purpose of verifying the trading performance of the business. If, following the trial run, the purchaser is not satisfied with the trading performance of the business, the purchaser may terminate the Contract.

Vendor tuition/assistance

Where agreed, the vendor may agree to show the purchaser how to run the business. This may happen before settlement or after settlement depending on the election made under the Contract.



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Special conditions

As discussed above, special conditions specific to the particular circumstances of the sale of the business can be added to the Contract. Special Conditions may potentially change any aspect of the Contract discussed above. These conditions may alter the standard conditions of the Contract, which may place more onerous obligations on a party or conversely extinguish a right provided under the Contract.

Further information

If you are considering buying or selling a business, it is highly advisable that you engage the help of a solicitor to prepare and negotiate the terms of the Contract of Sale.

The following fact sheets provide further information on these issues:

- Business records you should keep
- Accounting records you should keep