



FOR THE LIFE OF YOUR BUSINESS  
*Ohio Southern Chapters*

Brief 12.02  
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## **Contents of an Effective Business Purchase or Business Sale Agreement**

(Refer to [Brief 02.11](#) for Sales Agreements for Service Providers)

1. Decide whether it will be a stock or asset sale transaction.
2. If an asset sale, define the assets. Keep in mind that there could be intangible assets such as software licenses. Do not forget deposits with utilities or other prepaid expenses. Make a list of assets as an appendix to the purchase/sale contract.
3. Define the liabilities. Even in an asset sale there can be liabilities such as accounts payable and vacation/holiday accruals.
4. Define the purchase price. Also consider things that might affect the purchase price between the time a sales agreement is signed and the closing occurs.
5. In the sales agreement have a statement that the seller is an Ohio corporation and is in good standing under the laws of Ohio. Also identify the individual or individuals who are authorized to enter into the sales agreement.
6. Seller must state that he has all required licenses and permits to conduct its business.
7. Seller must state that there are no liens against the assets that will be sold. Also, if there are any assets on the seller's premises owned by a third party, those assets must be identified.
8. If any assets are not at the location of the seller, this must be noted. Also, at the time of the sale there must be sufficient materials and supplies on hand to conduct the ordinary course of business. In other words, the seller cannot sign an agreement, then stop buying supplies or inventory.
9. Slow moving or obsolete inventory must be identified.
10. There can be no adverse change in assets in the time between the sales agreement and the closing date.
11. All contracts that the seller is engaged in must be identified. This includes service contracts, leases, equipment leases such as copiers, lines of credit, etc. Outstanding purchase orders for material and supplies must be identified.
12. Contracts with sales agents or distributors must be identified.
13. If seller has any licensing agreement for seller's products with a third party it should be identified. If consent of a third party is required for conducting normal business transactions, it should be noted.

14. If the seller has purchase agreements with suppliers other than purchase orders, it should be noted. An example would be a letter of intent to purchase product.
15. Seller must identify any contract or agreement with any officer, employee, director, or shareholder, or any persons or organization controlled by or affiliated with any of these.
16. Seller must state that he is not in violation of any law and that there is no pending litigation.
17. Seller must state that he is not in violation of any labor law, and is clear of any problems with OSHA, EPA, etc. If collective bargaining is in process, that should be stated.
18. Seller must pay all employee salary, benefits, vacation, etc., up to the time of closing.
19. Seller must be up to date on tax payments at time of closing.
20. Seller must be up to date on insurance until time of closing.
21. The responsibility for warranty of products sold before or other product liabilities must be considered. Typically, the buyer assumes liability for the first stated amount. Any costs beyond that stated amount, the seller is responsible. A copy of the seller's product warranty should be part of the contract.
22. Any environmental issues or liabilities must be disclosed and discussed in the contract. Hazardous materials, toxic substances, oils, solvents, etc. must be identified.
23. Open order backlog must be part of the agreement.
24. Recent financial statements must be part of the agreement.
25. Any recent adverse change in the business or the market must be disclosed by the seller if known.
26. Employee benefits should be listed in the sales agreement and it should be noted if the benefits are going to change after the sale of the business. Also, it should be stated that the buyer has no obligation to continue to employ any of the employees after the closing, unless there is an employment contract agreed to by seller and buyer.
27. Seller must not change the normal course of business between the time of the sales agreement and closing.
28. Between the time of the sales agreement and closing, the seller must allow reasonable access of buyer to the seller's facility, records, etc. Seller may not hire or fire employees in this time period without the consent of the buyer.
29. After the sales agreement is signed, the seller cannot solicit any other offers.
30. A non-compete agreement must be part of the sales contract. This is to prevent the seller from starting a business, which will compete with the buyer after the sale of the business. The parties should agree on the time period for this agreement. It is often a good idea to include a statement that the seller agrees not to interfere with the on-going functioning of the business after the sale. This relates to not engaging in detrimental activities with customers, suppliers, or vendors of the business.
31. Terms of termination of the agreement must be listed in the sales agreement. The most likely reason for termination is if some major liability, litigation, etc. occurs.

32. Terms for allocation of purchase price must be determined.
33. Responsibility for closing costs must also be agreed upon. Normally, the buyer pays his lawyer and accountant and the seller does likewise.
34. Public statements and their terms should be agreed upon. This would involve notification of suppliers, customers and possibly the public.
35. Do not try to do this without a lawyer!

Summary. Without question, when buying or selling a business, "the devil is in the details." This Brief is intended to provide a solid foundation upon which to build an agreement to either buy or sell a business. It is intended to protect both parties. But do not take this lightly. Literally, hundreds of thousands of dollars can be lost by overlooking some of these points.

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