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BUYING OR SELLING A BUSINESS: SUMMARY OF RELEVANT CONSIDERATION

Considerations		
Apportionment of price between goodwill, plant and equipment, stock and other inclusions such as licences and intellectual property.		
Need for confidentiality deed, exclusivity deed or heads of agreement.		
Structure to be used by purchaser for acquisition – personal, company, trust, super fund.		
Discharge of debt by way of mortgage, security agreement, charge and associated guarantees.		
Tax: GST (sale as a going concern), capital gains tax and income tax.		
List of inclusions in sale:	Inventory of plant and equipment, fixtures and fittings;	
	Motor vehicles and registrable machinery; and	
	Stock list.	
Transfer or retention of business name.		
Intellectual property such as trade names, product names, trade marks, patents, copyrights, licences, email addresses and websites.		
Restraint of trade:	Which persons;	
	How long; and	
	Within what radius of the place of business.	
Items sold which are subject to lease or security agreement.		
Warranties to be honoured by purchaser.		
Contracts, licences, permits, authorisations, supply agreements, utilities, security services, vending machines, billboards, advertising contracts including those on the internet.		
List of fixtures and fittings being taken by vendor. Reinstatement of premises?		
Stock-in-trade:	What is included, what is excluded;	
	Who does stocktake and valuation method;	

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Considerations		
	Maximum quantity to be taken by purchaser; and	
	Restriction on vendor disposing of excess stock.	
Any other assets included.		
Municipal council requirements, use approved or not, zoning compliance, outstanding notices, e.g. health legislation notices, occupational health and safety code infringements.		
Provision for parking.		
Assistance and introductions before and after completion.		
Vendor's obligations before completion:	Maintain stock levels;	
	Purchase further stock without purchaser's consent? Limit?	
	Offer stock for sale at reduced prices;	
	Hold sale;	
	Hold closing down sale;	
	Employ additional staff? Dismiss staff?	
	Discontinue regular advertising?	
	Transfer of security back-to-base contract, drive-by arrangements and alarms.	
Books and records, computer hardware and software, client lists etc. to be provided to purchaser, or retained by vendor.		
Arrangements in relation to work in progress: commission to buyer for collections? Valuation if included in price.		
Arrangements in relation to creditors. Commission for collection to purchaser?		
Arrangements in relation to book debts. Treat as work in progress?		
Arrangements in relation to credit sales and lay-bys.		
Premises lease or licence – new or transfer existing? Retail disclosure obligations?		
Liability for ongoing warranties or product liability.		
Employee arrangements:	Have any employees earned long service leave? If so, how is it treated?	
	Are any other employees near qualifying for long service leave? Should vendor contribute to long service leave? If so, how much?	
	Are superannuation contributions up to date?	
	Holiday pay adjustments.	

Considerations		
Notices, orders and proposals affecting business or premises:	Do any municipal health orders require capital expenditure e.g. new grease traps?	
	If these are food premises, have the requisite number of employees undergone training?	
Rates, taxes and outgoings to be apportioned on completion:	Certificates required;	
	Transfer security back to base contract, drive-by arrangements and alarms;	
	Adjustment of lease rentals and outgoings. Note: no liability for land tax if retail lease.	
Review insurances. Which may be taken over by purchaser, which cancelled and which to be obtained?		