

SamarasLawyers

PURCHASE OF BUSINESS NSW INSTRUCTION SHEET

Key legislation:

[A New Tax System \(Goods and Services Tax\) Act 1999](#)

[Personal Property Securities Act 2009](#)

[Fair Work Act 2009](#)

[Income Tax Assessment Act 1997](#)

[Competition and Consumer \(Industry Codes – Franchising\) Regulation 2014](#)

[Duties Act 1997](#)

Date: _____

Client Contact

Name: _____

Preferred method of contact: Email Post Phone Other: _____

Email: _____

Address: _____

Phone: _____

Existing client New client

Client Details and Verifying Identity: Completed Not required, as identified within last two years

Conflict of Interest Check: Completed

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1. Basis of Sale

Sale of business assets *Contract for Sale of Business.*
 Sale of shares in company that owns the business *Contract for Sale of Shares.*
 Sale of units in unit trust that owns the business *See Agreement for Sale of Units in a Unit Trust.*

2. Purchaser

See also Client Details and Verifying Identity.

Individual Company – new/existing Trustee – new/existing

Details: _____

3. Vendor

(If applicable) See contract for full details of the vendor and their representative:

Details: _____

4. Business Details

Description: _____

Business name: _____

Registered: Yes No Transfer to purchaser: Yes No

ABN: _____
Registered
to: _____

If company, ACN: _____ ASIC key: _____

Registered address: _____

Trading address(es): _____

Continue to trade from these premises: Yes No

If yes, see 5. Business premises – If continuing.

If no, go to 6. Mortgages/charges/security agreements.

Contacts to be transferred from vendor:

PO box: _____ Fax: _____

Phone: _____ Email: _____

Mobile: _____ Domain: _____

Social media
accounts: _____

Other: _____

Is the purchaser aware of any notices, orders or proposals concerning
the business? _____

Yes No

If yes, please
provide
details:

5. Business Premises – If Continuing

Owned by vendor or related entity

Yes No

To be sold with business:

Yes No

If yes, is there a separate contract
for sale of land? Yes NoIf no, is there a lease? Yes No *If yes, consider need for separate file/retainer.*

Leased by vendor or related entity from third party

New Assignment

Lessor: _____

Has lessor been notified of sale and/or
purchaser?

Yes No

Details: _____

Lessor
solicitor: _____

Contact: Name: _____ Phone: _____

Email: _____ Mobile: _____

Is the client aware of any notices, orders or proposals concerning the
premises?

Yes No

If yes, please
provide
details:_____

Is the client aware of any council requirements?

Yes No

Details: _____

Is the client aware of whether the land use is approved for the applicable
business?

Yes No

Details: _____

6. Mortgages/Charges/Security Agreements

1. Description: _____

Held by: _____

What is to happen at settlement? *e.g. discharge or
transfer.*Amount
owing: \$ _____

2. Description: _____

Held by: _____

What is to happen at settlement? *e.g. discharge or
transfer.*Amount
owing: \$ _____

3. Description: _____

Held by: _____

What is to happen at settlement? *e.g. discharge or transfer.* _____

Amount owing: \$ _____

4. Description: _____

Held by: _____

What is to happen at settlement? *e.g. discharge or transfer.* _____

Amount owing: \$ _____

Any registrations on the [Personal Property Securities Register](#) to be transferred: Yes No

7. Price

GST applicable (taxable supply) **OR** GST not applicable (going concern)

Price: \$ _____ GST amount if applicable: \$ _____

Apportionment Client's accountant to advise

Goodwill: \$ _____

Plant, fixtures, fittings: \$ _____

Stock: \$ _____

Stock – if applicable

1. Description: _____

Or attach list. _____

Purchaser's right to reject in excess

2. of: \$ _____

Valuation

3. basis: _____

If stocktake, how, by whom and

4. when: _____

Any excluded stock

5. items: _____

8. Assets**Included**

Excluded

9. Deposit

Arrangements: Paid To be paid Not required

Amount: 5% 10% Other: \$ _____

Paid to/held by: Agent Us Other: _____
 If yes, please provide

Invest deposit: Yes No tax file number: _____

Interest accrues to: Vendor Purchaser

10. Finance

Cash available Loan

Is it approved? Yes No

Loan from: _____

Address: _____

Contact: Phone: _____ Fax: _____

Mobile: _____ Email: _____

11. Tax

Client advised to obtain advice from accountant regarding:

Apportionment of sale price in contract

Goods and services tax

Capital gains tax

Ownership structure

Other: _____

If applicable, client to sign authority to obtain information from client's accountant

If applicable, we provide tax advice *If so, consider need for separate file/retainer instructions.*

12. Client's Accountant

Firm: _____
 Contact name: _____
 Address: _____
 Postal address: As above or _____
 Contact: Phone: _____ Fax: _____
 Mobile: _____ Email: _____

13. Vendor's Accountant – If Applicable

Firm: _____
 Contact name: _____
 Address: _____
 Postal address: As above or _____
 Contact: Phone: _____ Fax: _____
 Mobile: _____ Email: _____

14. Intellectual Property of Business

	Details:	To be assigned:		Details:
		Yes	No	
Business name	_____	Yes	No	_____
Product name	_____	Yes	No	_____
Trade mark	_____	Yes	No	_____
Patent	_____	Yes	No	_____
Copyright	_____	Yes	No	_____
License	_____	Yes	No	_____
Website	_____	Yes	No	_____
Social media	_____	Yes	No	_____
Other	_____	Yes	No	_____

15. Restraint of Trade

Type of restraint:	Customer	Internet	Employee	Other:
Persons to be restrained:	Vendor	Directors	Other key staff	

Details:

Restraint _____ years Distance radius: _____ km
 period:

Requesting they enter into a deed of restraint: Yes No

Note: As a general rule such clauses are unenforceable and void unless they satisfy the test of reasonableness. In order to be enforceable, the restraint cannot seek to prevent mere competition. It must seek to protect legitimate business interests such as goodwill, confidential information and trade secrets that a purchaser can protect by limiting the activities of the vendor post-contract.

To be reasonable, a restraint of trade must be limited as regards time, geographical location and extent, always having regard to what the business does and with whom they have dealings or relationships.

The [Restraints of Trade Act 1976](#) (NSW) impacts on the validity of restraints. The Act provides that a restraint of trade is valid to the extent to which it is not against public policy, whether it is in severable terms or not. The court has the power to order that the restraint be on terms as it thinks fit.

16. Business Contracts and Agreements

1. Contracts to be assigned to purchaser: *e.g., leased equipment, hired equipment, franchise.*

2. Contracts to be terminated: *e.g., leased equipment, hired equipment, franchise.*

3. Licences, permits, authorisations to be transferred to purchaser:

4. Licences permits, authorisations to be retained or terminated by vendor:

17. Vendor Assistance

- Before completion:** Yes No Duration: _____
 Specific hours: _____ Specific days: _____
 Other details: _____
- After completion:** Yes No Duration: _____
 Specific hours: _____ Specific days: _____
 Other details: _____
3. Vendor assistance conditions: *e.g. key personnel to provide.*

18. Vendor's Conduct Before Completion

Is there any agreement about the following?

Details:

Maintaining stock levels:	Yes	No	_____
Purchasing stock without purchaser's consent:	Yes	No	_____
Offering stock for sale at reduced prices:	Yes	No	_____
Holding a sale:	Yes	No	_____
Announcing closing down:	Yes	No	_____
Employing additional staff:	Yes	No	_____
Advertising:	Yes	No	_____

19. Work in Progress

e.g. unfilled orders, partly completed work, lay-bys, gift vouchers, deposits and customer enquiries.

Details: _____

Purchaser to have benefit of work in progress:

Yes No

If no, details of any apportionment: _____

20. Special Conditions

Does the client require any special conditions? Yes No

Have the parties agreed on any special conditions? Yes No
e.g. vendor representations to go in the contract: product liabilities that become the purchaser's responsibility.

If yes, please
provide details:

21. Creditors

Vendor will pay all outstanding: Yes No *If no, include any apportionment below.*

Details:

22. Debts

Vendor will recover: Yes No *If no, include any apportionment below.*

Details:

23. Employees

The transfer of business provisions of [Part 2-8](#) of the Fair Work Act 2009 (Cth) deal with situations where a business is transferred from one employer to another. Employees cannot be ‘transferred’ from one employer to another without their consent. The employees need to be notified of the proposed arrangement in writing and be free to accept or reject the new offer of employment.

The National Employment Standards in the Act set out the minimum period of notice that an employer must give to an employee to terminate their employment. [Section 117](#) provides a scale of minimum notice that must be provided. If the minimum period of notice cannot be given, then pay in lieu of notice must be provided: see [s 117\(2\)\(b\)](#).

For more information see the commentary.

Transferring employees: *i.e.* name, date commenced and whether full or part-time or casual.

Details: _____

Note: Adjustments are made on settlement for the entitlements of transferring employees including accrued annual leave, personal/sick leave and long service leave.

24. Outgoings to be Apportioned on Completion

e.g. ongoing operational expenses.

Between
 vendor/purchaser: _____

Between lessor/lessee
 if applicable: _____

25. Agent/Broker

Firm: _____
 Contact name: _____
 Address: _____
 Postal address: *As above* or _____
 Contact: Phone: _____ Fax: _____
 Mobile: _____ Email: _____

Sole agency: Yes No If yes, until: _____
Commission: \$ _____ or basis: _____