

PROVISIONS TO BE CONSIDERED	NOTES
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) and ASSET PURCHASE PROCEDURE (B-1) checklists. The provisions suggested in this checklist must be considered in relation to the particular facts in the matter at hand and augmented and revised as appropriate. This checklist is current to September 1, 2016.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Additional property transfer tax on residential property transfers to foreign entities.</b> Effective August 2, 2016, the <i>Property Transfer Tax Act</i>, R.S.B.C. 1996 c. 378 was amended to impose an additional tax of 15 per cent on transfers of residential property in the Greater Vancouver Regional District (the “GVRD”) to “foreign entities” (see ss. 2.01 to 2.04). The additional tax applies on all applicable transfers registered with the Land Title Office on or after August 2, 2016, regardless of when the contract of purchase and sale was made effective. A “foreign entity” is defined as a “foreign national”, as defined in s. 2(1) of the <i>Immigration and Refugee Protection Act</i>, S.C. 2001, c. 27, or a “foreign corporation”, which is a corporation not incorporated in Canada or a corporation incorporated in Canada but controlled directly or indirectly by a foreign national or a foreign corporation. An Additional Property Transfer Tax return (FIN 532) must be filed at the time the transfer is registered. For further information, including the municipalities included in the GVRD, can be found in the Ministry of Finance Tax Information Sheet 2016-006 at <a href="http://www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/is-006-additional-property-transfer-tax-foreign-entities-vancouver.pdf">www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/is-006-additional-property-transfer-tax-foreign-entities-vancouver.pdf</a>.</li> <li>• <b>Franchises Act.</b> The British Columbia <i>Franchises Act</i>, S.B.C. 2015, c. 35 received Royal Assent on November 17, 2015, and will come into force on February 1, 2017 (B.C. Reg. 238/2016). The new legislation will impose a duty of fair dealing, require a franchisor to provide a disclosure document to a prospective franchisee, and provide remedies for the failure to do so or for misrepresentation. The Franchises Regulation, B.C. Reg. 238/2016 is available at <a href="http://www.bclaws.ca">www.bclaws.ca</a>.</li> <li>• <b>Articled students permitted to act as commissioners for taking affidavits.</b> Effective September 1, 2015, articled students and temporary articled students are prescribed as persons who are commissioners for taking affidavits in British Columbia (B.C. Reg. 142/2015, pursuant to s. 60(1) of the <i>Evidence Act</i>, R.S.B.C. 1996, c. 124). Principals remain responsible for students’ actions and will need to ensure that students understand the effect of acting as commissioner.</li> <li>• <b>Law Society Rules.</b> On July 1, 2015, revised and consolidated Law Society Rules came into effect. See: <a href="http://www.lawsociety.bc.ca/page.cfm?cid=4089&amp;t=Law-Society-Rules-2015">www.lawsociety.bc.ca/page.cfm?cid=4089&amp;t=Law-Society-Rules-2015</a>.</li> <li>• <b>Code of Professional Conduct for British Columbia (the “BC Code”).</b> In July 2015, rule 3.7-9 of the <i>BC Code</i> was amended to require that a lawyer promptly notify the client, other counsel, and the court or tribunal of the lawyer’s withdrawal from a file. An annotated version of the <i>BC Code</i> is published at <a href="http://www.lawsociety.bc.ca">www.lawsociety.bc.ca</a>.</li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>General duty of honesty in contractual performance.</b> In <i>Bhasin v. Hrynew</i>, 2014 SCC 71, the Supreme Court of Canada recognized the general duty of honesty in contractual performance: parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of a contract.</li> </ul>	

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<p>• <b>Additional resources.</b> For further information about asset purchases, see <i>Advising British Columbia Businesses</i>, looseleaf and online (CLEBC, 2006); <i>Buying and Selling a Business: Annotated Precedents</i>, looseleaf (CLEBC, 2000); <i>British Columbia Personal Property Security Act Practice Manual</i>, looseleaf and online (CLEBC, 1995); and the <i>Due Diligence Deskbook</i>, looseleaf and online (CLEBC, 1994).</p> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Identification of Parties</li> <li>3. Recitals</li> <li>4. Assets to Be Sold</li> <li>5. Purchase Price and Allocation</li> <li>6. Responsibility for Vendor’s Business Liabilities</li> <li>7. Escrows</li> <li>8. Prorations</li> <li>9. Payment of Purchase Price</li> <li>10. Security for Vendor in Vendor-Financed Transactions</li> <li>11. Closing</li> <li>12. Vendor’s Representations and Warranties</li> <li>13. Purchaser’s Representations and Warranties</li> <li>14. Vendor’s Obligations</li> <li>15. Purchaser’s Obligations</li> <li>16. Conditions Precedent to Obligations of Purchaser</li> <li>17. Conditions Precedent to Obligations of Vendor</li> <li>18. Loss or Damage Prior to Closing</li> <li>19. General Provisions</li> <li>20. Schedules</li> </ol> <p style="text-align: center;"><b>CHECKLIST</b></p> <ol style="list-style-type: none"> <li><b>1. INITIAL CONTACT</b> <ol style="list-style-type: none"> <li>1.1 Confirm compliance with Law Society Rules 3-98 to 3-109 on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) CHECKLIST.</li> </ol> </li> <li><b>2. IDENTIFICATION OF PARTIES</b> <ol style="list-style-type: none"> <li>2.1 If the vendor is a limited company or other entity, consider whether the principals should be added as covenantors (usually dependent on the history and long-term (future) financial capability of the vendor; i.e., will the vendor retain any assets or operations after the sale?).</li> </ol> </li> <li><b>3. RECITALS</b> <ol style="list-style-type: none"> <li>3.1 General statement of the legal relationships between the parties.</li> <li>3.2 General statement of the factual background to the transaction.</li> </ol> </li> </ol>	

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<p><b>4. ASSETS TO BE SOLD</b></p> <p>4.1 Tangible property.</p> <ul style="list-style-type: none"> <li>.1 Land held in fee simple, including improvements.</li> <li>.2 Land held under lease, including improvements.</li> <li>.3 Buildings and improvements.</li> <li>.4 Machinery, vehicles, and other equipment.</li> <li>.5 Furniture and accessories.</li> <li>.6 Computer equipment (a separate class under the <i>Income Tax Act</i>, R.S.C. 1985, c. 1 (5th Supp.)).</li> </ul> <p>4.2 Intangible property.</p> <ul style="list-style-type: none"> <li>.1 Trademarks and other company logos.</li> <li>.2 Trade or brand names.</li> <li>.3 Copyrights.</li> <li>.4 Designs and patents.</li> <li>.5 Computer software, source code and object code.</li> <li>.6 Restrictive covenants.</li> <li>.7 Franchises and distributorships.</li> <li>.8 Licences and leases.</li> <li>.9 Other industrial or intellectual property, including trade secrets, know how, company manuals, franchise manuals, computer manuals, etc.</li> <li>.10 Contracts</li> </ul> <p>4.3 Shares and securities.</p> <p>4.4 Inventory.</p> <p>4.5 Accounts receivable.</p> <p>4.6 Prepaid expenses.</p> <p>4.7 Work in progress.</p> <ul style="list-style-type: none"> <li>.1 Unfilled orders.</li> <li>.2 Forward commitments to purchase.</li> <li>.3 Executory contracts.</li> </ul> <p>4.8 Goodwill.</p> <ul style="list-style-type: none"> <li>.1 Right to use business name and domain name.</li> <li>.2 Customer lists including telephone numbers and other information.</li> </ul> <p>4.9 Property to be excluded (if applicable), for example:</p> <ul style="list-style-type: none"> <li>.1 Cash on hand.</li> <li>.2 Other.</li> </ul> <p>4.10 Clearly state which of the two categories (assets included, assets excluded) is the general category.</p>	

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<p><b>5. PURCHASE PRICE AND ALLOCATION</b></p> <p>5.1 Basis of calculation. Consider the following alternatives:</p> <ul style="list-style-type: none"> <li>.1 Capital assets. <ul style="list-style-type: none"> <li>(a) Fixed sum; or</li> <li>(b) Fair market value as determined by a named third party.</li> </ul> </li> <li>.2 Inventories. <ul style="list-style-type: none"> <li>(a) Assets are to be valued at the lower of “cost” or “net realizable value” or otherwise (terms and process for determination to be defined).</li> <li>(b) Date for taking inventory.</li> <li>(c) Last day for representatives to agree on valuation.</li> <li>(d) Where no agreement is reached by representatives, inventory is to be valued by a third party, such as the auditors of the respective parties or by an independent auditor or arbitrator appointed for this purpose (consider who pays, whether the decision is binding, and allow sufficient time prior to closing).</li> </ul> </li> <li>.3 Accounts receivable and prepaid expenses. <ul style="list-style-type: none"> <li>(a) To be valued at “net book value” (to be defined) or other agreed-upon basis at time of closing or other effective date determined as agreed, or on same basis as set out in item 5.1.2(d).</li> <li>(b) Allowance for doubtful accounts.</li> <li>(c) Joint election under <i>Income Tax Act</i>, s. 22(1).</li> </ul> </li> <li>.4 Deduction of amount for warranty or product liability claims.</li> </ul> <p>5.2 Allocation.</p> <ul style="list-style-type: none"> <li>.1 To land.</li> <li>.2 To buildings and improvements.</li> <li>.3 To leasehold interests.</li> <li>.4 To machinery, equipment, and vehicles.</li> <li>.5 To prepaid expenses.</li> <li>.6 To inventory.</li> <li>.7 To accounts receivable (consider warranty and reduction of price if receivables are not paid within a certain time).</li> <li>.8 To intangible property and material contracts.</li> <li>.9 To goodwill.</li> <li>.10 Consider with a tax advisor the ramifications if the Canada Revenue Agency were to reallocate under the <i>Income Tax Act</i>.</li> </ul> <p>5.3 Holdback. Consider placing holdback funds in trust with the purchaser’s lawyer or other party until all liabilities are paid/accounts receivable collected.</p>	

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<p><b>6. RESPONSIBILITY FOR VENDOR’S BUSINESS LIABILITIES</b></p> <p>6.1 Liabilities to be paid by the vendor.</p> <p>6.2 Liabilities to be assumed by the purchaser, with set-off against purchase price (as agreed).</p> <ul style="list-style-type: none"> <li>.1 Current liabilities of the vendor incurred before the closing time and set out in writing at the time of closing.</li> <li>.2 Balances owing as of time of closing under mortgages, security agreements, and other instruments of indebtedness set out in a schedule.</li> <li>.3 Other obligations.</li> <li>.4 Exclusions.</li> </ul> <p><b>7. ESCROWS</b></p> <p>7.1 Consider the following for a possible escrow (providing for the application of funds to be used to discharge the following):</p> <ul style="list-style-type: none"> <li>.1 Liabilities outstanding on closing.</li> <li>.2 Taxes.</li> <li>.3 Accounts payable.</li> <li>.4 Pending litigation.</li> <li>.5 Potential product liability and warranty claims.</li> <li>.6 Environmental concerns.</li> <li>.7 In support of the vendor’s representations and warranties (i.e., a general holdback).</li> </ul> <p><b>8. PRORATIONS</b></p> <p>8.1 Consider prorating the following amounts as between the vendor and the purchaser depending on the date of closing (may be dealt with in adjustments):</p> <ul style="list-style-type: none"> <li>.1 Insurance.</li> <li>.2 Telephone bills and listings.</li> <li>.3 Utility bills or “final readings”.</li> <li>.4 Rent and security deposits.</li> <li>.5 Alarm service system and deposit.</li> <li>.6 Utility deposits.</li> <li>.7 Fees and transferable licences.</li> <li>.8 Maintenance contracts on equipment.</li> <li>.9 Leases for equipment and signage.</li> <li>.10 Leases on motor vehicles.</li> <li>.11 Property tax.</li> <li>.12 Advertising: in yellow pages or multiple newspaper insertions.</li> <li>.13 Other.</li> </ul>	

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<p><b>9. PAYMENT OF PURCHASE PRICE</b></p> <p>9.1 Time for payment. May be a mixture of the following:</p> <ul style="list-style-type: none"> <li>.1 On execution of the contract (e.g., as a deposit; see item 9.3).</li> <li>.2 On closing.</li> <li>.3 Payment by installments. <ul style="list-style-type: none"> <li>(a) Acceleration clause in the event of a default or other circumstance.</li> <li>(b) Prepayment and prepayment penalty.</li> <li>(c) Interest. <ul style="list-style-type: none"> <li>(i) Increased rate on default. (Note restrictions in the <i>Interest Act</i>, R.S.C. 1985, c. I-15.)</li> <li>(ii) Application of payments to interest due and then to principal.</li> </ul> </li> </ul> </li> <li>.4 Factor in holdback/escrow.</li> </ul> <p>9.2 Manner of payment.</p> <ul style="list-style-type: none"> <li>.1 Assumed liabilities.</li> <li>.2 Balance. <ul style="list-style-type: none"> <li>(a) Certified cheque.</li> <li>(b) Banker's draft.</li> <li>(c) Lawyer's trust cheque.</li> <li>(d) Wire transfer. (Note restrictions in Law Society Rule 3-64(7) and (8).)</li> <li>(e) Note Law Society Rule 3-59 with respect to the restrictions on receiving cash and Rule 3-70 for records of cash transactions.</li> <li>(f) Other.</li> </ul> </li> <li>.3 Adjustment for prorations.</li> <li>.4 Vendor or third-party financing.</li> </ul> <p>9.3 Deposit.</p> <ul style="list-style-type: none"> <li>.1 Forfeit on default. Consider if it is refundable in any circumstances.</li> <li>.2 Provide for increase upon fulfillment of specific conditions precedent.</li> </ul> <p><b>10. SECURITY FOR VENDOR IN VENDOR-FINANCED TRANSACTIONS</b></p> <p>10.1 Security agreement(s).</p> <ul style="list-style-type: none"> <li>.1 Amount.</li> <li>.2 Collateral (exclude consumer goods).</li> <li>.3 Acceleration clause.</li> <li>.4 Provision for interest, including interest on default (note restrictions in the <i>Interest Act</i>).</li> <li>.5 Application of payments to interest due and then to principal.</li> </ul> <p>10.2 Mortgage on real estate.</p> <ul style="list-style-type: none"> <li>.1 Amount.</li> <li>.2 Property covered.</li> </ul>	

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<ul style="list-style-type: none"> <li>.3 Acceleration clause.</li> <li>.4 Provision for interest, including interest on default (note restrictions in the <i>Interest Act</i>).</li> <li>.5 Application of payments to interest due and then to principal.</li> <li>.6 Blended payments: check for compliance with the <i>Interest Act</i>.</li> <li>.7 Will payments include property taxes and require a separate agreement?</li> </ul> <p>10.3 Guarantees or indemnities by third parties. Consider the following:</p> <ul style="list-style-type: none"> <li>.1 Right of the vendor to impair the security (e.g., through election to sue or through seizure and sale).</li> <li>.2 Guarantor/indemnitor to maintain net worth.</li> <li>.3 Guarantor/indemnitor to postpone claims.</li> <li>.4 Security for guarantee/indemnity.</li> </ul> <p>10.4 Other security arrangements.</p>	
<p><b>11. CLOSING</b></p> <p>11.1 Time and place.</p> <p>11.2 Transfer of assets.</p> <ul style="list-style-type: none"> <li>.1 Transfer forms for real estate.</li> <li>.2 Bills of sale for chattels or other personal property.</li> <li>.3 Assignments of leases and agreements.</li> <li>.4 Assignments of licences, permits, trademarks, copyrights, and franchise agreements.</li> <li>.5 Endorsement of share certificates and/or other transfer of securities.</li> <li>.6 Assignment of receivables.</li> <li>.7 PST/GST and other tax elections, if applicable.</li> <li>.8 Other transfers, as required.</li> </ul> <p>11.3 Delivery of other closing documents.</p> <p>11.4 Registrations in necessary offices (land title office, Canadian Intellectual Property Office, etc.).</p>	
<p><b>12. VENDOR'S REPRESENTATIONS AND WARRANTIES</b></p> <p>12.1 Vendor's corporate status.</p> <ul style="list-style-type: none"> <li>.1 Valid incorporation, corporate authority.</li> <li>.2 Good standing.</li> <li>.3 No business carried on outside province, except as stated.</li> <li>.4 Compliance with applicable licensing, registration, or qualification requirements (including extraprovincial, if applicable).</li> <li>.5 Constatting documents are unchanged since a specified date.</li> <li>.6 Constatting documents permit the vendor to own its present assets and to carry on its present business.</li> </ul>	

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<p>.7 Agreement is a legal, valid, and binding obligation.</p> <p>12.2 Vendor’s authority to sell.</p> <p>.1 Good and marketable title to assets.</p> <p>.2 Title to assets is free of liens, charges, or encumbrances (except as in schedule of encumbrances or material contracts, and except for standard statutory liens, inchoate liens, etc.). Consider separate confirmation of ownership for particular types of property: real property, intellectual property, leases, etc.</p> <p>.3 Sale has been authorized by all necessary corporate action.</p> <p>.4 Sale is not in violation of corporate constitution, court orders, contracts, or applicable laws.</p> <p>.5 No third party consents are required, except as disclosed.</p> <p>.6 No triggering event has occurred under the <i>Family Law Act</i>, S.B.C. 2011, c. 25, s. 81 (or, if applicable, the former legislation, <i>Family Relations Act</i>, R.S.B.C. 1996, c. 128, s. 56). If one has occurred, consider obtaining a waiver from the other spouse or making that spouse a party to the agreement and paying the purchase price to both spouses jointly. Note that under the <i>Family Law Act</i>, the only triggering event would be the date of separation.</p> <p>12.3 Sale will not cause default, so as to impair the vendor’s rights under, or clear title to, any of the assets; nor will it impair the purchaser’s ability to carry on the business.</p> <p>12.4 Assets.</p> <p>.1 Assets and their value are as represented in schedules or elsewhere in agreement.</p> <p>.2 Assets being sold are all the assets used and necessary for the business.</p> <p>.3 Real property is as identified: no encumbrances (except as specified), no notices of expropriation.</p> <p>.4 Buildings are wholly situated on property owned by the vendor.</p> <p>.5 Buildings are constructed and are used in accordance with all laws, are in good repair, and are not subject to any government work orders or notices of non-compliance.</p> <p>.6 All leases on real property or equipment are valid and comply with registration requirements. All rents have been paid, and the vendor or other party thereto is not in breach of any terms and has not assigned or encumbered its interest under the leases.</p> <p>.7 Assets, e.g., machinery, vehicles, and other equipment (included leased property) are in good repair.</p> <p>.8 Intellectual property including patents, industrial designs, copyrights, trademarks, and trade names and applications for any of these items are in good standing and registered, if applicable. There currently exists no infringement of the vendor’s intangible property rights.</p> <p>.9 Inventory is good and usable and capable of being sold in the ordinary course.</p> <p>.10 Accounts receivable are all bona fide and collectible.</p>	



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<p>.11 Assets are not subject to work orders, notices of non-compliance, or deficiency notices.</p> <p>.12 Vendor did not acquire the assets through a transaction reviewable under the <i>Investment Canada Act</i>, R.S.C. 1985, c. 28 (1st Supp.).</p> <p>12.5 Environmental matters.</p> <p>.1 Property and buildings are free from “hazardous substances” (provide definition) and comply with all laws.</p> <p>.2 No urea formaldehyde or asbestos exists in the insulation of buildings.</p> <p>.3 No underground storage tanks exist on the property.</p> <p>.4 Vendor has handled, stored, treated, shipped, and disposed of hazardous substances in compliance with all laws.</p> <p>.5 Vendor has not had an environmental audit or assessment conducted with respect to it or property owned by the vendor. (Consider contaminated sites legislation.)</p> <p>12.6 Accuracy of balance sheet and financial statements.</p> <p>.1 Financial statements are accurate: true, correct and complete, and present fairly the financial condition and results of operations.</p> <p>.2 Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS) are applied on a basis consistent with previous years.</p> <p>.3 Books and records are complete and accurate.</p> <p>.4 No material changes since last balance sheet (may include list of such changes—incurrence of liabilities, payment of dividends, etc.).</p> <p>.5 No liabilities other than in financial statements, or as specifically assumed by the purchaser.</p> <p>.6 Auditor’s closing statement of net book value, if applicable, is accurate.</p> <p>.7 Review all financial representations and warranties with a tax advisor.</p> <p>12.7 Contracts.</p> <p>.1 Vendor is not in default under any contracts. All contracts between the vendor and dealers or suppliers are in good standing and have not been assigned or encumbered.</p> <p>.2 Outstanding forward commitments for purchase or sale of inventories are on the basis of established price lists or vary from them only in accordance with the vendor’s normal business practice.</p> <p>.3 All material contracts (written or oral) are listed and fully described in the schedule of material contracts, including all contracts:</p> <p>(a) Out of the ordinary course of business.</p> <p>(b) Where the obligation to pay exceeds a specified sum.</p> <p>(c) Which affect title to assets.</p> <p>(d) In respect of tangible property.</p> <p>(e) Dealing with pensions, group insurance, or employee welfare plans.</p> <p>(f) Dealing with bonuses or incentive compensation.</p>	

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<p>(g) That are written employment contracts, or employment contracts of fixed term.</p> <p>(h) That are non-competition and confidentiality agreements.</p> <p>12.8 Employment matters.</p> <p>.1 List of employees with job title, duration of employment, remuneration, etc.</p> <p>.2 There are no agreements to provide severance pay or separation allowances. No change of control agreements.</p> <p>.3 No obligations to pay benefits or share profits survive termination of employment or service contracts.</p> <p>.4 No employee or benefit plans. (If plans exist and are to be assumed, consider appropriate representations and warranties regarding status and funding. Consider pension, tax, and actuarial advice regarding mechanism to transfer plan assets or obligations, or both, if applicable.) Consider post-retirement benefits issue.</p> <p>.5 No collective agreement is in force or under negotiation.</p> <p>.6 No employees of the vendor are represented by a certified bargaining unit, no applications for certification are pending, and no attempt has been made to certify (otherwise consider the effect of possible successorship declaration).</p> <p>.7 Consider application of <i>Employment Standards Act</i>, R.S.B.C. 1996, c. 113, s. 97, regarding deemed continuation of employment and responsibility to employees. Also, consider <i>Labour Relations Code</i>, R.S.B.C. 1996, c. 244, s. 54.</p> <p>12.9 Vendor's legal position.</p> <p>.1 All required licences and permits are as specified and are in good standing.</p> <p>.2 Property is appropriately zoned for the purposes for which it is currently used.</p> <p>.3 Property is appropriately zoned for the purchaser's stated purposes.</p> <p>.4 Vendor's operations do not infringe any registered patent, industrial design, copyright, trademark, trade name, or other intellectual property right of a third party.</p> <p>.5 Vendor is not in breach of any court order.</p> <p>.6 Vendor is not in breach of any statute, regulation, or bylaw.</p> <p>.7 No pending change in statutes, regulations, or bylaws (including zoning) will render any part of the vendor's operations illegal.</p> <p>.8 No litigation or administrative proceeding against the vendor is in progress, pending, or threatened, and no order or judgment is outstanding.</p> <p>.9 No outstanding or unresolved product liability or warranty claims.</p> <p>.10 Vendor has paid all employer obligations including Canada Pension Plan, employment insurance, and Workers' Compensation Board contributions to date.</p>	

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<p>.11 No employment standards, human rights, workers' compensation, or similar actions are pending, and there are no orders or judgments outstanding against the vendor.</p> <p>.12 Vendor has not experienced, nor is it aware of, any occurrence or event which has, or might reasonably be expected to have, a material adverse effect on the business or the results of its operations.</p> <p>12.10 Vendor's tax situation.</p> <p>.1 True and timely filing of all federal, provincial, and local tax returns (income, sales, PST/GST, employee deduction remittances).</p> <p>.2 Tax liability is as indicated by returns.</p> <p>.3 No property tax owing.</p> <p>.4 Vendor is a Canadian resident within the meaning of the <i>Income Tax Act</i>.</p> <p>.5 Vendor and purchaser satisfy the requirements for election under <i>Excise Tax Act</i>, R.S.C. 1985, c. E-15, s. 156 or 167, if applicable.</p> <p>.6 Consider <i>Excise Tax Act</i>, s. 221(2), in the case of real property.</p> <p>.7 Vendor did not acquire the assets pursuant to any tax elections.</p> <p>.8 Note: review tax representations and warranties with the tax advisor.</p> <p>12.11 No indebtedness or liability other than as listed and described in the schedule of assumed indebtedness and liabilities or in the financial statements.</p> <p>12.12 Certificates furnished at closing are accurate.</p> <p>12.13 Consider incorporating recitals as appropriate.</p>	
<p><b>13. PURCHASER'S REPRESENTATIONS AND WARRANTIES</b></p> <p>13.1 Purchaser's corporate status.</p> <p>.1 Valid incorporation and corporate authority.</p> <p>.2 Agreement is a legal, valid, and binding obligation.</p> <p>.3 Good standing.</p> <p>.4 Status under the <i>Investment Canada Act</i>.</p> <p>13.2 Purchaser's authority to purchase.</p> <p>.1 Purchase is not in violation of constating documents or applicable laws.</p> <p>.2 Purchase is not in conflict with any agreement to which the purchaser is a party.</p> <p>.3 No third party consents required to purchase.</p> <p>.4 Purchase has been authorized by all necessary corporate action.</p> <p>.5 Purchaser has authority to give security, if there is vendor financing.</p> <p>13.3 Purchaser is a GST registrant for the purposes of <i>Excise Tax Act</i>, s. 221(2)(b), in the case of non-residential real property.</p> <p>13.4 Representations and warranties survive closing.</p> <p>13.5 Consider incorporating recitals, as appropriate.</p>	

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<p><b>14. VENDOR'S OBLIGATIONS</b></p> <p>14.1 Have auditors or agreed-upon parties determine the value of receivables, inventories, and prepaids as of the day preceding closing (or another agreed time) in accordance with the schedules or otherwise specified accounting principles, if applicable.</p> <p>14.2 Conduct of business up to closing.</p> <p>.1 No transactions outside the ordinary course of business.</p> <p>.2 Carry on business diligently at the same location.</p> <p>.3 Preserve assets intact—no further encumbrances.</p> <p>.4 Properly maintain and repair machinery, equipment, vehicles, and real property.</p> <p>.5 Not unduly deplete inventories.</p> <p>.6 Retain employees for the purchaser, if instructed.</p> <p>.7 Preserve goodwill and existing relationships with customers, suppliers, and creditors.</p> <p>.8 No purchases, other contracts, or commitments over a specified amount without the purchaser's prior consent in writing.</p> <p>.9 Advise promptly of any material adverse change.</p> <p>14.3 Give the purchaser access to properties, accounts, records (consider, in particular, access for environmental audits and testing).</p> <p>14.4 Supply the purchaser with information requested.</p> <p>14.5 Insure or continue insurance on tangible assets with the purchaser added as a named insured.</p> <p>14.6 Use reasonable best efforts to obtain consent to assignment of leases and contracts, where needed.</p> <p>14.7 Terminate all employees at the time of closing (if so instructed, and if this is a term of the transaction) and pay all outstanding holiday pay, workers' compensation contributions, income tax assessments, etc., up to the date of closing. Consider group termination issues under the <i>Employment Standards Act</i> and notice issues under the <i>Labour Relations Code</i>. (See also item 12.8.)</p> <p>14.8 Pay or remit all property and business or commodities taxes owing at the date of closing, including interest or penalties for late payment (subject to proration adjustment).</p> <p>14.9 Change the business name and/or company name, if required.</p> <p>14.10 Provide a commitment not to compete (specify the area, activity, time limit, and include principals/covenantors in their personal capacities).</p> <p>14.11 Pay the amount by which uncollected receivables exceed the provision for doubtful accounts in the statement of value (90 days, 180 days, etc.) after closing (purchaser to reassign uncollected accounts to vendor), if applicable.</p> <p>14.12 Effect transfer of assets.</p> <p>14.13 Pass or have passed all necessary corporate resolutions (including the special resolution of the shareholders as required by <i>Business Corporations Act</i>, S.B.C. 2002, c. 57, s. 301(1) and <i>Canada Business Corporations Act</i>, R.S.C. 1985, c. C-44, s. 189(3)). Provide an officers' certificate. See item 16.4.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>14.14 Execute and file any joint election required in connection with tax returns under <i>Income Tax Act</i>, s. 22 and <i>Excise Tax Act</i>, s. 167.</p> <p>14.15 Notify customers and suppliers of the sale of the business, and introduce the purchaser to major customers and suppliers.</p> <p>14.16 Give notice under <i>Competition Act</i>, R.S.C. 1985, c. C-34, Part IX, if required.</p>	
<p><b>15. PURCHASER'S OBLIGATIONS</b></p> <p>15.1 Offer employment to present employees of the business (on the basis agreed). Consider assuming pension plans or other benefits (if so, ensure that appropriate representations and warranties and tax and actuarial advice are obtained).</p> <p>15.2 Pay tax owing under the <i>Provincial Sales Tax Act</i>, S.B.C. 2012, c. 35, <i>Provincial Sales Tax Transitional Provisions and Amendments Act, 2013</i>, S.B.C. 2013, c. 1, <i>Property Transfer Tax Act</i>, R.S.B.C. 1996, c. 378, and GST, if this is a term of the transaction (unless otherwise exempted). (Effective April 1, 2013, the harmonized sales tax ("HST") was eliminated, and the <i>Provincial Sales Tax Act</i> reinstated the PST; GST (rather than HST) applies under the <i>Excise Tax Act</i>. Further information about the GST and PST can be found at <a href="http://www.cra-arc.gc.ca">www.cra-arc.gc.ca</a> and <a href="http://www2.gov.bc.ca">www2.gov.bc.ca</a>.)</p> <p>15.3 Give notice or apply for review pursuant to the <i>Investment Canada Act</i>, if required.</p> <p>15.4 Give notice under the <i>Competition Act</i>, if required. Consider availability of an advance ruling certificate (<i>Competition Act</i>, s. 102).</p> <p>15.5 Assist the vendor in obtaining consents to assignments of leases and other contracts.</p> <p>15.6 Enter into assumption agreements; use reasonable best efforts to obtain releases of liability in favour of the vendor.</p> <p>15.7 Pass all necessary corporate resolutions.</p> <p>15.8 Pay the agreed price.</p> <p>15.9 Continue operating the business (where there is vendor financing).</p>	
<p><b>16. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER</b></p> <p>16.1 Opinion of vendor's counsel, in form and substance satisfactory to purchaser's counsel, that:</p> <ol style="list-style-type: none"> <li>.1 Vendor is duly incorporated, validly existing, and in good standing.</li> <li>.2 All necessary corporate action has been taken by the vendor and, if applicable, its shareholders.</li> <li>.3 Agreement has been duly executed and delivered and is a legal, valid and binding obligation enforceable against the vendor.</li> <li>.4 There are no actions or probable actions against the vendor (based on information and belief and review of files) or other proceedings that restrain closing.</li> <li>.5 The agreement is not in conflict with the vendor's constating documents and material contractual commitments.</li> </ol>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>.6 Assets pass to the purchaser free and clear of encumbrances or contrary claims, except as contemplated by the agreement (purchaser obtains good and marketable title).</p> <p>Note: Many of these will be resisted by the vendor’s counsel and may not be appropriate. Review CLEBC’s <i>Advising British Columbia Businesses</i>. Consider extending some of these opinions to shareholders who are parties.</p> <p>16.2 Truth of the vendor’s representations and warranties at the time of closing.</p> <p>16.3 Performance by the vendor of all obligations required to be performed at or before the time of closing.</p> <p>16.4 Delivery by the vendor at the time of closing of a statement, signed by the vendor or corporate officers, that items 16.2 and 16.3 have been satisfied.</p> <p>16.5 Favourable review of acquisition of business if required by the <i>Investment Canada Act</i>, <i>Competition Act</i>, or both.</p> <p>16.6 Delivery at or before closing of duly executed consents to assignments of leases, licences, permits, and contracts (where needed).</p> <p>16.7 No adverse developments in the vendor’s business.</p> <p>16.8 Provision that the purchaser may waive some or all conditions precedent to his or her obligations.</p>	
<p><b>17. CONDITIONS PRECEDENT TO OBLIGATIONS OF VENDOR</b></p>	
<p>17.1 Truth of the purchaser’s representations and warranties at the time of closing.</p> <p>17.2 Performance by the purchaser of all obligations required to be performed at or before the time of closing.</p> <p>17.3 Consent of third parties to assignment of leases, licences, permits, and contracts (where needed).</p> <p>17.4 Favourable review of acquisition of business, if required by the <i>Investment Canada Act</i>, <i>Competition Act</i>, or both.</p> <p>17.5 Opinion of purchaser’s counsel, in form and substance satisfactory to vendor’s counsel, that the agreement is enforceable against the purchaser. (See items 16.1, 16.2, and 16.3, as applied to the purchaser.)</p> <p>17.6 Provision that the vendor may waive some or all conditions precedent to his or her obligations.</p>	
<p><b>18. LOSS OR DAMAGE PRIOR TO CLOSING</b></p>	
<p>18.1 Terminate agreement.</p> <p>18.2 Complete agreement on terms:</p> <p>.1 Payment of all insurance proceeds recovered to purchaser.</p> <p>.2 Assign insurance proceeds to the purchaser.</p> <p>18.3 Adjust the purchase price.</p>	
<p><b>19. GENERAL PROVISIONS</b></p>	
<p>19.1 Representations and warranties survive closing.</p> <p>19.2 Dollar and time limits on warranties and indemnities.</p>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>19.3 Vendor will notify the purchaser as soon as possible if the vendor determines a state of facts exists that will result in an untrue representation, non-fulfillment of any condition, or material change.</p> <p>19.4 Risk of loss (e.g., passes to purchaser on closing).</p> <p>19.5 Further assurances.</p> <p>19.6 Set-off for amounts due from the vendor (and its shareholders) to purchasers, including under indemnities.</p> <p>19.7 Entire agreement (supersedes any letter of intent or other agreement, etc.).</p> <p>19.8 Waivers to be in writing and signed. Consider providing for a right of the purchaser to waive breaches of representations and warranties without prejudicing the right to sue for damages.</p> <p>19.9 Subsequent modifications to be in writing signed by the party to be charged.</p> <p>19.10 Termination to be in writing signed by both parties.</p> <p>19.11 Successors and assigns.</p> <p>19.12 Limitations on assignability.</p> <p>19.13 Time is of the essence.</p> <p>19.14 Arbitration or mediation, if considered desirable.</p> <ul style="list-style-type: none"> <li>.1 Choice of arbitrator/mediator.</li> <li>.2 Statement that agreement constitutes a submission under the <i>Arbitration Act</i>, R.S.B.C. 1996, c. 55, <i>International Commercial Arbitration Act</i>, R.S.B.C. 1996, c. 233, or otherwise.</li> <li>.3 Choice of forum.</li> <li>.4 Statement of which issues are arbitrable or subject to mediation.</li> <li>.5 Mandatory time limits for submission of disagreements to arbitrator/mediator.</li> <li>.6 Arbitrator/mediator's decision is final and binding.</li> <li>.7 Expedited arbitration or mediation provision.</li> <li>.8 Costs.</li> </ul> <p>19.15 Choice of law and attornment to jurisdiction.</p> <p>19.16 Choice of exclusive forum.</p> <p>19.17 Currency.</p> <p>19.18 Costs of transaction.</p> <ul style="list-style-type: none"> <li>.1 Consider appropriate allocation of costs.</li> <li>.2 Normally payable by vendor: <ul style="list-style-type: none"> <li>(a) Agent's commission.</li> <li>(b) Vendor's accountant's fees.</li> <li>(c) Conveyances, transfers, and assignments.</li> </ul> </li> <li>.3 Normally payable by purchaser: <ul style="list-style-type: none"> <li>(a) Assumption agreements and releases.</li> <li>(b) Registration of documents.</li> </ul> </li> </ul>	

PROVISIONS TO BE CONSIDERED	NOTES
<p>.4 Normally negotiated:            (a) <i>Investment Canada Act</i> notice or review.            (b) <i>Competition Act</i> notice.</p> <p>19.19 Notices.            .1 Addresses for service.            .2 Prepaid registered mail or other arrangement.            .3 Deemed date of receipt.</p> <p>19.20 Nominees.</p> <p>19.21 Publicity.            .1 Press releases.            .2 Confidentiality of agreement terms, both before and after closing, if required. These terms should extend to directors, officers, and key employees of all companies involved.</p> <p>19.22 Vendor and principals/covenantors (i.e., vendor’s shareholders) jointly and severally indemnify the purchaser with regard to representations and warranties, and obligations and liabilities not agreed to be assumed by purchaser, and for any actions and expenses incident to the foregoing.</p> <p>19.23 Purchaser to indemnify vendor against assumed obligations and liabilities.</p> <p>19.24 Severability.</p> <p>19.25 General interpretation and construction.</p> <p>19.26 Counterparts.</p>	
<p><b>20. SCHEDULES (SAMPLE) (subject to provisions of agreement)</b></p> <p>20.1 Buildings and Lands.</p> <p>20.2 Leasehold Property.</p> <p>20.3 Machinery, Equipment, and Vehicles.</p> <p>20.4 Intangible Property.</p> <p>20.5 Material Contracts.</p> <p>20.6 Description of Assumed Indebtedness.</p> <p>20.7 Permitted Encumbrances.</p> <p>20.8 List of Employees and Start Date.</p> <p>20.9 Litigation.</p> <p>20.10 Accounting Principles.</p> <p>20.11 Audited Financial Statements.</p> <p>20.12 Unaudited Financial Statements.</p> <p>20.13 Other schedules as necessary.</p>	