

CHECKLIST: SALE OF BUSINESS

This checklist lists basic information required for a sale or purchase of a business. It is not necessarily complete, as particular circumstances may require different/extra information. Some of the questions may require our advice for proper interpretation and response. If you would like us to act for you on your sale or purchase of a business, please complete the checklist (so far as you can) and send it to us.

Selling agent

Agency name

Agency address

Telephone number

Fax number

Contact name

Vendor(s)

Full name(s)

Residential or registered office address(es)

ACN, ABN or ARBN

Please provide a copy of the constitution of each vendor company

Purchaser(s)

Full name(s)

Residential or registered office address(es)

ACN, ABN or ARBN

Please provide a copy of the constitution of each purchaser company

Other party's solicitor

Solicitor's name

Solicitor's address, DX number and email address

Telephone number

Fax number

Contact name

Deposit

Who is to hold the deposit – the selling agent, the vendor's solicitor or another

person?	
Is the deposit to be invested pending completion?	
Completion date	
What is the agreed completion period or date?	
Business names	
What are all the business names used in relation to the business sold?	
<p>For each registered business name, please specify:</p> <ul style="list-style-type: none"> (i) The state(s) in which it is registered. (ii) The registered number(s). (iii) The next renewal date(s). (iv) The principal place(s) of business. (v) (If applicable) the part of the business in relation to which it is used. 	
Please provide a copy of each business name registration certificate.	
Please give details of any consent that is required and has been obtained for the use of any of the business names.	
Freehold property	
<p>Please provide details of all freehold land owned by the vendor(s) and used in connection with the business which is to be sold. In respect of each property, please provide:</p> <ul style="list-style-type: none"> (i) The full address of the property. (ii) The title particulars. (iii) Details of all buildings and other improvements on the property. (iv) Details all unregistered encumbrances, leases or other interests affecting the property. <p>We will carry out property search(es) which will reveal registered affectations.</p>	
Please provide copies of every current	

survey of the property that you hold.	
<p>If we are required to advise on tax considerations in relation to the sale, please provide details of:</p> <ul style="list-style-type: none"> (i) All dates of acquisition. (ii) Dates of improvements carried out. (iii) Details of all acquisition and improvement costs. (iv) The current value of the property. 	
<p>If any freehold land owned by the vendor(s) is to be leased to the buyer instead of being sold, please provide details of the terms upon which it is to be leased.</p>	
Leased premises	
<p>Please provide details of all leases of premises occupied by the vendor(s) and used in connection with the business which are to be transferred to the buyer.</p>	
<p>In respect of each property, please provide:</p> <ul style="list-style-type: none"> (i) The full address of the property. (ii) The title particulars. (iii) Details of all buildings and other improvements on the property. (iv) Details of all fixtures and fittings and whether they belong to the vendor(s) or the lessor. (v) Details all unregistered sub-leases, licences or other interests affecting the property. (vi) The current annual rent. (vii) The date of the next rent review. (viii) The current monthly outgoings. (ix) A copy of the lease. (x) A copy of the headlease (if applicable). (xi) Any proposed new lease of the premises. (xii) Any document evidencing a variation of lease terms. 	

<p>(xiii) Any notice or order affecting the premises.</p> <p>(xiv) The lessor's disclosure statement.</p> <p>(xv) The lessors' disclosure update.</p> <p>(xvi) Any lessee's disclosure statement.</p> <p>(xvii) Any lease assignor's disclosure statement.</p> <p>We will carry out property search(es) which will reveal registered affectations.</p>	
<p>If any premises leased and occupied by the vendor(s) is to be sub-let to the buyer instead of the lease being transferred, please provide details of the terms upon which it is to be sub-let.</p>	
<p>Have you obtained your lessor's consent to transfer the lease or sub-let in each case?</p>	
<p>Contact numbers of the business(es) that are to be transferred to the purchaser(s)</p>	
<p>Telephone numbers</p>	
<p>Fax numbers</p>	
<p>Mobile telephone numbers</p>	
<p>Email & website addresses</p>	
<p>Internet domain names</p>	
<p>Description of the business(es)</p>	
<p>Please provide a brief (one or two word or sentence) description of the business to be sold.</p>	
<p>Non-competition agreements</p>	
<p>If the vendor(s) have agreed to give a non-competition covenant:</p> <p>(i) How long is it to continue?</p> <p>(ii) What geographical area is it to apply to?</p> <p>(iii) Which personnel is it to apply to?</p> <p>(iv) Which personnel is it not to apply to?</p>	
<p>Please provide a copy of any existing document evidencing a restraint on the</p>	

business.	
Purchaser's training period	
If the vendor(s) have agreed to provide the purchaser(s) with a period of training:	
(i) How long is the pre-completion training period to be?	
(ii) How long is the post-completion training period to be?	
Trading stock and work in progress	
Please provide (if applicable):	
(i) Stock list.	
(ii) Work in progress list.	
Please provide an estimate of the value of the stock to be sold, divided into current and non-current stock and specifying the period after which stock is treated as being non-current.	
What is the maximum value of trading stock that the purchaser(s) are obliged to purchase?	
Price and apportionment	
What is the agreed price?	
Does the price include GST?	
Is GST to be added to the price?	
What percentage is required as a deposit on exchange of contracts?	
How much of the price is attributable to goodwill?	
How much of the price is attributable to plant and equipment?	
Government and other licences, certifications, etc.	
Please provide a list of all government or other licences, permits, authorities, registrations, certifications, etc. which have been obtained and are current or are required in relation to the business sold.	
In the case of each such licence, etc. please specify:	
(i) The state(s) in which it is issued or registered.	

<ul style="list-style-type: none"> (ii) The serial or registered number(s). (iii) The next renewal date(s). (iv) (If applicable) the (part of the business) in relation to which it is required or is used. 	
<p>Please give details of any third party consent that is required and has been obtained in order to obtain such licences, etc.</p>	
Plant, equipment and motor vehicles	
<p>Please provide a list of all plant, equipment, motor vehicles and other tangible assets owned by the vendor(s) that are to be sold, specifying:</p> <ul style="list-style-type: none"> (i) A brief identifying description of each item or group of items. (ii) Serial numbers or other identifying particulars (where appropriate). (iii) The ownership of each item or group of items (if it is other than all the vendors). (iv) The current book value (financial written down value) of each item or group of items. 	
Equipment leases, hire purchase and hiring agreements	
<p>Please provide a list of all existing leases, hire purchase or hiring agreements in respect of plant, equipment and other tangible assets that are to be transferred to the buyer, specifying:</p> <ul style="list-style-type: none"> (i) A brief identifying description of each item or group of items. (ii) Serial numbers or other identifying particulars (where appropriate). (iii) Particulars of the relevant leases, hire purchase and hiring agreements, including the lessors'/hirers' names, term of each lease/hire purchase/hiring agreement, expiry dates and residual payments (if applicable). 	

(iv) Whether the lease or hire purchase agreement is to be paid out before the sale takes place.	
Please provide copies of all relevant equipment leases, hire purchase and hiring agreements.	
Intellectual property	
Please provide details of all copyrights, designs, patents, trade marks, web sites, domain names and other intellectual or industrial property owned by or licensed to the vendor(s) and used in the business that is to be sold, transferred or (sub-) licensed to the buyer.	
Please provide copies of all current registration certificates and pending applications in relation to that intellectual and industrial property, in each relevant jurisdiction where it is or is to be registered.	
Please provide copies of all relevant licence agreements and (where applicable) registered user agreements in respect of any of the intellectual and industrial property used in the business.	
If any of the intellectual and industrial property is to be (sub-) licensed instead of sold to the buyer, what are to be the terms of the licence?	
Licences, franchises, etc.	
Please provide details of all existing licences, franchises, agencies, distribution agreements, agreements with suppliers and customers and other agreements with third parties that are relevant to the business to be sold and that will be assigned, novated or otherwise transferred to the buyer.	
In relation to each such agreement, please provide a copy of the agreement or: (i) The names of the parties. (ii) The date of the agreement. (iii) The term of the agreement.	

<p>(iv) The territorial restrictions (if any).</p> <p>(v) A summary of the key obligations of each party.</p>	
<p>Please provide details of all licences, franchises, agencies, distribution agreements and other agreements (if any) which are to be entered into with the buyer with respect to the business to be sold.</p>	
<p>In the case of franchise agreements, please provide copies of:</p> <p>(i) The franchise agreement.</p> <p>(ii) The franchisor's disclosure statement.</p> <p>(iii) Any assignor's disclosure statement.</p>	
Employees, bonus schemes, superannuation, etc.	
<p>Please provide a list of all employees of the business, specifying:</p> <p>(i) Their names.</p> <p>(ii) Their positions.</p> <p>(iii) The date each was employed by the vendor(s) (or by a predecessor in title if they transferred to the vendor(s) upon acquisition of another's business).</p> <p>(iv) Applicable awards.</p> <p>(v) Each employee's current remuneration.</p> <p>(vi) Any employee whose employment cannot be terminated on one month's notice or less.</p> <p>(vii) Any employee who is to remain with the vendor(s).</p>	
<p>Please provide a copy of any applicable Australian Workplace Agreement.</p>	
<p>Please provide a copy of your standard terms of employment and details of all variations in them which confer additional benefits on particular employees.</p>	

Please provide particulars of any employee bonus scheme.	
Please provide details of superannuation funds to which the vendor(s) contribute on behalf of employees, including the names of the fund, the trustee and the members.	
Please provide copies of all current employee superannuation trust deeds.	
Please provide details of all workers compensation claims by employees of the business during the past 3 years.	
Excluded assets	
If any assets are to be specifically excluded from the sale, please give details of them.	
Charges, mortgages and other encumbrances	
Please give details of all registered and unregistered charges, mortgages or other encumbrances secured over or otherwise affecting any of the assets to be sold (including suppliers' retention of title clauses).	
In each case, please give details of: (i) The name of the encumbrancer. (ii) The nature of the encumbrance. (iii) Its place(s) of registration (if applicable). (iv) The asset(s) affected.	
Please provide copies of all relevant encumbrances.	
Guarantees and indemnities	
Please give details of all guarantees or indemnities that have been given by any of the vendor(s) or the shareholders or directors of vendor companies in relation to the business and assets to be sold or in relation to agreements to be transferred to the buyer. (Please remember to list guarantees and indemnities incorporated in such agreements.)	
In relation to each such guarantee or indemnity, please provide a copy of the	

<p>relevant document or specify:</p> <ul style="list-style-type: none"> (i) The names of the guarantors and the beneficiaries. (ii) The date and term (if any) of the guarantee or indemnity. (iii) The obligations guaranteed. (iv) The maximum liability under the guarantee or indemnity. 	
<p>In relation to each such guarantee or indemnity, please state whether it is to be discharged and/or replaced by a substitute security on behalf of the buyer or whether the buyer is to provide a corresponding guarantee or indemnity to the vendor(s).</p>	
<p>Litigation</p>	
<p>Please give details of all litigation or other proceedings which are threatened, pending or current in relation to any of the business and assets to be sold or transferred, including allegations of breach of leases, licences, permits, etc. (whether initiated by or against the vendor(s)).</p>	
<p>In respect of all such litigation, etc, please provide:</p> <ul style="list-style-type: none"> (i) The names of the parties involved. (ii) Brief details of the nature of the dispute. (iii) Particulars of the remedy claimed. 	
<p>Copy documents</p>	
<p>Please provide copies of the following documents for attachment to the contract (if applicable):</p> <ul style="list-style-type: none"> (i) Latest profit and loss statement. (ii) Latest balance sheet. (iii) Schedule of assets sold and apportionment of the price amongst them. (iv) Inventory of plant and equipment. (v) Latest depreciation schedule. 	

<ul style="list-style-type: none"> (vi) Licence affecting the business. (vii) Notice or order affecting the business. (viii) Continuing agreements (e.g., equipment and service agreements). (ix) Any development approval affecting the business premises. 	
Representations, etc	
<p>Please provide details of any promise, statement or representation made by or on behalf of the vendor(s) that is relied upon by the purchaser.</p>	
<p>Please provide details of any promise, statement or representation made by or on behalf of the purchaser that is relied upon by the vendor(s).</p>	