

Due Diligence Questions for Mergers/Acquisitions

DIRECTIONS: PLEASE ANSWER "YES" OR "NO" AFTER EACH QUESTION, PROVIDING AN EXPLANATION WHERE NECESSARY AND ALSO SUPPLY COPIES OF INFORMATION WHICH IS REQUESTED.

Note:

(i) "You" refers to [Seller's Owner's Name] or any of his relatives or shareholders or partners in any business.

(ii) the "Companies" means [Seller's Name]

(iii) "Intellectual Property" is any ideas embodied in any patents, patent applications or secrets which the Companies or [Seller's Owner's Name] use in their business operations (other than those ideas licensed by virtue of the fact that they are connected with machinery or equipment which are purchased (and therefore there is no separate licensing agreement covering such ideas)).

(a) Authorization of Transaction.

(1) Will entering into the transaction with [Client's Name] violate either any formal agreement or informal agreement with a third party?

(2) Is there notice that has to be given to any individual, business or government in order to complete the contemplated transactions?

(3) Is there any approval needed from any other individual, business or government in order to complete the contemplated transactions?

(b) Brokers' Fees. Are You required to pay any fees or commissions to any broker or agent with respect to the transactions?

(c) The Companies.

(1) Do You or any of the Companies have subsidiaries or interests in any other entities?

(2) Does [Seller Owner's Name] alone *presently* hold the following interests in the Companies: [Names]

(3) Please provide *copies* of the record books for the Companies including copies of all documents regarding the formation and operation of the Companies, including filings with national, state and local governments, charters, articles, by-laws, operating agreements, resolutions, meeting minutes and similar documents.

(4) Are the record books of the Companies complete as to the actions of the Companies?

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(5) Please provide *copies* of all stock certificates or similar documents evidencing ownership interests in the Companies and a *list* of all holders of any interest (other than [Seller Owner's Name]) in each of the Companies along with the number of shares of ownership and percentage of ownership interest set forth next to their names and the number of authorized shares for each of the Companies.

(6) Do You hold all of Your interests in the Companies free and clear of any security interest or restrictions on sale?

(7) Is there any buy-sell agreement, right of first refusal or similar agreement in existence for any of the Companies or any voting trusts, proxies or other agreements with respect to the voting of any interest in the Companies?

(8) Do the Companies have any outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights or other contracts or commitments which could require them to sell, issue or otherwise cause to become outstanding any stock or other interest in the Companies?

(9) Are there any outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to the Companies?

(d) Extraordinary Transactions with Third Parties.

(1) Are You or the Companies subject to any option or other contract or commitment that could require the sale or otherwise disposition of any interest in the Companies?

(2) Are You or the Companies subject to any option or other contract or commitment that could require the sale or licensing or other type of disposition of any Intellectual Property owned by or licensed to You or the Companies.

(e) Contracts. Please provide *copies* of the following contracts and other agreements to which the Companies are a party:

(1) leases of real and personal property;

(2) agreements for the purchase or sale of any real or personal property;

(3) agreements for the furnishing or receipt of services;

(4) partnership or joint venture agreements;

(5) loan agreements or agreements imposing a security interest on any assets;

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(6) agreements concerning confidentiality or non-competition;

(7) any agreement between and among (i) [Seller Owner's Name] and the Companies, (ii) the Companies, or (iii) the Companies and any affiliates;

(8) any plan of compensation (including retirement plans) for the benefit of its current or former directors, officers, and employees;

(9) any agreements with owners, employees, independent contractors or agents;

(10) any other agreement (or group of related agreements) the performance of which involves consideration in excess of Fifty Thousand Dollars (\$50,000.00).

(f) Financial Statements and Occurrence of Events Since Last Statements. Since the most recent fiscal year end for which financial statements are being provided to [Client's Name], has there been any material change in the business, financial condition (other than normal seasonal fluctuations), operations, results of operations, or future prospects of the Companies? Without limiting the generality of the foregoing, since that date have any of the Companies:

(1) entered into any transaction or agreement involving more than Fifty Thousand Dollars (\$50,000.00)?;

(2) canceled or had terminated any agreement involving more than Fifty Thousand Dollars (\$50,000.00) to which any of the Companies is a party or by which it is bound?;

(3) imposed any security interest upon any of its assets?;

(4) granted any license or sublicense of any rights under or with respect to any Intellectual Property?;

(5) had any event occur involving more than Fifty Thousand Dollars (\$50,000.00)?

(g) Litigation/Legal Compliance. Are the Companies:

(1) subject to any outstanding injunction, judgment, order, decree, ruling, or charge?; or

(2) a party or have been informed that they may be made a party (or have any reason to believe they may be) to any lawsuit, proceeding, hearing, investigation or demand for moneys not reflected on the financial statements given to [Client's Name]?

(h) Tax Matters.

(1) Have the Companies timely filed all tax returns that they were required to file and paid all taxes owed by the Companies?

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(2) Is there any dispute concerning any tax liability of the Companies which has been raised?

(3) Is there any claim concerning any tax liability of the Companies which has been made?

(4) Is there any significant chance of any potential liability for unpaid taxes being raised, whether or not under investigation?

(i) Real Property. Please provide a *list* of all real property that the Companies own or lease, including a *copy* of all deeds and leases. Have all facilities received all approvals of governmental authorities (including licenses and permits) required in connection with the ownership or operation thereof?

(j) Intellectual Property.

(1) Please provide a *list* of each patent or registration which has been issued to the Companies or [Seller Owner's Name] with respect to any of their Intellectual Property and identify each pending patent application or application for registration which the Companies or [Seller Owner's Name] have made with respect to any of their Intellectual Property and deliver correct and complete *copies* of all such patents, registrations, applications, licenses, agreements (as amended to date).

(2) Please identify each license, agreement, or other permission which the Companies or [Seller Owner's Name] have granted to any third party with respect to any of their Intellectual Property (together with any exceptions) and deliver correct and complete *copies* of all such patents, registrations, applications, licenses, agreements, and permissions (as amended to date).

(3) Is any Intellectual Property owned by a third party that the Companies or [Seller Owner's Name] use pursuant to license, sublicense, agreement, or permission? Please deliver correct and complete *copies* of all such licenses, sublicenses, agreements, and permissions (as amended to date).

(4) Will each item of Intellectual Property owned or used by the Companies or [Seller Owner's Name] immediately prior to the closing date be owned or available for use by them on identical terms and conditions immediately subsequent to the closing date?

(5) Has any claim ever been made that the Companies or [Seller Owner's Name] interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties?

(6) Has any claim ever been made that any third party has interfered with, infringed upon or misappropriated any Intellectual Property rights of the Companies or [Seller Owner's Name]?

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(k) Notes and Accounts Receivable.

(1) Are the notes and accounts receivable of the Companies subject to any *current* set off, counterclaim or other claim?

(2) Are the notes and accounts receivable of the Companies subject to any *potential* set off or other claim that you are aware of (whether or not the basis for such claim has already been discovered)?

(3) As far as you know, is there any reason to believe that notes and accounts receivable will not be collected in accordance with their terms at their recorded amounts, subject only to the reserve for bad debts set forth on the face of the most recent balance sheet?

(l) Product Warranty.

(1) Do the Companies have any current or foreseeable liability for replacement or repair of any products or other damages in connection therewith, subject only to the reserve for product warranty claims set forth on the face of the most recent balance sheet?

(2) Please provide *copies* of the standard terms and conditions of sale or lease of the Companies' products (containing applicable guaranty, warranty, and indemnity provisions).

(3) Please provide *copies* of any terms and conditions of sale or lease of the Companies' products which do not follow the standard terms and conditions (containing applicable guaranty, warranty, and indemnity provisions).

(m) Product Liability. Do the Companies have any current or foreseeable liability arising out of any injury to individuals or property as a result of the products manufactured, sold, leased, or delivered by the Companies?

(n) Employees.

(1) Please provide a *list* of the directors, officers and employees (including their positions) of the Companies and their compensation;

(2) Are the Companies party to or bound by any collective bargaining agreement or other labor agreement?;

(3) Have any strikes, discrimination claims, retaliatory discharge claims, sexual harassment claims, claims of unfair labor practices or collective bargaining been brought or threatened against the Companies?;

(4) Is there any organizational effort presently being made by or on behalf of any labor union with respect to employees of the Companies?;

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(5) Has each employee benefit plan that the Companies maintain filed all required reports and made all required contributions?

Are there any obligations to make future contributions to any plan in order to fund benefits for services which have already been performed?;

(6) Please provide *copies* of all benefit plan documents and government correspondence regarding such plans.

(o) Guaranties/Liabilities. Are the Companies a guarantor for any liability or obligation (including indebtedness) of any other person or entity or otherwise have any contingent liabilities or other liabilities not revealed on the most recent balance sheet supplied to [Client's Name]?

(p) Environmental Representations and Warranties.

(1) Have all facilities of the Companies received all required approvals of governmental authorities (including licenses and permits) related to environmental, health, and safety laws?

Has there ever been any investigation or is there any notice of any potential investigation alleging any failure to comply with such laws?

(2) Do the Companies have any liability or potential liability for damage to any site, location, or body of water (surface or subsurface), for any illness of or personal injury to any employee or other individual, or for any reason under any environmental, health, and safety law?