



## **BUSINESS SALE/ACQUISITION/MERGER CHECKLIST**

### **1. General Matters**

**1.1** Minute Books, Bylaws, Articles of Incorporation, stock books and records of shareholders. If Partnership, partnership agreements of every kind.

**1.2** List of states where the company owns or leases property, conducts business or is qualified to do business.

**1.3** Lists and copies of state and local business licenses, permits and franchises.

**1.4** List of officers and directors of company.

**1.5** List of all company subsidiaries and affiliates.

### **2. Financial Matters**

**2.1** Accountants' letters and responses resulting from either internal or external audits.

**2.2** Audited and/or unaudited financial statements of the company for each of the last five (5) fiscal years. Include balance sheets, profit and loss statements, statements of change in shareholder's equity, and list of all material liabilities not set forth in the financial statements.

**2.3** Any business plan, projections, forecasts, consultants' reports or other financial information concerning the business of the company.

**2.4** List of each of the following together with names of all persons authorized to draw thereon, have access thereto or give instructions with respect thereto:

- a. bank accounts
- b. safety deposit boxes
- c. money market accounts
- d. escrow accounts
- e. brokerage accounts, etc.

- 2.5** Copies of all loan documents, mortgages, industrial development bonds and other credit or financing arrangements and guarantees in respect of indebtedness.
- 2.6** Correspondence with lenders and other financing sources for the last three (3) years, including all compliance reports submitted by the company or its independent accountants.
- 2.7** Verification of compliance with covenants in existing financing documents.
- 2.8** Copy of the company's latest inventory.
- 2.9** List of prepaid expenses of the company as of the last entry.
- 2.10** Aged accounts receivable and payables list for the company at the end of the most recent month and at the end of each of the last four quarters.
- 2.11** List of liabilities of any nature not disclosed on the financial statements or incurred in the ordinary course of business. Any condition existing which might adversely affect the facilities, assets, prospects or business of the company.
- 2.12** Copies of all appraisal reports, surveys or document which evaluate the company's assets.
- 2.13** Copies of the current capital asset ledger and at the end of each of the last four quarters.

### **3. Tax Matters**

- 3.1** List of foreign, state and local taxes to which the company is subject showing assessment dates, dates when returns are to be filed, and dates when taxes are due.
- 3.2** List and copies of all agreements, consents, elections and waivers filed or made with any taxing authorities.
- 3.3** Description of all pending or threatened tax disputes.
- 3.4** Copies of all tax returns filed for last five (5) years (all types and jurisdictions).
- 3.5** Information with respect to any tax audits, federal, state and local, within the past five years and the results of each such audit.

### **4. Shareholders**

- 4.1** List of all shareholders of each of the companies, including stock certificate number, date on stock certificate, number of shares represented by each stock certificate, total shares owned by each shareholder.

**4.2** List and copies of all shareholder agreements, voting trust agreements or other agreements or arrangements between shareholders or between shareholders, their affiliates and the company, its affiliates or subsidiaries.

**4.3** Description and copies of all stock options, stock appreciation rights or other plans or securities providing for the issuance of stock in the company, including any documents pertaining to preemptive rights of any of the company's securities.

## **5. Employees**

### **5.1 Employment agreements**

- a. For all employees not employed at-will
- b. If employees all sign the same form, a list of employees who have signed each of the form employment agreements, with notation of material deviations.
- c. For payments or benefits or acceleration of payment/vesting
- d. Change in control
- e. Retention
- f. Bonus

### **5.2 Offer letters for all current and former employees from the past three years**

- a. If employees all sign the same form, a list of employees who have signed each of the form offer letters, with notation of material deviations.
- b. Unexpired offer letters for prospective employees

### **5.3 Consulting agreements for all current consultants and former consultants during the past three years**

- a. If consultants all sign the same form, please provide and list consultants who have signed but note material deviations.
- b. List of all consultants used during the past three years for whom no agreement was executed, including name, rate of compensation, name of consulting agreement, and whether any "entity independent contractor" (versus individual consultant) has multiple employees or one employee.
- c. Any additional agreements for consultants, including nondisclosure agreements.

### **5.4 All forms of proprietary information and inventions, confidentiality and non-competition agreements with all current and former employees employed during the past two years.**

- a. If employees all sign the same form, a list of employees who have signed each of the form employment agreements, with notation of material deviations.

## **5.5 Employee Benefit Plans and Compensation**

- a. Copies of all employee benefit plans, group life insurance plans, major medical plans, medical reimbursement plans, supplemental unemployment benefit plans, welfare plans (for hourly employees) or salary continuation plans, and a brief description of policies regarding bonuses, vacations, sick leaves and other benefits.
- b. List of names, compensation rates and length of employment of all employees of the company as of the last pay period.
- c. Copies of literature relating to all current personnel programs and benefits and programs and benefits expected to be proposed in the future.
- d. All current and past summary plan descriptions and other documents provided to employees regarding plans.
- e. Financial statements of each plan and related audit reports.
- f. A schedule describing all unfunded pension and related liabilities under any pension or other employee benefit plan.
- g. Actuarial reports for each defined benefit pension plan.
- h. Tax returns, reports, determination letters and communications or filing with the IRS, the Department of Labor and the Pension Benefit Guaranty Corporation (including Forms 5500, Annual Return Report of Employee Benefit Plan).

## **5.6 Listing of employees by geographic work location, department, compensation information (base, bonus, etc.), benefit plans in which they participate, accrued paid time off.**

- a. Do any employees work in highly regulated jurisdictions (California, etc.)?

## **5.7 Employee handbooks, manuals, guidelines and bulletins, and any memoranda pertaining to the Company's policies on vacation, termination, promotion and other employment related matters.**

- a. Form acknowledgment of receipt of the employee handbook
- b. Confirm all current employees have signed acknowledgment
- c. Confirm awareness of and compliance with applicable state or local law

## **5.8 List of employees who have terminated employment within the past two years and provide a brief statement regarding the basis for termination and whether the Company has any reason to**

believe that such former employee has violated any nondisclosure, non-competition, non-solicitation, or similar agreement or may have any claim of any kind against the Company.

- a. Separation agreements executed during the past two years
- b. Identify employees that were terminated but did not sign a separation agreement
- c. Confirm there have been no mass layoffs as defined under the WARN Act and if so, provide all documentation related to WARN Act compliance

- 5.9** Documentation relating to any charges, claims, audits and investigations with the EEOC, DOL, NLRB, OSHA, and other federal or state agencies relating to employment and labor matters within the last three years.
- 5.10** Documentation related to any internal complaints or HR investigations relating to any employment law matters, including sexual harassment, within the last three years.
- 5.11** For each employee classified as exempt under the Fair Labor Standards Act, and paid an annual salary of less than \$100,000, provide each employee's designated white-collar exemption and the employee's job description and/or a brief statement of the employee's primary job duties.
- 5.12** List all cases of known or suspected noncompliance with laws relating to wage and hour, hiring practices, nondiscrimination, promotion, benefits, working conditions, health and safety.
- 5.13** List all pending or threatened labor disputes, grievances, arbitrations, unfair labor practices, litigation or disputes involving employees.
- a. Provide key documents regarding each matter
  - b. If not reflected in key documents, provide a brief statement regarding the status of each matter
  - c. Confirm whether the Company carries EPLI insurance
- 5.14** Provide settlement agreements with current or former employees in the past three (3) years.
- 5.15** Confirm whether or not any employees have requested or been provided a workplace accommodation for a disability in the past year.
- a. Provide any related documentation, except for documentation from an employee or their healthcare provider that provides specific information regarding the nature of the employee's disability.
  - b. For any employee who requested, but was denied, an accommodation, provide a brief statement of why the Company denied the accommodation.
- 5.16** Confirm the Company provides anti-harassment training for all employees and managers and provide the date of the employees' last training.

- 5.17** Confirm whether the Company conducts background checks on new hires. If so, confirm the Company adheres to the requirements of the Fair Credit Reporting Act
- 5.18** Confirm that the Company maintains a properly completed I-9 for each employee, whether any employees are on work Visas, and whether the Company uses E-Verify.
- 5.19** FOR GOVERNMENT CONTRACTORS: Confirm that the Company maintains/updates/files as required, an Affirmative Action Plan, and all required forms relating to government contractor employment law compliance in accordance with applicable law.

## **6. Labor Relations**

- 6.1** Copies of all labor union contracts and collective bargaining agreements, the number of employees covered by each agreement and the anticipated expiration dates.
- 6.2** Description of "labor unrest" situations - all pending or threatened strikes or other labor problems during the past three years.
- 6.3** Description of current status of all unfair labor practices, complaints or grievances lodged during the last three years.
- 6.4** Description of all pending or threatened requests for arbitration, grievance proceedings, labor disputes, strikes or disturbances.
- 6.5** Description of recent union negotiations or organization attempts.

## **7. Properties**

- 7.1** List of real estate owned, leased or otherwise used by the company.
- 7.2** Copies of all mortgages, deeds and leases related to real estate used in the operation of the company.
- 7.3** Copies of any title insurance policies or lawyers abstract reports covering real estate owned, leased or otherwise used by any of the company.
- 7.4** List of any other liens or encumbrances on real estate owned, leased or otherwise used by the company.
- 7.5** List and brief description of all liens, security interests or mortgages on personal property and location where documents or financing statements are filed.
- 7.6** List and copies of all material leases of or security agreements for personal property, including conditional sales contracts, equipment leases and chattel mortgages and description of accounting treatment of each lease (e.g. capitalized or operating lease).

## **8. Intellectual Property**

**8.1** List of all patents, trademarks, trade names, copyrights, proprietary processes, etc., owned, used or developed by the company, with brief descriptions of use, registration number, date of issuance of registration, and any arrangements or agreements with respect thereto.

**8.2** List and description of any infringement claims by or against the company.

**8.3** Copies of all patent, trademark, trade name, copyright and other proprietary right licenses to or from the company.

**8.4** Names and addresses of special trademark, copyright, or patent counsel used by the company.

## **9. Contracts and Commitments**

List and copies of each of the following:

**9.1** Fuel and other energy supply agreements.

**9.2** Product purchase and sale contracts.

**9.3** Commission, sales agent and similar contracts.

**9.4** Web hosting and other digital contracts.

**9.5** Telephone contracts.

**9.6** Transportation contracts.

**9.7** Government contracts.

**9.8** Waste disposal contracts.

**9.9** Equipment maintenance contracts.

**9.10** Collection services contracts.

**9.11** Joint venture or partnership agreements.

**9.12** Advertising and public relations contracts.

**9.13** Service sharing arrangements with any entity.

**9.14** Standard purchase and sales forms.

**9.15** Forms of product warranties or guarantees, if any.

**9.16** Franchise and licensing agreements to which the company is a party.

**9.17** All other agreements, contracts or commitments relating to capital expenditures and the sale, distribution and purchase of any products or services.

**9.18** All other agreements, contracts or commitments limiting the freedom of the company to engage in any line of business or to complete with any other person.

**9.19** All other agreements, contracts or commitments which might reasonably be expected to have a potential adverse impact on the business practices, operations or condition of the company or any of its assets a property or which would prevent consummation of the proposed transaction.

## **10. Insurance**

**10.1** List of all insurance policies carried by the company including policies in effect or recently canceled, including amendments and riders, giving insurance company, policy number, property or risk covered, appraised value of covered property, extent of coverage, annual premiums, and amount of premiums which are prepaid or unpaid for prior years.

**10.2** Copies of all insurance policies.

## **11. Litigation**

**11.1** List and brief description of each threatened or pending claim, lawsuit, arbitration or investigation, including OSHA matters, EEOC matters, environmental matters, federal contract investigations, and worker's compensation matters and all incidents which may lead to litigation along with a statement of the status of each and whether it is covered by insurance.

**11.2** Copies of all consent decrees and settlement agreements to which the company is a party or that in any way affects the business.

**11.3** Most recent responses to auditors' requests for information about litigation and/or contingent liabilities, whether generated internally or by outside counsel.

## **12. Environmental Matters**

**12.1** List and copies of all federal, state and local licenses, permits, certificates and approvals.

**12.2** List and copies of all pending applications for federal, state and local environmental licenses, permits, certificates or approvals.

**12.3** Copies of court and administrative decisions and orders related to operations of the company.



**12.4** Copies of all environmental audits and other environmental studies.

**12.5** A description of the generation, treatment and disposition of hazardous substances and/or solid wastes by the company; history of problems with pollution control and environmental contamination.

**13. Data Processing**

**13.1** List of regularly distributed computer reports.

**13.2** Brief description of data processing services.

**14. Miscellaneous**

**14.1** A copy of customer lists for the company.

**14.2** Schedule of major suppliers and customers for the company, giving annual dollar amounts purchased or sold.

**14.3** Backlog and order records for the company.