**State of South Dakota**

**BUSINESS PURCHASE AGREEMENT**

**Background:**

This Business Purchase agreement (the “Agreement”) is created and effective as of the [INSERT DATE] (the “Commencement Date”).

The Agreement is between:

* 1. [INSERT SELLER NAME AND DETAILS] (“Seller” collectively the “Sellers”)
  2. [INSERT BUYER NAME AND DETAILS] (“Buyer” collectively the “Buyers”)

**WHEREAS**, the Seller owns and operates a business, [INSERT COMPANY NAME] a [Corporation] OR [Sole Proprietorship] OR [Limited Liability Company] OR [Partnership] OR [Limited Partnership] OR [Limited Liability Partnership] in South Dakota whose registered office address is [INSERT REGISTERED ADDRESS] that engages in the business of [BUSINESS DESCRIPTION] (the “Business”) and

**WHEREAS**, the parties agree that the Seller shall sell the Business to the Buyer on the terms set out within this Agreement.

**NOW THEREFORE**, for the reasons outlined below, and in consideration of the mutual covenants and obligations outlined hereto, with the intention to be legally bound, the Seller and Buyer agree to the following terms:

**Business Sale**

* 1. The Seller shall sell, assign, transfer, convey and deliver the Business to the Buyer.
  2. The Buyer, in consideration for the Business, shall purchase the Business and acquire all of the following rights, titles and interests of the Seller in the Business, subject to clause 3, including:
     1. [The assets described in Schedule 1.] OR [ALL interests, inventory, receivables, equipment, patents, trademarks, licenses, business records, goodwill, and other assets of the Business, whether tangible or intangible.] OR [The following assets only:
        1. [Cash. Cash and monetary equivalents of the Business.]
        2. [Receivables. Accounts receivable, notes receivable and other amounts owed or payable to the Business.]
        3. [Inventory. All inventory and works in progress.]
        4. [Intellectual Property. All intellectual property of the Business, including patents, copyrights, trade secrets, know-how, trademarks, software, and other content created for the Business.]
        5. [Goodwill. The Seller’s goodwill and going concern with respect to the Business.]
        6. [Licenses and Permits. All transferable licenses, permits, approvals, registrations, certificates, and other authorizations relating to the Business.]
        7. [Contracts and Other Agreements. All contracts and other agreements used in the operation of the Business.]
        8. [Books and Records. All books, records, surveys, ledgers, files, documents, lists, reports and other related materials and data related to the Business.]
        9. [Prepayments. All prepaid expenditures paid by the Business.]
        10. [Equipment and Fixtures. All equipment, fixtures, and other tangible assets of the Business.]
        11. [Real Property. All real property, including all buildings, fixtures, structures, signage, and improvements, owned by the Business.]
        12. [Insurance. All insurance policies of the Business and claims, refunds, or proceeds thereunder.]
        13. [Tax Refunds. All refunds or claims for any federal, state, local or foreign taxes paid by the Business.]
        14. [Subsidiaries and Investments. All membership or equitable interests in any subsidiary, joint venture, or other investment of the Business.]
        15. [Personnel Records. All personnel records and files of employees of the Business.]
        16. [Claims or Rights. All claims, causes of action or rights of recovery related to the Business.]
        17. [INSERT OTHER]
  3. [The Seller will not sell, assign, transfer, convey or deliver to the Buyer the following assets [listed in Schedule 2] OR [INSERT EXCLUDED ASSETS].

**Obligations**

* 1. [The Buyers obligations are listed within Schedule 3.] OR [The Buyer shall have the following obligations:]
     1. [All accounts payable of the Business.]
     2. [All accrued payroll owed to employees of the Business or other amount owed in relation to any employee benefit plans.]
     3. [All employee expenses, including severance or costs associated with termination of employees.]
     4. [Any business taxes or liabilities.]
     5. [All liabilities and obligations relating to compliance with environmental laws and regulations.]
     6. [All obligations and liabilities in connection with the contracts and other agreements included in the sale of the Business.]
     7. [All other current expenses and liabilities relating to the Business.]
     8. [INSERT OTHER]
  2. [The Buyer will not be liable for any excluded asset, in accordance with Schedule 4.] OR [The Buyer shall not be liable for any excluded asset, as well as to the following liabilities: [INSERT EXCLUDED LIABILITIES].]

**Purchase Price**

* 1. The Buyer will pay the Seller $[ENTER AMOUNT] in consideration for the sale of the business (the “Purchase Price”), payable by bank transfer [at the time of closing] OR [with an initial deposit of $[ENTER AMOUNT] payable on the Commencement Date which shall be held in escrow and discounted from the Purchase Price. The remaining balance shall become payable at the time of closing.]
  2. The Purchase Price shall be allocated in accordance with the Internal Revenue Code 1060:
     + 1. [As agreed between the parties within [30] days of the closing date.] OR [ As follows:

|  |  |
| --- | --- |
| **Asset** | **Value** |
|  | $ |
|  | $ |
|  | $ |
|  | $ |

]

* 1. [The following adjustments shall be made at the time of closing:
     1. [INSERT ADJUSTMENTS]]

**Closing**

* 1. The sale and transfer of the assets and the closing under this Agreement will take effect of the [INSERT CLOSING DATE] (the “Closing”).
  2. On the Closing date the Seller shall deliver and transfer to the Buyer:
     1. Possession of any tangible property and all of the other assets, documents and other instruments required to facilitate the transfer of the Business.
     2. All transactional documents and any other relevant paperwork required to transfer the ownership of the trade name to the Buyer. The Seller will lose all rights to use the trade name in any respect from this point.
  3. The sale will be deemed completed and effective once the parties have completed their obligations and upon receipt of the Purchase Price. At this point the Buyer will retain ownership and possession of the Business and other assets and the Seller will lose all rights to the Business and assets.

**Warranties**

* 1. The Seller warrants and represent that:
     1. it has the full capacity and authority to enter into and perform under this Agreement;
     2. it is adequately qualified and in good standing, under the law of its state of formation;
     3. it is the owner of and has good and marketable title to the property involved in this sale, free of all restrictions on transfer or assignment and all encumbrances except for those that are set forth in this Agreement;
     4. it has obtained all necessary licenses, consents, permissions and other relevant rights required to facilitate the fulfilment of their obligations under this Agreement;
     5. the Business is free from encumbrances and does not require any consents, approvals or authorizations by any governmental authority to execute, deliver and perform its obligations under this Agreement;
     6. their execution and delivery of their obligations under this Agreement will not conflict with or result in a violation of or default under any material agreements to which a Seller is a party or create a lien upon the Business;
     7. there are no proceedings, judgments, or liens present or pending or threatened against themselves or the Business and relevant assets;
     8. they have complied with all applicable federal, state, and local statutes, laws, and other regulations affecting the Business and its operation and those that are applicable to their performance of their obligations under this Agreement, they have received no notice of a violation or citation same from any governmental agencies;
     9. it has not otherwise contracted to sell, pledge, or mortgage all or part of the Business;
     10. it has paid all taxes, federal, state and local, applicable to the Business and assets;
     11. it has in full force and effect a general liability and casualty insurance policy in such amounts as are carried by companies carrying out similar activities;
     12. all the information and documents presented to the Buyer contain information that is accurate and complete, none of the information contains information that is untrue or omits a fact that would be considered to be material.
  2. The buyer warrants and represents that:
     1. it has the full capacity and authority to enter into and perform under this Agreement;
     2. it is adequately qualified and in good standing, under the laws of its state of formation;
     3. it has obtained all necessary licenses, consents, permissions and other relevant rights required to facilitate the fulfilment of their obligations under this Agreement;
     4. there are no proceedings, judgments, or liens currently pending or threatened against the Buyer that may effect of delay its purchase of the Business;
     5. the execution and delivery of this Agreement by the Buyer will not conflict with or result in a violation of or default under any material agreements to which Buyer is a party to;
     6. they understand that the Seller is making no representations or warranties other than what is provided within this Agreement.

**Covenants**

* 1. The Buyer will have the right to:
     1. request, at their own expense, that the financial records and books of the Business are inspected by a certified public accountant or other appropriately qualified financial expert.
  2. The Seller shall:
     1. operate the Business in the usual and ordinary manner in accordance with generally accepted standards of business and will not enter into any contract except as may be required in the regular course of business;
     2. pay all applicable taxes, federal, state and local;
     3. not remove or cause to be removed any inventory of the Business except upon sale in the ordinary course of business or in the event of return to a supplier for credit;
     4. not do, or permit to be done, anything that would render as a violation or breach of any of the contracts relating to the Business;
     5. pay and will not increase the salary or commissions of any employee, agent, or representative of the business.

**Restrictive Covenants**

* 1. The Seller shall not for [ENTER PERIOD] months after the Closing date, engage in a business similar to that involved in the transaction in any capacity within a radius of [INSERT RADIUS] miles from the city of [INSERT CITY] or with any restricted person, directly or indirectly. This is a condition of this Agreement.
  2. For the purpose of clause 16 a “business similar” is [INSERT BUSINESS DESCRIPTION].
  3. For the purpose of clause 16 a “restricted person” is a principal, agent, manager, owner, partner, employee, officer, director, or stockholder of any company or corporation with a business similar.
  4. [The Buyer has the right to assign clause 16 and its obligations in the event that they sell the Business. The Seller covenants that they will remain liable to this covenant to any subsequent buyer of the Business.]
  5. If the Seller breaches any of their obligations under clause 16, they shall pay the Buyer $[INSERT AMOUNT] for each week that they remain in breach.
  6. The Buyers receipt of the sums in clause 20 shall not be deemed a waiver or release of their rights to prevent further violations by seeking equitable relief in a court of law.

**[Conditions Precedent**

* 1. The Closing will not be considered complete until the following conditions have been fulfilled prior to the Closing date:
     1. [INSERT CONDITIONS]]

**Notices**

* 1. A notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's address.

**No Variation and Waiver**

* 1. No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each party for the time being. A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the party waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default**.**

**Survival**

* 1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 25 shall not affect the validity and enforceability of the rest of this Agreement.

**Entire Agreement**

* 1. This Agreement (together with the documents referred to in it) constitutes the entire Agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements, and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement (and any documents referred to in it), he does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents. Nothing in this clause 26 shall limit or exclude any liability for fraud.

**Assignment and Other Dealings**

* 1. No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over a deal in any other manner with any or all of his rights and obligations under this Agreement (or any other document referred to in it) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). Each party confirms that he is acting on his own behalf and not for the benefit of any other person.

**Third Parties**

* 1. Except as expressly provided elsewhere in this Agreement, no one other than a party to this Agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.

**Governing Law and Jurisdiction**

* 1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of South Dakota. Each party irrevocably agrees that the courts of South Dakota have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**Disputes**

* 1. If a dispute arises under or in connection with this agreement (“Dispute”), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (“Dispute Notice”) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 30. Disputes arising under this agreement shall be resolved by: (Insert those that apply)
     1. [Bringing proceedings in the courts of South Dakota.]
     2. [Arbitration in accordance with the American Arbitration Association.]
     3. [Mediation. If the parties fail to come to an agreement by mediation, then it shall be resolved through arbitration.]

1. **MISCELLANEOUS** 
   1. [INSERT ANY OTHER PROVISIONS]

**Schedule 1**

**Schedule 2**

**Schedule 3**

**Schedule 4**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Commencement Date.

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**Seller Name Seller Signature**

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**Seller Name Seller Signature**

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**Buyer Name Buyer Signature**

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**Buyer Name Buyer Signature**