

Representations and Warranties of Seller

Representations and Warranties of the Seller in a Stock Purchase Agreement.

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REPRESENTATIONS AND WARRANTIES OF SELLER

This section of the purchase agreement contains statements of fact and assurances made by the Seller that must be true and correct as of the closing date. In an aggressively summarized format, the Buyer is looking to have the following confirmed:

1. That the Seller has the authority to enter into the purchase agreement and sell the securities described, and that the share count and capitalization represented are accurate.
2. That the Company is duly organized, validly existing and in good standing.
3. That the financial statements provided are complete and correct and fairly present the financial condition of the Company.
4. That there are no undisclosed liabilities.
5. That the company has all required permits and operates within the boundaries of the law.
6. That taxes have been paid and returns have been filed.
7. That Seller has provided information regarding the Company's litigation matters, employee matters, as well as the material contracts of the Company.

Summarized even further into one sentence: The Buyer needs to know that the Company's key assets are covered, that it can legally operate and that the Buyer is protected from potential liabilities that might have been the Seller's responsibility or that grew under Seller's ownership.

Beyond this summarized format, the Representations and Warranties of the Seller or the Company can cover somewhere between 20 and 50 separate topics.

Focus of the Article: The type of business being acquired and the industry it operates in will have a big impact on which representations and warranties are of focus. For example, a manufacturer of lead-acid batteries for forklifts will be more focused on compliance with labor and environmental laws and the permits required to operate. In contrast, the acquisition of a business that has developed proprietary technology, say a database to manage hospital patients and predict outcomes, will place an emphasis on representations and warranties surrounding intellectual property.

Stock Purchase Agreement Language: The pages that follow contain hypothetical language detailing the above sequence as it might appear in a stock purchase agreement.

WHAT FOLLOWS IS A HYPOTHETICAL EXAMPLE PROVIDED SOLEY FOR GENERAL INFORMATION PURPOSES.

STOCK PURCHASE AGREEMENT

**ARTICLE I
DEFINITIONS**

[Only definitions relevant to this post have been included. This is by no means a comprehensive example of the definitions that would otherwise be found in a stock purchase agreement. It is not uncommon to see a purchase agreement with 10+ pages of definitions.]

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Key Employees” means *[The stock purchase agreement will specifically name employees. This list would typically include c-suite employees and those with influence.]*

“Knowledge” means the actual knowledge of *[The stock purchase agreement would specifically name directors, officers or employees of the Seller or the Company.]*

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, individually or in the aggregate, materially adverse to (a) the business, financial condition or assets of the Company, or (b) the ability of Sellers to consummate the transaction contemplated hereby; provided, however, that Material Adverse Effect shall not include any event, occurrence, fact, condition or change attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industry in which the Company operates; (iii) any changes in securities markets; (iv) acts of war; (v) any natural or man-made disaster or acts of God; (vi) any changes in applicable laws or accounting rules; or (vii) any failure by the Company to meet any forecasts for revenue or earnings.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association, governmental authority or other entity.

“Real Property” means the real property owned, leased or subleased by the Company, together with all buildings, structures and facilities located thereon.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers represent and warrant to Buyer that the statements contained in this Article III are true and correct as of the date hereof.

Section 3.1 Authority of Sellers Each Seller has full power and authority to enter into this Agreement, and to consummate the transactions contemplated hereby.

Section 3.2 Organization and Authority of the Company The Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of [STATE]. The Company has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it is currently conducted.

Section 3.3 Capitalization The authorized capital stock of the Company consists of [XX,XXX,XXX] shares [of common stock], par value [X], of which [XX,XXX,XXX] shares are issued and outstanding. *[Language stating that the Seller owns these shares free and clear of all Encumbrances, and that upon consummation of the transaction, Buyer will own all of the shares free and clear of all Encumbrances.]*

Section 3.4 No Conflicts *[Language stating that the transaction will not result in a conflict with any provision of the certificate of incorporation, by-laws or other organizational documents of the Company. This provision will also state, among other things, that the transaction will not result in a conflict with or violation or breach of any law.]*

Section 3.5 Financial Statements *[Language stating that complete, true and correct copies of the financial statements of the Company have been provided to Buyer.]*

Section 3.6 No Subsidiaries The Company does not own, or have any interest in any shares or have an ownership interest in any other Person.

Section 3.7 Undisclosed Liabilities The Company has no liabilities, obligations or commitments, except (a) those required in accordance with GAAP to be reflected on the balance sheet and (b) liabilities which are not, individually or in the aggregate, material in amount.

Section 3.8 Material Contracts *[Should the Company have a large number of material contracts, this provision will call for a schedule of these contracts. The contracts that qualify will typically be identified as those in excess of some aggregate consideration to be determined by the parties.]*

Section 3.9 Real Property The Company has good and valid title to all Real Property and other assets reflected in the audited financial statements. All such properties and assets are free and clear of Encumbrances. *[In the event that the Company does not own real property this provision will focus on the Company's leasehold interests.]*

Section 3.10 Condition and Sufficiency of Assets The buildings, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company are structurally sound, are in normal operating condition, and are adequate for the uses to which they are being put. The buildings, furniture, fixtures, machinery, equipment and other items of tangible personal

property of the Company are sufficient for the Company to continue operating in substantially the same manner as conducted prior to the closing.

Section 3.11 Intellectual Property Schedule [X.X] of the Disclosure Schedules sets forth a true, correct and complete list of all Company intellectual property identified by what is owned and what is licensed by the Company. *[The text that follows will confirm that (i) the Company owns and has exclusive title to each item listed in the Disclosure Schedule and (ii) there is no litigation surrounding the Company's intellectual property that would restrict use of Company intellectual property.] [This section will also contain a representation that the Company's business as conducted (including the use of the Company intellectual property in connection therewith) and the products, processes and services of the Company have not infringed, misappropriated or otherwise violated the intellectual property or other rights of any individual or entity, and that no individual or entity has infringed, misappropriated or otherwise violated any Company intellectual property.]*

Section 3.12 Inventory All inventory of the Company, whether or not reflected on the balance sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice. All such inventory is owned by the Company free and clear of all Encumbrances.

Section 3.13 Accounts Receivable The accounts receivable reflected on the balance sheet (a) have arisen from bona fide transactions in the ordinary course of business consistent with past practice, (b) constitute only valid, undisputed claims of the Company and (c) subject to a reserve for bad debts shown on the interim balance sheet or, with respect to accounts receivable arising after the date of the interim balance sheet date, are collectable in full within [X] days after billing.

Section 3.14 Customers Section [X.XX] of the Disclosure Schedules sets forth each customer who has paid aggregate consideration to the Company for goods or services rendered in an amount greater than or equal to \$XXX,XXX for any of the [X] most recent fiscal years (collectively, the "Material Customers"). The Company has not received any notice that any of the Material Customers intends to change the terms with respect to the use of goods or services of the Company or has ceased, or intends to cease after the Closing, to use the goods or services of the Company or to otherwise terminate or materially reduce its relationship with the Company.

[Note: Article III may include a similar section for Suppliers in some purchase agreements.]

Section 3.15 Insurance Policies As of the date hereof, Schedule [X.X] contains a true, correct and complete list of all insurance policies maintained by the Company. Copies of all such insurance policies have been made available to the Buyer. Each such insurance policy is in full force and effect and has not been subject to any lapse in coverage.

Section 3.16 Compliance with Laws; Permits The Company is in material compliance with all laws applicable to its business, properties or assets.

All material permits required for the Company to conduct its business have been obtained by the Company and are, to the Knowledge of the Sellers, valid and in full force and effect.

Section 3.18 Environmental Matters To the Knowledge of the Sellers, the Company is in compliance in all material respects with all environmental laws. The Company has not received any notice of any proceeding from any governmental authority involving environmental claims or notices.

Section 3.19 Employment Matters

- (a) Schedule [X.X] contains a true, correct and complete list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof.
- (b) To the Knowledge of the Sellers, no executive or significant group of employees, including the Key Employees, plans to terminate employment with the Company as a result of the consummation of the contemplated Transaction.
- (c) To the Knowledge of the Sellers, the Company is in compliance with all currently applicable Laws with respect to employment practices.
- (d) The Company is not bound by any collective bargaining agreement. There are no work stoppages or other material labor disputes pending or, to the Knowledge of the Sellers, threatened against the Company.
- (e) The Company has not implemented a layoff that triggered notice requirements of the Worker Adjustment and Retraining Notification Act of 1988 (the “WARN Act”).
- (f) The Company has fully and timely paid all wages, salaries, wage premiums, commissions, bonuses, expense reimbursements, severance and other compensation that has come due and payable to its current and former employees.

Section 3.20 Employee Benefit Matters

- (a) Schedule [X.X] contains a true, correct and complete list of the Company benefit plans.
- (b) Each Company benefit plan has been established, operated and administered in all respects in accordance with its terms and in compliance with ERISA. *[This will include additional text confirming that there is no indication that the Company has created any ERISA- or company-benefit-plan-related liability.]*

Section 3.20 Taxes The Company has timely filed all income, franchise and other material Tax Returns required to be filed by it pursuant to applicable laws. Such Tax Returns are accurate, complete and correct in all material respects and have been prepared in material compliance with all applicable laws. The Company has paid all income, franchise and other material taxes due and payable by it to the appropriate taxing authority. The Company has established reserves on the Financial Statements for all Taxes not yet due and payable in respect of any pre-closing tax period.

[This provision will include additional language to reassure the Buyer that the Seller has not created any additional tax-related liabilities.]

Section 3.21 No Material Adverse Effect Since the date of the latest balance sheet, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company, any event that could reasonably be expected to have a Material Adverse Effect.

Section 3.22 Litigation [Except as set forth on Schedule X.X] There is no proceeding or action pending or threatened against or, to the Knowledge of the Sellers, affecting the Company or any of its properties or rights with respect to the transactions contemplated in this Agreement.

Section 3.23 Books and Records The minute books are complete and correct and have been maintained in accordance with sound business practices. All such minute books have been made available to Buyer in the data room.

Section 3.24 Brokers Except for [Investment Bank Engaged] no broker or investment banker is entitled to any fee or commission in connection with the transactions contemplated by this Agreement.