

## Meet Your Buyer: Does your Business satisfy the Due Diligence Checklist?

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### PRELIMINARY DUE DILIGENCE CHECKLIST

#### A. Corporate Structure

1. Charter. Articles of Incorporation of the Company and all amendments thereto.
2. Bylaws. Bylaws of the Company and all amendments thereto.
3. Shareholders. Current shareholders list, including names of shareholders and number of outstanding shares, warrants, options or other rights to purchase Company shares, held by each shareholder.
4. Subsidiaries and Affiliates. List of all entities in which the Company owns (directly or indirectly) any shares, partnership or other ownership interest. List of all other affiliates of the Company or its management, and description of such relationships.
5. Jurisdictions. List of all jurisdictions in which the Company is qualified to do business or otherwise is operating.
6. Offices. List of all Company offices.
7. Options. Copies (or, if oral, description) of all outstanding rights, subscriptions, warrants, calls, unsatisfied preemptive rights, options or other agreements of any kind to purchase or otherwise receive shares from the Company.
8. Minute books – Last 5 years.
9. Trade Names. List of all names under which the Company does business.

#### B. Financial Structure

1. Financial Statements. Company's balance sheet for the last five full fiscal years and the related statements of income, retained earnings and changes in financial position, including the notes thereto, compiled by independent accountants, if any, or the Company's chief financial officer.

2. Interim Financials. The unaudited balance sheet, including the footnotes thereto, of the Company for each fiscal quarter since the end of the last full fiscal year.
3. Tax Returns. Copies of all tax returns filed by the Company during the last five full fiscal years.
4. Tax Audits. List of all ongoing tax audits.
5. Tax Deficiencies. List of all deficiencies or additions to tax, interest, and penalties that have been made or proposed, and the amounts of any payments made by the Company with respect to any tax audit within the last three years.
6. Tax Elections. List of all tax elections that are in effect for the last full fiscal year and the current fiscal year.
7. Tax Extensions. List of all extensions of time granted to the Company for the assessment of tax deficiencies.
8. Tax Liens. List and copies of all liens on properties or assets of the Company imposed as a result of the delinquent payment or nonpayment of any tax or other governmental charge.
9. Tax Assessments. List of all unpaid assessments for additional taxes.
10. Accounts Receivable. List of receivables as of a current date, including an age analysis.
11. Accounts Receivable Collectibility. An analysis of doubtful accounts.
12. Customers. List of customers, including the number of sales and volume by year, for the past five years.
13. Work in Process. List of work now being performed by the Company, including: customer's name, copy of any applicable written contract/order, schedule for completion of the work/delivery, accounting of billings, payments and estimated dates and amounts of future billings, a statement of any complaint received or dispute known or anticipated with respect to the customer whether limited to this particular contract/order or not, and name of responsible party for both the Company and the customer.
14. Promotional Work. List of work now being done which is of a promotional or business development nature. Where applicable, indicate the name of the potential customer, contract or project description, amount of money already expended, and anticipated total cost of remaining work.
15. Indebtedness. List and description of all indebtedness and other financing arrangements of the Company, including without limitation any guarantees concerning indebtedness provided by the Company.
16. Contract/Order Execution. Describe any formal practices of the Company in monitoring prospective contracts/sales and execution of awarded contracts/approved orders.
17. Contracts/Orders in Process of Negotiation. List of prospective contracts/orders on which work has not been started, but which are in the process of negotiation. Where appropriate, indicate the name of the customer, contract/order description, and anticipated total fees.

18. Profitability Analysis. List of completed sales for the past five years, including customer name, contract/order description and total amount received.
19. Profitability Analysis on Work in Process. List of orders now in together with an estimate of profit or loss on the job when it is completed/delivered.
20. Volume Analysis. List of volume by product type and total amount earned for the past three years.
21. Accounting Method. Does the Company use cash or accrual accounting?
22. Bad Debt Reserve. Does the Company maintain a bad debt reserve? If yes, what amount? What has been the Company's bad debt loss ratio during the past three years?
23. Assets. Are all fixed assets recorded at cost? If no, what method is used?
24. Business Plans. Copies of all written business plans, budgets and projections, and all written comparisons of actual results of operations and plans, budgets and projections, for the Company prepared during the last three years.

### **C. Compliance with Laws**

1. Permits. List and copies of all licenses, permits, orders or approvals of, and all required registrations made with, any governmental or regulatory body that are material to or necessary for the Company's business (collectively, "**Permits**").
2. Permit Violations. List and copies of all violations with respect to any Permit and any proceedings, pending or threatened, to revoke or limit any Permit.
3. Legislation. List of any current or proposed legislation of which the Company is aware which has or may have a materially adverse effect on the business of the Company.
4. Judgments and Settlements. List and copies of all judgments, injunctions, awards or decrees against the Company. List and copies of all agreements to settle or compromise any proceeding pending or threatened against the Company.
5. Litigation. List and description (including, if applicable, a description of any insurance protection) of all legal, administrative or arbitral proceedings, pending or threatened, involving the Company or any of its properties or assets. Include the magnitude of the Company's liability (or damages sought by the Company) in each instance.
6. Indemnification. List, copies and description (including, if applicable, a description of any insurance protection) of all legal, administrative or arbitral proceedings, pending or threatened, against any director or officers of the Company which may give rise to a claim against the Company for indemnification of such director or officer. Include the magnitude of the Company's liability in each instance.

## D. Operations

1. Contracts. Please provide copies (or, if oral, a summary) of the following list of Contracts. As used herein, "Contracts" means contracts, commitments, agreements, understandings, plans, leases, instruments, policies, permits, licenses or other binding arrangements or ongoing negotiations to which the Company is a party or by which its assets or properties are bound:
  - a. Contracts with any current or former officer, director, shareholder, employee, or consultant (or with any entity in which any of the foregoing is a controlling person). This should include loan agreements, confidentiality and non-compete agreements, shareholder agreements, employment agreements, joint ventures, leases, or any other agreement to which the Company and any officer, director, shareholder, employee or consultant are parties.
  - b. Contracts with any labor union or association representing any employee.
  - c. Contracts for the sale of assets of the Company other than in the ordinary course of business.
  - d. Joint venture Contracts.
  - e. Contracts under which the Company agrees to indemnify any party or to share the tax liability of any party.
  - f. Contracts that can be cancelled without liability, premium or penalty only on ninety days' or more notice.
  - g. Contracts with customers, distributors or suppliers.
  - h. Contracts containing (a) covenants of the Company not to compete in any line of business or with any person in any geographical area or (b) covenants of any person not to compete with the Company in any line of business or in any geographical area.
  - i. Contracts relating to the acquisition by the Company of any operating business or the capital stock of any entity.
  - j. Contracts relating to the borrowing of money.
- k. Contracts that in any way restrict or may restrict any sale, transfer, assignment or other disposition of the assets of the Company
- l. Any Contract under which a default or breach has occurred or is claimed to have occurred
- m. Any other Contracts, whether or not made in the ordinary course of business, pursuant to which payments in excess of \$10,000 may be expected to be made or received after the completion of this acquisition.

2. Benefit Plans. List and copies of all bonus, profit sharing, life insurance, health insurance and other employee benefits plans; including a statement of any increases made during the current fiscal year to the benefits payable under any such plan.
3. Fringe Benefits. Describe the Company's current fringe benefit practices for employees (number of paid holidays, vacation policy, paid sick leave days, group insurance benefits, etc.)
4. Employees. List of all employees, showing compensation and titles and any accrued benefits, including vacation, sick pay, and bonuses, contractually or customarily payable with respect to any period that is now in progress or may be in progress before closing.
5. Increases. List of any increases made in the compensation of any employee since the end of the last full fiscal year.
6. Training. Description of any training and development programs conducted by the Company for its employees.
7. Environmental Matters. List and description of each facility or real property currently or previously owned, leased or otherwise operated by the Company, the nature of the operations and activities conducted there and any related conditions presenting compliance issues concerning environmental laws. List, copies and summary of any current or past investigations, complaints, proceedings, notices of violations, lawsuits, studies or evaluations relating to environmental or health and safety matters concerning the Company.

#### **E. Assets**

1. Leases. List, copies and summary description of all leases, subleases or other agreements under which the Company is lessor or lessee of any property.
2. Real Property. List of real property owned by the Company.
3. Options on Real Property. List of all contractual obligations or options of the Company to purchase or acquire any interests in real property.
4. Tangible Property. List of all tangible property material to the business of the Company, including, without way of limitation, all inventory, work in process, raw materials, finished goods, furniture, fixtures, equipment and motor vehicles.
5. Intangible and Intellectual Property. List of all patents, trademarks, service marks, trade names, franchises and other intellectual property (including all applications for any of the foregoing) that are material to the business of the Company; and description of any notice received by the Company that the Company's exclusive right to use any of the foregoing is or may be challenged by a third party.
6. Liens. List of all liens or encumbrances on any real property, tangible property or intangible property owned by the Company.

7. Insurance. List and brief description (specifying the insurer and the policy number or covering note number with respect to binders) of all policies or binders of fire, liability, product liability, workmen's compensation, vehicular and other insurance held by or on behalf of the Company (collectively the "Insurance Policies").
8. Insurance Default. List of (i) any defaults by the Company under the Insurance Policies and (ii) the Company's failure to give any notice or present any claim under the Insurance Policies in a timely fashion.
9. Insurance Claims. List of all outstanding unpaid claims under the Insurance Policies.
10. Retrospective Premiums. List of any agreement by the Company to pay, or any liability by the Company for, any retrospective insurance premiums.
11. Notices of Insurance Cancellations. List of any notice of cancellation or non-renewal of any Insurance Policy.
12. Insurance Termination. List of any known inaccuracy in any application for any Insurance Policy, any failure to pay premiums when due or any similar state of facts that might form the basis for termination of any Insurance Policy.

#### **F. Miscellaneous**

1. Conduct of Business. Confirm that since [last financial year end of Company] it has not:
  - a. entered into or amended any employment agreement, entered into or amended any agreement with any labor union or association representing any employees, adopted, entered into, or amended any employee benefit plan, or made any change in the actuarial methods or assumptions used in funding any defined benefit pension plan, or made any change in the assumptions or factors used in determining benefit equivalencies thereunder;
  - b. waived any right of material value to its business;
  - c. made any change in its accounting methods or practices or made any change in depreciation or amortization policies or rates adopted by it;
  - d. materially changed any of its business policies, including, without limitation, advertising, marketing, pricing, purchasing, personnel, budget or booking policies;
  - e. made any general wage or salary increase or bonus, or any increase of \$5,000 or more in any other direct or indirect compensation, for or to any of its officers, directors, employees, consultants, agents or other representatives;

f. made any loan or advance to any of its officers, directors, employees, consultants, agents or other representatives (other than travel advances made in the ordinary course of business), or made any other loan or advance otherwise than in the ordinary course of business; or

g. suffered or incurred any damage, destruction or loss (regardless of whether covered by insurance) materially and adversely affecting the assets, properties, business, operations or condition (financial or otherwise) of the Company.

-- If not able to confirm any of the foregoing, please explain.

2. Consents. List of all consents required to consummate this acquisition.
3. Articles. Copies of all magazine, trade journals and newspaper articles regarding or mentioning the Company.
4. Unrecorded Liabilities. Does the Company have any unrecorded liabilities or contingencies? If yes, please explain.
5. Other. Please provide copies of organization charts, personnel manuals, policy statements or other information which will provide background information to enable us to have a better understanding of the Company.