# PURCHASE OF BUSINESS AGREEMENT

This Purchase of Business Agreement (this "Agreement") is made on _____ for the sale of the business known as _____ (the "Business") as a going concern.

Seller: _____, mailing address _____. If the Seller is a company, owner signing personally for the non-compete and transition duties (the "Owner"): _____.

Buyer: _____, mailing address _____.

**1. THE BUSINESS AND THE STRUCTURE OF THE SALE**

The Business is a _____ business with its principal place of business at _____. It does the following: _____.

Structure (check one): [ ] Asset sale. The Seller sells substantially all of the assets used in the Business, including its equipment, fixtures, trade names, telephone numbers, websites, customer lists, transferable licenses and goodwill (the "Purchased Assets"), free of liens. [ ] Stock or membership interest sale. The Seller sells all of its [ ] shares of stock [ ] membership interests of _____ (the "Company"), which keeps its own assets and liabilities.

Specific items included: _____. Assets the Seller keeps (cash, bank accounts and tax records always stay with the Seller): _____.

**2. PRICE AND PAYMENT**

Purchase price: $_____ (the "Purchase Price"), paid as follows: a deposit of $_____ held in escrow by _____ and credited at Closing; $_____ by a promissory note from the Buyer (the "Seller Note") at _____% simple interest per year, payable in _____ equal monthly installments and secured by the Purchased Assets or a pledge of the shares or interests; _____% of the Purchase Price held in escrow until the claims period below ends (the "Holdback"); and the balance in cash at Closing.

Earn-out (optional): _____% of the gross revenue of the Business above $_____ for each 12-month period during the _____ months after Closing, up to $_____ in total.

If the Seller Note is used, it may be personally guaranteed by _____, and the Seller will subordinate it to the Buyer's bank loan if the bank requires.

**3. ALLOCATION AND FORM 8594**

For an asset sale, the Purchase Price is allocated as follows: equipment, fixtures and other tangible assets (Class V) $_____; inventory (Class IV) $_____; non-compete, customer lists, licenses and other intangibles (Class VI) $_____; goodwill and going concern value (Class VII) $_____. Each Party will file IRS Form 8594 consistently with this allocation.

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**4. INVENTORY, RECEIVABLES AND CLOSING ADJUSTMENTS**

Inventory (check one): [ ] included in the Purchase Price; [ ] counted within 2 days before Closing and paid for separately at the Seller's cost, up to $_____; [ ] none.

Accounts receivable at Closing (check one): [ ] kept by the Seller; [ ] transferred to the Buyer as part of the Purchase Price. Trade payables the Buyer assumes, for a credit at Closing: _____. The Seller pays all other debts of the Business.

Rent, utilities, taxes and fees are prorated as of the Closing Date. The Buyer receives a credit for customer deposits, gift cards and prepaid work it will honor.

**5. PREMISES, CONTRACTS, LICENSES AND EMPLOYEES**

Premises (check one): [ ] the Seller's lease is assigned to the Buyer with the landlord's written consent; [ ] the Buyer signs a new lease with the landlord; [ ] the Seller owns the premises and will lease them to the Buyer; [ ] no premises are included. Contracts the Buyer takes over: _____.

The Buyer will apply for the licenses and permits it needs, including: _____. Any liquor license transfer requires approval of the alcohol authorities before Closing.

Employees (check one): [ ] the Buyer offers jobs to all employees; [ ] the Buyer may hire the employees it chooses; [ ] the Buyer hires no employees. The Seller pays all wages and accrued vacation the law requires through Closing.

**6. DUE DILIGENCE, CONDITIONS AND CLOSING**

For _____ days after signing, the Buyer may review the tax returns, financial statements, bank and sales tax statements, leases, contracts and payroll records of the Business, and may end this Agreement for any reason during that period with a full refund of the deposit.

The Buyer's duty to close depends on: [ ] the Buyer obtaining financing; [ ] landlord consent or a new lease; [ ] third-party consents to contracts; [ ] approval of license transfers; no material adverse change; and the Seller's statements being true at Closing.

Closing will take place on _____. The Seller delivers a bill of sale and assignments (or the share or interest certificates and company records), lien releases, keys, passwords and account access. The Buyer delivers the payment and any Seller Note, security agreement and guaranty.

**7. REPRESENTATIONS, TAXES AND TRANSITION**

The Seller states that it has authority to sell, good title, accurate financial statements and tax returns, assets in good working order, no pending lawsuits, all required permits, and all taxes and wages paid. The Buyer states that it has authority to buy and the funds to close.

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The Seller pays all taxes of the Business for periods before Closing. Where state law can make a buyer liable for the seller's unpaid taxes, the Parties will give the required notices, and the Buyer may hold back enough of the price until the tax agency issues its clearance.

For _____ days after Closing, the Seller will train the Buyer and introduce it to customers, suppliers, the landlord and staff, at no extra charge.

**8. NON-COMPETITION AND NON-SOLICITATION**

For _____ years after Closing, the Seller and the Owner will not compete with the Business within _____, and will not solicit its customers or employees. If a court finds these limits too broad, it may enforce them to the extent the law allows. Some states limit the area or length of a seller's non-compete.

**9. INDEMNIFICATION**

Each Party will indemnify the other for losses from its breach of this Agreement. The Seller also indemnifies the Buyer for debts and liabilities of the Business from before Closing that the Buyer did not assume, and for taxes for periods before Closing.

Claims about the Parties' statements must be made within _____ months after Closing. Liability for those claims is capped at [ ] _____% of the Purchase Price [ ] $_____ [ ] no cap, except for claims about authority, title, taxes, retained liabilities or fraud. No claim may be made until losses exceed $_____. The Buyer may recover proven claims from the Holdback and set them off against the Seller Note or earn-out.

**10. DISPUTES AND GENERAL TERMS**

The laws of the State of _____ govern this Agreement. Disputes will be resolved (check one): [ ] in court; [ ] by mediation, then court; [ ] by binding arbitration, in _____ County.

This Agreement is the complete agreement between the Parties about its subject and replaces any letter of intent. It can be changed only in a signed writing. If a court finds any part unenforceable, the rest stays in effect. It may be signed in counterparts and electronically.

Additional terms: _____

**SIGNATURES**

**Seller**

Signature: _____ Date: _____

Printed Name: _____

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**Buyer**

Signature: _____ Date: _____

Printed Name: _____

**Owner (if any)**

Signature: _____ Date: _____

Printed Name: _____

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