



Due Diligence

Business Owner Action Item: Provide all due diligence requested by the Buyer.

Why is This Important? Issues discovered in due diligence are often used by the Buyer for a reduction in the purchase price previously negotiated in the letter of intent.

In My Experience: The Buyer will engage in legal due diligence and business due diligence. The Buyer will typically conduct legal due diligence by reviewing the documents provided by the Company in response to the due diligence list (like the list below). The Buyer will typically conduct business due diligence through interviews of the Company's management team, employees, customers, and vendors, and reviewing the Company's financial statements and accounting reports.

In My Experience: If the business owner completed step 1 (perform legal audit), step 2 (prepare GAAP financial statements) and step 4 (prepare a quality of earnings report) of the 11 Steps to Prepare for the Sale of the Company, then the due diligence process is significantly easier.

The due diligence process involves a legal, financial, and strategic review of the Company's documents, contractual relationships, operating history, and organizational structure. The due diligence process will attempt to (i) confirm the value proposition underlying the transaction, and (ii) look for deal breakers (i.e., unacceptable levels of risk or liabilities).

Due diligence must be a cooperative and patient process involving both the Buyer and the Company. Material misrepresentations or omissions can (and often do) lead to post-closing litigation, which is expensive and time-consuming for both parties.

The following is a list of legal documents that will be requested and reviewed by the Buyer in connection with the Buyer's legal due diligence.

A	BASIC CORPORATE DOCUMENTS:
A1	Certificates of incorporation/formation and similar charter documents (including all amendments thereto).
A2	Bylaws, partnership agreements, limited liability company agreements or operating agreements (including all amendments thereto).
A3	Minutes of all meetings of managers, directors, committees of directors, and shareholders, and copies of all written consents of the foregoing, for the shorter of the last five years or since inception.
A4	Schedule of all states, foreign countries, and other jurisdictions in which qualified to do business.



A5	List of all subsidiaries and other affiliates, including full name, the jurisdiction of incorporation or organization, number of securities outstanding, class of securities and securities ownership.
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B	ISSUANCE OF SECURITIES AND MERGERS AND ACQUISITIONS:
B1	Stock certificate (or limited liability company interest) books and transfer ledgers or other records that show all issuances, grants, and cancellations of Company equity interests.
B2	Schedule showing capitalization on a fully diluted basis of the Company. Such schedule should list the name of each equity holder and its holdings by series or class of capital stock or unit.
B3	Schedule, together with copies, of all non-employee option agreements, profits interests, warrants, puts, calls, purchase or acquisition agreements, buy/sell agreements and similar rights or agreements, and agreements under which any person has registration rights, preemptive rights, or rights of first refusal, in each case relating to the Company's securities.
B4	Copies of all equity compensation plans, including profits unit plans, stock option plans, stock purchase plans and other employee-related stock-based plans, together with related stock option or purchase agreements, relating to the Company's securities, together with a schedule of all optionees, including name, date of grant, strike price and expiration date.
B5	Copies of all written proposals and agreements relating to the purchase or other acquisition of the Company's securities (debt or equity), together with copies of related correspondence with investors.
B6	Copies of all agreements relating to the voting of shares, including Voting Trusts, Shareholder Agreements, Operating Agreements, Proxies, or similar arrangements covering, or relating to, any of the Company's securities.
B7	A schedule, together with copies, of all Letters of Intent and agreements or plans for mergers, consolidations, reorganizations, or significant acquisitions or dispositions of assets involving the Company or any agreements in principle relating to any of the foregoing, together with related documentation.
B8	Trust documents of equity holders.



C	FINANCING AGREEMENTS AND RELATED MATTERS:
C1	A schedule, together with copies, of all agreements, instruments and other documents evidencing or governing borrowings or available borrowings, whether secured or unsecured, including, but not limited to, loan or credit agreements, notes, security agreements, pledge agreements (stock or otherwise), indentures, mortgages, deeds of trust and any other evidence of indebtedness.
C2	A schedule, together with copies, of all guarantees of third-party obligations (whether related or unrelated third parties), and all bonds posted, by the Company, and all such guarantees of obligations of the Company, and all bonds posted, by its affiliates.
C3	A schedule, together with copies, of all agreements and other documents evidencing other significant financing arrangements, including instruments granting a security interest in assets of the Company, sale and leaseback agreements, letters of credit and reimbursement agreements, factoring and vendor arrangements, installment purchase agreements, hedging agreements and currency and exchange rate protection agreements.
C4	A schedule, together with copies, of all Uniform Commercial Code financing statements indicating the Company as a debtor or co-debtor.

D	MATERIAL CONTRACTS AND AGREEMENTS:
D1	List of top customers and suppliers of the Company.
D2	Copies of all existing contracts and agreements with customers.
D3	Copies of all supply, distribution, equipment manufacturing, warehousing, and sales agreements and arrangements.
D4	Personal property leases for the Company's equipment, machinery, furniture, vehicles, computers, and other assets.
D5	Copies of all agreements relating to significant pending or current capital expenditures.
D6	Schedule of, together with copies of contracts and agreements related to, all transactions, arrangements, understandings, loans, advances, or other relationships between the Company, on the one hand, and any of its stockholders, affiliates, beneficial owners, directors, officers, key employees, or family members of any of



	the aforementioned, or any of its subsidiaries, on the other hand, during the past three years.
D7	Copies of all partnering agreements, joint venture agreements and agreements or documents regarding strategic alliances.
D8	Copies of all confidentiality agreements with third parties (other than employees or consultants).
D9	Copies of all licensing agreements, including but not limited to, licensing agreements for patents, trademarks, service marks, trade secrets, know-how, copyrights, computer software or other intellectual property, whether the Company is the licensor or licensee, for the use, manufacture of sale of any product or process, including any of the foregoing as they relate to any internet or e-commerce operations.
D10	Copies of all advertising, marketing, and representation agreements.
D11	Any agreements entered into outside the normal course of business.
D12	Any agreements containing a most-favored nation provision, non-compete provision or otherwise limiting or restricting the Company's ability to conduct its business in any manner in any jurisdiction.
D13	Copies of any agreements providing for indemnification by or in favor of the Company.
D14	Schedule, together with copies, of all contracts, agreements or other arrangements involving total payments thereunder of greater than \$25,000.
D15	A list of any customers who have terminated, threatened to terminate, or materially reduce or alter their relationship with the Company in the last three years.

E	LITIGATION AND CLAIMS: Documentation relating to pending or threatened litigation assessments or claims, including:
E1	Schedule of and materials relating to all lawsuits, actions, administrative proceedings or governmental investigations or inquiries, whether pending or threatened, affecting the Company (including any settlement or similar agreements with respect thereto).



E2	Correspondence, memoranda, or notes concerning inquiries from federal, state, or local regulatory officials during the last five years, including, but not limited to, any of the foregoing pertaining to safety, environmental and waste and hazardous materials treatment, storage and disposal matters.
E3	List of all disputes with customers, suppliers, competitors, or other persons involving any claim in excess of \$25,000, or which may otherwise have a material impact on the Company, together with correspondence, memoranda, or notes regarding the same.
E4	Correspondence, memoranda, or notes concerning federal, state, local or foreign tax audits and investigations.
E5	Correspondence, memoranda, notices, and any other documentation (including inquiries from federal, state, or local governmental agencies) regarding potential violations of any laws, rules or regulations, including, but not limited to, safety, environmental, antitrust, equal opportunity, health and safety and waste and hazardous materials treatment, storage and disposal matters.
E6	Schedule of all consent decrees, judgments and other decrees or orders and settlement and other agreements to which the Company or any of its officers, directors or affiliates is a party.
E7	Copies of all agreements or other documents pertaining to any bankruptcy or receivership proceedings in which the Company has been involved.
E8	Any notices regarding non-compliance or required corrections issued by any governmental agency or by any insurance company.
E9	Copies of all attorney audit letters to accountants during the past three years.

F	MANAGEMENT AND EMPLOYEES; ERISA MATTERS:
F1	Copies of all confidentiality and non-competition Agreements with current and former employees and consultants which are currently in effect.
F2	Copies of all executive management employment agreements.
F3	Copies of all other employment agreements and agreements with third parties for the supply of labor.



F4	Copies of all consulting agreements.
F5	Schedule, together with copies, of all labor union contracts, collective bargaining agreements or other labor understandings. Correspondence over the last three years with any employee unions and a description of any potential union strikes or disputes, and history of any union strikes or disputes
F6	Studies of underfunding liabilities with respect to any employee benefit plan as well as the calculation of unpaid vacations, bonuses, or other employee benefits.
F7	Please provide a list of all active employees with hire date.
F8	Please provide a list of all employees terminated within the last 5 years with hire date and termination date.

G	REGULATORY MATTERS
G1	Schedule, together with copies, of all government or regulatory permits, licenses, authorizations and approvals regarding current and future properties or operations, including, but not limited to, any of the foregoing pertaining to uranium enrichment and related matters, environmental, waste, and hazardous materials treatment and storage and disposal matters.
G2	Copies of all correspondence to and from governmental authorities relating to the matters described in G1, as well as correspondence of the Company with the following: (i) Environmental Protection Agency; (ii) Department of Labor; (iii) Occupational Safety and Health Administration; (iv) Equal Employment and Opportunity Commission; (v) Internal Revenue Service; (vi) and any other United States federal, state or local, or foreign federal, provincial or local, governmental agencies of significance to the business or operations of the Company.
G3	Does the Company do business pursuant to any contracts with U.S. federal, state, or local government entities?

H	ENVIRONMENTAL COMPLIANCE:
H1	All environment-related assessment, investigation, evaluation, audit and inspection reports, data, sampling results and other documents related to the operation of the business of the Company



	or any real property currently or formerly owned, leased, operated or used by the Company.
H2	All local, state, county and federal environment-related consents, variances, registrations, permits, licenses, and other approvals relating to the operation of the business of the Company or their ownership, operation, development or current or proposed use of any real property, along with any applications, submittals, memoranda, notices, correspondence, and amendments relating thereto.
H3	List of any environmental liabilities, conditions, complaints, or issues known to the Company relating to the operation of the business or any real property owned, leased, or operated by them.
H4	Copies of all environmental insurance policies issued to the Company or that otherwise related to any real property currently or formerly owned, leased, or operated by the Company.

I	REAL PROPERTY:
I1	List of all real property owned by the Company, together with all documents related to the purchase and sale of such property and all documents evidencing easements or restrictions or limitations on the use of such real property.
I2	Schedule, together with copies, of all mortgages, deeds of trust and/or similar security agreements affecting any of the Company's properties, all currently effective financing documents and all liens and financing statements.
I3	Copies of title insurance policies, appraisals, and related documentation with respect to all real properties of the Company.
I4	A schedule, together with copies, of all real property lease agreements for the Company's offices, facilities, and other locations.
I5	Any appraisals or surveys of the Company's real property obtained within the past five years
I6	List of all material encroachments, liens, easements, or other encumbrances on any real property owned or leased by the Company.

J	INTELLECTUAL PROPERTY:
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J1	Schedule, together with copies, of all existing patents, trademarks, service marks and copyrights, and all trademark, service mark and copyright registrations, trade names and brands, and any pending applications for the foregoing.
J2	All correspondence dealing with actual or alleged infringement of patents, trademarks, service marks or copyrights, whether from the Company or any other person.
J3	List of all assumed, fictitious and trade names currently used by the Company or previously used within the last three years, the states (or counties or other political subdivisions) in which, and the dates when, those names were registered, recorded, filed, or otherwise protected as required by, or desirable under, applicable law.