

Sale Readiness Assessment

[This is the Sales Readiness Assessment that my company sends to potential clients.]



To help us determine how prepared you and your company are for a possible sale and the assets your company can provide a buyer, please complete this Sale Readiness Assessment. If you do not understand what a question means or, more likely, want to provide us additional or clarifying information, please so indicate by checking the box marked “Ask me.” Please return this assessment to us so we can meet with you to review your answers and ask additional questions.



PART I: YOUR EXIT GOALS

	Comment	Ask Me
1. What are the characteristics of your "ideal" sale in terms of:		
1a. Price		
1b. Your role after the sale		
1c. Postacquisition role for your employees		
1d. Potential reorganization of the company		
1e. Optimal personal tax ramifications		
2. Is there a party (or parties) that you will not consider as a buyer?		

PART II: EXIT STRATEGY AWARENESS

	Yes	No	Comment	Ask Me
1. Do all owners agree with the "ideal" sale as outlined above?				
1a. If not, what are the differences?	N/A	N/A		
2. Is your board of directors aware of your exit strategy?				
2a. If so, do its members agree with your exit strategy?				
3. Is senior management aware of your exit strategy?				
3a. If so, do all senior managers agree with your exit strategy?				
4. Are key employees aware of your exit strategy?				
4a. If so, do all key employees agree with your exit strategy?				

PART III: FAMILY BUSINESS CONSIDERATIONS

	Yes	No	Comment	Ask Me
1. How will a transfer to a third party affect your:	N/A	N/A		
1a. Spouse?	→	→		
1b. Ex-spouse?	→	→		
1c. In-laws?	→	→		
1d. Business-active children?	→	→		
1e. Non-business-active children?	→	→		
2. Have you discussed your ideal sale plan with your:	N/A	N/A		
2a. Spouse?				
2b. Ex-spouse?				
2c. In-laws?				
2d. Business-active children?				
2e. Non-business-active children?				

PART III: FAMILY BUSINESS CONSIDERATIONS

	Yes	No	Comment	Ask Me
3. Do you have a succession plan for your company?				
3a. If so, is that plan in writing?				
4. Does any member of your family expect to succeed you in ownership?				

PART IV: YOUR COMPANY'S ADVISERS

	Yes	No	Comment	Ask Me
1. Is your relationship with your bank or primary lender:	N/A	N/A		
1a. Proactive?				
1b. On a need-to-know basis?				
1c. Somewhere in between?				
2. Do you work with a law firm skilled in transaction law?				
2a. If so, has this firm performed a legal audit of your company?				
3. Do you work with a CPA firm skilled in transactions?				
3a. If so, has this firm talked to you about strategies to minimize corporate and personal tax liability upon sale?				

PART V: YOUR COMPANY**A. Pricing**

	Yes	No	Comment	Ask Me
1. Do you have a higher or lower price point than your competitors for your most profitable product/service?				
2. Do you engage in promotional pricing?				
2a. If so, what is your strategy?	N/A	N/A		

B. Costs

	Yes	No	Comment	Ask Me
1. Do you have a robust process in place to track your costs?				
2. Have you taken steps to reduce supply chain costs?				
3. Are you as effective as you'd like to be in negotiating the price of your raw materials?				
4. Do you effectively minimize your cost drivers?				

B. Costs

	Yes	No	Comment	Ask Me
5. Have you taken steps to ensure a lean production process?				
6. How have you improved your inventory management and capacity utilization rate?				
7. Does your company enjoy any economies of scale?				
7a. If it could do so, how would it be more profitable?	N/A	N/A		

C. People

	Yes	No	Comment	Ask Me
1. Do you follow a set strategy to attract and select employees?				
2. Do you know why your employees work for you?				
3. Is your management team both experienced and diversely talented?				
4. Have you/your company/your employees won any awards? Recognitions?				
5. Is your product development team different from your competitors'?				
5a. How?	N/A	N/A		
6. Do your employees affect your customers' purchase decisions?				
7. Does meeting your customers' needs depend on high-intellect or highly skilled employees?				
8. Do the salaries, benefits, and working conditions of your employees meet "industry standard"?				

D. Sales/Communications/Marketing

	Yes	No	Comment	Ask Me
1. Does your company have a written marketing plan?				
1a. Do you measure its results?				
1b. If so, have you communicated it to your employees?				
2. What is your company's market share in your industry?	N/A	N/A		
2a. Is its share increasing?				
2b. Is its share decreasing?				
2c. Is its share constant?				
2d. If your company's market share is changing, do you know why?				
3. Has your company's image/brand recognition changed over the years?				
4. Does your company have a written sales plan?				
4a. Do you measure its results?				

D. Sales/Communications/Marketing

	Yes	No	Comment	Ask Me
4b. Have you communicated it to your employees?				
5. Does your sales team communicate the strengths of your product/service?				
6. Can you influence demand for your product/service?				
7. Are your company's distribution channels the same as your competitors'?				
7a. If not, how are they different, better, or worse?	N/A	N/A		

E. Technology

	Yes	No	Comment	Ask Me
1. Does your company have a technological advantage over its competitors?				
2. What steps do you take to improve/update your technical capabilities?	N/A	N/A		
3. Are rights to all technology registered to the company?				
3a. Are those rights current?				
3b. Are those rights transferable to a new owner?				

F. Business Strategy/Business Model

	Yes	No	Comment	Ask Me
1. Do you have a business model?				
2. Do you have a written business plan?				
2a. Is the plan up-to-date?				
2b. Do you use it to make decisions?				
3. Do you have a vision for your company's future?				
3a. Do you share that vision with your employees?				
4. How much of the information necessary to run the company, maintain its customer base, develop new products, or generate new sales leads is dependent on you?	N/A	N/A		

G. Industry

	Yes	No	Comment	Ask Me
1. How do companies in your industry make money?	N/A	N/A		
2. In what ways is your industry changing?	N/A	N/A		
2a. What have you done to keep pace with changes?	N/A	N/A		
2b. How successful have those actions been?	N/A	N/A		

G. Industry

	Yes	No	Comment	Ask Me
3. Are there threats to your company:	N/A	N/A		
3a. Currently?				
3b. In the short term?				
3c. In the long term?				
4. Are there governmental or licensing regulations that apply to your company or industry?				
4a. If so, how robust is your compliance with these regulations or requirements?	N/A	N/A		

H. Customers

	Yes	No	Comment	Ask Me
1. Who are your customers?	N/A	N/A		
2. Do you know why your customers buy from you instead of from your competitors?				
3. Do you know why your customers left their previous vendor/service provider?				
4. Are you effective in increasing your customers' profits?				
4a. Do you know how much you save them?				
5. Are your current customers your target market?				
6. How do you find out what customers need?	N/A	N/A		
7. What is your customer retention rate?	N/A	N/A		
8. Do you have data indicating how customers rate your customer service?				
9. What percentage of your business comes from referrals?	N/A	N/A	_ percent	
10. Does one (or several) customer account for a significant percentage of the company's sales?				

I. Systems

	Yes	No	Comment	Ask Me
1. Are your systems sophisticated and complete enough to show how well your company is managed?				
2. Does your company have:	N/A	N/A		
2a. Audited financial statements?				
2b. Reviewed financial statements?				

I. Systems

	Yes	No	Comment	Ask Me
2c. Compiled financial statements?				
2d. Budget projections and comparisons?				
3. Do you have systems in place to reduce the risk of litigation from customers, suppliers, and vendors?				
3a. Do you use contracts to reduce risk with these parties?				
3b. Do these contracts meet "industry standard"?				
3c. Can these contracts be assigned?				

PART VI: YOUR COMPANY'S COMPETITORS

	Yes	No	Comment	Ask Me
1. Who are your company's competitors?	N/A	N/A		
2. Have you ever taken advantage of a competitor's mistake or weakness?				
2a. If not, have you ever perceived the opportunity but for some reason did not act?				
2b. What prevented you from taking action?	N/A	N/A		
3. Is there a competitor (or several) who would like to see your company out of business?				
3a. Why?	N/A	N/A		
4. How do your competitors make money?	N/A	N/A		
5. Have you compared your company's metrics to industry standards?				
5a. If so, how does your company compare?	N/A	N/A		

PART VII: POTENTIAL BUYERS

	Yes	No	Comment	Ask Me
1. Can you list competitors who might (under the right conditions) be interested in purchasing your company?				
2. Are there customers, vendors, or others outside your industry that might be interested in buying your company?				
3. Do you have contacts in any of these organizations?				
4. Do you have relationships or linkages (sit on each other's boards) with potential buyers?				

PART VIII: CURRENT ACQUISITION ACTIVITY

	Yes	No	Comment	Ask Me
1. Are there specific valuation issues that are unique to your industry or to recent industry transactions?				
2. What is the current volume of deal activity in your industry?	N/A	N/A		
3. Do you know how much buyers making recent acquisitions in your marketplace are paying?				
4. Do you know if these buyers are paying in all cash or some combination of cash and equity?				
5. Do you know what size acquisitions buyers are making?				
6. Do you know why buyers are making these acquisitions?				

PART IX: YOUR COMPANY'S COMPETITIVE ADVANTAGE

	Yes	No	Comment	Ask Me
1. Do you currently differentiate your company from competitors?				
1a. Based on price?				
1b. Based on quality?				
1c. Based on service?				
2. Are you searching for or developing a new competitive advantage?				
3. Can your product/service be easily replicated or substituted?				
4. Are there limits to your company's scalability, such as legislative/regulatory issues or requirements for a good infrastructure or highly educated workforce?				
5. Why do you think a buyer would want to purchase your company?	N/A	N/A		
6. How could you better position your company to appeal to a buyer?	N/A	N/A		

Legal and Financial Due Diligence List

1. Legal Considerations

- ◆ Contracts with manufacturers, distributors, customers, vendors, and suppliers
- ◆ Sales, supply, service, and maintenance agreements
- ◆ Government contracts
- ◆ Express warranties and disclaimers of warranties (last five years)
- ◆ Performance or custom bonds
- ◆ Powers of attorney
- ◆ Agreements restricting the conduct of the company or its business
- ◆ Letters of intent
- ◆ Personal property leases
- ◆ Standard company business forms
- ◆ Indemnification agreements

2. Corporate Organization

- ◆ Articles of incorporation
- ◆ Bylaws
- ◆ Stock certificates and stock book
- ◆ Stock transfer ledgers for the company
- ◆ List of board of directors
 - ◇ Include brief description of current duties and current compensation
- ◆ Minutes of board of directors' meetings
- ◆ Minutes of shareholder meetings
- ◆ Minutes of any committee meetings
- ◆ List of shareholders (break out on a fully diluted basis, including options, warrants, etc.)
- ◆ List of shareholder responsibilities
- ◆ Copies of any shareholder agreements
- ◆ List of current officers
 - ◇ Include brief description of current duties and current compensation
- ◆ List of subsidiaries or related companies
- ◆ List of all partnerships, joint ventures, or affiliates
- ◆ Business plan (last two years)
- ◆ List of states in which the company is qualified to transact business and all certificates of authority
 - ◇ Provide good standing certificates
- ◆ Copies of all legal opinions prepared for the company relating to its organization and/or its business within the last five years
- ◆ Copies of all voting trust agreements and other voting agreements

3. Financial Statements and Reports

- ◆ Historical year-end financial statements (audited, CPA-prepared, and internally generated for last three fiscal years)
- ◆ Monthly (interim) unaudited financial statements for current fiscal year
- ◆ Copies of all management letters and special reports from auditors (and responses thereto)

- ◆ Schedule of all bank accounts, certificates of deposit, and safe deposit boxes
 - ◇ Address
 - ◇ Individual authorized to sign on account
- ◆ General ledger, sales journals, and cash receipts journal for last fiscal year
- ◆ Breakdown of officers' and others' salaries as a component of general and administrative expenses (analysis of officer/shareholder benefits—compensation, benefits, and perks for past three years and year-to-date comparable to the same time period during prior fiscal year)
- ◆ Description of accounting policies and changes thereto
- ◆ Documentation of the company's procedures/controls
- ◆ Schedule of current year's customer revenues vs. current year's budgeted revenues
- ◆ List of liabilities not reflected on interim financial statements
 - ◇ Include material or potentially material contingent liabilities
- ◆ Description of any material damage, destruction, or loss (whether or not covered by insurance) suffered in past five years
- ◆ List of capital expenditures for the past three fiscal years and year-to-date identifying whether the expenditure was for maintenance or to support growth of the company
- ◆ Projections, forecasts, and budgets (last two years)
- ◆ Projections and/or budgets for current and next two years:
 - ◇ Include capital expenditure forecast
 - ◇ Break down growth between (i) organic within existing accounts or (ii) related to new accounts
 - ◇ Include revenue, unit, and gross margin assumptions for each customer/channel as applicable
- ◆ Schedule of recently introduced new products and revenue and unit assumptions for current and next three years
- ◆ Schedule of planned new product introductions and revenue and unit assumptions for current and next three years
- ◆ List of assets and liabilities on the balance sheet that will not be sold with the company (e.g., personal vehicle)
- ◆ List of tax asset detail showing all fixed assets and depreciation

- ◆ Breakdown of revenues for each entity over past three years
 - ◇ By type of customer
 - ◇ By product category
 - ◇ By geography
 - ◇ By independent sales rep/word of mouth/employees/etc.
- ◆ Accounts payable aging and reconciliation to general ledger (most recent month-end that ties to balance sheet)
- ◆ Long-term liabilities and commitments (other than notes, payable, and inventory commitments exceeding six months)
 - ◇ List of banking and credit activities
 - ◇ Agreements related to indebtedness
 - ◇ List of guarantees or indemnification agreements
 - ◇ Letters of credit
 - ◇ Revolving credit agreements
 - ◇ Lease-purchase agreements
 - ◇ Equity purchase agreements
 - ◇ List of accrued liabilities and reconciliation to general ledger
 - ◇ Schedule of notes and loans payable
- ◆ Other financial information will be requested separately.

4. Tax

- ◆ Income tax returns for past five years:
 - ◇ Federal
 - ◇ State/local
- ◆ Franchise, sales property, and excise tax returns for all open years, including:
 - ◇ Tax elections
 - ◇ Election to be taxed as an S corporation
- ◆ Sales and use tax returns for past five years
- ◆ Payroll and unemployment tax returns for past five years
- ◆ All IRS or state revenue department correspondence for past five years
- ◆ Notices or proposed adjustments received from federal, state, local, or foreign authorities regarding returns, deficiency claims with regard to income, sales, property, or other taxes

- ◆ Description of tax accounting and depreciation methods (including any changes)
- ◆ Copies of any extension of the statute of limitations for any tax years for any tax

5. Agreements, Commitments, and Understandings (Verbal and Written)

- ◆ Shareholder agreements
- ◆ Voting agreements
- ◆ Agreements, arrangements, or understandings by the company or its shareholders to issue, purchase, or sell any securities of the company
- ◆ List of written consents related to the company
- ◆ List of any sale or grant of any option, warrant, right of first refusal, purchase plan, or other right to purchase capital stock, including copies of any agreements or documents related thereto
- ◆ All agreements, orders, or commitments for the purchase or lease of capital equipment, components, assemblies, supplies, inventories, or finished goods in excess of \$10,000 per any one agreement, order, or commitment
- ◆ All agreements or orders of commitments for the sale of products or assets in excess of \$10,000 for any one agreement, order, or commitment
- ◆ All other agreements, contracts, or commitments involving the payment or receipt of more than \$10,000 in any individual case, including copies of all agreements relating to the borrowing of money or extension of credit, including those with affiliates, directors or officers, or other employees of the company
- ◆ Copies of all sales agency or representative, manufacturer representative, distributorship, and franchise agreements
- ◆ Copies of all requirement, output, and supply contracts
- ◆ Copies of all partnership or joint venture agreements
- ◆ All agreements, contracts, or commitments not entered into in the ordinary course of business
- ◆ All product or service warranties extended to customers of the company, including the warranty claims history with respect thereto

- ◆ A list of all transactions, and copies of all agreements, between the company and any subsidiary or between the company and any of its directors, officers, or other affiliated parties (or members of their immediate families, which includes spouses, parents, children, siblings, mothers, fathers, and all in-laws)

6. Consents, Authorizations, and Approvals Necessary to Complete the Transaction

- ◆ Copies of any offering or disclosure documents prepared with respect to the sale of the company
- ◆ All agreements, contracts, or commitments that are subject to suspension, revocation, cancellation, modification, or termination by, or that require notice to or consent of, any third party upon a change of control of the company
- ◆ Lists and copies of all permits, licenses, and governmental or regulatory franchises and indication of any permit, license, or franchise that is subject to suspension, revocation, cancellation, or modification, whether upon a change of control of the company or otherwise

7. Employment

- ◆ List of all employees:
 - ◇ Name
 - ◇ Classification
 - ◇ Hire date
 - ◇ Full-time, part-time, or temporary status
 - ◇ Compensation
 - ◇ Organizational chart
- ◆ Biographies/resumes of key employees
 - ◇ Structure of key employee compensation
- ◆ Agreements related to employment, independent contractors, consultants, directors, or officers, including information on commissions, severance, and change in control agreements
- ◆ Confidentiality, noncompete, commission, and trade secret agreements (present and former employees, consultants, or other third parties)

- ◆ All agreements, contracts, or commitments limiting the ability of the company to engage in any line of business, compete with any other person, or solicit any person for employment with the company
- ◆ Employee handbooks, manuals, personnel policy manuals, and policies not part of any manual
- ◆ Employee work rules
- ◆ Union or collective bargaining agreements:
 - ◇ Covering any group or unit of employees
 - ◇ National Labor Relations Board (NLRB) certifications that may trigger potential successorship obligations or liabilities
 - ◇ Expired, pending, scheduled, or expected to be scheduled
 - ◇ Internal grievance procedures and on-solicitation and no-access rules related to union issues
- ◆ Description of any labor law violations, “Prohibited Transactions” (as defined by Section 4975 of IRS Code or Section 406 of Employee Retirement Income Security Act) as well as any “accumulated funding deficiencies” (as defined by ERISA)
- ◆ Subcontractor labor agreements
- ◆ Samples of all application forms
- ◆ EEO-1 (Employer Information Report), if applicable, for past three years
- ◆ Any document prepared by the company or at the company’s request that might be subject to discovery in future discrimination cases
- ◆ All documents related to I-9 compliance, including any letters (in the past two years) from the Social Security Administration regarding employees’ social security numbers
- ◆ Copies of any notices prepared or served related to Workers Adjustment and Retraining Notification Act (WARN)
- ◆ Compliance with federal and state withholding requirements
- ◆ Copies of any affirmative action plan adopted pursuant to federal, state, or local statute, rule, or regulation, including, but not limited to, Executive Order 11246 and its implementing regulations
- ◆ Copies of all correspondence, documentation, annual reports (if applicable), summary plan descriptions, determination letters, and actuarial reports (for the past five years) for any and all:
 - ◇ Group insurance plans
 - ◇ Pension and profit-sharing plans (or any plan described in Section 3 of the Employee Retirement Income Security Act of 1974)

- ◇ Bonus and incentive compensation plans:
 - Stock option plans (restricted or unrestricted)
 - Stock appreciation rights plans
 - Nonqualified deferred compensation plans
 - Performance share or other awards
 - Welfare and fringe benefit plans
 - Voluntary employees' beneficiary association (VEBA) trust agreements
- ◇ Deferred compensation and salary continuation plans
- ◇ Bonus plans or arrangements
- ◇ Incentive compensation plans and phantom stock plans
- ◇ Severance agreements
- ◆ List of employees receiving COBRA benefits
- ◆ List of employees' current vacation and sick leave accruals
- ◆ List of leaves of absence (requested or granted) within the last 180 days, including reasons for request and/or permission for leave
- ◆ List of employees receiving short-term or long-term disability payments
- ◆ List of all employees on layoff
- ◆ List of pending garnishment and wage assignment obligations
- ◆ List of policies regarding employee loans and any outstanding employee loans from, and debts to, the company
- ◆ Any documents that refer to or create rights by employees to severance payments
- ◆ List of other employee benefits not covered above

8. Insurance

- ◆ Schedules/certificates/binders related to:
 - ◇ Health
 - ◇ Vehicles
 - ◇ Property
 - ◇ Product liability
 - ◇ Casualty
 - ◇ Business interruption and discontinuance
 - ◇ Key person
 - ◇ Directors/officers fiduciary liability
 - ◇ Personal injury
 - ◇ Workers' compensation

- ◆ Copies of any summaries of insurance coverage
- ◆ List of pending uninsured claims
- ◆ Outstanding workers' compensation claims
- ◆ Insurance claims (of any type) during past five years
- ◆ Notification of termination of coverage from insurers during past five years
- ◆ Documents related to payment of contributions, interest, or penalties for unemployment insurance within past five years
- ◆ List of any other insurance-related documents not covered above

9. Litigation

- ◆ List of all pending or threatened lawsuits, claims, grievances (asserted and nonasserted), and assessments (within the past five years) noting:
 - ◇ Whether claim has been resolved
 - ◇ Whether subject to an award
 - ◇ Whether insurer has accepted liability (if applicable)
 - ◇ Nature of proceedings
 - ◇ Date of commencement
 - ◇ Current status
 - ◇ Relief sought
 - ◇ Estimated and/or actual costs
- ◆ Settlement agreements, conciliation agreements, releases, and state, territorial, or federal court or agency orders in injunctions involving any incumbent or former company employees entered into or issued within the past five years
- ◆ Potential claims
- ◆ Administrative proceedings
- ◆ Actions or proceedings (past, pending, or threatened) before state, territorial, and federal courts or agencies involving labor, employment, safety, and employee benefit matters, including:
 - ◇ Employment discrimination charges
 - ◇ Wage and hour investigation and complaints
 - ◇ Occupational Safety and Health Administration (OSHA) investigations and complaints

- ◇ Office of Federal Contract Compliance Programs (OFCCP) investigations and complaints
- ◇ Employment tax audits
- ◇ Immigration and Naturalization Service audits
- ◇ Charges of retaliation under antidiscrimination or workers' compensation laws
- ◇ Grievances under collective bargaining agreements
- ◇ Unfair labor practice charges
- ◇ Representation proceedings
- ◇ Audits or claims by trust funds providing pension and health insurance to bargaining unit employees
- ◇ Union organizing activity
- ◆ Copies of any correspondence or other documentation involving the return of merchandise based on a claim that such merchandise was defective
- ◆ Copies of all consent decrees, judgments, other decrees, orders, and settlement agreements to which the company, or any of its officers, directors, nominees for director, key employees, or controlling stockholders is a party or is bound that relate to environmental, health, and safety (EHS) matters or liabilities of the company
- ◆ Copies of all documents related to all civil, criminal, or administrative claims, lawsuits, or actions (threatened, pending, or resolved) under EHS laws or concerning EHS matters to which the company is or was a party, or is or was otherwise involved, including:
 - ◇ All material agreements under which the company is obligated to take any action or make any payment for environmental cleanup or compliance or under which the company is obligated to indemnify any other party for investigation, assessment, testing, removal, or remediation of hazardous substances (for purposes here referred to as "hazardous substances" to be broadly defined and to include petroleum)
- ◆ Copies of letters from attorneys for the company to the company's independent public accountants concerning litigation and other legal proceedings related to EHS laws (i.e., "audit letters")
- ◆ List of any litigation-related issues not covered above

10. Permits, Registrations, Licenses, Authorizations, Certificates, Concessions, and Registrations Related to Government Compliance (Referred to Collectively as “Permits”)

Concerning the conduct of the company’s business required by federal, state, or local governmental agencies, bureaus, or boards:

- ◆ List and copies of all
- ◆ List of jurisdictions outside home state where the company has facilities or authority to transact business
- ◆ List and copies of documents requesting renewal of any permits expiring in current year
- ◆ Discussion of compliance with applicable government regulations or standards related to:
 - ◇ Safety of products
 - ◇ Safety in company facilities (OSHA)
 - Include list/description of hazardous work conditions or known or suspected violations of OSHA requirements and hazardous waste disposal
 - ◇ Equal employment opportunity
 - ◇ Wages and hours
 - ◇ U.S. Environmental Protection Agency (EPA)
 - ◇ U.S. Food and Drug Administration (FDA)
 - ◇ U.S. Department of Transportation
 - ◇ U.S. Department of Homeland Security
 - ◇ Pricing, sale, and distribution of products
 - ◇ Import/export permits/licenses
 - ◇ Violations cited in inspections in last twelve months
- ◆ Copies of all contracts with any governmental agencies that require compliance with state, territorial, or federal prevailing wage laws or affirmative action programs for applications, employees, or enterprises owned by minorities or women
- ◆ Any information concerning required security clearances to business with certain entities
- ◆ Copies of any industrial revenue bonds and other government-sponsored loans and all material documents related thereto
- ◆ Copies of all documents, correspondence, and filings relating to governmental/regulatory agency claims, assessments, and proceedings (pending or threatened)

- ◆ Copies of all correspondence during the past five years with the U.S. Department of Justice, the Federal Trade Commission, the U.S. Environmental Protection Agency, or any other governmental, administrative, or regulatory agency, whether state or federal
- ◆ Copies of all inspection or other reports issued by administrative or regulatory agencies
- ◆ Copies of any report, internal compliance audit, regulatory review, or other investigation by the company (or any other party) related to the company's compliance with any law, regulation, ordinance, rule, or code

11. Environment Related

- ◆ List and copies of environmental, health, and safety (EHS) permits
 - ◇ Current
 - ◇ Expired
 - ◇ Yet to be obtained
- ◆ Records of any hazardous substance spills or releases from any site currently or formerly owned or leased by the company
- ◆ Copies of any communication from any source related to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or any EHS law
- ◆ List of names and addresses of all past and current off-site waste disposal facilities and transporters used by the company
 - ◇ Include sites used for recycling or reclamation
 - ◇ Describe the waste sent to each site
 - ◇ Note the time period in which the company sent waste to each site
- ◆ Description of the company's EHS compliance program
 - ◇ Copies of documents related to any programs designed to comply with process safety management or reduce management risk
 - ◇ Documents related to compliance with Department of Homeland Security regulations
- ◆ Copies of all documents related to any indemnification the company has given or received involving liability for EHS matters, along with documents related to any claims made or received

- ◆ Copies of all documents related to environmental issues
 - ◇ Include audits, studies, environmental sampling data, reports, site evaluations, government filings, agreements, consent decrees, consent orders, all Phase I and Phase II environmental assessments, and Phase III and any remedial action reports
 - ◇ Include those applicable to the company, its predecessors, and its affiliates
 - ◇ Include those related to current or prior facilities (whether owned or leased)
 - ◇ Include any soil or groundwater sampling conducted at any real property owned or leased by the company
- ◆ Copies of air emission inventories:
 - ◇ Include for each facility owned or leased by the company
 - ◇ Document actual emissions for past five years
 - ◇ Include any analysis or review of the applicability of greenhouse gas reporting rule to the company's emissions
- ◆ All information related to generation, treatment, disposal, or recycling of hazardous substances and/or solid wastes
 - ◇ Include history of problems or other issues with pollution control and environmental contamination
 - ◇ Include any communications with federal or state environmental agencies
- ◆ List of all dangerous, toxic, flammable, or hazardous substances used, produced, or disposed of in connection with the operations or business of the company
 - ◇ Indicate whether a company's current or prior facilities were used
- ◆ List of all storage tanks currently (or previously) owned, leased, or operated either by the company or on any real property currently or previously owned or leased by the company, indicating (for each tank):
 - ◇ The nature of materials stored in the tank
 - ◇ Copies of documents related to registration, releases, monitoring, testing, and closure
- ◆ Information related to any nuisance complaints (e.g., odor, noise, migration of contamination) received by the company under any EHS law or regulation or under common law
- ◆ Documents related to energy efficiency, or reduction programs or measures taken by the company in the past five years

- ◆ Documents submitted to governmental authority or prepared pursuant to any community or worker right-to-know law (program, law, or requirement) similar to the Emergency Planning and Community Right-to-Know Act
- ◆ List of any environment-related documents not covered above

12. Accounts

- ◆ List of ten largest customers
 - ◇ Sales to each for the past three years
- ◆ List of suppliers (by dollar volume) and related contracts (for past three fiscal years and year-to-date)
- ◆ All vendor contracts
- ◆ Examples of all standard form agreements (short-term leases, purchase or sale orders, invoices, requisitions, service contracts, etc.) used by the company with suppliers or customers, along with a list of all existing contracts or leases in each form that have not otherwise been provided

13. Accounts Receivable

- ◆ Detailed accounts receivable aging and reconciliation to general ledger (most recent month-end that ties to balance sheet)
- ◆ Analysis of bad debt expense and write-offs for the past three years
- ◆ Explanation of credit issues
- ◆ Schedule of notes and loans receivable

14. Prepaid Accounts

- ◆ Schedule of prepaid expenses

15. Inventory

- ◆ List of inventory by department, item, and reconciliation to general ledger
- ◆ Analysis of inventory write-offs, obsolescence, and write-downs (past three years)

- ◆ Inventory breakdown by category, turns, and aging
 - ◇ Identify any inventory that is unique or custom or has a very specific application
 - ◇ Identify any consigned inventory (held at customer's location)
- ◆ Written description of all policies/procedures relating to inventory and returned product

16. Fixed Assets

(Includes machinery; equipment; tooling; office furniture, fixtures, and inventory; and leasehold improvements)

- ◆ List of material, machinery, equipment, or inventory
 - ◇ Note whether in possession of company or third party
 - ◇ Note dates of acquisition
 - ◇ Note whether subject to lien, encumbrance, or security interest.
 - ◇ Include copies of Uniform Commercial Code (UCC) search reports as applicable
- ◆ Copies of all:
 - ◇ Bills of sale
 - ◇ Leases (equipment and motor vehicle)
 - ◇ Financing agreements
 - ◇ Security agreements
 - ◇ Applicable insurance
- ◆ Copies of all contracts or options to purchase, sell, or lease personal property
- ◆ Copies of all installment contracts for the purchase of personal property, including equipment
- ◆ Detailed schedule and reconciliation to general ledger

17. Real Property

- ◆ Owned:
 - ◇ List of all real property owned in fee and locations thereof (and any related mortgages, indentures/promissory notes, and trust deeds)
 - ◇ Fixture filings with respect to real property
 - ◇ Copies of contract and options to purchase or sell real property or to construct improvements thereon

- ◆ Leased:
 - ◇ List of all leases and subleases on any locations/facilities utilized by the company or its employees or on which it pays taxes on a recurring basis, including square footage
 - ◇ Copies of any assignments of lease made for security purposes or otherwise
- ◆ Leased or owned:
 - ◇ List of all liens or encumbrances against real property
 - ◇ Copies of any appraisals of real property
 - ◇ Copies of any surveys relating to real property
 - ◇ Copies of any engineering reports prepared regarding real property
 - ◇ Copies of certificates of occupancy
 - ◇ Copies of any governmental permits required with respect to real property
 - ◇ Copies of any guarantees or warranties relating to improvements on real property
 - ◇ Copies of any outstanding notices of violation or similar notices received from any governmental authority or insurance company related to the use, operation, or maintenance of real property
 - ◇ List of condemnation or eminent domain proceedings pending or threatened against real property
 - ◇ List of those properties (owned, leased, or operated currently or previously) for which the company has retained or assumed environmental liabilities, description of the type of operations conducted at each property, and dates of ownership, tenancy, or operation
- ◆ Owned in the past:
 - ◇ List of any real property formerly owned or leased by the company since its date of incorporation
 - ◇ Copies of all prior title insurance policies and title reports and/or opinions, including copies of exceptions listed on said policies
- ◆ Future plans:
 - ◇ Description of any plans the company has with respect to opening or closing of any operating facility

18. Intellectual Property

- ◆ For all patents, trademarks, service marks, copyrights, trade names, domain names, and other industrial property rights:
 - ◇ Copies of all registrations, assignments, and licenses (including dates registrations were filed)
 - ◇ Copies of all pending applications, including where and when such applications were filed
 - ◇ List indicating which are unregistered or common-law
 - ◇ List indicating which are owned by third parties, licensed to the company, or used in connection with the business of the company (with copies of all related agreements)
- ◆ Licensing agreements, contracts, options, or agreements that relate in any manner to intellectual property
- ◆ Detailed list of all computer systems
 - ◇ Leases and licenses
- ◆ Infringement actions
 - ◇ Disclose if the company has received any notice, claim, or threat that:
 1. Company does not own any intellectual property it claims to own
 2. Company does not have the right to use any intellectual property that it claims to license from a third party
 3. Any intellectual property owned by or licensed to company is invalid or unenforceable
 - ◇ Provide copies of such notices or claims, a complete description of said notice or claim, copies of all correspondence related to the claim/notice, the circumstances surrounding it, any responsive actions taken by the company, and the current status of said notice or claim
- ◆ Trade secrets
 - ◇ List and describe all material trade secrets owned by or licensed to the company
 - ◇ Include copies of representative employment agreements, independent contractor agreements, and company policies related to the protection of trade secrets or ownership of intellectual property
 - ◇ Provide copies of all assignments, licenses, and nondisclosure and other agreements related to trade secrets

- ◇ List all third parties to which the company has disclosed any of its trade secrets and provide copies of the agreements that control these disclosures; if no agreements were used, please provide explanation
- ◇ If the company has obtained trade secrets for confidential information from a third party, describe the steps the company takes to ensure that it uses such trade secrets (or confidential information) only in the manner in which it is authorized to do so
- ◇ Provide copies of all materials related to any charges of trade secret misappropriation made by, on behalf of, or against the company
- ◆ List products that the company has reverse-engineered and provide all agreements relating to such products. For each such product, indicate whether:
 1. The company manufactured the product pursuant to a formula provided by a customer
 2. To the company's knowledge, the product is subject to any patents

19. Marketing and Sales Materials

- ◆ Agreements with advertising/public relations agencies
- ◆ All marketing or sales materials
- ◆ Certifications or preferred status designations, customer awards, etc.
- ◆ Copy of any press release related to the company within the past five years
- ◆ Copies of all advertising and labeling agreements

20. Research and Development

- ◆ Contracts

21. Transaction Intermediary and Finders' Fees

- ◆ Contracts
- ◆ List of any nonwritten agreements

Management System Due Diligence List

Item	Presale DD	Buyer DD
I. Customer and Product Performance		
A. Revenues, gross margin, and units for all customers for past five years.	X* – Top 10 customers for past three years. – Note percentage of sales.	X
1. Segmented by end-market application		X
B. Name of each customer:		X
1. Length of relationship		
C. Schedule of historical price increases by:	X Indicate most recent price increase.	X
1. Customer		
2. Amount		
3. Timing		

200 Appendix C Management System Due Diligence List

Item	Presale DD	Buyer DD
D. Explanation for any and all lost customers (past five years).	X – Three years – Major customers (not any and all).	X
E. Details of any material customer contracts.	X Indicate whether a change in ownership affects these contracts.	X
II. Production and Supply Chain Analysis		
A. Schedule of costs for each raw material component (past four years). 1. Annual purchase volumes and associated prices organized by: a. Specification b. Price per pound c. Supplier for the primary raw materials used in the manufacture of the product	X Indicate whether company is dependent on any vendors.	X
B. Provide any material supplier contacts and key terms.	X Indicate if a change in ownership affects these contracts.	X
C. Provide details on rebate programs with suppliers.	X Explain any rebate programs that skew financials.	X
D. Estimate the equipment costs necessary to start manufacturing in-house those products that are currently outsourced.		X
E. Provide labor and overhead detail related to manufacturing for past four years: 1. Labor and overhead cost per unit 2. Number of production overtime hours 3. Number of units run by product line 4. Number of lines in plant 5. Run speeds, setup time, changeover time on current lines	X – Three years X X X	X X X X X
F. Provide order information as follows: 1. Number shipped daily 2. Number of trucks shipped daily 3. Average size of truckload 4. Average shipping cost per unit	X X X	X X X X

Item	Presale DD	Buyer DD
G. For manufacturing employees (excluding plan supervisor), list: 1. Average wage rate 2. Starting wage rate	X X	X X
H. For each operating line identify: 1. Payroll complete with title and salary 2. Volume of production by unit size		X X
I. List any special packaging requirements for company's products: 1. Labels, shrink packaging, etc.	Are there any special packaging requirements?	X X
J. Describe any customer-specific requirements.	Are there any customer-specific requirements?	X
K. Describe any stock-level programs.	X	X
L. Provide a company organizational chart organized by functional area.	X	X
M. Provide payroll information by: 1. Department 2. Title 3. Salary		X X X
N. Provide sales coverage map by geographic area: 1. Include associated marketing collateral. 2. Include foreign countries to which company exports.	X X	X X
O. Provide sales coverage map by salesperson: 1. Include associated marketing collateral. 2. Include foreign countries to which company exports.		X X
III. Technical Product Analysis		
A. Provide access to all formulas and labels.		X
B. Describe any pending litigation related to product safety or other regulatory matters.	X	X
C. Describe legal compliance efforts related to all applicable regulations (e.g., EPA and OSHA).	Is company in compliance with all regulatory requirements?	X

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Item	Presale DD	Buyer DD
D. Provide access to all raw material, Material Safety Data Sheets, and tools for MSDS authoring.		X
E. Provide details on mechanisms for change management/control.		X
F. Describe customer complaint processing and related call history.		X
G. Provide details related to any major product liability claim in the past five years.	Have you experienced any claims related to insurance or liability?	X
H. Provide detailed information on regulatory/ EPA permits, registrations, etc.	Is company in compliance with all regulatory requirements?	X
I. Provide name and version of all manufacturing software.	X	X
IV. Customer/Market Review		
A. Provide any relevant customer or market surveys conducted in the past five years.	X for three years	X
V. Insurance Review		
A. Provide complete copies of all current policies.		X
B. For each policy include: 1. Currently valued loss run (for the past five years) 2. Complete history		X X X
C. Complete copies of any contracts and/or licenses requiring special insurance wording.		X
VI. Environmental Review		
A. Provide copies of any environmental reports.		X
B. Provide copies of any sampling results.		X
C. Describe status of any known environmental conditions.	Does company have any environmental issues?	X

Checking an Investment Banker's References

These questions are designed for owners/prospective sellers to ask former owners who retained the investment banker they are considering for their own transaction.

1. When did you close on the sale of your business?
2. How long did the sale process take from the time you signed the investment banker's engagement letter until closing?
3. Did you get the purchase price you wanted?
4. Do you think that the investment banker really understood your company and your goals?
5. How did the investment banker market your company?
6. Did the investment banker protect your confidentiality throughout the process?

7. Did the investment banker keep you abreast of every important development?
8. How would you rate this investment banker's:
 - a. Judgment?
 - b. Negotiating skills?
 - c. Ability to predict problems and solve them?
9. Did you feel prepared when you eventually met the buyer?
10. Was this investment banker available when you needed him or her?
11. If you had to sell another company, would you use the same investment banker?

What to Look for in an Engagement Letter

Selling your company is a huge undertaking: financially, emotionally, legally, and personally. Like all transactions in which you retain an individual or a firm to represent you, that relationship is governed by a contractual agreement, usually in the form of an engagement letter. I suggest that you ask your attorney to review any engagement letter that you consider signing to make sure that it satisfies the legal requirements in your state and that it protects your interest.

1. Services

What services does the investment bank say it will perform?

- ◆ Will it use an existing list of possible buyers or develop a unique list for your company based on its access to a number of databases?
- ◆ Will it charge for meetings with your accountant and lawyer, or are those meetings included in its fee?

- ◆ Who pays for the establishment and maintenance of the virtual data room? This online site is maintained by a third party and contains all of your company's information (financial statements, employment and all other contracts, leases, invoices, written policies, etc.) for review by potential buyers. Security is critical, as are protocols regarding password access to increasingly sensitive materials.
- ◆ Does the investment bank commit to communicating with you:
 - ◇ Verbally or in writing?
 - ◇ On a prearranged basis or as necessary?
- ◆ What services will the investment bank not perform? Excluded services can include providing tax, legal, or accounting advice. Some investment banks perform due diligence; others do not.
- ◆ Who in the investment bank will negotiate the transaction? The same person you meet initially? A junior person?

2. Fees

Investment banks typically charge a retainer as well as a contingent fee.

- ◆ *Retainer fee.* Investment bankers charge a retainer fee to commit a seller to the sale process. Investment bankers don't want to invest time and money into bringing a company to market, only to have the seller change his or her mind.
 - ◇ When is the retainer fee due?
 - ◇ Can it be paid in installments?
- ◆ *Contingent fee.* This fee typically represents the lion's share of the amount you'll pay an investment banker because it is typically a percentage of the purchase price. In customizing the banker's fee, first come to an agreement about your minimally acceptable sale price. The banker's fee for achieving that sale price should be minimal, say, 2.5 percent. From that point, increase the percentage on amounts over that price to motivate the investment banker to negotiate aggressively on your behalf.

Most firms establish a minimum fee (due at closing and unrelated to the purchase price). From there, investment bankers may set percentages due on portions of the purchase price.

For example, the fee might be:

- ◆ 2.5 percent of the minimally acceptable sale price (say, \$10 million)
- ◆ 3.5 percent of the purchase price between \$10,000,001 and \$15,000,000
- ◆ 5 percent of the purchase price between \$15,000,001 and \$20,000,000
- ◆ 6 percent of the purchase price above \$20,000,000

You'll note that the percentages increase as the purchase price increases. The purpose here is to encourage your investment banker to work for the best possible price.

There are other contingent fee formulas, one of which (known as the *Lehman formula*) reduces the investment banker's percentage as the purchase price rises. Think carefully about how you wish to motivate the investment banker working on your behalf.

3. Purchase Price

Generally, the purchase price includes far more than the cash that changes hands at closing. It is impossible to list all the issues the definition of *purchase price* might include because of the fluidity and variability in the design of each transaction. In general, however, you can expect the purchase price to include:

- ◆ The value of any stock, debt, or other financial instruments (including warrants and stock options) issued in consideration, plus
- ◆ The total of any liabilities assumed, including any debt, trade payables, and other liabilities on the balance sheet, and any contingent or other liabilities that may not be on the company's balance sheet, plus
- ◆ The value of any assets (cash, accounts receivable, inventory, real estate, etc.) retained by the sellers (company or shareholders), plus
- ◆ The value of any stock retained by the sellers (company or shareholders), plus
- ◆ The present value, at the then-current prime rate, of any employment or noncompete contracts, rents, royalties, and any other forms of deferred payment related to the compensation of the transaction

If your employment agreement remains the same after closing as it was before closing, the investment banker is not likely to take a cut. He or she

should be paid only if a significant portion of the purchase price is paid to you via your postsale employment contract.



A note of explanation about charging a fee on stock retained by the seller: Your investment banker may be able to negotiate a deal in which the purchaser agrees to buy only a portion of your stock. The investment banker wants his or her fee paid as if 100 percent of the stock were transferred because you have benefited—thanks to the investment banker’s negotiating prowess—from selling the majority of your company while retaining an interest in its future prosperity.



4. Expenses

Some engagement letters list the charges for various expenses (travel, courier charges, and copy charges). Others set an amount that, if exceeded, you must preapprove.

5. Exclusivity

All investment banks require you to contractually agree that they will act as your exclusive representative. Exclusivity also means that if a potential buyer contacts you after you sign the engagement letter, you will use your investment banker to represent you in negotiations with that prospective buyer. Some sellers want to “carve out” a specific buyer. Before you ask your investment banker to do so, remember that the competitive auction process (the sale process most likely to yield a maximum sale price) works best when all buyers compete to purchase your company. If you exclude one buyer from that process, it is likely to offer far less for your company than it would if included in the competitive auction process. Don’t be surprised if investment bankers refuse to represent you if you tie their hands by removing a legitimate buyer from the sale process.

6. Termination

Sellers do well to pay close attention to this part of the engagement letter. It should clearly state how each party can terminate the contract, and when. Most important, it states that the seller is obligated to pay the banker's fee—if that seller sells to: (a) any buyer or (b) any buyer contacted by the investment banker—and for how long that obligation to pay is in force. For example, some investment bankers want a one-year “tail” after the termination, and others may want five years. You obviously want to negotiate for the shortest period of time and should stipulate that the investment banker must provide you a list (upon termination) of all prospective buyers contacted. You may wish to negotiate the requirements for being placed on that list. For example, perhaps it includes only those prospective buyers that signed a nondisclosure agreement.

7. Legal Stuff

This section includes naming the state whose laws will govern the agreement. It is usually the state where the investment bank is headquartered, but this can be negotiated.

It also includes “hold harmless” clauses whereby you agree that the investment banker will depend on the accuracy of the material you provide and that you'll seek your own accounting and legal advice. You will also likely be asked to hold harmless the investment bank (and everyone related to it) if you are (or it is) sued or damaged, in any way, by the transaction. Make sure that you are not responsible for any liabilities arising from the negligence, bad faith, or willful misconduct of your investment bank. Make sure that you are as well protected from the actions of the investment bank as it is protected from yours.

Finally, expect some sort of arbitration clause that puts all disputes that can't be worked within a reasonable amount of time (say, thirty days) into arbitration. Make sure you have the same rights to submit a dispute to arbitration as the investment bank has.

Sample Nondisclosure Agreement

Between
Owner as Protected Party and Investment Banker as Receiving Party
or
Investment Banker as Protected Party and Prospective Buyer as Receiving Party

This Agreement is made between _____ authorized representative of _____ (hereinafter referred to as the “Protected Party”) and _____ authorized representative for _____ (hereinafter referred to as “Receiving Party”).

A. RECEIVING PARTY AGREES TO THE FOLLOWING:

1. It will actively protect the confidentiality of all information, data, and materials disclosed or furnished in writing or orally (herein called “Information”) by the Protected Party.
2. In consideration for such disclosure, Receiving Party and its employees will use the Information only for internal evaluation purposes.
3. It understands that any disclosure of any of the Information (including the possibility that the Shareholders may consider sale), disclosure of the current status of the Protected Party, or disclosure of any Information to customers, vendors, competitors, or employees of the Protected Party would cause serious financial damage to the Protected Party and/or its affiliates.
4. It will not, for the term of this Agreement, solicit for employment any person who is currently employed by the Protected Party.
5. It will not copy, duplicate, disclose, or deliver all or any portion of the Information to a third party or permit any third party to inspect, copy, or duplicate the same.

B. NOTHING STATED ABOVE SHALL PREVENT THE RECEIVING PARTY FROM DISCLOSING TO OTHERS OR USING IN ANY MANNER:

1. Information that has been published and has become part of the public domain other than by acts or omissions by the Receiving Party.
2. Information that has been furnished or made known to the Receiving Party by third parties as a matter of right without restriction of disclosure.
3. Information that the Receiving Party can show was already in its possession at the time it entered into this Agreement and which was not acquired directly or indirectly from the Company, its representatives, its employees, or their representatives.

C. THIS AGREEMENT SHALL REMAIN IN EFFECT FOR A TERM OF TWO YEARS FROM THE EXECUTION DATE HEREOF, AND, UPON REQUEST, THE RECEIVING PARTY WILL PROMPTLY RETURN ALL DATA AND MATERIALS FURNISHED BY THE PROTECTED PARTY AND DESTROY ANY INTERNAL ANALYSES AND/OR WORK PAPERS RELATED TO THE PROTECTED PARTY.

Signature: _____

For Protected Party: _____

Signature: _____

For Receiving Party: _____

Questions to Ask a Prospective Investment Banker

1. Can he or she provide a valuation that takes into account:
 - a. Current market conditions in your industry?
 - b. Future performance of your company?
 - c. Understanding of buyers in the marketplace?
 - d. Unique characteristics of your company?
 - e. Terms a buyer is likely to demand?
2. Does he or she understand what makes your company unique?
3. Does he or she have enough experience to anticipate future challenges and develop successful strategies to overcome those challenges?
4. Does he or she have the analytical skills necessary to understand your company's numbers and the ability to persuade the buyer to see them as he or she does?
5. Does he or she have the reputation in the professional community necessary to recruit other members to your advisory team?

6. Does he or she understand the world of buyers well enough to find the right buyer for your company?
7. Can he or she develop creative market strategies to successfully orchestrate a competitive auction and get an Outrageous Price for your company?
8. Does he or she have enough experience and the good judgment to help you prioritize buyers?
9. Is his or her reputation in the marketplace one that facilitates introductions to decision makers? Does this reputation reflect well on you?
10. Can he or she tell a compelling story? Can he or she communicate clearly and effectively?
11. Does he or she know how to attract buyers to the table?
12. Is he or she as sensitive about confidentiality as you are?
13. Does he or she recognize the fine line between “just enough” and “too much” information?
14. Can he or she recognize the difference between serious and half-hearted buyers?
15. Does he or she understand your needs well enough to find the buyer that “fits” you?
16. Can he or she script a site visit that prepares you for the unexpected?
17. Can he or she orchestrate site visits in a way that makes you comfortable?
18. Does he or she know how to maintain deal momentum?
19. Does he or she know how to control the flow of information?
20. Does he or she know how to elicit positive indications of terms and value from buyers?
21. Can he or she evaluate deal structures in terms of your goals?
22. Does he or she know where the buyer has hidden “land mines” (in the letter of intent and purchase agreement) that have the potential to reduce the purchase price *after* closing?

23. Can he or she efficiently organize all of your company's information to minimize the time and effort necessary to complete due diligence?
24. Can he or she manage the release of company information so that it supports the company's projection of future growth?
25. Can he or she manage the due diligence process so that precious time is not wasted?
26. Can he or she track all the open issues quickly and efficiently enough to maintain deal momentum?
27. Does he or she have the experience necessary to distinguish the important from the trivial while negotiating the promises you'll make in your warranties and representations?
28. Does he or she have the attention to detail necessary to collect (from a myriad of sources) every single deliverable necessary to close the deal?
29. Does he or she understand the nuances of negotiation? Can he or she help you understand your options and make decisions?
30. Will he or she be there *whenever* you need him or her?